

**SUPREME COURT OF NOVA SCOTIA**

**In the matter of the *Companies' Creditors Arrangement Act*, R.S.C 1985, c. C-36, as amended**

**An Application by CFFI Ventures Inc. (the "Applicant") for creditor protection under s. 11 of the CCAA, and other relief**

**BOOK OF AUTHORITIES OF CFFI VENTURES INC.  
Motion for SISP Approval**

**McINNES COOPER**  
1969 Upper Water St., Suite 1300  
Halifax, NS B3J 3R7

**Stephen Kingston**  
Tel: 902-444-8569  
Email: stephen.kingston@mcinnescooper.com

**Ben Pryde**  
Tel: 902-444-8453  
Email: ben.pryde@mcinnescooper.com

**Counsel for the Moving Party, CFFI Ventures Inc.**

**TO: The Service List**

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2. *CFFI Ventures Inc (Re)* (13 March 2026), Halifax Hfx No. 551716 (NSSC) ([Initial Order](#))
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ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MADAM )  
 )  
JUSTICE PEPALL )

Tuesday THE 2

DAY OF FEBRUARY, 2010

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 CANWEST PUBLISHING  
INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS  
INC. AND CANWEST (CANADA) INC.

**STAY EXTENSION ORDER AND ORDER AMENDING THE INITIAL ORDER AND  
THE PROCEDURES FOR THE SALE AND INVESTOR SOLICITATION PROCESS**

THESE MOTIONS, made by the Applicants for an extension of the Stay Period and other relief, and by the Ad Hoc Committee of 9.25% Senior Subordinated Noteholders (the "Ad Hoc Committee") for amendments to the Sale and Investor Solicitation Process and other relief, were heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Thomas C. Strike sworn January 27, 2010 and the Exhibits thereto, the affidavit of Ted S. Lodge sworn January 27, 2010 and the Exhibits thereto, the affidavit of Mark Hootnick sworn January 27, 2010 and the Exhibits thereto and the report of FTI Consulting Canada Inc. (the "Report") in its capacity as the monitor appointed in these proceedings (the "Monitor"), and on hearing the submissions of counsel for the Applicants and Canwest Limited Partnership / Canwest Societe en Commandite (the "Limited Partnership"), the Monitor, The Bank of Nova Scotia in its capacity as Administrative Agent (the "Agent") for the senior lenders to the Limited Partnership (collectively, the "Senior Lenders") and the Ad

Hoc Committee, no one appearing for anyone else on the service list although served as appears from the Affidavit of Service, filed and on being advised of the consent of the Ad Hoc Committee to (i) the relief set out in paragraph 4 of this Order, and (ii) the form of Schedule "A" hereto,

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Report and the Motion Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the Stay Period as defined in Paragraph 21 of the Order of this Honourable Court made in these proceedings on January 8, 2010 (the "Initial Order") be and is hereby extended to and including April 14, 2010.

3. THIS COURT ORDERS that paragraph 12 of the Initial Order be and is amended so that it reads as follows:

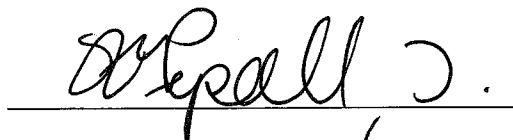
12. THIS COURT ORDERS that, subject to availability under the LP DIP Facility, subject to the LP DIP Definitive Documents and the LP Support Agreement, and subject to the Approved Cash Flow, the LP Entities shall be entitled but not required to make available to National Post Inc. (formerly known as 4513401 Canada Inc.) secured revolving loans pursuant to the terms of the NP Intercompany Loan Agreement as defined and described in greater detail in the Strike Affidavit, as same may be amended from time to time with the consent of the Agent, acting in consultation with the Steering Committee, the LP CRA and the Monitor.

4. THIS COURT ORDERS that Schedule "A" to the Initial Order as issued and entered on January 8, 2010 is removed and replaced with the amended version of the Procedures for the Sale and Investor Solicitation Process that is attached as Schedule "A" to this Order.

5. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and are 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.

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

FEB 02 2010



PER / PAR: 

Joanne Nicoara  
Registrar, Superior Court of Justice

## Schedule "A"

### Procedures for the Sale and Investor Solicitation Process

On January 8, 2010, Canwest Publishing Inc. / Publications Canwest Inc. ("CPI"), Canwest (Canada) Inc. and Canwest Books Inc. (the "Applicants") obtained an initial order (the "Initial Order") under the *Companies' Creditors Arrangement Act* ("CCAA") from the Ontario Superior Court of Justice (the "Court"). The Initial Order also applies to Canwest Limited Partnership/Canwest Societe en Commandite (the "Limited Partnership", which together with the Applicants make up the "LP Entities"). As part of the Initial Order, the Court: (i) approved the Sale and Investor Solicitation Process (the "SISP") set forth herein to determine whether a Successful Bid (as defined below) can be obtained; and (ii) authorized CPI and the Limited Partnership to file the Senior Lenders CCAA Plan, pursuant to which, if there is no Successful Bid, 7272049 Canada Inc. ("AcquireCo") will acquire certain assets and assume certain liabilities of CPI (the "Credit Acquisition").

Set forth below are the procedures (the "SISP Procedures") to be followed with respect to a sale and investor solicitation process to be undertaken to seek a Successful Bid, and if there is a Successful Bid, to complete the transactions contemplated by the Successful Bid.

### Defined Terms

All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Initial Order or in the Senior Lenders CCAA Plan, attached to the Initial Order. In addition, in these SISP Procedures:

**"CCAA Senior Lender Approval"** means a formal vote of the Senior Lenders under the CCAA, pursuant to which super majority approval of the Senior Lenders as required by the CCAA, being 66.7% by Cdn\$ and an absolute majority in number of the Senior Lenders that vote, is obtained;

**"Senior Secured Claims Amount"** means the aggregate amount owing (whether for principal, interest, fees, recoverable costs or otherwise) to the Senior Lenders and the Agent, as at the date upon which the transactions contemplated by the Successful Bid, if any, are completed, under:

- (i) the Senior Credit Agreement;
- (ii) all Hedging Agreements; and
- (iii) the LP Support Agreement,

in each case calculated based on the deemed conversion of claims denominated in US Dollars to Canadian Dollars on the Filing Date;

**"Superior Cash Offer"** means a credible, reasonably certain and financially viable offer that would result in a cash distribution to the Senior Lenders on closing of the transaction contemplated by the offer of the Senior Secured Claims Amount less a discount of Cdn \$25 million calculated as of the date of such closing (the "Reference Amount");

**“Superior Alternative Offer”** means a credible, reasonably certain and financially viable offer for the purchase of all or substantially all of the LP Property (for greater certainty, including any such offer where the cash component available for distribution to the Senior Lenders upon closing, if any, is less than the Reference Amount) or a reorganization of the LP Plan Entities, in each case approved by a CCAA Senior Lender Approval; and

**“Superior Offer”** means either a Superior Cash Offer or a Superior Alternative Offer.

### **Solicitation Process**

The SISP Procedures set forth herein describe, among other things, the LP Property available for sale and the opportunity for an investment in the LP Business, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the LP Property and the LP Business, the manner in which bidders and bids become Qualified Bidders (as defined below) and Qualified Bids (as defined below), respectively, the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below) and the Court’s approval thereof (collectively, the **“Solicitation Process”**). The Monitor shall supervise the SISP Procedures and in particular shall supervise the Financial Advisor in connection therewith. The LP Entities are required to assist and support the efforts of the Monitor, the Financial Advisor, and the LP CRA as provided for herein. In the event that there is disagreement as to the interpretation or application of these SISP Procedures, the Court will have jurisdiction to hear and resolve such dispute.

### **Sale and Investment Opportunity**

A Confidential Information Memorandum describing the opportunity to acquire all or substantially all of the LP Property or invest in the LP Entities will be made available by the Financial Advisor to prospective purchasers or prospective strategic or financial investors that have executed a confidentiality agreement with the LP Entities. One or more Qualified Non-Binding Indications of Interest (as defined below) for less than substantially all of the LP Property will not be precluded from consideration as a Superior Cash Offer or Potential Superior Alternative Offer (as defined below).

### **"As Is, Where Is"**

The sale of the LP Property or investment in the LP Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the LP Entities or any of their agents or estates, except to the extent set forth in the relevant sale or investment agreement with a Successful Bidder.

### **Free Of Any And All Claims And Interests**

In the event of a sale, all of the rights, title and interests of the LP Entities in and to the LP Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the **"Claims and Interests"**) pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such LP Property (without prejudice to any claims or

causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant sale agreement with a Successful Bidder.

An investment in the LP Entities may, at the option of the Successful Bidder, include one or more of the following: a restructuring, recapitalization or other form of reorganization of the business and affairs of the LP Entities as a going concern; a sale of LP Property to a newly formed acquisition entity on terms described in the above paragraph; or a plan of compromise or arrangement pursuant to the CCAA or any applicable corporate legislation which compromises the Claims and Interests as set out therein.

### **Phase 1 - Initial Timing**

For a period of approximately eight weeks following the date of the Initial Order, or for such shorter period as the Monitor, in consultation with the Financial Advisor and the LP CRA, may determine appropriate (“**Phase 1**”), the Financial Advisor (with the assistance of the LP CRA and under the supervision of the Monitor and in accordance with the terms of the Initial Order) will solicit non-binding indications of interest from prospective strategic or financial parties to acquire the LP Property or to invest in the LP Entities (the “**Non-Binding Indications of Interest**”).

### **Publication Notice**

As soon as reasonably practicable after the granting of the Initial Order approving these SISP Procedures, but in any event no more than three (3) Business Days after the issuance of the Initial Order, the Monitor shall cause a notice of the sale and investor solicitation process contemplated by these SISP Procedures and such other relevant information which the Monitor, in consultation with the Financial Advisor, considers appropriate to be published in the National Post (National Edition). At the same time, the LP Entities shall issue a press release setting out the notice and such other relevant information in form and substance satisfactory to the Monitor, following consultation with the Financial Advisor, with Canada Newswire designating dissemination in Canada and major financial centres in the United States, Europe and Asia Pacific.

### **Participation Requirements**

Unless otherwise ordered by the Court or as otherwise determined by the Monitor (in consultation with the Financial Advisor, the LP CRA and the Agent), in order to participate in the Solicitation Process, each person (a “**Potential Bidder**”) must deliver to the Financial Advisor at the address specified in Schedule “1” hereto (including by email or fax transmission):

- (a) prior to the distribution of any confidential information by the Financial Advisor to a Potential Bidder (including the Confidential Information Memorandum), an executed confidentiality agreement in form and substance satisfactory to the Monitor, the Financial Advisor, the LP CRA and the LP Entities, which shall inure to the benefit of any purchaser of the LP Property or any investor in the LP Business. At the request of a Potential Bidder, the Confidential Information Memorandum shall also be provided to a proposed lender of such Potential Bidder that: (i) is reasonably acceptable to the

Financial Advisor; and (ii) executes a confidentiality agreement in form and substance satisfactory to the Monitor, the Financial Advisor, the LP CRA and the LP Entities; and

(b) on or prior to the Phase I Bid Deadline, as defined below, specific indication of the anticipated sources of capital for the Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the Financial Advisor, the LP CRA and the Agent and each of their respective legal and financial advisors, to make, in their reasonable business or professional judgment, a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the transaction.

A Potential Bidder that has executed a confidentiality agreement, as described above, and delivers the documents described above, whose financial information and credit quality support or enhancement demonstrate to the satisfaction of the Monitor, in its reasonable business judgment, the financial capability of the Potential Bidder to consummate a transaction, and that the Monitor determines, in its reasonable business judgment, after consultation with the Financial Advisor, the LP CRA and the Agent is likely (based on availability of financing, experience and other considerations) to be able to consummate a Sale Proposal (as defined below) or an Investment Proposal (as defined below) will be deemed a "**Qualified Bidder**".

The determination as to whether a Potential Bidder is a Qualified Bidder will be made as promptly as practicable after a Potential Bidder delivers all of the materials required above. If it is determined that a Potential Bidder is a Qualified Bidder, the Financial Advisor will promptly notify the Potential Bidder that it is a Qualified Bidder.

### **Due Diligence**

The Financial Advisor shall provide any person seeking to become a Qualified Bidder that has executed a confidentiality agreement with a copy of the Confidential Information Memorandum. The Monitor, the Financial Advisor, the LP CRA and the LP Entities make no representation or warranty as to the information contained in the Confidential Information Memorandum or the information to be provided through the due diligence process in Phase 2 or otherwise, except, in the case of the LP Entities, to the extent otherwise contemplated under any definitive sale or investment agreement with a Successful Bidder executed and delivered by the LP Entities.

### **Phase 1**

#### **Seeking Non-Binding Indications of Interest by Qualified Bidders**

A Qualified Bidder that desires to participate in Phase 1 shall deliver written copies of a non-binding indication of interest to the Financial Advisor, at the address specified in Schedule "1" hereto (including by email or fax transmission), so as to be received by it not later than March 5, 2010 at 5:00 PM (Toronto time), or such other date or time as may be agreed by the Monitor, in consultation with the Financial Advisor and the LP CRA, and the Agent (the "**Phase 1 Bid Deadline**").

**Non-Binding Indications of Interest by Qualified Bidders**

A non-binding indication of interest submitted will be considered a Qualified Non-Binding Indication of Interest only if the bid is submitted on or before the Phase 1 Bid Deadline by a Qualified Bidder (pursuant to the criteria indicated above) and contains the following information (a “**Qualified Non-Binding Indication of Interest**”):

(a) An indication of whether the Qualified Bidder is offering to (i) acquire all or substantially all of the LP Property (a “**Sale Proposal**”) or (ii) make an investment in the LP Entities (an “**Investment Proposal**”);

(b) In the case of a Sale Proposal: it shall identify (i) the purchase price range (including liabilities to be assumed by the Qualified Bidder); (ii) any of the LP Property expected to be excluded or any additional assets desired to be included; (iii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and any related contingencies, as applicable); (iv) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; (v) additional due diligence required or desired to be conducted during Phase 2 (defined below), if any; (vi) any conditions to closing that the Qualified Bidder may wish to impose; (vii) any other terms or conditions of the Sale Proposal which the Qualified Bidder believes are material to the transaction; and (viii) whether, if the proposed transaction is completed, the newspapers operated by the LP Business and the National Post will continue to be “Canadian issues” of “Canadian newspapers” as defined in the *Income Tax Act* (Canada); and

(c) In the case of an Investment Proposal, it shall identify: (i) the direct or indirect investment target, whether the Limited Partnership or CPI or both; (ii) the aggregate amount of the equity and debt investment (including, the sources of such capital, preliminary evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and any related contingencies, as applicable) to be made in the LP Business; (iii) the underlying assumptions regarding the pro forma capital structure (including, the anticipated debt levels, debt service fees, interest and amortization); (iv) equity, if any, to be allocated to the Senior Secured Claims or to any other secured or unsecured creditors of the LP Entities; (v) the structure and financing of the transaction (including, but not limited to, whether and what portion of the Senior Secured Claims Amount is proposed to be paid on closing and all requisite financial assurance); (vi) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals; (vii) additional due diligence required or desired to be conducted during Phase 2, if any; (viii) any conditions to closing that the Qualified Bidder may wish to impose; (ix) any other terms or conditions of the Investment Proposal which the Qualified Bidder believes are material to the transaction; and (x) whether, if the proposed transaction is completed, the newspapers operated by the LP Business and the National Post will continue to be “Canadian issues” of “Canadian newspapers” as defined in the *Income Tax Act* (Canada).

(d) In the case of a Sale Proposal or an Investment Proposal, it shall contain such other information reasonably requested by the Financial Advisor, in consultation with the LP CRA and the Agent.

Unless the Qualified Bidder otherwise indicates in its Sale Proposal or Investment Proposal, as the case may be, it shall be assumed for purposes of assessing the proposal that (i) substantially all of the employees of the LP Entities will become employees of the Qualified Bidder or remain employees of the LP Entities, as the case may be, and the proposed terms and conditions of employment to be offered to those employees will be substantially similar to their existing terms and conditions of employment; and (ii) all pension liabilities and assets related to any employees currently covered under any registered pension or retirement income plan or any post-retirement benefit plan will be assumed or purchased, as applicable, by the Qualified Bidder or will remain liabilities and assets of the LP Entities, as the case may be.

The Monitor, in consultation with the Financial Advisor and the LP CRA, may waive compliance with any one or more of the requirements specified herein and deem such non-compliant bids to be Qualified Non-Binding Indication of Interest, but only with the prior consent of the Agent, acting in consultation with the Steering Committee. Copies of all Qualified Non-Binding Indications of Interest shall be provided to the Agent on terms that permit the Agent to consult with respect thereto with the Steering Committee and other Senior Lenders on a confidential basis, subject only to the Monitor reserving its right not to provide information concerning the particulars of any of the Qualified Non-Binding Indications of Interest until after the conduct of the vote on the Senior Lenders CCAA Plan.

### **Assessment of Qualified Non-Binding Indications of Interest**

#### *I - Advance to Phase 2*

Within the one week period following the Phase 1 Bid Deadline, or by such other later date as may be agreed by the Monitor, in consultation with the Financial Advisor and the LP CRA, and the Agent, the Monitor will, in consultation with the Financial Advisor, the LP CRA and the Agent, assess the Qualified Non-Binding Indications of Interest received during Phase 1, if any, and will determine whether there is a reasonable prospect of obtaining either (a) one or more Superior Cash Offers; or (b) one or more Superior Alternative Offers (if prior to closing approved by CCAA Senior Lender Approval) that could generate value for the general unsecured creditors of the LP Entities. If the Monitor determines that there is such a reasonable prospect, the Monitor will recommend to the Special Committee that the SISP continue for a further seven weeks in accordance with these SISP Procedures (“**Phase 2**”). If the Special Committee accepts such recommendation, the SISP will immediately thereafter continue to Phase 2. If the Special Committee does not accept such recommendation, the Monitor will report to the Court that the Special Committee does not accept such recommendation, and will seek advice and directions from the Court with respect to the SISP.

If the SISP does not proceed to Phase 2 under the prior paragraph, the Monitor will forthwith advise the Agent and thereafter consult with the Agent, the LP CRA and the Financial Advisor to assess whether there is a reasonable prospect of a Qualified Non-Binding Indication of Interest resulting in a Superior Alternative Offer (a “**Potential Superior Alternative Offer**”).

If the Monitor determines that there is a Potential Superior Alternative Offer, the Monitor will forthwith so advise the Agent. If CCAA Senior Lender Approval has been obtained for the Senior Lenders CCAA Plan, and if the Agent, acting in consultation with the Steering Committee, considers it highly unlikely that the Potential Superior Alternative Offer would receive CCAA Senior Lender Approval, it may elect, by notice to the Monitor, for a delay of two weeks to consult with relevant Senior Lenders. If within those two weeks, the Agent provides satisfactory written confirmation to the Monitor that Senior Lenders holding more than 33.3% of the Senior Secured Claims do not support pursuing the Potential Superior Alternative Offer, it shall be deemed that there is no reasonable prospect of the Potential Superior Alternative Offer resulting in a Superior Alternative Offer. If the Agent does not so notify the Monitor within such period, the SISP will proceed to Phase 2.

## *II. Terminate SISP*

The Monitor shall recommend to the Special Committee that the SISP be terminated at the end of Phase 1 if:

1. no Qualified Non-Binding Indication of Interest is received by the Financial Advisor;  
or
2. the Monitor determines that there is no reasonable prospect that any Qualified Non-Binding Indication of Interest received will result in a Superior Cash Offer or in a Superior Alternative Offer.

If the Special Committee does not accept the Monitor's recommendation to terminate the SISP at the end of Phase 1, the Monitor shall advise the Court and seek advice and directions of the Court with respect to the SISP. If the SISP is terminated pursuant to the Monitor's recommendation or pursuant to Court Order, the LP Entities shall promptly, and if they do not, the Agent may: (i) apply for Court sanction of the Senior Lenders CCAA Plan in accordance with the Initial Order and (ii) take steps to complete the Credit Acquisition, subject to satisfaction of the conditions precedent under and compliance with the terms and conditions of (a) the Senior Lenders CCAA Plan, (b) the Acquisition and Assumption Agreement between Acquireco and the LP Entities (the "**Credit Acquisition Agreement**"), and (c) the LP Support Agreement made among the LP Entities and the Agent dated January 8, 2010 (the "**LP Support Agreement**"). The Financial Advisor shall also notify each Qualified Bidder that submitted a Qualified Non-Binding Indication of Interest that the SISP has been terminated.

## Phase 2

### Seeking Qualified Bids by Qualified Bidders

At the outset of Phase 2, the Monitor shall, in its reasonable business judgment, in consultation with the Financial Advisor, the LP CRA and the Agent, recommend to the Special Committee whether any Qualified Bidders should be eliminated from the SISP (the "**Elimination Recommendation**"). If the Special Committee disagrees with the Elimination Recommendation, the Monitor shall advise the Court and seek advice and directions of the Court with respect to the SISP.

During Phase 2, each Qualified Bidder that is not eliminated from the SISP in accordance with these SISP Procedures and, at the request of such a Qualified Bidder, a proposed lender of such Qualified Bidder that: (i) is reasonably acceptable to the Financial Advisor; and (ii) executes a confidentiality agreement in form and substance satisfactory to the Monitor, the Financial Advisor, the LP CRA and the LP Entities, shall have such due diligence access to materials and information relating to the LP Property and the LP Business as the Financial Advisor, in its reasonable business judgment, in consultation with Monitor, deems appropriate, having regard to the advance to Phase 2 and the requirements of a Qualified Purchase Bid (defined below) and a Qualified Investment Bid (defined below), including, as appropriate, meetings with senior management of the LP Entities and facility tours.

A Qualified Bidder that is not eliminated from the SISP in accordance with these SISP Procedures and which desires to participate in Phase 2 will deliver written copies of a Qualified Purchase Bid or a Qualified Investment Bid to the Financial Advisor at the address specified in Schedule "1" hereto (including by email or fax transmission) so as to be received by it not later than 5:00 pm (Toronto time) on the date which is seven (7) weeks following the commencement of Phase 2, or such other date or time as may be agreed by the Financial Advisor, in consultation with the Monitor and the LP CRA, and the Agent (the "**Phase 2 Bid Deadline**").

#### **Qualified Purchase Bids**

A bid submitted to acquire all or substantially all of the LP Property will be considered a Qualified Purchase Bid only if (i) the bid is submitted by a Qualified Bidder who submitted a Qualified Non-Binding Indication of Interest on or before the Phase 1 Bid Deadline, (ii) the Qualified Bidder was not eliminated from the SISP in accordance with these SISP Procedures and (iii) and the bid complies with all of the following (a "**Qualified Purchase Bid**"):

(a) it includes a letter stating that the bidder's offer is irrevocable until the earlier of (x) the selection of the Successful Bidder and (y) thirty (30) days following the Phase 2 Bid Deadline, provided that if such bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the sale to the Successful Bidder;

(b) it includes a duly authorized and executed purchase agreement, including the purchase price for assets proposed to be acquired expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements);

(c) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Monitor, in consultation with the Financial Advisor, the LP CRA and the Agent, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the bid;

(d) it is not conditioned on (i) the outcome of unperformed due diligence by the bidder and/or (ii) obtaining financing;

(e) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of any such participation;

(f) it includes an acknowledgement and representation that the bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase agreement;

(g) it includes evidence, in form and substance reasonably satisfactory to the Monitor: (i) of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid and (ii) that, if the proposed transaction is completed, the newspapers operated by the LP Business and the National Post will continue to be "Canadian issues" of "Canadian newspapers" as defined in the *Income Tax Act (Canada)*;

(h) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to Cdn\$10 million to be held and dealt with in accordance with these SISP Procedures;

(i) it (i) contains full details of the proposed number of employees of the LP Entities who will become employees of the bidder and the proposed terms and conditions of employment to be offered to those employees and (ii) identifies any pension liabilities and assets related to any employees currently covered under any registered pension or retirement income plan who will become employees of the bidder that the bidder intends to assume or purchase;

(j) it contains other information reasonably requested by the Financial Advisor, in consultation with the Monitor, the LP CRA and the Agent; and

(k) it is received by the Phase 2 Bid Deadline.

### **Qualified Investment Bids**

A bid submitted to make an investment in the LP Entities will be considered a Qualified Investment Bid only if (i) the bid is submitted by a Qualified Bidder who submitted a Qualified Non-Binding Indication of Interest on or before the Phase 1 Bid Deadline, (ii) the Qualified Bidder was not eliminated from the SISP in accordance with these SISP Procedures and (iii) the bid complies with all of the following (a "**Qualified Investment Bid**"):

(a) it includes a duly authorized and executed term sheet describing the terms and conditions of the proposed transaction, including details regarding the proposed

equity and debt structure of the LP Entities following completion of the proposed transaction (the "**Term Sheet**");

(b) it includes a letter stating that the bidder's offer is irrevocable until the earlier of (x) the selection of the Successful Bidder and (y) thirty (30) days following the Phase 2 Bid Deadline, provided that if such bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the investment by the Successful Bidder;

(c) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Monitor, in consultation with the Financial Advisor, the LP CRA and the Agent, to make a reasonable determination as to the bidder's financial and other capabilities to consummate the transaction contemplated by the bid;

(d) it is not conditioned on (i) the outcome of unperformed due diligence by the bidder and/or (ii) obtaining financing;

(e) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of any such participation;

(f) it includes an acknowledgement and representation that the bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business of the LP Entities or the completeness of any information provided in connection therewith except as expressly stated in the Term Sheet;

(g) it includes evidence, in form and substance reasonably satisfactory to the Monitor, (i) of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid; and (ii) that, if the proposed transaction is completed, the newspapers operated by the LP Business and the National Post will continue to be "Canadian issues" of "Canadian newspapers" as defined in the *Income Tax Act* (Canada);

(h) it is accompanied by a refundable deposit (the "**Good Faith Deposit**") in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to Cdn\$10 million to be held and dealt with in accordance with these SISF Procedures,;

(i) it contains other information reasonably requested by the Monitor, the Financial Advisor, the LP CRA or the Agent; and

(j) it is received by the Phase 2 Bid Deadline.

Qualified Investment Bids and Qualified Purchase Bids shall hereinafter be referred to as “**Qualified Bids**” and each a “**Qualified Bid**”.

The Monitor, in consultation with the Financial Advisor and the LP CRA, may waive compliance with any one or more of the requirements specified herein and deem such non-compliant bids to be Qualified Investment Bids or Qualified Purchase Bids, as the case may be, but only with the prior consent of the Agent, acting in consultation with the Steering Committee. Copies of all Qualified Bids shall be provided to the Agent on terms that permit the Agent to consult with respect thereto with the Steering Committee and other Senior Lenders on a confidential basis, subject only to the Monitor reserving its right not to provide information concerning the particulars of any of the Qualified Bid until after the conduct of the vote on the Senior Lenders CCAA Plan.

If at any point during Phase 2, the Monitor determines, in consultation with the Financial Advisor, the LP CRA, and the Agent, that a Successful Bid will not be obtained by the Phase 2 Bid Deadline, (i) it will advise the Special Committee, the Financial Advisor, the LP CRA and the Agent of that fact; and (ii) following that advice, the Monitor and the LP Entities shall promptly, and if they do not, the Agent may, apply for Court sanction of the Senior Lenders CCAA Plan in accordance with the Initial Order, including completion of the Credit Acquisition, subject to satisfaction of the conditions precedent under and compliance with the terms and conditions of (a) the Senior Lenders CCAA Plan, (b) the Credit Acquisition Agreement and (c) the LP Support Agreement.

#### **No Qualified Bids**

If none of the Qualified Bids received by the Financial Advisor constitute Superior Offers, the LP Entities shall promptly, and if they do not, the Agent may, apply for Court sanction of the Senior Lenders CCAA Plan in accordance with the Initial Order, including completion of the Credit Acquisition, subject to satisfaction of the conditions precedent under and compliance with the terms and conditions of (a) the Senior Lenders CCAA Plan, (b) the Credit Acquisition Agreement and (c) the LP Support Agreement.

#### **Superior Cash Offer is Received**

If the Monitor determines in its reasonable business judgment following consultation with the Financial Advisor and the LP CRA, that one or more of the Qualified Bids is a Superior Cash Offer, the Monitor, in consultation with the Financial Advisor and the LP CRA, shall recommend (the “**Superior Cash Offer Recommendation**”) to the Special Committee that the most favourable Superior Cash Offer be selected and that a definitive agreement be negotiated and settled in respect of that Superior Cash Offer, conditional upon Court approval and conditional on the Superior Cash Offer closing within 60 days after the Phase 2 Bid Deadline, or such longer period as shall be agreed to by the Monitor, in consultation with the Financial Advisor and the LP CRA, and consented to by the Agent, acting in consultation with the Steering Committee.

If the Special Committee accepts the Superior Cash Offer Recommendation, the Monitor, in consultation with the Financial Advisor and the LP CRA, shall negotiate and settle a definitive

agreement in accordance with the recommendation but subject to the terms and conditions of the Senior Lenders CCAA Plan.

If the Special Committee does not wish to proceed with the Superior Cash Offer recommended by the Monitor, the Monitor shall advise the Court and seek advice and directions from the Court with respect to the SISP.

### **Superior Alternative Offer is Received**

If the Monitor does not receive a Superior Cash Offer but receives a Qualified Bid which the Monitor determines, in consultation with the Financial Advisor, the LP CRA and the Agent, is a Potential Superior Alternative Offer, the Monitor shall so advise the Agent. If CCAA Senior Lender Approval has been obtained for the Senior Lenders CCAA Plan, and if the Agent, acting in consultation with the Steering Committee, considers it highly unlikely that the Potential Superior Alternative Offer would receive CCAA Senior Lender Approval, it may elect, by notice to the Monitor, for a delay of two weeks to consult with relevant Senior Lenders. If within those two weeks, the Agent provides satisfactory written confirmation to the Monitor that Senior Lenders holding more than 33.3% of the Senior Secured Claims do not support pursuing the Potential Superior Alternative Offer, it shall be deemed that there is no reasonable prospect of the Potential Superior Alternative Offer resulting in a Superior Alternative Offer. If the Agent does not so notify the Monitor within such period, the Monitor, in consultation with the Financial Advisor and the LP CRA, shall recommend (the “**Superior Alternative Offer Recommendation**”) to the Special Committee that the Monitor, in consultation with the Financial Advisor and the LP CRA, and the Agent negotiate a definitive agreement in respect of the Potential Superior Alternative Offer, conditional upon Court approval and CCAA Senior Lender Approval and on the Superior Alternative Offer closing within 60 days after the Phase 2 Bid Deadline, or such longer period as shall be agreed to by the Monitor and the Agent acting in consultation with the Steering Committee.

In the event that the Special Committee does not accept the Superior Alternative Offer Recommendation, the Monitor shall so advise the Court and seek its advice and directions with respect to the SISP.

In the event that the Special Committee does accept the Superior Alternative Offer Recommendation, the Monitor, in consultation with the Financial Advisor and the LP CRA, and the Agent shall negotiate a definitive agreement in accordance with such recommendation and thereafter the Monitor, in consultation with the Financial Advisor and the LP CRA, or the Agent shall have the right to seek CCAA Senior Lender Approval of the Potential Superior Alternative Offer.

If within the two week delay referred to above, the Agent provides satisfactory written confirmation to the Monitor that Senior Lenders holding more than 33.3% of the Senior Secured Claims do not support pursuing the Potential Superior Alternative Offer or if CCAA Senior Lender Approval is sought but not obtained, then the LP Entities shall promptly, and if they do not, the Agent may, apply for Court sanction of the Senior Lenders CCAA Plan in accordance with the Initial Order, including completion of the Credit Acquisition, subject to satisfaction of

the conditions precedent under and compliance with the terms and conditions of (a) the Senior Lenders CCAA Plan, (b) the Credit Acquisition Agreement and (c) the LP Support Agreement.

Once a definitive agreement has been negotiated and settled in respect of the Superior Offer which has been selected by the Monitor or by Court Order (the “**Selected Superior Offer**”) in accordance with the provisions hereof, the Selected Superior Offer shall be the “**Successful Bid**” hereunder and the person(s) who made the Selected Superior Offer shall be the “**Successful Bidder**” hereunder.

### **Approval Motion**

The hearing to authorize some or all of the Applicants to enter into agreements with respect to the Successful Bid (the “**Approval Motion**”) will be held on a date to be scheduled by the Court upon application by the Applicants. The Approval Motion may be adjourned or rescheduled by the Monitor with the consent of the Agent, acting in consultation with the Steering Committee, without further notice by an announcement of the adjourned date at the Approval Motion. All Qualified Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of approval of the Successful Bid by the Court.

### **Deposits**

All Deposits shall be retained by the Monitor and invested in an interest bearing trust account. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion shall be applied to the purchase price to be paid or investment amount to be made by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders not selected as the Successful Bidder shall be returned to such bidders within five Business Days of the date upon which the Successful Bid is approved by the Court. If there is no Successful Bid, all Deposits shall be returned to the bidders within five Business Days of the date upon which the SISIP is terminated in accordance with these procedures.

### **Approvals**

For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or are otherwise required at law in order to implement a Successful Bid or the Senior Lenders CCAA Plan.

**No Amendment**

There shall be no amendments to this SISP, including, for greater certainty the process and procedures set out herein, without the consent of the Agent, acting in consultation with the Steering Committee.

**Further Orders**

At any time during the Solicitation Process, the Monitor may, following consultation with the Financial Advisor, the LP CRA and the Agent, apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

**Schedule "1"**

**Address for Notices and Deliveries**

To the Financial Advisor:

**RBC Capital Markets**  
Mergers & Acquisitions  
P.O. Box 50, 5<sup>th</sup> Floor  
South Tower, Royal Bank Plaza  
Toronto, Ontario  
M5J 2W7

Attention: Peter Buzzi, Managing Director, Co-Head M&A

Email: peter.buzzi@rbccm.com

Facsimile: (416) 842-5360

- and -

Attention: Richard Grudzinski, Managing Director, M&A, Head of Financial  
Restructuring Advisory

Email: richard.grudzinski@rbccm.com

Facsimile: (416) 842-5360

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 CANWEST  
PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST  
(CANADA) INC.

APPLICANTS

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**STAY EXTENSION ORDER AND ORDER  
AMENDING THE PROCEDURES FOR THE SALE  
AND INVESTOR SOLICITATION PROCESS**

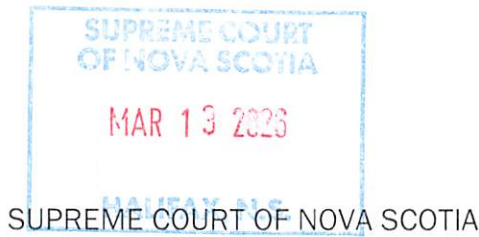
**Osler, Hoskin & Harcourt LLP**  
1 First Canadian Place  
P.O. Box 50  
Toronto, ON M5X 1B8

Lyndon A.J. Barnes (LSUC#13350D)  
Tel: (416) 862-6679  
Alexander Cobb (LSUC#45363F)  
Tel: (416) 862-5964  
Elizabeth Allen Putnam (LSUC#53194L)  
Tel: (416) 862-6835  
Fax: (416) 862-6666

Lawyers for the Applicants

F. 1117119

2026



Hfx No. 551716

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

AND IN THE MATTER OF: An Application by CFFI Ventures Inc. (the Applicant") for creditor protection under s. 11 of the CCAA, and other relief



INITIAL ORDER

BEFORE THE HONOURABLE JUSTICE JOHN KEITH:

The Applicant proposes to make a compromise or arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended, and it applied for an initial order and, now or in the future, other relief under the CCAA as may be sought on notice of motion.

The following parties received notice of this application:

The Service List attached here to as Schedule "A"

The following parties, represented by the following counsel, made submissions:

Party	Counsel
Applicant	Stephen Kingston and Ben Pryde, McInnes Cooper
HPS Investment Partners LLC	Gavin MacDonald, Cox & Palmer; Marc Wasserman, Dave Rosenblat, Osler, Hoskin & Harcourt LLP
FTI Consulting Canada Inc.	Maria Konyukhova, Stikeman Elliott LLP

On motion of the Applicant and upon reading the affidavit of Brittany Bartlett sworn March 11, 2026 (the "**Bartlett Affidavit**") and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and such other counsel as appeared, with all parties being duly served as appears from the affidavit of service of Stephen Kingston sworn March 12, 2026 and on reading the Pre-Filing Report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as proposed monitor of the Applicant dated March 12 2026, and their consent act as the monitor (in such capacity, the "**Monitor**") attached to the within application, the following is ordered and declared:

### SERVICE

1. The service of the notice of application in chambers, and the supporting documents, as set out in the affidavit of service is hereby deemed adequate notice so that the motion is properly returnable today and further service thereof is hereby dispensed with.

### DEFINITIONS

2. For the purposes of this Initial Order, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them the Bartlett Affidavit.

### APPLICATION

3. The Applicant is a company to which the CCAA applies.

### PLAN OF ARRANGEMENT

4. The Applicant, in consultation with the Monitor, 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

5. The Applicant 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 Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ consultants, agents, experts, accountants, counsel, and such other persons (collectively "**Assistants**") and the employees 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.
6. The Applicant may 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 to employees who continue to provide service on or after the date of this Order ("**Active Employees**"), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the "**Group Benefits**") payable on or after the date of this Order to Active Employees, in each case

incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to deliver the existing Group Benefits;

- c. with prior written approval of the Monitor, the fees and disbursements for any Assistants retained or employed by the Applicant in respect of these proceedings, at their reasonable standard rates and charges.
7. Except as otherwise provided to the contrary herein, the Applicant may pay all reasonable expenses incurred by the Applicant 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 including directors and officers insurance, maintenance, and security services; and
  - b. payment for goods or services actually supplied to the Applicant following the date of this Order.
8. The Applicant may pay reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course prior to the date of this Order, which are determined by the Applicant, in consultation with the Monitor, to be necessary to the continued operation of the Business or preservation of the Property and such payments are approved in advance by the Monitor or by further Order of this Court. Notwithstanding the foregoing, any such payments shall not exceed the amount of \$125,000 in the aggregate.
9. The Applicant shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Applicant and the applicable authority:
  - 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 Applicant in connection with the sale of goods and services by the Applicant, 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 or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business, or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims

of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Applicant; and iii) payable in respect of the period commencing on or after the date of this Order.

10. Until such time as the Applicant disclaims a real property lease in accordance with the CCAA, the Applicant 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 Applicant and the landlord from time to time, for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.
11. Except as specifically permitted herein or by further order of this Court, the Applicant is hereby directed, until further order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date without prior written consent of the Monitor; ii) to grant no security interests, trusts, liens, charges, or encumbrances upon or in respect of any of its Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

#### RESTRUCTURING

12. The Applicant shall, subject to such requirements as are imposed by the Monitor, have the right to:
  - a. permanently or temporarily cease, downsize or shut down any of its business or operations;
  - b. terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
  - 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 refinancing; and
  - d. in accordance with its ordinary course of business, dispose of redundant or nonmaterial assets not exceeding \$500,000 in value.

#### NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

13. Until and including March 23, 2026 or such later date as this Court may order (the "**Stay Period**"), no claim, grievance, application, action, suit, right or remedy, or proceeding or enforcement process in any court, tribunal, or arbitration association (each, a "**Proceeding**") shall be commenced, continued, or enforced against or in respect of any of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in

respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

#### NO PROCEEDINGS AGAINST THE NON-FILING AFFILIATES

14. During the Stay Period, no Proceeding shall be commenced or continued against or in respect of the Non-Filing Affiliates, or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the **"Non-Filing Affiliates' Property and Business"**) including, without limitation, terminating, making any demand, accelerating, amending or declaring in default or taking any enforcement steps under any agreement or agreements with respect to which the Applicant is a party, borrower, principal obligor or guarantor, and no default or event of default shall have occurred or be deemed to have occurred under any such agreement or agreements, by reason of:
- a. the insolvency of the Applicant;
  - b. the Applicant having made an application to this Court under the CCAA, or in connection with the application made to this Court pursuant to Subsection 130(1) of the *Companies Act*;
  - c. the Applicant being a party to this proceeding or any ancillary proceedings;
  - d. the provisions of this Order or any other order in these proceedings or any ancillary proceedings;
  - e. the Applicant taking any step related to this CCAA proceeding;
  - f. any default or cross-default arising from the matters set out in subparagraphs (a), (b), (c), (d) or (e) above, or arising from the Applicant breaching or failing to perform any contractual or other obligations (collectively, the **"Non-Filing Affiliates' Default Events"**),

except with the prior written consent of the Applicant and the Monitor, or with leave of this Court.

#### NO EXERCISE OF RIGHTS OR REMEDIES

15. 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 Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall i) empower the Applicant to carry on any business which the Applicant 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) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety, or the environment;

iv) prevent the filing of any registration to preserve or perfect a security interest; or  
v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence during the Stay Period.

16. During the Stay Period, all rights and remedies of any Person against or in respect of the Non-Filing Affiliates, or affecting the Non-Filing Affiliates' Property and Business, as a result of a Non-Filing Affiliates' Default Event, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **NO INTERFERENCE WITH RIGHTS**

17. 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 Applicant or the Non-Filing Affiliates (as a result of a Non-Filing Affiliates' Default Event), including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. During the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods 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 Applicant, 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 Applicant, and the Applicant 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

19. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased 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 Applicant.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. 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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court, these proceedings are dismissed by final order of this Court, or with leave of this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

21. The Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant 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.
22. The directors and officers of the Applicant 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 \$100,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 31 and 33 hereof.

#### **APPOINTMENT OF MONITOR**

23. FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicant, the Property, and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and the Applicant and its shareholders, officers, directors, employees and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, cooperate 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.
24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
  - a. monitor the Applicant'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, the activities of the Applicant and such other matters as may be relevant to the proceedings herein;
  - c. advise the Applicant in its development of the Plan and any amendments to the Plan, and, to the extent deemed appropriate by the Monitor, assist in its negotiations with creditors, customers, vendors, and other interested Persons;

- d. assist the Applicant, to the extent deemed appropriate by the Monitor, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - e. have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents and to the Business of the Applicant, to the extent that is necessary to adequately assess the Applicant's Business and financial affairs or to perform its duties arising under this Order;
  - f. 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, including any affiliate of, or person related to the Monitor;
  - g. develop a claims process to ascertain the quantum of the claims of all creditors; and
  - h. be at liberty to perform such other duties as are required by this Order or by this Court from time to time.
25. 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.
26. Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.
27. The Monitor shall provide any creditor of the Applicant with information provided by the Applicant 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 Applicant 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 Applicant may agree.
28. The Monitor, counsel to the Monitor, and all counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

29. The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge.

#### ADMINISTRATION CHARGE

30. The Monitor, the Monitor's counsel, and the Applicant's counsel (collectively, the "Chargees") 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 \$250,000, as security for their professional fees and disbursements incurred at the 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 31 and 33 hereof.

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

31. The priorities of the Administration Charge and the Directors' Charge (collectively, the "Charges"), as among them, shall be as follows:
- a. First – Administration Charge (to the maximum amount of \$250,000); and
  - b. Second – Directors' Charge (to the maximum amount of \$100,000).
32. 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.
33. Each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, except for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order.
34. The Applicant and the Chargees shall be entitled, upon giving notice to parties likely affected, to seek an order changing the amount of the Charges or providing that the Charges shall rank in priority to any Encumbrances over which the Charges may not have obtained priority pursuant to this Order.
35. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any encumbrance over any Property that ranks in priority to, or pari passu with any of the Charges unless the Applicant also obtains the prior written consent of the Chargees, or further order of this Court.
36. 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 for a bankruptcy order 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; or (d) 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 Applicant, and notwithstanding any provision to the contrary in any Agreement:

- a. the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant 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 the Applicant seeking the creation of the Charges; and
- c. the payments made by the Applicant pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

#### SERVICE AND NOTICE

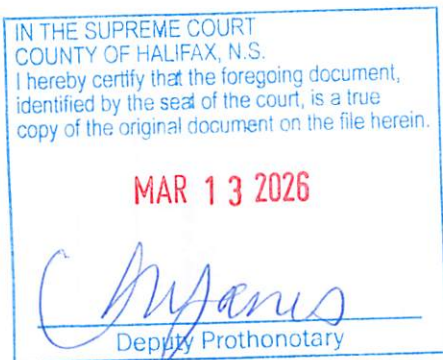
37. The Monitor shall: i) without delay, publish in the Chronicle Herald newspaper a notice containing the information prescribed under the CCAA, and ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicant's books and records), a notice to every known creditor who has a claim against the Applicant 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.
38. The Applicant and the Monitor may give notice of this Order, any other materials and orders in these proceedings, and any notices, and provide correspondence, by forwarding originals or true copies by prepaid ordinary mail, courier, personal delivery, or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Applicant and any such notice by courier, personal delivery, or electronic transmission shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic transmission at or prior to 5:00 p.m. prevailing Atlantic Daylight Savings Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof if sent by courier, personal delivery or electronic transmission sent after 5:00 p.m. prevailing Atlantic Daylight Savings Time; or (c) if sent by ordinary mail, on the third business day after mailing.
39. The Applicant and the Monitor, and any party who has filed a demand of notice may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsel's e-mail addresses as recorded on the service list

from time to time, and the Monitor may post a copy of any or all such materials on its website at [cfcanada.fticonsulting.com/CFFI](http://cfcanada.fticonsulting.com/CFFI).

**GENERAL**

40. The Applicant 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.
41. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee, or a trustee in bankruptcy of the Applicant, the Business or the Property.
42. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction outside Nova Scotia, is requested to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
43. Each of the Applicant and the Monitor may apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor may act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
44. Any interested party, including the Applicant and the Monitor, may apply to this Court to vary or amend this Order on such notice required under the *Civil Procedure Rules* or as this Court may order.
45. This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Daylight Saving Time on the date of this Order.

ISSUED at Halifax, Nova Scotia this 13 day of March, 2026.



*Myra Janes*  
\_\_\_\_\_  
PROTHONOTARY  
**MYRA JANES**  
Deputy Prothonotary

SCHEDULE "A"

SERVICE LIST

CREDITOR NAME	CONTACT
CFFI Ventures Inc.	Stephen Kingston <a href="mailto:stephen.kingston@mcinnescooper.com">stephen.kingston@mcinnescooper.com</a> Ben Pryde <a href="mailto:ben.pryde@mcinnescooper.com">ben.pryde@mcinnescooper.com</a>
HPS Investment Partners LLC	Gavin McDonald <a href="mailto:gmcdonald@coxandpalmer.com">gmcdonald@coxandpalmer.com</a> Marc Wasserman <a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a> Dave Rosenblat <a href="mailto:drosenblat@osler.com">drosenblat@osler.com</a>
SFPC Quantum LP	Michael Scott <a href="mailto:mScott@safgroup.ca">mScott@safgroup.ca</a> Zubair Hussain <a href="mailto:zhussain@safgroup.ca">zhussain@safgroup.ca</a> Guy Martel <a href="mailto:gmartel@stikeman.com">gmartel@stikeman.com</a> Jaye Stewart <a href="mailto:jastewart@stikeman.com">jastewart@stikeman.com</a>
FPR Financial Corporation	John Risley <a href="mailto:jrisley@cffi.com">jrisley@cffi.com</a>
Canada Revenue Agency	Sophie Dupre <a href="mailto:sophie.dupre@justice.gc.ca">sophie.dupre@justice.gc.ca</a> Maeve Baird <a href="mailto:maeve.baird@justice.gc.ca">maeve.baird@justice.gc.ca</a> Caitlin Ward <a href="mailto:caitlin.ward@justice.gc.ca">caitlin.ward@justice.gc.ca</a>
Brendan Paddick	Natasha MacParland <a href="mailto:nmacparland@dwpv.com">nmacparland@dwpv.com</a> Sean Monahan <a href="mailto:smonahan@dwpv.com">smonahan@dwpv.com</a>
Andrew Lapham	Andrew Lapham <a href="mailto:alapham@npcapital.com">alapham@npcapital.com</a>
Robert Orr	Robert Orr <a href="mailto:robert@cunadelmar.com">robert@cunadelmar.com</a> Sara Scott <a href="mailto:sscott@stewartmckelvey.com">sscott@stewartmckelvey.com</a>
Royal Bank Visa	<a href="mailto:rbccommercialcards@rbc.com">rbccommercialcards@rbc.com</a>
Shell Canada Products	Jeyrald Aquino <a href="mailto:jeyrald.aquino@shell.com">jeyrald.aquino@shell.com</a> Tyler McRobbie <a href="mailto:tyler.mcrobbie@shell.com">tyler.mcrobbie@shell.com</a>
FTI Consulting Canada Inc.	Jeffrey Rosenberg <a href="mailto:jeffrey.rosenberg@fticonsulting.com">jeffrey.rosenberg@fticonsulting.com</a> Maria Konyukhova <a href="mailto:mkonyukhova@stikeman.com">mkonyukhova@stikeman.com</a>

<b>McCarthy Tetrault LLP</b>	Hina Khan <a href="mailto:hkhan@mccarthy.ca">hkhan@mccarthy.ca</a> David Lever <a href="mailto:dlever@mccarthy.ca">dlever@mccarthy.ca</a> Sanea Tanvir <a href="mailto:stanvir@mccarthy.ca">stanvir@mccarthy.ca</a>
<b>Livingston International Inc.</b>	Allyson Perkins <a href="mailto:a.perkins@livingston.com">a.perkins@livingston.com</a>
<b>Allianz (AWP Health) Worldwide Care Ltd.</b>	Leighanne Freeman <a href="mailto:Leighanne.freeman@allianz.com">Leighanne.freeman@allianz.com</a>
<b>Bombardier Inc.</b>	Nathalie Daoud <a href="mailto:nathalie.daoud@aero.bombardier.com">nathalie.daoud@aero.bombardier.com</a>
<b>Cortland Capital Market Services</b>	Georgina Bridgman <a href="mailto:georgina.bridgman@alterdomus.com">georgina.bridgman@alterdomus.com</a>
<b>CVI Holdings (2020) Inc.</b>	Stan Spavold <a href="mailto:sspavold@cffi.com">sspavold@cffi.com</a>
<b>FP Resources USA Inc.</b>	Stan Spavold <a href="mailto:sspavold@cffi.com">sspavold@cffi.com</a>
<b>FPR Financial Corporation</b>	John Risley <a href="mailto:jrisley@cffi.com">jrisley@cffi.com</a>
<b>John Risley</b>	John Risley <a href="mailto:jrisley@cffi.com">jrisley@cffi.com</a>
<b>Sarah Risley</b>	John Risley <a href="mailto:jrisley@cffi.com">jrisley@cffi.com</a>

2026



Hfx No. 551716

**SUPREME COURT OF NOVA SCOTIA**

**IN THE MATTER OF:**

**The *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA")**

**AND IN THE MATTER OF:**

**An Application by CFFI Ventures Inc. (the Applicant) for creditor protection under s. 11 of the CCA, and other relief**

**ORDER**

**BEFORE THE HONOURABLE JUSTICE JOHN A. KEITH IN CHAMBERS:**

**UPON HEARING** Stephen Kingston on behalf of the Applicant CFFI Ventures Inc. ("CFFI") and such other counsel as attended and wished to be heard;

**AND UPON** having read the Affidavit of Brittany Bartlett sworn herein on May 15, 2026 (the "**Bartlett Affidavit**"), the Second Report of the Monitor (the "**Second Report**"), and such other materials as were filed with the Court;

**AND UPON** the CFFI having applied for approval of certain amendments to the Amended and Restated Initial Order issued herein on March 23, 2026 (the "**ARIO**") and to the payment of severance and retention benefits to four former CFFI employees;

**NOW UPON MOTION:**

**IT IS ORDERED THAT:**

1. The time for service is hereby abridged and validated so that the Motion is properly returnable today and further service thereof is hereby dispensed with.
2. Paragraph 13 of the ARIO be and hereby amended to extend the Stay Period up to and including **June 15, 2026**;
3. Schedule "B" to the ARIO be and is hereby amended to delete "OpenScreen Inc." from the List of Non-Filing Affiliates; and
4. Approval be and is hereby granted to CFFI to pay the severance and retention benefits to its four former employees as referenced in the Bartlett Affidavit and the Second Report.

DATED at Halifax, Nova Scotia this 22 day of May, 2026.

IN THE SUPREME COURT  
COUNTY OF HALIFAX, N.S.  
I hereby certify that the foregoing document,  
identified by the seal of the court, is a true  
copy of the original document on the file herein.

MAY 22 2026

*Myra Janes*  
Deputy Prothonotary

*Myra Janes*  
PROTHONOTARY

**MYRA JANES**  
Deputy Prothonotary

**MYRA JANES**  
Deputy Prothonotary

MAR 23 2026

## SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF:

The *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA")

AND IN THE MATTER OF:

An Application by CFFI Ventures Inc. (the Applicant") for creditor protection under s. 11 of the CCAA, and other relief

AMENDED AND RESTATED INITIAL ORDER

BEFORE THE HONOURABLE JUSTICE JOHN KEITH:

The Applicant proposes to make a compromise or arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended, and it applied for an initial order and, now or in the future, other relief under the CCAA as may be sought on notice of motion.

The following parties received notice of this application:

The Service List attached here to as Schedule "A"

The following parties, represented by the following counsel, made submissions:

Party	Counsel
Applicant	Stephen Kingston and Ben Pryde, McInnes Cooper
HPS Investment Partners LLC	Gavin MacDonald, Cox & Palmer; Marc Wasserman, Dave Rosenblat, Osler, Hoskin & Harcourt LLP
FTI Consulting Canada Inc.	Maria Konyukhova, Stikeman Elliott LLP

On motion of the Applicant and upon reading the affidavits of Brittany Bartlett sworn February 14, 2026, March 11, 2026 and March 19, 2026 (the "**Bartlett Affidavits**") and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and such other counsel as appeared, with all parties being duly served as appears from the affidavits of service of Stephen Kingston sworn March 12, 2026 and March 20, 2026 and on reading the Pre-Filing Report of FTI Consulting Canada Inc. ("FTI") in its capacity as the Monitor of the Applicant (the "Monitor") dated March 12, 2026, the Supplement to the Monitor's Pre-Filing Report dated March 13, 2026 and the Monitor's First Report dated March 19, 2026,

i and FTI's consent act as the monitor attached to the within application, the following is ordered and declared:

### SERVICE

1. The service of the notice of application in chambers, and the supporting documents, as set out in the affidavit of service is hereby deemed adequate notice so that the motion is properly returnable today and further service thereof is hereby dispensed with.

### DEFINITIONS

2. For the purposes of this Initial Order, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Bartlett Affidavit.

### APPLICATION

3. The Applicant is a company to which the CCAA applies.

### PLAN OF ARRANGEMENT

4. The Applicant, in consultation with the Monitor, 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

5. The Applicant 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 Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ consultants, agents, experts, accountants, counsel, and such other persons (collectively "**Assistants**") and the employees 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.
6. The Applicant may 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 to employees who continue to provide service on or after the date of this Order ("**Active Employees**"), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the “**Group Benefits**”) payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to deliver the existing Group Benefits;
    - c. with prior written approval of the Monitor, the fees and disbursements for any Assistants retained or employed by the Applicant in respect of these proceedings, at their reasonable standard rates and charges.
7. Except as otherwise provided to the contrary herein, the Applicant may pay all reasonable expenses incurred by the Applicant 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 including directors and officers insurance, maintenance, and security services; and
  - b. payment for goods or services actually supplied to the Applicant following the date of this Order.
8. The Applicant may pay reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course prior to the date of this Order, which are determined by the Applicant, in consultation with the Monitor, to be necessary to the continued operation of the Business or preservation of the Property and such payments are approved in advance by the Monitor or by further Order of this Court. Notwithstanding the foregoing, any such payments shall not exceed the amount of \$125,000 in the aggregate.
9. The Applicant shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Applicant and the applicable authority:
  - 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 Applicant in connection with the sale of goods and services by the Applicant, 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 or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business, or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Applicant; and iii) payable in respect of the period commencing on or after the date of this Order.
10. Until such time as the Applicant disclaims a real property lease in accordance with the CCAA, the Applicant 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 Applicant and the landlord from time to time, for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.
11. Except as specifically permitted herein or by further order of this Court, the Applicant is hereby directed, until further order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date without prior written consent of the Monitor; ii) to grant no security interests, trusts, liens, charges, or encumbrances upon or in respect of any of its Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

#### RESTRUCTURING

12. The Applicant shall, subject to such requirements as are imposed by the Monitor, have the right to:
  - a. permanently or temporarily cease, downsize or shut down any of its business or operations;
  - b. terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
  - 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 refinancing; and
  - d. in accordance with its ordinary course of business, dispose of redundant or nonmaterial assets not exceeding \$500,000 in value.

#### NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

13. Until and including May 29, 2026 or such later date as this Court may order (the "**Stay Period**"), no claim, grievance, application, action, suit, right or remedy, or proceeding or enforcement process in any court, tribunal, or arbitration association

(each, a "**Proceeding**") shall be commenced, continued, or enforced against or in respect of any of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

#### **NO PROCEEDINGS AGAINST THE NON-FILING AFFILIATES**

14. During the Stay Period, no Proceeding shall be commenced or continued against or in respect of those affiliates of the Applicant listed in **Schedule "B"** attached hereto (the "**Non-Filing Affiliates**"), or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the "**Non-Filing Affiliates' Property and Business**") including, without limitation, terminating, making any demand, accelerating, amending or declaring in default or taking any enforcement steps under any agreement or agreements with respect to which the Applicant is a party, borrower, principal obligor or guarantor, and no default or event of default shall have occurred or be deemed to have occurred under any such agreement or agreements, by reason of:

- a. the insolvency of the Applicant;
- b. the Applicant having made an application to this Court under the CCAA, or in connection with the application made to this Court pursuant to Subsection 130(1) of the *Companies Act*;
- c. the Applicant being a party to this proceeding or any ancillary proceedings;
- d. the provisions of this Order or any other order in these proceedings or any ancillary proceedings;
- e. the Applicant taking any step related to this CCAA proceeding;
- f. any default or cross-default arising from the matters set out in subparagraphs (a), (b), (c), (d) or (e) above, or arising from the Applicant breaching or failing to perform any contractual or other obligations (collectively, the "**Non-Filing Affiliates' Default Events**"),

except with the prior written consent of the Applicant and the Monitor, or with leave of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. 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 Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave

of this Court, provided that nothing in this Order shall i) empower the Applicant to carry on any business which the Applicant 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) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety, or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence during the Stay Period.

16. During the Stay Period, all rights and remedies of any Person against or in respect of the Non-Filing Affiliates, or affecting the Non-Filing Affiliates' Property and Business, as a result of a Non-Filing Affiliates' Default Event, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **NO INTERFERENCE WITH RIGHTS**

17. 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 Applicant or the Non-Filing Affiliates (as a result of a Non-Filing Affiliates' Default Event), including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. During the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods 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 Applicant, 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 Applicant, and the Applicant 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

19. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased 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 Applicant.

### PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. 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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court, these proceedings are dismissed by final order of this Court, or with leave of this Court.

### DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. The Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant 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.
22. The directors and officers of the Applicant 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 \$100,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 31 and 33 hereof.

### APPOINTMENT OF MONITOR

23. FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicant, the Property, and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and the Applicant and its shareholders, officers, directors, employees and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, cooperate 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.
24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
  - a. monitor the Applicant'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, the activities of the Applicant and such other matters as may be relevant to the proceedings herein;

- c. advise the Applicant in its development of the Plan and any amendments to the Plan, and, to the extent deemed appropriate by the Monitor, assist in its negotiations with creditors, customers, vendors, and other interested Persons;
  - d. assist the Applicant, to the extent deemed appropriate by the Monitor, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - e. have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents and to the Business of the Applicant, to the extent that is necessary to adequately assess the Applicant's Business and financial affairs or to perform its duties arising under this Order;
  - f. 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, including any affiliate of, or person related to the Monitor;
  - g. develop a claims process to ascertain the quantum of the claims of all creditors; and
  - h. be at liberty to perform such other duties as are required by this Order or by this Court from time to time.
25. 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.
26. Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.
27. The Monitor shall provide any creditor of the Applicant with information provided by the Applicant 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 Applicant 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 Applicant may agree.
28. The Monitor, counsel to the Monitor, and all counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis and, in

addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

29. The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge.

#### ADMINISTRATION CHARGE

30. The Monitor, the Monitor's counsel, and the Applicant's counsel (collectively, the "Chargees") 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 \$400,000, as security for their professional fees and disbursements incurred at the 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 31 and 33 hereof.

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

31. The priorities of the Administration Charge and the Directors' Charge (collectively, the "Charges"), as among them, shall be as follows:

- a. First - Administration Charge (to the maximum amount of \$250,000); and
- b. Second - Directors' Charge (to the maximum amount of \$100,000).

#400,000 (A.V.J.)

32. 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.
33. Each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, except for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order.
34. The Applicant and the Chargees shall be entitled, upon giving notice to parties likely affected, to seek an order changing the amount of the Charges or providing that the Charges shall rank in priority to any Encumbrances over which the Charges may not have obtained priority pursuant to this Order.
35. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any encumbrance over any Property that ranks in priority to, or pari passu with any of the Charges unless the Applicant also obtains the prior written consent of the Chargees, or further order of this Court.

36. 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 for a bankruptcy order 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; or (d) 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 Applicant, and notwithstanding any provision to the contrary in any Agreement:
- a. the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant 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 the Applicant seeking the creation of the Charges; and
  - c. the payments made by the Applicant pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

#### SERVICE AND NOTICE

37. The Monitor shall: i) without delay, publish in the Chronicle Herald newspaper a notice containing the information prescribed under the CCAA, and ii) within five 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 (including by electronic message to the e-mail addresses as last shown in the Applicant's books and records), a notice to every known creditor who has a claim against the Applicant 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.
38. The Applicant and the Monitor may give notice of this Order, any other materials and orders in these proceedings, and any notices, and provide correspondence, by forwarding originals or true copies by prepaid ordinary mail, courier, personal delivery, or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Applicant and any such notice by courier, personal delivery, or electronic transmission shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic transmission at or prior to 5:00 p.m. prevailing Atlantic Daylight Savings Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof if sent by courier, personal

delivery or electronic transmission sent after 5:00 p.m. prevailing Atlantic Daylight Savings Time; or (c) if sent by ordinary mail, on the third business day after mailing.

39. The Applicant and the Monitor, and any party who has filed a demand of notice may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsel's e-mail addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at [cfcanada.fticonsulting.com/CFFI](http://cfcanada.fticonsulting.com/CFFI).

#### GENERAL

40. The Applicant 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.
41. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee, or a trustee in bankruptcy of the Applicant, the Business or the Property.
42. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction outside Nova Scotia, is requested to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
43. Each of the Applicant and the Monitor may apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor may act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
44. Any interested party, including the Applicant and the Monitor, may apply to this Court to vary or amend this Order on such notice required under the *Civil Procedure Rules* or as this Court may order.
45. This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Daylight Saving Time on the date of this Order.


ISSUED at Halifax, Nova Scotia this 23 day of March, 2026.

  
\_\_\_\_\_  
PROTHONOTARY.

**MYRA JANES**  
Deputy Prothonotary

IN THE SUPREME COURT  
COUNTY OF HALIFAX, N.S.  
I hereby certify that the foregoing document,  
identified by the seal of the court, is a true  
copy of the original document on the file herein.

MAR 23 2026

  
Deputy Prothonotary

**MYRA JANES**  
Deputy Prothonotary

SCHEDULE "A"

SERVICE LIST

CREDITOR NAME	CONTACT
CFFI Ventures Inc.	Stephen Kingston <a href="mailto:stephen.kingston@mcinnescooper.com">stephen.kingston@mcinnescooper.com</a> Ben Pryde <a href="mailto:ben.pryde@mcinnescooper.com">ben.pryde@mcinnescooper.com</a> Noah Yao <a href="mailto:noah.yao@mcinnescooper.com">noah.yao@mcinnescooper.com</a>
HPS Investment Partners LLC	Gavin McDonald <a href="mailto:gmcDonald@coxandpalmer.com">gmcDonald@coxandpalmer.com</a> Marc Wasserman <a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a> Dave Rosenblat <a href="mailto:drosenblat@osler.com">drosenblat@osler.com</a>
SFPC Quantum LP	Michael Scott <a href="mailto:mScott@safgroup.ca">mScott@safgroup.ca</a> Zubair Hussain <a href="mailto:zhussain@safgroup.ca">zhussain@safgroup.ca</a> Darren O'Keefe <a href="mailto:dokeefe@okeefesullivan.com">dokeefe@okeefesullivan.com</a> Adam Baker <a href="mailto:agbaker@okeefesullivan.com">agbaker@okeefesullivan.com</a> Essber Essber <a href="mailto:eesber@okeefesullivan.com">eesber@okeefesullivan.com</a> Melissa De Caria <a href="mailto:mdecaria@okeefesullivan.com">mdecaria@okeefesullivan.com</a>
FPR Financial Corporation	John Risley <a href="mailto:jrisley@cffi.com">jrisley@cffi.com</a>
Canada Revenue Agency	Sophie Dupre <a href="mailto:sophie.dupre@justice.gc.ca">sophie.dupre@justice.gc.ca</a> Maeve Baird <a href="mailto:maeve.baird@justice.gc.ca">maeve.baird@justice.gc.ca</a> Caitlin Ward <a href="mailto:caitlin.ward@justice.gc.ca">caitlin.ward@justice.gc.ca</a>
Brendan Paddick	Natasha MacParland <a href="mailto:nmacparland@dwpv.com">nmacparland@dwpv.com</a> Sean Monahan <a href="mailto:smonahan@dwpv.com">smonahan@dwpv.com</a> Joshua Santimaw <a href="mailto:jsantimaw@boyneclarke.ca">jsantimaw@boyneclarke.ca</a>
Andrew Lapham	Andrew Lapham <a href="mailto:alapham@npcapital.com">alapham@npcapital.com</a>
Robert Orr	Robert Orr <a href="mailto:robert@cunadelmar.com">robert@cunadelmar.com</a> Sara Scott <a href="mailto:sscott@stewartmckelvey.com">sscott@stewartmckelvey.com</a>

<b>Royal Bank Visa</b>	<a href="mailto:rbccommercialcards@rbc.com">rbccommercialcards@rbc.com</a>
<b>Shell Canada Products</b>	Jeyrald Aquino <a href="mailto:jeyrald.aquino@shell.com">jeyrald.aquino@shell.com</a> Tyler McRobbie <a href="mailto:tyler.mcrobbie@shell.com">tyler.mcrobbie@shell.com</a>
<b>McCarthy Tetrault LLP</b>	Saneea Tanvir <a href="mailto:stanvir@mccarthy.ca">stanvir@mccarthy.ca</a> David Lever <a href="mailto:dlever@mccarthy.ca">dlever@mccarthy.ca</a> Hina Khan <a href="mailto:hkhan@mccarthy.ca">hkhan@mccarthy.ca</a>
<b>Livingston International Inc.</b>	Allyson Perkins <a href="mailto:a.perkins@livingston.com">a.perkins@livingston.com</a>
<b>Allianz (AWP Health) Worldwide Care Ltd.</b>	Leighanne Freeman <a href="mailto:Leighanne.freeman@allianz.com">Leighanne.freeman@allianz.com</a>
<b>Bombardier Inc.</b>	Nathalie Daoud <a href="mailto:nathalie.daoud@aero.bombardier.com">nathalie.daoud@aero.bombardier.com</a>
<b>Cortland Capital Market Services</b>	Georgina Bridgman <a href="mailto:georgina.bridgman@alterdomus.com">georgina.bridgman@alterdomus.com</a>
<b>CVI Holdings (2020) Inc.</b>	Stan Spavold <a href="mailto:sspavold@cffi.com">sspavold@cffi.com</a>
<b>FP Resources USA Inc.</b>	Stan Spavold <a href="mailto:sspavold@cffi.com">sspavold@cffi.com</a>
<b>FPR Financial Corporation</b>	John Risley <a href="mailto:jrisley@cffi.com">jrisley@cffi.com</a>
<b>John Risley</b>	John Risley <a href="mailto:jrisley@cffi.com">jrisley@cffi.com</a>
<b>Sarah Risley</b>	John Risley <a href="mailto:jrisley@cffi.com">jrisley@cffi.com</a>
<b>FTI Consulting Canada Inc.</b>	Jeffrey Rosenberg <a href="mailto:jeffrey.rosenberg@fticonsulting.com">jeffrey.rosenberg@fticonsulting.com</a> Jonathan Joffe <a href="mailto:jonathan.joffe@fticonsulting.com">jonathan.joffe@fticonsulting.com</a> Maria Konyukhova <a href="mailto:mkonyukhova@stikeman.com">mkonyukhova@stikeman.com</a> Nick Avis <a href="mailto:navis@stikeman.com">navis@stikeman.com</a>

**SCHEDULE "B"**

**LIST OF NON-FILING AFFILIATES**

1. Metric Partners Limited Partnership
2. Cormorant Utility Services Limited
3. PowerTel Utilities Contractors Limited
4. Cormorant Utilities Development Corp. Ltd.
5. PowerTraxx Vehicles Inc.
6. Pouvoir Nord Inc.
7. Eptcon Ltd.
8. Eptcon Canpower Inc.
9. Eptcon USA II Inc.
10. Eptcon Bondeo Inc.
11. Cormorant Infinity Power Solutions Limited
12. Cormorant-ECS Inc.
13. Energio Power Solutions Inc.
14. Ironbound Holdings Limited
15. CFFI USA Holdings Inc.
16. CFFI UK Ventures (Barbados) Ltd.
17. Horizon Maritime Services Ltd.
18. Horizon Maritime Offshore A/S
19. Horizon Maritime Northern Services Ltd.
20. Horizon Maritime Facility Services Ltd.
21. Horizon Maritime Offshore Ltd.
22. Horizon Atlantic Maritime Services Ltd.
23. Miawpukek Horizon Maritime Services LP
24. Miawpukek Horizon Maritime Services Ltd.

25. Horizon Pacific Maritime Services Ltd.
26. Heiltsuk Horizon Maritime Services LP
27. Heiltsuk Horizon Maritime Services Ltd.
28. Bourbon Horizon AS
29. Bourbon Horizon Inc.
30. Kotug Canada Inc.
31. Ampelmann Canada Inc.
32. BIOX USA Limited
33. BIOX Holdings, LLC
34. World Energy, LLC
35. World Energy Holdings, LLC
36. Par49 Holdings, LLC
37. World Energy Sustainable Products, LLC
38. FP Acquisition Holdings LLC
39. FP Resources Holdings LP
40. FP Resources USA Inc.
41. FPR Financial Corporation
42. MARA Renewables Corporation
43. Skinfix Inc.
44. CVI Capital Investments (Barbados) Inc.
45. Valent Low-Carbon Technologies Inc.
46. Tracking Ventures Limited
47. OpenScreen Holdings Inc.
48. OpenScreen Inc.
49. Northern Private Capital GP I Ltd.
50. Northern Private Capital Fund I Limited Partnership

51. Northern Private Capital Ltd.
52. Northern Private Capital Holdings GP Ltd.
53. Northern Private Capital Holdings LP
54. Boomerswork Employment Services Inc.
55. DeNova Inc.
56. Enlighten Innovations Inc.
57. GIT Coatings Inc.
58. Sandpiper Ventures Fund Limited Partnership

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Fiera Private Debt Fund v. SaltWire Network Inc.*, 2024 NSSC 89

**Date:** 20240326

**Docket:** No. 531463

**Registry:** Halifax

IN THE MATTER OF:            *The Companies' Creditors Arrangement Act*,  
R.S.C., c. C-36, as amended

AND IN THE MATTER OF:    A Plan or Arrangement of SaltWire Network Inc.,  
The Halifax Herald Limited, Headline Promotional  
Products Limited, Titan Security & Investigation  
Inc., Brace Capital Limited and Brace Holdings  
Limited

**Judge:**                        The Honourable Justice John A. Keith

**Heard:**                        March 24 and 25, 2024, in Halifax, Nova Scotia

**Written Decision:**        March 26, 2024

**Counsel:**                    Joshua J. Santimaw and Jennifer Stam, for the Applicants  
Maurice Chiasson, KC and Sara L. Scott, for the  
Defendants

**By the Court:**

**Introduction and Issues**

[1] These proceedings arise under the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended (the "CCAA") and involve The Halifax Herald Limited ("**The Halifax Herald**"), SaltWire Network Inc. ("**SaltWire Network**"), Headline Promotional Products Limited ("**Headline Promotional**"), Titan Security & Investigation Inc. ("**Titan Security**"), Brace Holdings Limited, and Brace Capital Limited. Where necessary, I refer to these entities collectively as the "**Debtor Companies**".

[2] On March 13, 2024, I heard the following, competing emergency motions, each seeking an initial Order under the CCAA:

1. A motion filed by Fiera Private Debt Fund III LP and Fiera Private Debt Fund V LP. Each fund is a limited partnership represented by their general partner, Fiera Private Debt GP Inc. (collectively, "**Fiera**"). Fiera is owed in excess of \$32,700,000 by the Debtor Companies and is the senior secured lender in this proceeding;
2. A motion filed by the Debtor Companies under Court File No. 531475.

[3] Fiera and the Debtor Companies were aligned on several important issues.

They agreed that:

1. The Debtors Companies were insolvent;
2. The Debtor Companies required protection (including emergency, stabilizing relief) under the CCAA;
3. David Boyd of Resolve Advisory Services Ltd. would serve as the Chief Restructuring Officer (“**CRO**”) during the CCAA process.

[4] The differences between the two competing applications narrowed essentially to the question of who would serve as monitor in these CCAA proceedings. Fiera proposed that KSV be appointed monitor. The Debtor Companies proposed Grant Thornton. There was a related, more minor dispute around who would provide interim (or Debtor-in-Possession, “**D.I.P.**”) financing and the terms of any such financing. However, again, the dispute effectively turned on whether the Court appointed KSV or Grant Thornton as monitor.

[5] I issued an initial order appointing KSV Restructuring Inc. (“**KSV**”) as monitor (the “**Initial Order**”). My reasons are reported at 2024 NSSC 79.

[6] The return hearing was scheduled for Friday, March 22, 2024 in accordance with the deadlines established under section 11.02(1) of the CCAA (the “**Comeback Hearing**”).

[7] The first report of the Monitor, KSV, was filed on March 19, 2024.

[8] Also on March 19, 2024, Fiera filed a Notice of Motion seeking the following relief at the Comeback Hearing:

1. Declaring that one of the affiliated debtor companies (Headline Promotional) meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and that Headline’s employees are eligible to receive payments under and in accordance with the *Wage Earner Protection Program Act*, S.C. 2005, c. 47 s. 1, as amended. (the “**WEPP Order**”)
2. Amending and restating the Initial Order, to, among other things:
  - a. Extend the stay of proceedings up to and including to May 3, 2024;
  - b. Increase the maximum principal amount which the Debtor Companies may borrow under the secured debtor-in-possession financing facility from \$500,000 to \$1.5 million

pursuant to an amended and restated interim financing term sheet;

- c. Increase the Administration Charge from \$300,000 to \$450,000;
- d. Increase the aggregate limit of pre-filing payments from \$300,000 to \$500,000;
- e. Expand and enhance the CRO's powers; and
- f. Expand and enhance the Monitor's powers.

(the "**First ARIO**")

3. Approving a proposed sale and investment solicitation process ("**SISP**") to be conducted by FTI Capital Advisors-Canada ULC (the "**FTI Capital**") and, in turn, approving an engagement letter dated March 14, 2024 and entered into between the CRO on behalf of the Debtor Companies and the Financial Advisor. The proposed SISP Order would also grant the Financial Advisor a charge in respect of its proposed fees (the "**Financial Advisor's Charge**").

(the "**SISP Order**")

[9] I will address each requested Order separately.

## WEPP ORDER FOR HEADLINE PROMOTIONAL

[10] The WEPP Order was not controversial.

[11] Headline Promotional is a promotional products company that employs 10 people. It is not integral to the operations and business prospects of either:

1. The Halifax Herald or SaltWire Network which are the media companies representing the key business opportunities offered at this stage of the CCAA restructuring process;
2. Titan Security.<sup>1</sup>

[12] As of December 31, 2021, Headline Promotional year-end losses were \$100,962. As of December 31, 2022, the year-end losses more than doubled to \$220,475. As of December 31, 2023, the year-end losses increased again to \$303,325.35.

[13] I am satisfied that winding down Headline Promotional will stop the financial hemorrhaging and will not materially impact the ongoing efforts to optimize the value which can be realized in the remaining Debtor Companies. For present purposes, the more important point is that the WEPP Order will assist Headline

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<sup>1</sup> Titan Security is a full-service security and health care services company with approximately 100 full and part-time employees. Based on the evidence before the Court, Titan Security recorded a positive net income of \$640,860.16 (or Adjusted EBITDA of \$744,442.48) for the year ending December 31, 2024. Titan Security will be the subject of a separate marketing and sale process.

Promotional's terminated employees to access benefits under the *Wage Earner Protection Program Act* (e.g. compensation for unpaid wages, vacation pay, termination pay and severance pay). The Monitor supports granting the WEPP Order.

[14] The WEPP Order will be issued in the form presented.

### **The ARIO**

[15] I issued the ARIO immediately following the hearing on March 22, 2024. My reasons include:

1. **Extending the stay from March 22, 2024 to May 3, 2024:** This is not a controversial proposition. It is not only reasonable and necessary to extend the stay to May 3, 2024, it is essential. The Debtors Companies clearly require time to pursue restructuring and, in particular, advance the proposed SISP process;
2. **Increased D.I.P. Financing:** Fiera states that the Debtor Companies will require an additional \$1,000,000 in D.I.P. financing, increasing the available amount available under this facility from \$500,000 to \$1,500,000. The Debtor Companies do not dispute the need for this access to cash. The Monitor confirms that the Debtor Companies have already been required to access about \$250,000 of the original

\$500,000 and concludes the proposed increase is reasonable and appropriate noting that:

- a. The cash flow projections indicate that an additional \$1,000,000 will be required to sustain the Debtor Companies through the extended stay period;
- b. The Companies are not projected to have the funding needed to operate and continue these proceedings without this additional access to cash; and
- c. The terms of the additional financing are essentially in line with the existing D.I.P. funding, previously approved.

I carefully reviewed the cash-flow statements submitted by the CRO. The increase would clearly enhance the prospects of the Debtor Companies emerging from these proceedings as a viable, on-going business. With the CRO in place, the concerns around management have dissipated. Finally, the financial terms associated with the increased \$1,000,000 in interim funding is commercially reasonable and consistent with the original \$500,000 D.I.P. financing term sheet. Overall, I am satisfied the requirements for interim financing under section 11.2 of the *CCAA* are met.

3. **Increased Administration Charge:** The Order increased the proposed Administration Charge from \$300,000 to \$450,000. The increase was not contested and is largely related estimated professional fees forecasted over the extended stay period. The increases will ensure the effective participation of those professionals essential to the necessary management and execution of the upcoming SISP process. I agree to the proposed increase in the Administration Charge.
  
4. **Increased pre-filing payments:** At para. 6 of the Initial Order, I confirmed that, with the consent of the Monitor and the CRO, a total amount of no more than \$300,000 may be paid for those pre-filing debts considered necessary for the ongoing operation of the Debtor Companies. In the Monitor’s First Report dated March 19, 2024, the Monitor came to the view that an increased limit of \$500,000 for Pre-Filing Payments “should be sufficient, subject to the Debtor Companies’ or the Monitor’s right to bring a motion to Court on an urgent basis should the need arise to increase this amount.” (Monitor’s First Report dated March 19, 2024 at page 17) Section 11.4(1) of the CCAA contemplates payments to persons who supply goods or services that “are critical to the company’s continued operation.” Further, in *Re Performance Sports Group Ltd.*, 2016 ONSC 6800, Newbould, J.

wrote that “recent amendments [to the CCAA], including Section 11.4, do not detract from the inherently flexible nature of the CCAA or the Court's broad and inherent jurisdiction to make such orders that will facilitate the debtor's restructuring of its business as a going concern.” (at paragraph 24).

I emphasize that suppliers will be expected to comply with the terms of this Court’s Orders and the Monitor reserves the right to bring motions compelling such compliance among suppliers. However, the Court cannot ignore (and the Debtor Companies cannot afford) the destabilizing influence of critical suppliers who may improperly delay or deny the provision of goods or services. I agree to this increase on the understanding that:

- a. The Monitor and CRO deem (and consent to) the payments as critical to the ongoing and uninterrupted operations of the Debtor Companies and the preservation of their property;
- b. The continued supply of services by the supplier is critical and integral to the business;

- c. The failure to pay will result in an immediate materially adverse impact on the Debtor Companies which could seriously jeopardize these ongoing CCAA proceedings; and
- d. A minor error at para. 6 of the first Amended Restated Initial Order be corrected. It should read:
- e. Para. 6 of the first Amended Restated Initial Order be corrected. It should read:

“With the consent of the Monitor and the CRO, the Companies Applicant may make payments owing to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order where such payments are deemed by the Companies Applicant to be necessary for the ongoing operation of the Companies Applicant of the preservation of the Property, up to an aggregate limit of \$500,000.

(See also *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para. 32)

5. **CRO's expanded and enhanced powers:** It is proposed that the Monitor be expressly vested with the following powers, without limiting those already conferred in the CRO Agreement:

- a. approve all of the Debtor Companies' receipts and disbursements;
- b. oversee and have access to all elements of the management and operation of the business of the Debtor Companies and, without limitation, shall be provided advance details of all proposed sale transactions, including estimated production and transportation cost, price and payment terms;
- c. carry out all obligations of the Debtor Companies pursuant to any proposed sale and investment solicitation process or other sale or divestiture of the assets or business of the Debtor Companies including, without limitation, executing agreements, instruments, notices, directions, settlements, filings, authorizations and other documents of whatever nature on behalf of each of the Debtor Companies in connection therewith;

- d. take steps to cause the Debtor Companies, with the approval of the Monitor, to disclaim any agreements to which any of the Debtor Companies are party in accordance with the *CCAA*;
- e. execute all Advance Requests (as defined in the DIP Documents) on behalf of the Debtor Companies; and
- f. cause the Debtor Companies to administer the business or the property as the CRO, in consultation with the Monitor, deems necessary or desirable for the purposes of completing any transaction involving the business or the property or for purposes of facilitating distributions to creditors of the Debtor Companies.

Again, this was not a controversial amendment. Both the Debtor Companies and Fiera agreed to the appointment of David Boyd as CRO. Neither contest increasing his powers, as proposed. Mr. Boyd is an insolvency expert who enjoys the confidence of these key stakeholders. There is no suggestion that their confidence has waned. The Monitor believes that enhancing the CRO's powers will "further assist the [Debtor] Companies with their restructuring efforts and is appropriate in the circumstances." (Monitor's First Report dated March

19, 2024 at page 16). Moreover, following the Initial Order, the Debtor Companies' President (Mark Lever) stepped down and there is a suggestion that Mr. Lever may bid on some or all of the business opportunities available through the anticipated SISP process. In the circumstances, the CRO now serves as the embodiment of the Debtor Companies for the purposes of helping to ensure continued operations and implementing the SISP proposal, among other things. The proposed enhanced powers are very clearly required to enable the CRO to fulfill his duties effectively and efficiently.

6. **Monitor's Expanded and Enhanced Powers:** By Notice of Motion dated March 19, 2024, Fiera proposed that the Monitor be empowered to:
- a. Monitor the Companies' receipts and approve disbursements;
  - b. Bring motions in these proceedings.

The Monitor's ability to bring motions was not challenged and, in my view, is both reasonable and necessary. The Monitor is an Officer of the Court who acts as its "eyes and ears" in these proceedings (*Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014 ("**Essar Global**") at para. 109 and quoted with approval by the Supreme Court

of Canada in *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 (“*9353-9186 v Callidus*”) at para. 52 and again in *Canada v. Canada North Group Inc.*, 2021 SCC 30 at para. 28). The Monitor must be able to bring matters formally before the Court when necessary.

Expanding the Monitor’s power to ensure it can review and keep an eye on the Debtor Companies’ receipts and disbursements is also reasonable – and was uncontested.

Expanding the Monitor’s power to “approve” disbursements was more controversial. Counsel for the Debtor Companies opposed this form of relief. Prior to the hearing, Fiera reconsidered this request and withdrew it. In *obiter*, the decision to withdraw was appropriate, in my view. Empowering a Monitor with broad powers (or expanding the role to what is sometimes referred to as a “super monitor”) should not be a routine or regular occurrence. Extraordinary circumstances should exist. In *Arrangement relatif à Bloom Lake General*, 2021 QCCS 2946 (“*Bloom Lake*”), expanded powers were considered absolutely necessary for the Monitor to fulfill its statutory duties and maximize recovery. Indeed, Pisonnault, J. concluded that, without the expanded powers, “it will be **impossible** for the Monitor to calculate what the true

approximate value of [a key asset] may be in order for the Monitor to fulfill its statutory duties under the CCAA.” (at para. 81, emphasis added) In *Essar Global*, there were a number of questionable transactions between related parties in the months leading up to CCAA proceedings with significant prejudice to the Debtor Company (Algoma Steel) and its stakeholders. The Court was asked to expand the Monitor’s powers so that it might file a claim against the related parties alleging oppression under the *Canada Business Corporations Act*. The Court smell that wafted above the suspicious transactions prompted the Court to observe that “The monitor is to be the eyes and the ears of the court and sometimes, as is the case here, the nose.” (at paragraph 109) Ultimately, the Court concluded that the Monitor is intended to play a neutral (not adversarial) role in CCAA proceedings. Thus, it would be unusual for a Monitor to launch separate a claim of oppression. However, the Court concluded: “... **in exceptional circumstances**, it may be appropriate for a monitor to serve as a complainant. In my view, this is one such case.” (at para. 120, emphasis added) In Luc Morin and Arad Mojtahedi, "In Search of a Purpose: The Rise of Super Monitors & Creditor-Driven CCAAs", *Annual Review of Insolvency Law*, Toronto, Thomson Reuters, 2019, p. 650 similarly conclude that the

Monitor's powers should be extended only when absolutely necessary. The authors write that: "The *CCAA* monitor should remain neutral and exercise supervisory powers over the restructuring process, driven by the debtor, unless evidence demonstrating that its management is failing or neglecting to exercise its fiduciary duties appropriately." (at p. 651)

In this case, as indicated, the President of the Debtor Companies (Mark Lever) has stepped down and there is some suggestion in the materials that Mr. Lever (and perhaps other key management personnel related to the Debtor Companies) may consider bidding on the business opportunities available through these proceedings, thereby giving rise to concerns around conflict. However, at Fiera's request, a CRO has been appointed and, indeed, the CRO's powers have been expanded. There is no clear reason why the Monitor must now approve the CRO's decisions regarding disbursements. Moreover, Fiera is proposing and supports a SISP proposal, seeking to liquidate and optimize value in the Debtor Companies. No party or stakeholder is suggesting that this idea is doomed such that the Monitor must step in. Finally, it is important that the Monitor retain (and be seen to retain) its neutrality. The Court should be careful not to risk potentially undermining that important

objective unless there are exigent circumstances which necessarily demand that the Monitor be vested with increased powers.

## **SISP ORDER**

### **Background**

[16] It is necessary to provide some brief background to properly contextualize certain issues which are relevant to the SISP Order.

[17] In October, 2023:

1. Fiera and the Debtor Companies were just entering into their final Forbearance Agreement – the ninth in about 4 ½ years. In that agreement, the Debtor Companies and their principals provided their advance consent to the “commencement of creditor-led proceedings” by Fiera under the CCAA;
2. The Debtor Companies (with Fiera’s approval) engaged FTI Capital to assist in locating potential buyers or investors for the Media Companies. The filed materials describe these efforts as the “recapitalization program”. In his Affidavit sworn March 8, 2024, Russell French (Fiera’s Managing Director, Special Situations) testifies

that he “was hopeful that FTI would be successful in attracting a potential investor or buyer for The Herald and Saltwire.” (at para. 74)

[18] On January 31, 2024, the final Forbearance Agreement expired and the “recapitalization program” had yet to achieve any appreciable results in terms of generating a solid offer for the Media Companies.

[19] The parties began discussing a further forbearance agreement but Fiera needed finality and, if the private “recapitalization program” failed, “a roadmap for the planning and preparation of *CCAA* proceedings at the end of the process.” (Affidavit of Russell French sworn March 8, 2024 at para. 81)

[20] On February 24, 2024, Fiera received a letter of intent but described as “highly conditional” and not capable of acceptance by Fiera absent “significant investigation and further work” (Affidavit of Russell French sworn March 8, 2024 at para. 84).

[21] By February 26, 2024, the Debtor Companies and Fiera agreed that proceedings under the *CCAA* were necessary but, despite the Debtor Companies’ prior consent, disputes arose. The situation deteriorated to the point where both Fiera and the Debtor companies brought competing emergency motions under the *CCAA*, as indicated.

[22] The “recapitalization program” was suspended at or around this time. After obtaining the Initial Order under the *CCAA*, Fiera now seeks to resume the SISP process.

[23] There is one further, background issue that should be briefly addressed: the materials filed in connection with this motion describe the current SISP process as a “continuation” of the original private “recapitalization program” commenced in October, 2023. Fiera states that the proposed SISP process now before the Court is “designed effectively as a continuation of the FTI-led Recapitalization Process that has been ongoing for several months and will have clear and firm deadlines for the submission of bids.” (Affidavit of Russell French sworn March 8, 2024, at para. 21) The Monitor similarly observed that the pre-filing SISP process would continue during the *CCAA* proceedings. (Monitor’s First Report dated March 19, 2024 at pp. 8, 9, and 12) FTI’s proposed letter of engagement dated March 14, 2024 also described its mandate as continuing its prior services.

[24] There are cases in which creditors, debtors and other stakeholders agree on a plan (or transaction) in advance of filing under the *CCAA*. Formal proceedings under the *CCAA* are then launched to expedite the restructuring process already agreed upon. The benefits include minimizing disruption to the business. This attempt at a pre-ordained result is sometimes called a “pre-packaged” proposal or “pre-pack”. It

can invite additional Court scrutiny because the Court is being asked to look retrospectively into events that occurred prior to *CCAA* proceedings being launched.

[25] Here, the initial process undertaken by the Financial Agent resulted in data and information which will prove useful in the upcoming *SISP*. However, it did not result in a proposed transaction to be approved through the *CCAA*. Thus, the current motion is not a “pre-pack” in the true sense of the word. However, similar concerns arise in that the Court may, in the future, be required to more closely review what occurred before formal *CCAA* proceedings were launched. In any event, for clarity, despite the language around a “continuation” of an existing sale or investment process, these proceedings are not constrained (and the Court’s jurisdiction is not fettered) by whatever may have occurred before Fiera filed for *CCAA* protection.

### **The Law**

[26] Section 36 of the *CCAA* enumerates the factors which the Court will consider when assessing the merits of a sale. In *Royal Bank of Canada v. Soundair Corp.*, (1991) 83 DLR (4th) 76, 1991 CanLII 2727 (ON CA), the Ontario Court of Appeal helpfully distilled these factors in the following criteria to be considered when approving a proposed sale:

1. Did the receiver make a sufficient effort to get the best price and did it act providently?

2. Consideration of the interests of all parties.
3. Consideration of the efficacy and integrity of the process by which the offer was obtained.
4. Was there unfairness in the process?

[27] The *CCAA* does not contain this same sort of detailed directions for assessing the merits of the pre-transaction sales **process**. However, the jurisprudence confirms that the essential or foundational principles which animate the Court’s assessment of a proposed sales transaction equally guide the Court’s discretion assessing the underlying sales process. For the purposes of this proceeding, I would synthesize those principles as follows:

1. Whether a sale transaction is warranted at this time. Relevant considerations may include the business realities facing the debtor companies (e.g. liquidity problems or cash crunch; the reasons any of the debtor company’s past efforts to address its debts and obligations failed).
2. Whether the sale will benefit the whole “economic community”. The goal is to optimize the value in the debtor’s business for the benefit of all relevant stakeholders. On this point, and given the nature of this

proceeding as a “creditor-led” proceeding under the CCAA, several additional, brief comments are relevant:

- a. Creditor-led proceedings under the CCAA are not particularly common but they are clearly permitted under the statute;
- b. The interim relief granted in “creditor-led” proceedings under the CCAA may need to be tailored to the circumstances. For example, the debtor company and creditor may be in full agreement that the proceedings will be initiated or “led” by the creditor. However, a “creditor-led” proceeding may be more adversarial and expose a fractured and contentious relationship between the creditor and the debtor company. Such was the situation here. Other examples include *Arrangement relatif à Groupe Sélection inc.*, 2022 QCCS 4281, urgent application for leave to appeal denied 2022 QCCA 1596 and *Crystallex International Corp.*, 2011 ONSC 7701. Indeed, in this case, the President of the Debtor Companies (Mark Lever) stepped down immediately following the Initial Order being granted. To ensure the effective management and operations of the debtor company

as a going concern, it became necessary to engage an independent chief restructuring officer; and

c. Although the powers available under the CCAA are sufficiently flexible to respond appropriately to the unique circumstances of the case, all parties agreed that the principles which guide the Court's discretion and the basis statutory objectives do not change. Thus, the particular interests which may motivate a creditor do not dominate the CCAA analysis simply because a creditor launched or "leads" the proceeding.

3. Whether a creditor has a good or *bona fide* reason for objecting to the proposed sale process. On this, the Court may consider and weigh all of the affected interests. Where there are numerous affected stakeholders, an individual creditor's preferences or demands may not necessarily represent an enforceable objection.
4. Whether there is a more viable alternative. In very simple terms: does any person have a better idea? Is bankruptcy more beneficial?

5. The Court should ensure that the process being proposed is fair, transparent, commercially efficient, cost-effective in the circumstances, and preserves the integrity of the CCAA process.
6. Whether all parties to the process are acting in good faith and with due diligence.

(*Re. Nortel Networks Corporation*, 2009 CanLII 39492 (ON SC); *CCM Master Qualified Fund Ltd. v blutip Power Technologies Ltd.*, 2012 ONSC 1750; *Re. PCAS Patient Care Automation Services Inc.*, 2012 ONSC 2840; *Re Lydian International Limited*, 2019 ONSC 7473). (I also note that section 18.6 of the CCAA specifically codifies the obligation to act in good faith).

[28] These principles also reflect the following more general imperatives embedded within the CCAA:

1. Providing reasonably sufficient flexibility, time and space to allow the debtor company to engage in restructuring negotiations; optimize the debtor company's value for all stakeholders; and ideally enable the debtor company to emerge from CCAA as an ongoing concern;
2. Equally important, the Court's overarching supervisory jurisdiction and broad discretion over this statutory process. The Supreme Court of Canada's observation in *9354-9186 v Callidus* is germane:

“...the relative weight that the differing objectives of the CCAA take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the Court for approval...**the architecture of the CCAA leaves the case specific assessment and balancing of the remedial objectives to the supervising judge.**”

(at para. 46, emphasis added)

### **FTI’s Engagement Letter and Related Charge**

[29] Generally speaking, I am agreeable to and approve the terms of FTI’s engagement letter dated March 14, 2024. I am satisfied that FTI’s familiarity and experience with the Media Companies (including its knowledge of those who may be in the market for the business opportunities presented by the CCAA proceeding):

1. Enables FTI to immediately engage with an identifiable market. Among other things, FTI has spent months identifying potential buyers and has a data room already populated for use in the upcoming SISP process. Ignoring these benefits will cause unnecessary waste and delay;
2. Will facilitate an efficient and commercially efficacious SISP process;
3. Will improve the likelihood of optimizing the value and restructuring options available in the Media Companies.

[30] I also accept the Monitor’s view that:

1. The financial terms of the Engagement Letter are commercially reasonable;
2. FTI's requested charge for its fees is standard in these proceedings; will provide FTI with necessary assurances around payment and, in doing so, will ensure FTI's professional commitment to this mandate.

### **Proposed SISP Process**

[31] As to the terms of the SISP Process attached to the SISP Order, again, I am generally agreeable to the proposed form. It is clear that a SISP process is required; no creditor has raised any objection and, indeed, no other person or stakeholder has identified any alternate path forward. The public interest is a consideration but this SISP offers the opportunity for renewal of the Media Companies and the public service they provide in a commercially reasonable manner.

[32] There are several amendments which were required. A copy of the revised Order which will issue is attached. Many of the amendments were minor in nature. However, the following paragraphs bear additional mention:

1. Paragraphs 8 and 14: In my view, it is important that any Potential Bidder (as that term is defined in the SISP Process document receive a copy of the Court's Order). Among other things, the Court's supervisory role should be formally recognized. Moreover, in my

view, it is not necessary that the Monitor be required to expressly permit certain key members of the Debtor Companies' management to participate as a Potential Bidder. By way of background, the President of the Debtor Companies (Mark Lever) may be interested in bidding on the business opportunities being made available through the SISP. Mr. Lever and others may be considered "insiders" or key members of management who acquired unique, sensitive, or important information regarding the Debtor Companies. Concerns regarding potential conflict and, more importantly, the fairness and integrity of the SISP process plainly arise. The SISP Process document will be amended to clearly define those "insiders" or key members of management who trigger these concerns. They are "any director, officer, employee, or professional advisor of the Companies with information that could prove useful or valuable to any bidder including, without limitation, [Mark] Lever, [Sarah] Dennis, the CFO, the COO or any other employee of the Companies who is asked to participate in the due diligence being performed by a purchaser or investor, including management meetings or may be a member of a purchase or investor group". The SISP Process document also contains a number of critical safeguards including an obligation to immediately and clearly advise

if/when any such key management team member determines that it will be participating in the bidding process. With these protections in place and given the need to maximize value, in my view, it is unnecessary to also require the Monitor's permission before any such person can even be qualified as a potential bidder, before the due diligence process even begins.

2. Paragraph 29(b)(iii): This paragraph originally suggested that Fiera's "concurrence" was required when determining any successful bid or back-up bid. For the reasons given above, in my view, Fiera is entitled to be consulted but cannot insist upon that "concurrence" will govern. In fairness, I note that all parties agreed that it is not the intention of the SISP to fetter the Court's discretion or bind the Court to Fiera's decisions;
3. Paragraph 39: This paragraph indicates that any material amendments to the SISP requires the "consent" of Fiera. I recognize that Fiera is the senior secured lender. I also appreciate that, realistically, the value of the Debtor Companies may not exceed Fiera's debt such that Fiera represents the only actual economic interest. However, for the reasons given above, Fiera does not control the levers of this process. Its "consent" cannot be determinative. Thus, the paragraph has been

altered to require that the Monitor also seek Court approval for any material changes to the SISP. For clarity, it is the Court that retains jurisdiction in this process. And, again, all parties agree that the Court retains the ultimate discretion and jurisdiction and is not bound to the decisions of any party.

Keith, J.

# Sale and Investment Solicitation Process

## Introduction

On March 12, 2024, upon application by Fiera Private Debt Fund III LP and Fiera Private Debt Fund V LP, each by their general partner, Fiera Private Debt GP Inc. (collectively, the “**Applicants**”) the Supreme Court of Nova Scotia (the “**Court**”) granted an Initial Order (as amended and restated and as may be further amended from time to time, the “**Initial Order**”) commencing proceedings pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) in respect of Saltwire Network Inc. (“**Saltwire**”), the Halifax Herald Limited (“**The Herald**”), Headline Promotional Products Limited (“**Headline**”), Titan Security & Investigation Inc. (“**Titan**”), Brace Capital Limited and Brace Holdings Limited.

Pursuant to the Initial Order, KSV Restructuring Inc. was appointed by the Court as the monitor in the CCAA Proceedings (the “**Monitor**”) and Resolve Advisory Services Ltd., through the services of David Boyd, was appointed as chief restructuring officer (the “**CRO**”) in the CCAA Proceedings.

Saltwire and The Herald (collectively, the “**Companies**”), through the CRO, have retained FTI Capital Advisors – Canada ULC (the “**Financial Advisor**”) pursuant to a revised engagement letter dated March 14, 2024, to conduct a sale and investment solicitation process (“**SISP**”) under the supervision of the Monitor and with approval of the Court, pursuant to which all interested parties will be provided with an opportunity to participate in the SISP. The SISP will continue the pre-filing efforts of Financial Advisor in soliciting interests for the assets and/or the business of the Companies, which efforts were commenced by the Financial Advisor on November 6, 2023 pursuant to an engagement letter dated October 18, 2023.

This document outlines the SISP, comprised of two phases (“**Phase 1**” and “**Phase 2**”, respectively).

## Opportunity

1. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of assets and business operations of the Companies (the “**Opportunity**”) which includes principally, the assets or shares relating to the media businesses owned by the Companies (the “**Business**”).

2. The Opportunity may include one or more of:
  - (a) a restructuring, recapitalization or other form of reorganization of the business and affairs of the Companies (or some of them) as a going concern; and
  - (b) subject to 0, a sale of all, any or all of the assets or shares relating to the Business (the “**Property**”) as a going concern.
3. For greater certainty, the Opportunity shall not include the sale or restructuring of Titan, Headline or the real property owned by the Companies (the “**Real Property**”) on a stand- alone basis.
4. Prior to the date of the Initial Order, the Companies, with the assistance of the Financial Advisor, had been conducting a pre-filing sale and investment solicitation process (the “**Pre-filing SISP**”) in respect of the Business. From and after the date of the SISP Order, the Pre-filing SISP will be continued under, and be governed by, this SISP. Further, and for greater certainty, any previously submitted non-binding letter of interest shall not be considered an LOI for the purposes of the SISP unless re-submitted in accordance with the terms set out herein.

## Timeline

5. The following table sets out the key milestones under the SISP:

<b>Milestone</b>	<b>Deadline</b>
Commencement of the SISP	March 26, 2024
Phase 1 Bid Deadline	5pm ADT, April 25, 2024 (“ <b>Phase 1 Bid Deadline</b> ”)
Phase 2 Bid Deadline	5pm ADT, May 24, 2024 (“ <b>Phase 2 Bid Deadline</b> ”)
Court Approval Date	No later than June 28, 2024
Closing Date Deadline	July 31, 2024

Subject to the terms provided for herein or any order of the Court, these dates may be extended by the Monitor in consultation with the CRO and the Financial Advisor pursuant to this SISP.

Nothing herein shall prevent an interested from submitting a letter of intent or expression of interest prior to any deadline in the table above.

### **Solicitation of Interest: Notice of the SISP**

6. As soon as reasonably practicable, but in any event by no later than March 26, 2024:
  - (a) In consultation with the Monitor and the CRO, the Financial Advisor shall contact again those parties canvassed as part of the Pre-filing SISP to determine whether they now have an interest in this Opportunity in light of the commencement of these proceedings, pursuant to the process in paragraph 0 below. Additionally, the Financial Advisor, in consultation with the Monitor and the CRO, will contact any additional parties it believes may have an interest in this Opportunity, including parties that have approached the Companies, the Financial Advisor or the Monitor indicating an interest in the Opportunity (collectively, “**Known Potential Bidders**”);
  - (b) the Monitor will cause a notice of the SISP (the “**Notice**”) to be published in The Globe and Mail (National Edition) and the relevant media company newspapers, and any other newspaper or journals as the CRO, Monitor and Financial Advisor, consider appropriate, if any;
  - (c) the CRO will cause the Companies to issue a press release with Canada Newswire setting out the information contained in the Notice and such other relevant information which the CRO, Financial Advisor and the Monitor, consider appropriate, designating dissemination in Canada and major financial centres in the United States; and
  - (d) the Financial Advisor, in consultation with the Monitor and the CRO, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Financial Advisor and the Monitor, in consultation with the CRO and consistent with the form and substance of the non-disclosure agreement previously executed by interested parties under the Pre-filing SISP (an “**NDA**”).

7. The Financial Advisor will send the Teaser Letter and NDA to all Known Potential Bidders by no later than March 26, 2024 and to any other party who request a copy of the Teaser Letter and NDA or who is identified to the CRO, the Monitor or the Financial Advisor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

## **PHASE 1: NON BINDING LOIs**

### ***Qualified Bidders and Delivery of Confidential Information Package***

8. Any party who wishes to participate in the SISP (a “**Potential Bidder**”) must provide to the Financial Advisor:
  - (a) A written acknowledgement which confirms receipt of this SISP Approval Order (including these SISP Procedures) and contains an agreement to accept and be bound by the terms of that Order;
  - (b) An NDA executed by it, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder – unless the Financial Advisor confirms to such Potential Bidder that those documents were already provided to the satisfaction of the Financial Advisor and the Monitor,
9. If it is determined by the Financial Advisor and the Monitor in their reasonable business judgement, and in consultation with the CRO that a Potential Bidder: (i) has satisfied the requirements of paragraph 8 above; (ii) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal; (iii) has delivered an NDA; and (iv) and has the financial capability based on the availability of financing, experience and other considerations, as determined by the Financial Advisor and the CRO, in consultation with the Monitor, to be able to consummate a sale or investment transaction pursuant to the SISP, then such Potential Bidder will be deemed to be a “**Phase 1 Qualified Bidder**”; provided that no Potential Bidder shall be deemed not to be a Phase 1 Qualified Bidder.
10. At any time during Phase 1 of the SISP, the Financial Advisor and the CRO, with the consent of the Monitor, may eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP.
11. The Financial Advisor, with the assistance of the CRO and the Monitor, will prepare and send to each Phase 1 Qualified Bidder a confidential information

package providing additional information considered relevant to the Opportunity (the “**Confidential Information Package**”). The Financial Advisor, the CRO, the Companies, the Monitor and their respective advisors make no representation or warranty as to the information contained in the Confidential Information Package or otherwise made available pursuant to the SISP or otherwise, except to the extent expressly contemplated in any definitive sale or investment agreement with a successful bidder ultimately executed and delivered by the Companies.

12. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and the Business in connection with their participation in the SISP and any transaction they enter into pursuant to this SISP.

### *Due Diligence*

13. The Financial Advisor and the CRO, in consultation with the Monitor, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Phase 1 Qualified Bidder such access to due diligence materials and information relating to the Property and the Business as they deem appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Phase 1 Qualified Bidder may reasonably request and as to which the Financial Advisor and the Monitor, in their reasonable business judgment and after consulting with CRO, may agree. The Financial Advisor, with the assistance of the Monitor, will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated. None of the Companies, the Financial Advisor and the Monitor will be obligated to furnish any information relating to the Property or the Business to any person other than to Phase 1 Qualified Bidders. Further and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 1 Qualified Bidders if the Financial Advisor the CRO, in consultation with the Monitor, determine such information to represent proprietary or sensitive competitive information.
14. If any officer, director, professional advisor, or employee of the Companies has information which could prove useful or valuable to any bidder (including, without limitation Mark Lever, Sarah Dennis, the CFO and the COO or any other employee of the Companies with such information):

- (a) is asked to participate in due diligence being performed by a purchaser or investor, including management meetings; or
- (b) is or may be a member of a purchaser or investor group

(each, a “**Management Member**”)

Then (i) any such Management Member shall be required to advise the Financial Advisor and Monitor of this potential interest. This information shall be provided to the Financial Advisor and Monitor immediately upon the Management Member being asked to participate in due diligence or becoming (or may become) a member of a purchaser or investor group and, in any event, before any management meeting occurs; (ii) competing interested parties shall be advised of the Management Member’s potential involvement with another bid by the Financial Advisor or the Monitor; (iii) the Management Member will only be entitled to participate in the meetings with the consent of the interested party; and (iv) the management meeting will be supervised by either or both of the Financial Advisor and the Monitor. The Monitor reserves the right to implement such other procedures as it considers necessary to address any confidentiality issues that may arise during the conduct of the SISP. If a Management Member fails to disclose its interest or potential interest in a transaction prior to meeting with another interested party, the Monitor shall have the right to preclude that individual or the group with he or she is involved from participating in the SISP.

***Non-Binding Letters of Intent from Phase 1 Qualified Bidders***

- 15. A Phase I Qualified Bidder that wishes to pursue the Opportunity further must deliver a non-binding letter of interest (an “**LOI**”) to the Financial Advisor and the Monitor in the manner specified in Schedule “I” hereto, so as to be received by them not later the Phase 1 Bid Deadline.
- 16. Subject to paragraph 0, an LOI so submitted will be considered a qualified LOI (a “**Qualified LOI**”) only if:
  - (a) it is submitted on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;
  - (b) it contains an indication of Phase 1 Qualified Bidder’s offer to:

- (i) acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”) and clearly identifies which Property it intends to acquire, or
  - (ii) make an investment in, restructure, reorganize or refinance the Business/the Companies (an “**Investment Proposal**”) and clearly identifies which Business/Companies it intends to make an investment in, restructure, reorganize or refinance;
- (c) in the case of a Sale Proposal, it identifies or contains the following:
- (i) the purchase price or price range in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a specific indication of the financial capability of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction;
  - (iv) the key material contracts and leases, if any, the Phase 1 Qualified Bidder wishes to acquire and the Qualified Phase 1 Bidder’s proposed treatment of any related cure costs;
  - (v) a description of the conditions and approvals required for a final and binding offer;
  - (vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
  - (vii) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (d) in the case of an Investment Proposal, it identifies the following:
- (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment;
  - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business/the Companies in Canadian dollars;

- (iii) the underlying assumptions regarding the pro forma capital structure;
  - (iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;
  - (v) a description of the conditions and approvals required for a final and binding offer;
  - (vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
  - (vii) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and
  - (viii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (e) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Financial Advisor and the Monitor in consultation with the CRO.
17. Unless otherwise ordered by the Court, the Monitor in consultation with the Financial Advisor and the CRO, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

***Preliminary Assessment of Phase 1 Bids and Subsequent Process***

18. Following the Phase 1 Bid Deadline, the Financial Advisor and the CRO, in consultation with the Monitor, will assess the LOIs and shall determine whether an LOI is a Qualified LOI. A summary of all LOIs shall be provided to the Applicants forthwith after receipt. If it is determined by the Financial Advisor and the Monitor, in consultation with the CRO, that a Phase 1 Qualified Bidder that has submitted a Qualified LOI (i) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will

be deemed a “**Phase 2 Qualified Bidder**”. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.

19. As part of the assessment of Qualified LOIs and the determination of the process subsequent thereto, the Financial Advisor and the CRO, in consultation with the Monitor, and after consultation with the Applicants, shall determine the process and timing to be followed in pursuing Qualified LOIs based on such factors and circumstances as they consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified LOIs received, (ii) the scope of the Property or Business to which any Qualified LOIs may relate, and (iii) whether to proceed by way of sealed bid or auction (with or without a stalking horse bidder) with respect to some or all of the Property.
20. Upon the determination by the Financial Advisor and the CRO in consultation with the Monitor and the Applicants, of the manner in which to proceed to Phase 2 of the SISP, the Financial Advisor, in consultation with the Monitor, the CRO and the Applicants, will prepare a bid process letter for Phase 2 (the “**Bid Process Letter**”), and the Bid Process Letter will be (i) sent by the Financial Advisor to all Phase 2 Qualified Bidders, and (ii) posted by the Monitor on the website the Monitor maintains in respect of this CCAA proceeding.

## **PHASE 2: FORMAL OFFERS AND SELECTION OF SUCCESSFUL BIDDER**

21. Paragraphs 0 to 0 below and the conduct of Phase 2 are subject to paragraphs 0 to 0, above, and any adjustments made to Phase 2 in accordance with the Bid Process Letter and any further Court order regarding the SISP.

### ***Formal Binding Offers***

22. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Business or the Property (or any of it) shall submit a binding offer that complies with all of the following requirements to the Financial Advisor and the Monitor as specified in Schedule “1” hereto, so as to be received by them not later than the Phase 2 Bid Deadline or as may be modified in the Bid Process Letter, in consultation with and with the CRO and the Applicants by the Phase 2 Bid Deadline:
  - (a) the bid shall comply with all of the requirements set forth in respect of Phase 1 Qualified LOIs;

- (b) the bid clearly identifies which of the Property it relates to and is on terms and conditions reasonably acceptable to the Financial Advisor and the Monitor, in consultation with the CRO;
- (c) it indicates whether the bid includes the acquisition of the litigation claim of Saltwire against Transcontinental Nova Scotia Media Group Inc., et. al. and provides an allocated purchase price to the same;
- (d) the bid indicates the number of employees of the Companies that the Phase 2 Qualified Bidder intends to hire;
- (e) the bid confirms that any applicable collective agreements will be assumed by the Phase 2 Qualified Bidder;
- (f) the bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder or a Back Up Bidder (defined below), its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder or, in the case of a Back Up Bid (defined below), that it shall remain irrevocable until the later of the closing of the transaction with the Successful Bidder or the closing of the transaction contemplated by the Back Up Bid, if the Successful Bid has failed (the “**Back Up Bid Expiration Date**”);
- (g) the bid includes duly authorized and executed transaction agreements, including the purchase price or investment amount and any other key economic terms expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto;
- (h) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Financial Advisor and the CRO, in consultation with the Monitor to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
- (i) the bid is not conditioned on the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, to the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 1 from the Phase 1 Qualified Bidder;

- (j) the bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;
  - (k) the bid is accompanied by a non-refundable deposit in the amount of not less than 10% (the “**Deposit**”) of the purchase price or transaction value (as determined by the Financial Advisor, in consultation with the Monitor and the CRO) by wire transfer of immediately available funds, which deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with paragraph 0;
  - (l) the bid includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Companies prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld in Phase 2 from the Phase 2 Qualified Bidder); (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, Property, or the Companies or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) entered into in connection with a transaction;
  - (m) the bid is received by the Phase 2 Bid Deadline; and
  - (n) the bid contemplates closing the transaction set out therein on or before July 31, 2024 (the “**Closing Date**”).
23. Following the Phase 2 Bid Deadline, the Financial Advisor and the CRO, in consultation with the Monitor, will assess the Phase 2 bids received and, for greater certainty, copies of all Phase 2 bids shall be provided forthwith after receipt to the Applicants unless the Applicants have become a Phase 2 Qualified Bidder. The Financial Advisor and the CRO, in consultation with the Monitor, will designate the most competitive bids that comply with the foregoing requirements to be “Qualified Bids”. No Phase 2 bids received shall be deemed not to be Qualified Bids without the approval of the Monitor. Only

Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

24. The Monitor, in consultation with the Financial Advisor and the CRO, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified Bid
25. The Financial Advisor shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constituted a Qualified Bid within five (5) business days of the expiration of the Phase 2 Bid Deadline, or at such later time as the Financial Advisor and the Monitor, in consultation with the CRO and the Applicants, deem appropriate.
26. If the Financial Advisor and the CRO, with the consent of the Monitor, are not satisfied with the number or terms of the Qualified Bids or otherwise believe that the SISF would benefit from extending the Phase 2 Bid Deadline, the Financial Advisor and the CRO, with the consent of the Monitor and subject to paragraph 0, may extend the Phase 2 Bid Deadline provided that the Phase 2 Bid Deadline shall not be extended for more than 10 business days without the approval of the Monitor or Order of the Courts.
27. The Financial Advisor and the CRO, with the consent of the Monitor, may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one "Qualified Bid".

### ***Evaluation of Competing Bids***

28. A Qualified Bid will be valued based upon several factors, including, without limitation, items such as the Purchase Price and the net value provided by such bid, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Financial Advisor and the Monitor, in consultation with the CRO.

### ***Selection of Successful Bids***

29. Subject to the Bid Process Letter, the Financial Advisor, the CRO and the Monitor:

- (a) will review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated among the Financial Advisor, in consultation with the Monitor and the CRO, and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations, and
  - (b) may
    - (i) (i) identify the highest or otherwise best bid or bids (each, a “**Successful Bid**”, and the Phase 2 Qualified Bidder making each such Successful Bid, a “**Successful Bidder**”) for any particular Property or Business in whole or part; and/or
    - (ii) Identify one or more Qualified Bids to be accepted on a conditional basis subject to the failure of the transaction(s) contemplated by the Successful Bid(s) (a “**Back Up Bid**” and such Phase 2 Qualified Bidder, a “**Back Up Bidder**”); and/or
    - (iii) (ii) direct such Phase 2 Qualified Bidders to participate in an auction (“**Auction**”) to be conducted and administered by the Monitor in accordance with the Auction Procedures Letter (defined below), with the assistance of the Financial Advisor and the CRO. The determination of any Successful Bid and Back Up Bid by the Financial Advisor and the CRO, with the concurrence of the Monitor and in consultation with the Applicants, shall be subject to approval by the Court.
30. In the event that it is determined that there is to be an Auction in respect of some or all of the Property or Business, the Auction shall be governed by an auction procedures letter (“**Auction Procedures Letter**”) to be prepared by the Monitor and sent to all applicable Phase 2 Qualified Bidders setting out, among other things, (a) the date, time and location of the Auction (including whether in person or by videoconference); (b) the amount of the starting bid; and (c) the initial minimum overbid.

### ***Sale Approval Motion Hearing***

31. At the hearing of the motion to approve any transaction with a Successful Bidder or Successful Bidders (the “**Sale Approval Motion**”), the Monitor shall seek, among other things, approval from the Court to consummate any Successful Bid.

### ***Confidentiality and Access to Information***

32. All discussions regarding a Sale Proposal, Investment Proposal, LOI or Phase 2 bid should be directed through the Financial Advisor. Under no circumstances should the management of the Companies be contacted directly without the prior consent of the Financial Advisor and the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process, in the discretion of the Monitor.
33. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the CRO, the Financial Advisor, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Financial Advisor and the CRO, with the consent of the Monitor, and consent of the applicable participants, are seeking to combine separate bids from Phase I Qualified Bidders or Phase 2 Qualified Bidders.
34. Without limiting the rights of the Applicants herein, the Financial Advisor and the Monitor may consult with any other parties with a material interest in the CCAA proceedings, including the Applicants, regarding the status and material information and developments relating to the SISP to the extent considered appropriate by the Monitor in consultation with the Financial Advisor, provided that such parties (other than the Applicants) shall have entered into confidentiality arrangements satisfactory to the Financial Advisor and the Monitor. The Financial Advisor and/or the Monitor may discuss the status of the SISP throughout the conduct of the SISP.

### ***Supervision of the SISP***

35. The Monitor will oversee, in all respects, the conduct of the SISP by the Financial Advisor and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in herein, in any Bid Process Letter and the Initial Order and is entitled to receive all information in relation to the SISP.
36. This SISP does not and will not be interpreted to create any contractual or other legal relationship between the Companies and any Phase I Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as

specifically set forth in a definitive agreement that may be signed in connection with a Successful Bid.

37. Without limiting the preceding paragraph, neither the Financial Advisor nor the Monitor shall have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, the Companies, the Applicants or any other creditor or other stakeholder of the Companies, for any act or omission related to the process contemplated herein. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor or the Financial Advisor for any reason whatsoever.
38. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, Phase 2 bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
39. Subject to the limitations in paragraph 0, the Financial Advisor, with the consent of the Monitor, or order of the Court, shall have the right to modify the SISP (including, without limitation, pursuant to the Bid Process Letter) if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in this CCAA proceeding shall be advised of any substantive modification to the procedures set forth herein. Any material amendment to the SISP, in the opinion of the Monitor, will require the consent of the Applicants. However, for clarity and irrespective of the Applicants' foregoing consent rights, the Monitor shall seek the Court's approval for any material changes to the SISP.
40. The deadlines provided for in this SISP may be extended in the discretion of the Financial Advisor and the Monitor provided that the aggregate discretionary extensions shall not exceed 15 business days. In the event that any one milestone deadline is extended, all subsequent milestones shall be extended by the same number of days and a revised timetable shall be provided to all applicable interested parties and posted on the Monitor's website.

### ***Miscellaneous***

41. Notwithstanding the other provisions of the SISP, the Monitor may, in consultation with the CRO, the Financial Advisor and the Applicants, at any time bring a motion:
  - (a) to seek approval of a stalking horse agreement in respect of some or all of the Property and related bid procedures in respect of such Property or to establish further or other procedures for Phase 2; and/or
  - (b) to seek approval to terminate the SISP if (i) no *bona fide* purchasers or investors, in the opinion of the Monitor are participating in the SISP; or (ii) the Applicants, acting reasonably, have advised the Financial Advisor and the Monitor that none of the LOIs submitted in phase 1 will result in a transaction acceptable to the Applicants, and after consideration, the Financial Advisor, CRO and the Monitor concur with that view or (iii) the Applicants, acting reasonably, have advised the Financial Advisor, the CRO and the Monitor that none of the offers submitted in phase 2 will result in a transaction acceptable to the Applicants, and after consideration, the Financial Advisor, the CRO and the Monitor concur with that view; and/or
  - (c) to seek approval of a transaction for any of the Real Property, provided that prior to the completion of the SISP, such Real Property sale does not impair the ability to complete a transaction for the Business; and/or
  - (d) to seek approval of a transaction for certain Property of some or all of the Companies of de minimis value and which the Monitor, in consultation with the CRO and Financial Advisor, can be sold independently of the Business.
42. In the event that the SISP is terminated in connection with paragraph 0 above, the Applicants shall not, by virtue of having not participated in the SISP, be disqualified from submitting an offer for the Business on the basis of a credit bid or otherwise. For clarity, it is the strong preference of the Applicants to find a solution that results in a transaction where the Applicants are not the controlling shareholder of the Companies or the Business.
43. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any sale of any of the Property or investment in the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Companies, the CRO the Financial Advisor, or any of their

respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Companies in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders or the definitive documents entered into in connection with the Successful Bid.

44. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. In the event that the Successful Bid is not completed due to a breach or default of the bidder's obligations thereunder, the Deposit shall be forfeited to the Companies as damages and such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Companies have in respect of such breach or default. Any Deposit delivered with a Phase 2 Qualified Bid that is not selected as a Successful Bid or a Back Up Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the earliest of (a) Court approval of an alternative Successful Bid for the same Property or Business, which Order shall have become a final order; (b) the closing of a transaction in respect of the same Property or Business; or (c) 60 days after the date the Phase 2 Qualified Bidder is notified its bid is not a Successful Bid. Deposits in respect of a Back Up Bid will be returned as soon as reasonably practicable (but not later than ten (10) business days) after the Back Up Bid Expiration Date.
45. The consultation and other rights afforded to the CRO herein shall not extend to other officers, shareholders and/or the directors of the Companies without the consent of the Monitor, in its sole discretion.

**Schedule “1”****Addresses of Monitor and Financial Advisor**

All LOIs and formal binding offers (and any accompanying documents) shall be transmitted by way of email to the Monitor and Financial Advisor as follows:

**To the Monitor:**

KSV Restructuring Inc.

220 Bay Street, 13<sup>th</sup> Floor, PO Box 20

Toronto, Ontario M5J 2W4

Attention: Bobby Kofman ([bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com)) and Mitch Vininsky ([mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com))

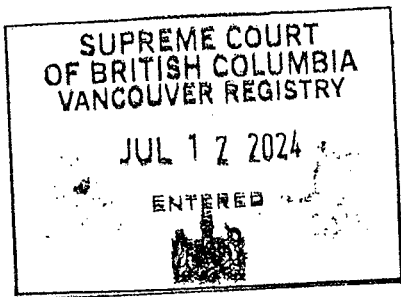
**To the Financial Advisor:**

FTI Capital Advisors – Canada ULC

79 Wellington Street West, Suite 2010

Toronto, ON M5K 1G8

Attention: Dean Mullett ([dean.mullett@fticonsulting.com](mailto:dean.mullett@fticonsulting.com)) and Richard Kim ([richard.kim@fticonsulting.com](mailto:richard.kim@fticonsulting.com))



No. S-244212  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c.57, AS AMENDED

AND

IN THE MATTER OF GOOD NATURED PRODUCTS INC., & THOSE ENTITIES LISTED  
IN SCHEDULE "A"

PETITIONERS

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE )  
MADAM JUSTICE FITZPATRICK ) 2024/07/11  
)

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 11th day of July, 2024 (the "Order Date"); AND ON HEARING Mary Buttery, K.C., counsel for the Petitioners and those other counsel listed on Schedule "B" hereto; AND UPON READING the material filed, including the Second Affidavit of Paul Antoniadis sworn July 10, 2023, (the "Second Antoniadis Affidavit"); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "CCAA"), the British Columbia Supreme Court Civil Rules, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

**SERVICE AND DEFINITIONS**

1. The time for service of this notice of application and supporting materials is hereby abridged such that the notice of application is properly returnable today.

2. Capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process in respect of the business and assets of the Petitioners, in the form attached hereto as Schedule "C" (the "SISP"), the Amended and Restated Initial Order of this Court dated July 8, 2024 (the "ARIO"), or the Second Antoniadis Affidavit, as applicable.

#### **SALE AND INVESTMENT SOLICITATION PROCESS**

3. The SISP is hereby approved and the Petitioners and the Monitor are hereby authorized and directed to implement the SISP pursuant to the terms thereof. The Petitioners and the Monitor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder, subject to prior approval of the Court being obtained before completion of any transaction(s) under the SISP.

4. Capital West Partners ("Capital West") is hereby appointed as sales agent of the Petitioners to implement and carry out duties under the SISP.

5. The Petitioners, Capital West, and the Monitor and their respective affiliates, partners, directors, offices, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Petitioners, Capital West, or the Monitor, as applicable, in performing their obligations under the SISP, as determined by this Court in a final order that is not subject to appeal or other review.

6. In conducting the SISP, the Monitor shall have all of the benefits and protections granted to it under the CCAA, the ARIO and any other Order of this Court in the within proceeding.

## **PIPEDA**

7. Pursuant to section 18(10)(o) of the *Personal Information Protection Act* (British Columbia), and any similar legislation in any other applicable jurisdictions, the Petitioners or the Monitor and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants that are party to a non-disclosure agreement with the Petitioners (each, a “**SISP Participant**”) and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the SISP (a “**Transaction**”), Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to the SISP Participant’s evaluation for the purpose of effecting a Transaction, and, if a SISP Participant does not complete a Transaction, shall return all such information to the Petitioners or the Monitor, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Petitioners or the Monitor.

## **GENERAL**

8. This court requests the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners 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 Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

9. Each of the Petitioners 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 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.

10. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of

Party  Lawyer for the Petitioners

*Mary Buttery*

\_\_\_\_\_  
Mary Buttery, K.C.

Christen  
Ganton  
For:

\_\_\_\_\_  
Signature of

Party  Lawyer for <name of party(ies)>

\_\_\_\_\_  
Name

BY THE COURT

*[Handwritten signature]*

\_\_\_\_\_  
REGISTRAR

*[Handwritten signature]*

*Done*  
CHECKED  
*[Handwritten mark]*

## Schedule "A"

### *Canadian Petitioners*

1. good natured Products Inc.
2. good natured Real Estate Holdings (Ontario) Inc.
3. 1306187 B.C. Ltd.
4. good natured Products (CAD) Inc.
5. good natured Products Packaging Canada GP Inc.
6. good natured Products Packaging Brampton GP Inc.
7. good natured Products Industrial Canada GP Inc.
8. good natured Products Packaging Canada LP
9. good natured Products Packaging Brampton LP
10. good natured Products Industrial Canada LP

### *US Petitioners*

11. good natured Products (US) Inc.
12. good natured Products (Illinois), LLC
13. good natured Products Real Estate U.S., LLC
14. good natured Products Packaging US LLC
15. good natured Products Direct LLC
16. good natured Products (Texas) LLC

**Schedule "B"**

**Appearance List**

<b>NAME</b>	<b>APPEARING FOR</b>
<b>Osler, Hoskin &amp; Harcourt LLP</b> Suite 3000, Bentall Four 1055 Dunsmuir Street Vancouver BC V7X 1K8  Mary Buttery, K.C. Christian Garton Emma Newbery	The Petitioners
<b>McCarthy Tétrault</b> 745 Thurlow Street Suite 2400 Vancouver, BC V6E 0C5  Lance Williams Ashley Bowron	The Monitor, Alvarez & Marsal Canada Inc.
<b>Norton Rose Fulbright Canada LLP</b> 510 West Georgia Street, Suite 1800 Vancouver, BC V6B 0M3  Kieran Siddall Candace Formosa	Wells Fargo Capital Finance Corporation Canada
<b>Dentons Canada LLP</b> 250 Howe Street 20th Floor Vancouver, BC V6C 3R8  John Sandrelli Cassandra Federico	Royal Bank of Canada

<b>Owen Bird Law Corporation</b> 2900 – 733 Seymour St., P.O. Box 1, Vancouver, BC V6B 0S6  Scott Stephens	Toronto-Dominion Bank
<b>Chaitons LLP</b> 5000 Yonge St, 10th Floor, Toronto, ON M2N 7E9  Laura Culleton	Export Development Canada

**Schedule "C"**

**Sale and Investment Solicitation Process**

## SALES AND INVESTMENT SOLICITATION PROCESS GOOD NATURED PRODUCTS INC. AND AFFILIATES

1. On June 28, 2024, Good Natured Products Inc. (“**Good Natured**”) and its subsidiaries (collectively, the “**Petitioners**”) sought and were granted an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”) from the Supreme Court of British Columbia (the “**CCAA Court**”). The Petitioners’ proceedings under the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed as monitor of the Petitioners in the CCAA Proceedings (in such capacity, the “**Monitor**”).
3. Pursuant to proceedings commenced in the United States Bankruptcy Court for the Northern District of Illinois (the “**US Bankruptcy Court**”, and together with the CCAA Court, the “**Insolvency Courts**”) under chapter 15, Title 11 of the United States Code (the “**Chapter 15 Proceedings**”, and together with the CCAA Proceedings, the “**Insolvency Proceedings**”), Good Natured obtained, among other things, recognition of the CCAA Proceedings.
4. Wells Fargo Capital Finance Corporation Canada (the “**Lender**”) has agreed to provide certain interim financing to the Petitioners during the Insolvency Proceedings, as approved or to be approved by the Insolvency Courts.
5. Pursuant to the Order of the CCAA Court dated July 11, 2024 (the “**SISP Order**”), the CCAA Court approved the sale and investment solicitation process set out herein (the “**SISP**”). Capitalized terms used herein are as defined in the SISP Order unless defined otherwise herein.
6. Pursuant to the SISP Order, Capital West Partners was appointed to act as Sales Agent in accordance with the SISP Order and the SISP.

### SISP OVERVIEW

7. The purpose of the SISP is to solicit interest in one or more or any combination of (1) a restructuring, recapitalization or other form of reorganization of the business and affairs of one or more of the Petitioners as a going concern, or (2) a sale of all, substantially all or one or more components of the Petitioners’ assets (the “**Property**”) and/or business operations of the Petitioners (the “**Business**”) as a going concern or otherwise.
8. The SISP describes the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a “**Person**”) may gain access to or continue to have access to due diligence materials concerning the Petitioners, the Property and the Business, how bids involving the Petitioners, the Property or the Business will be submitted to and dealt with by the Petitioners, the Monitor, the Sales Agent and the Lender and how Court approval will be obtained in respect of any Transaction (as defined below).

9. As described below, the various deadlines herein may be extended by and at the discretion of the Monitor and the Petitioners, subject to approval by the Lender, in its sole discretion. The Monitor will consider extending the various deadlines herein in the event that the Monitor determines that such an extension will generally benefit the Petitioners' creditors and other stakeholders.

#### **"AS IS, WHERE IS" BASIS**

10. Any transaction involving the Petitioners, the Property or the Business (in each case, a "**Transaction**") will be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Sales Agent, the Monitor, the Petitioners, or any of their respective agents, estates, advisors, professionals or otherwise, except to the extent expressly set forth in the relevant Final Agreement (as defined herein).

#### **THE SISP PROCESS**

##### **A. Initial Solicitation of Interest**

11. The Sales Agent may contact any Persons to solicit expressions of interest in a Transaction either before or after the granting of the SISP Order.
12. As soon as reasonably practicable after the granting of the SISP Order, the Monitor will cause a notice regarding this SISP, in a form satisfactory to and previously approved by the Petitioners and the Monitor, to be published in (a) the Globe and Mail (National Edition), (b) the Wall Street Journal or other national daily publication acceptable to the Petitioners and the Monitor, and (c) any other publication in which the Sales Agent determines notice of this SISP should be published.
13. As soon as reasonably practicable after the granting of the SISP Order, in consultation with the Petitioners and the Monitor, the Sales Agent will prepare a list of potential bidders (the "**Known Potential Bidders**") who may have an interest in a Transaction. Such list will include both strategic and/or financial parties who may be interested in acquiring an interest in the Petitioners and/or their assets pursuant to an asset purchase transaction (an "**Asset Bid**"), a restructuring of the debt, share or capital structure of the Petitioners (a "**Restructuring Bid**") or some combination of an Asset Bid and a Restructuring Bid (such combination bid, a "**Hybrid Bid**"). Concurrently, the Sales Agent will prepare an initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders of the SISP and inviting the Known Potential Bidders to express interest in making an Asset Bid, Restructuring Bid or Hybrid Bid (each, a "**SISP Bid**").
14. By no later than July 18, 2024, the Sales Agent shall distribute to the Known Potential Bidders, the Teaser Letter, as well as a draft form of confidentiality agreement (the "**Confidentiality Agreement**") that shall inure to the benefit of the Person or Persons who make the Winning Bid (as defined herein) pursuant to this SISP. Copies of the Teaser Letter and Confidentiality Agreement shall be provided to any appropriate Persons who become known to the Sales Agent after the initial distribution of such documents.

15. Any Person who (a) executes a Confidentiality Agreement in form and substance satisfactory to the Petitioners, the Sales Agent and the Monitor, and (b) whom the Sales Agent is satisfied has the financial capabilities and technical expertise to make a viable SISP Bid, shall be deemed to be a potential bidder (each, a **"Potential Bidder"**).

**B. Due Diligence**

16. The Sales Agent will prepare a confidential information memorandum ("**CIM**") by no later than July 18, 2024, describing the opportunity to make a SISP Bid. The Sales Agent shall deliver the CIM to each Potential Bidder as soon as practicable after such Person is deemed to be a Potential Bidder in accordance with this SISP.
17. The Sales Agent shall provide each Potential Bidder with information, including access to an electronic data room established by the Sales Agent by no later than July 18, 2024 (the "**Data Room**"), that the Sales Agent determines to be necessary for the Potential Bidder to evaluate a transaction involving a SISP Bid.

**C. LOI Process**

18. Any Potential Bidder who wishes to submit a SISP Bid must deliver a written, non-binding letter of intent (each, a "**LOI**") to the Monitor at the address specified in and in accordance with Schedule "A" hereto so as to be received by the Monitor not later than 5:00 p.m. PST on August 22, 2024, or such other date or time as the Monitor and the Petitioners may determine with the consent of the Lender, acting reasonably (the "**LOI Deadline**").
19. Following the LOI Deadline, all LOIs shall be reviewed by the Petitioners, in consultation with the Monitor, the Sales Agent the Lender, the Royal Bank of Canada ("**RBC**"), and Toronto-Dominion Bank ("**TD Bank**"). *and Export Development Canada ("**EDC**").*
20. An LOI shall be a qualified LOI (each, a "**Qualified LOI**") provided that it contains:
  - (a) a specific indication of the anticipated sources of capital for such Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow the Monitor and its legal advisors to make, in their reasonable business or professional judgment, a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate a SISP Bid;
  - (b) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect owners of the Potential Bidder and their principals;
  - (c) an indication of whether the Potential Bidder wishes to tender (i) an Asset Bid; (ii) a Restructuring Bid; or (iii) a Hybrid Bid;
  - (d) in the case of an Asset Bid, it identifies:
    - (i) the purchase price range (including liabilities to be assumed by the Potential Bidder and any credit bid) including indicative value allocated to the Real Property;

- (ii) whether the Asset Bid is *en bloc*, the Property included, any of the Property expected to be excluded, and/or any additional assets desired to be included in the transaction;
  - (iii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the proposed transaction and any related contingencies, as applicable);
  - (iv) the proposed treatment of employees of the Petitioners;
  - (v) the proposed treatment of any leases and other material contracts;
  - (vi) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (vii) any additional due diligence required or desired to be conducted by the Potential Bidder;
  - (viii) any conditions to closing that the Potential Bidder may wish to impose; and
  - (ix) any other terms or conditions of the Asset Bid which the Potential Bidder believes are material to the transaction;
- (e) in the case of a Restructuring Bid, it identifies:
- (i) the aggregate amount of the equity and debt investment, including liabilities to be assumed by the Potential Bidder and any credit bid component (including the sources of capital, preliminary evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed transaction and any related contingencies, as applicable) to be made in the Petitioners;
  - (ii) the underlying assumptions regarding the *pro forma* capital structure (including the anticipated debt levels, debt service fees, interest and amortization);
  - (iii) the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of the Petitioners and the proposed treatment of employees;
  - (iv) the structure and financing of the transaction including all requisite financial assurance;
  - (v) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;

(vi) any additional due diligence required or desired to be conducted by the Potential Bidder, if any;

(vii) any conditions to closing that the Potential Bidder may wish to impose; and

(viii) any other terms or conditions of the Restructuring Bid which the Potential Bidder believes are material to the transaction;

(f) in the case of a Hybrid Bid, all of the information contained in subparagraphs (d) through (e) above, as applicable;

(g) such other information as may be requested by the Monitor or the Sales Agent; and

provided however, that any Qualified LOI must be in form and substance satisfactory to the Monitor.

21. Any Potential Bidder who submits a Qualified LOI on or before the LOI Deadline shall be designated a **"Qualified Bidder"**.
22. The Petitioners, with the approval of the Monitor and in consultation with the Lender, may waive the strict compliance of one or more of the requirements specified above and deem any LOI to be a Qualified LOI, notwithstanding any noncompliance with the terms and conditions of this SISP.
23. In the event that no Person submits an LOI, or that no LOI qualifies as or is deemed to qualify as a Qualified LOI, or that no LOI is deemed commercially reasonable to the Petitioners and the Monitor, the Petitioners may, with the approval of the Monitor and the Sales Agent and with the consent of the Lender, terminate the SISP. If no Qualified LOIs are received by the LOI Deadline, the Petitioners may, in consultation with the Monitor and the Lender, consider other forms of bids for the Property and the Business. At any time during the SISP, the Petitioners may, with the approval of the Monitor and the Lender, determine that any bid is a Winning Bid and seek Approval Orders (as defined below) in respect of such Winning Bid(s) from the Insolvency Courts.

**D. Final Bid Process**

24. By no later than August 26, 2024, the Sales Agent may invite Qualified Bidders to conduct additional due diligence or otherwise make available to Qualified Bidders additional information not posted in the Data Room, arrange for inspections and site visits at the Petitioners' premises, as determined by the Sales Agent.
25. Any Qualified Bidder may submit an Asset Bid, a Restructuring Bid or a Hybrid Bid (each a **"Final Bid"**) to the Monitor at the address specified in Schedule "A" hereto on or before 5:00 pm PST on September 12, 2024, or such later time and date that the Petitioners may determine, with the approval of the Monitor and the consent of the Lender, acting reasonably (the **"Final Bid Deadline"**).
26. Final Bids shall be reviewed by the Monitor, the Sales Agent, the Petitioners and the Lender, *RBC, and TD Bank, and EDC.*


*JK*

27. A Final Bid submitted as an Asset Bid shall be a “**Qualified Asset Bid**” in the event that:
- (a) it complies with the criteria required for a Qualified LOI;
  - (b) provides an allocation of value for the Real Property;
  - (c) it includes a letter stating that the Asset Bid is irrevocable until the earlier of (i) the approval by the Insolvency Courts, and (ii) forty-five (45) days following the Final Bid Deadline; provided, however, that if such Asset Bid is selected as the Winning Bid or the Backup Bid, it shall remain irrevocable until the closing of the Winning Bid or the Backup Bid, as the case may be;
  - (d) it includes a duly authorized and executed purchase and sale agreement specifying all consideration payable, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto;
  - (e) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
  - (f) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Monitor to allow the Monitor to make a reasonable determination as to the Qualified Bidder’s (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Asset Bid;
  - (g) it is not conditional on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Asset Bid;
  - (h) it is not conditional upon any governmental or regulatory approval;
  - (i) it fully discloses the identify of each Person that is bidding or otherwise that will be sponsoring or participating in the Asset Bid, including the identification of the bidder’s direct and indirect owners and their principals, and the complete terms of any such participation;
  - (j) it is accompanied by a refundable cash deposit (the “**Deposit**”) in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to ten percent (10%) of the consideration to be paid in respect of the Asset Bid, to be held and dealt with in accordance with this SISP;
  - (k) it contains other information requested by the Sales Agent, the Petitioners or the Monitor; and
  - (l) it is received by no later than the Final Bid Deadline.

28. A Final Bid submitted as a Restructuring Bid shall be a **“Qualified Restructuring Bid”** in the event that:
- (a) It includes definitive documentation, duly authorized and executed by the Qualified Bidder, setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and debt investment, assumption of debt if any, and details regarding the proposed equity and debt structure of the Petitioners following completion of the proposed transaction;
  - (b) it includes a letter stating that the Restructuring Bid is irrevocable until the earlier of (i) the approval by the Insolvency Courts, and (ii) forty-five (45) days following the Final Bid Deadline; provided however, that if such Restructuring Bid is selected as the Winning Bid or the Backup Bid, it shall remain irrevocable until the closing of the Winning Bid or the Backup Bid, as the case may be;
  - (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
  - (d) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Monitor to allow the Monitor to make a reasonable determination as to the Qualified Bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Restructuring Bid;
  - (e) it is not conditional on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining any financing capital and includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Restructuring Bid;
  - (f) it is not conditional on any governmental or regulatory approval;
  - (g) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Restructuring Bid, including the identification of the Qualified Bidder's direct and indirect owners and their principals, and the complete terms of such participation;
  - (h) it is accompanied by a refundable deposit in the form of a wire transfer (payable to a trust account specified by the Monitor) in an amount equal to ten percent (10%) of the consideration to be paid pursuant to the Restructuring Bid, to be held and dealt with in accordance with this SISP; and
  - (i) it is received by no later than the Final Bid Deadline.
29. A Hybrid Bid submitted by the Final Bid Deadline will be considered a **“Qualified Hybrid Bid”** if it is in substantial compliance with the portions of paragraphs 27 and 28 of this SISP, as determined by the Monitor.

30. All Qualified Asset Bids, Qualified Restructuring Bids and Qualified Hybrid Bids shall constitute "**Qualified Final Bids**". The Petitioners, with the approval of the Monitor, may waive the strict compliance of one or more of the requirements specified above and deem any Final Bid(s) to be a Qualified Final Bid, notwithstanding any non-compliance with the terms and conditions of this SISP.

**E. Selection of Winning Bid**

31. The Petitioners shall review all Qualified Final Bids in consultation with the Monitor, the Sales Agent and the Lender. Subject to the approval of the Monitor and the Lender, the Petitioners may, but shall have no obligation to, enter into a definitive agreement or agreements (each, a "**Final Agreement**") with the Person or Persons who submitted the highest, best or otherwise most favourable Qualified Final Bid(s).
32. In the event that the Petitioners enter into one or more Final Agreements on or before September 19, 2024, or such later time that the Monitor may determine (the "**Final Agreement Deadline**"), any Qualified Bid so selected shall be a "**Winning Bid**" and the next highest, best or otherwise most favourable Qualified Bid received, as determined by the Petitioners with the consent of the Monitor and the Lender, shall be the "**Backup Bid**". Any Qualified Bidder that makes a Winning Bid shall be a "**Successful Bidder**" and any Qualified Bidder that makes a Backup Bid shall be a "**Backup Bidder**".
33. Notwithstanding anything to the contrary in this SISP, the Petitioners and the Monitor shall not, without the prior consent of RBC and TD Bank (collectively, the "**Real Estate Lenders**"), identify one or more Qualified Final Bid that includes the sale or acquisition of the Real Estate Lenders' Canadian real property collateral (the "**Real Estate Collateral**") as the Winning Bid, if such Qualified Final Bid would not, if so identified, result in full payment of the amounts owing to the Real Estate Lenders on closing with respect to the ~~Real Property Collateral~~. For greater certainty, this provision does not override paragraph 12 of the Amended and Restated Initial Order of Justice Fitzpatrick made on July 8, 2024. **Real Estate Collateral** 
34. The Monitor or the Sales Agent will notify each Successful Bidder and Backup Bidder of the Final Agreement and the Backup Bid shall remain open until the consummation of the transaction contemplated by the Winning Bid (and, for greater certainty, the Monitor shall be entitled to continue to hold the Deposit in respect of the Backup Bid until such time as the transaction contemplated by the Winning Bid is consummated).
35. In the event that (a) no Qualified Bidder submits or is deemed to have submitted a Qualified Final Bid, (b) the Petitioners, with the approval of the Monitor and the Lender, determines that none of the Qualified Final Bids should be accepted, or (c) that a Final Agreement has not been entered into before the Final Agreement Deadline, this SISP shall terminate.
36. The highest Qualified Final Bid may not necessarily be accepted by the Petitioners. The Petitioners, with the approval of the Monitor and the Lender, reserve the right to not accept any Qualified Final Bid or to otherwise terminate the SISP. The Petitioners, with the approval of the Monitor and the Lender, further reserve the right to deal with one or more Qualified Bidders to the exclusion of other Persons, to accept a Qualified Final Bid or

Qualified Final Bids for some or all of the Property, the Petitioners or the Business, to accept multiple Qualified Final Bids and enter into multiple Final Agreements.

#### **APPROVAL ORDERS**

37. In the event that the Petitioners enter into a Final Agreement, the Petitioners shall apply for an order (the “**Approval Order**”) from the Insolvency Courts on or before Thursday, September 26, 2024, in form and substance satisfactory to the Monitor, approving the transaction contemplated by the Winning Bid and any necessary related relief required to consummate the transaction contemplated by the Winning Bid, subject to the terms of the Final Agreement.
38. The Petitioners may also concurrently obtain relief approving the transaction contemplated by the Backup Bid and any necessary related relief required to consummate the transaction contemplated by the Backup Bid.
39. An Approval Order shall become a “**Final Order**” upon satisfaction of the following conditions: (i) it is in full force and effect; (ii) it has not been reversed, modified or vacated and is not subject to any stay; and (iii) all applicable appeal periods have expired and any appeals therefrom have been finally disposed of, leaving the Approval Order wholly operable.

#### **CLOSING**

40. Closing of the transactions contemplated in any Final Agreement shall occur by the later of October 11, 2024, and ten (10) days of the date upon which the Approval Orders have become Final Orders] and in any event no later than October 25, 2024, or as may be extended with the Approval of the Monitor and the Lender.

#### **DEPOSITS**

41. All Deposits paid pursuant to this SISP shall be held in trust by the Monitor. The Monitor shall hold Deposits paid by each of the Winning Bidder and the Backup Bidder in accordance with the terms outlined in this SISP. In the event that a Deposit is paid pursuant to this SISP and the Petitioners elect not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Monitor shall return the Deposit and any interest accrued thereon to that Person.
42. In the event that either of the Successful Bidder or the Backup Bidder default in the payment of performance of any obligations owed to the Petitioners, the Monitor or the Sales Agent pursuant to any Final Agreement, the Deposit paid by the Winning Bidder or the Backup Bidder, as applicable, shall be forfeited to such party as liquidated damages and not as a penalty.

#### **INFORMATION AND CONFIDENTIALITY**

43. None of directors and officers (collectively, “**Connected Persons**”) are entitled to any SISP-related information or to be consulted in relation to the SISP until such time as any such party confirms in writing to the Monitor that they and their Connected Persons will

not be a bidder, or participate in any bid, in respect of the Debtors, Property or the Business (the “**Non-Bid Notice**”) by July 18, 2024. For greater clarity, the Connected Persons shall not be entitled to be a bidder, or participate in any bid, in respect of the Debtors, Property or the Business after the submission of a Non-Bid Notice.

44. The Sales Agent shall keep confidential all information concerning Potential Bidders, LOIs, Qualified Bidders, Final Bids, the Successful Bidder, the Winning Bid, the Backup Bidder, the Backup Bid, and the Final Agreement.

**GENERAL**

45. Subject to the approval of the Monitor and the Lender, the Petitioners may at any time prior to the Final Bid Deadline apply to the Insolvency Courts for approval to accept a “stalking horse” bid in the SISF.

## SCHEDULE "A"

### Addresses for Deliveries

Any notice or other delivery made to the Monitor pursuant to this SISP shall be made to:

ALVAREZ & MARSAL CANADA INC.  
Cathedral Place Building  
925 West Georgia Street, Suite 902  
Vancouver, BC V6C 3L2

Attention: Anthony Tillman / Pinky Law  
Email: [atillman@alvarezandmarsal.com](mailto:atillman@alvarezandmarsal.com) / [pinky.law@alvarezandmarsal.com](mailto:pinky.law@alvarezandmarsal.com)

with copy to:

MCCARTHY TETRAULT LLP  
745 Thurlow Street, Suite 2400  
Vancouver, BC V6E 0C5

Attention: Lance Williams / Ashley Bowron  
Email: [lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca) / [abowron@mccarthy.ca](mailto:abowron@mccarthy.ca)

Any notice or delivery made to the Sales Agent pursuant to this SISP shall be made to:

●

Attention: ●  
Email: ●

Deliveries pursuant to this SISP by email or by facsimile shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this SISP shall be deemed to be received when delivered to the relevant address, as identified above.

**CITATION:** *In Re Hudson's Bay Company*, 2025 ONSC 6764  
**COURT FILE NO.:** CV-25-00738613-00CL  
**DATE:** 20251128

**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  
**HUDSON'S BAY COMPANY** ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC  
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC  
BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC  
CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP  
INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.,  
Applicants

**BEFORE:** Peter J. Osborne J.

**COUNSEL:** *Ashley Taylor, Brittney Ketwarro and Philip Yang*, for the Hudson's Bay Company  
*David Bish*, for The Cadillac Fairview Corporation  
*Linc Rogers and Caitlin McIntyre*, for Restore Capital LLC  
*D. J. Miller*, for Oxford Properties Group  
*Andrew Harmes*, for RioCan Real Estate Investment Trust  
*Natasha MacParland and Jason Stephanian*, for Wittington Investments Limited  
*Linda Galessiere*, for Ivanhoe Cambridge II Inc. Jones Lang LaSalle Inc.,  
Morguard Investments Limited, Salthill Property Management Inc.  
*Frederick Schumann*, for DKRT Family Corp.  
*Vivian Li*, for Department of Justice (Manitoba)  
*Brian Kolenda*, for Restore Capital for FILO Agent  
*Methura Sinnadurai*, for Toronto Hydro  
*Asad Moten*, for Department of Justice (Canada)  
*Sean Zweig and Michael Shakra*, for Court Appointed Monitor

**ENDORSEMENT**

- [1] The Applicants (collectively for the purposes of this Endorsement, "HBC" or "The Hudson's Bay Company") seek an order approving a proposed auction process for the Royal Proclamation Charter (the "Charter").
- [2] To say that the Charter has significance to stakeholders in this CCAA Proceeding as well as to other stakeholders who are not directly involved in matters arising out of the insolvency

of HBC would be a gross understatement. It has profound historical and cultural significance to Canada and its people.

- [3] The Charter was granted by King Charles II in 1670. It established HBC and granted the Company a trade monopoly over what was then known as Rupert's Land and which encompasses what is today a significant part of Canadian territory. In addition, it granted to HBC the power to make certain laws, build forts and administer justice. Until HBC sought protection from its creditors under the *CCAA*, it was the oldest continuously operating company in North America.
- [4] Defined terms in this Endorsement have the meaning given to them in the Motion Record of HBC and/or the Ninth Report of the Monitor and the Supplement thereto, unless otherwise stated.
- [5] As is common in *CCAA* proceedings, I previously approved a *SISP* Order in this Proceeding to set out the framework of the process for soliciting interest in and selling assets of HBC to maximize recoveries for stakeholders.
- [6] Clearly, however, it was necessary to consider next steps regarding the Charter differently and separately from both the general assets of HBC and also from its Art Collection (which is the subject of separate auctions). There has been significant public interest in the Charter, a number of stakeholders have expressed an interest in the process by which it is to be managed, and numerous other parties and groups have contacted the Monitor to express their views.
- [7] Beyond certain export restrictions related to Canadian cultural property (discussed further below), there is very little law governing the disposition and stewardship of a document such as the Charter.
- [8] Accordingly, one of the challenges for this Court is to balance the objective in an insolvency proceeding such as this to maximize recoveries from all assets of a debtor company for the benefit of creditors and other stakeholders against the imperative of ensuring that a document such as the Charter is addressed in a manner that reflects its relevance and importance to Canada, its history and all of its peoples.
- [9] The motion today is not opposed by any party. It is supported by the Joint Bidders, the first Senior Secured Lender, the *FILO* Agent, and is not opposed by the second Senior Secured Lender, Pathlight. It is recommended by the Court-appointed Monitor.
- [10] In addition to the Department of Justice (Canada) on behalf of the Department of Canadian Heritage (among others), the Department of Justice (Manitoba), numerous Indigenous groups, museums, archives, and other public institutions have expressed views with respect to the Charter.

- [11] Having reviewed all of the materials and heard the submissions of all parties who wished to make them, I granted the order, albeit with numerous revisions. I indicated at the conclusion of the hearing that reasons would follow. These are those reasons.
- [12] In June 2025, HBC received an unsolicited offer from Wittington Investments Limited to purchase the Charter for \$12.5 million. Wittington is the private holding company of a prominent Canadian family. The offer included a commitment to immediately donate the Charter to the Canadian Museum of History where, after a robust and extensive consultation process, it would be shared with museums and Indigenous groups across Canada, prioritizing the long-term preservation of the Charter.
- [13] In the summer of 2025, HBC brought a motion seeking approval to sell the Charter pursuant to the Wittington offer. I scheduled that motion for September 9, 2025. While many steps in an insolvency proceeding are undertaken in “real-time” or on short notice, given the Charter’s profound historical and cultural significance, I directed that the motion for an order approving the sale of the Charter should not be rushed, in order that all interested parties and other stakeholders could have an adequate opportunity to consider the issues.
- [14] At the (very appropriate) request of HBC, I directed that any party wishing to submit materials in respect of the motion do so no later than August 21, 2025, in order that all interested stakeholders could have an opportunity to consider not only the motion materials of HBC, but the submissions made by any other party who intended to take a position on the motion.
- [15] By that deadline, HBC had received one responding motion record from DKRT Family Corp. DKRT is the private holding company of another prominent Canadian family. DKRT opposed the approval of the sale of the Charter pursuant to the Wittington offer and submitted that the Charter should be the subject of an open auction, albeit with conditions. DKRT advised the Company that it was prepared and willing to provide an opening bid of at least \$15 million if the Charter were auctioned.
- [16] HBC, Reflect and the Monitor had numerous discussions with other Interested Parties, including representatives of major Canadian cultural institutions. There were several expressions of interest in the acquisition of the Charter were it to be made available through an auction process.
- [17] HBC, Reflect and the Monitor then initiated discussions with Wittington and DKRT, together their respective advisors, to further discuss their offers and the path forward. To ensure appropriate protections were in place, HBC obtained a binding commitment letter from DKRT to participate in any Court-approved auction process, to submit an opening bid of not less than \$15 million on terms consistent with those set out in the DKRT Responding Motion Record, and other terms.

- [18] Accordingly, HBC, in consultation with the Monitor, Reflect, the FILO Agent and Pathlight, determined that a competitive auction process, with conditions, was appropriate.
- [19] On September 28, 2025, HBC received an unsolicited Joint Bid from Wittington and DKRT (the “Joint Bidders”) together.
- [20] On November 14, 2025, the Joint Bidders executed a Joint Commitment Letter pursuant to which they agreed to participate in a Court-approved auction if so authorized and bid at least \$18 million for the Charter. That Joint Commitment Letter has been made publicly available. HBC and the Monitor, following consultation with Reflect, that FILO Agent and Pathlight, agreed to permit the Joint Bidders to act together, and accepted the Joint Bid.
- [21] With the minimum price represented by the Joint Bid, HBC now seeks approval of an (updated and revised) Charter Auction Process.
- [22] The Court has broad discretion under the *CCAA* to facilitate restructurings, and in the course of so doing to approve a sales process in relation to a debtor’s business and/or assets, prior to or in the absence of a plan of compromise and arrangement: *Grant Forest Products Inc (Re)*, 2013 ONSC 5933 at para. 44; and *Indalex Ltd (Re)*, 2011 ONCA 265 at para. 180.
- [23] In *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ONSC) at paras. 47-48, the court identified several factors to be considered in determining whether to approve a sales process:
- a. is a sale warranted at this time?
  - b. will the sale be of benefit to the whole economic community?
  - c. do any of the debtor’s creditors have a *bona fide* reason to object to a sale?; and
  - d. is there a better viable alternative?.
- [24] These factors have been consistently applied in numerous subsequent cases, including, in particular, retail insolvencies: *Nordstrom Canada Retail Inc.* (April 20, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00695619-00CL (Endorsement), at paras. 6–13; *Bed Bath & Beyond Canada Ltd.*, (February 21, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00694493-00CL (Endorsement), at paras. 7–9; *Target Canada Co. (Re)* (February 5, 2015) Ont SCJ [Commercial List] Court File No. CV-15-10832-00CL (Endorsement), at para. 3; and *Green Growth Brands, (Re)*, 2020 ONSC 3565 at para. 61.
- [25] Further, and while the factors set out in section 36 of the *CCAA* have direct applicability to a sale approval rather than approval of a sales process, this Court has held in several cases that the *Nortel* factors should be evaluated in light of the considerations that may ultimately

apply to a subsequent sale approval motion pursuant to section 36: *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ONSC) at para. 17.

[26] In *CanWest Global Communications Corp.*, 2010 ONSC 2870 at para. 13, Justice Pepall held that the criteria enumerated in Section 36(3) of the CCAA largely overlapped with the common law criteria established in *Royal Bank v. Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para. 16 (commonly referred to as the *Soundair Principles*) for approval of a sale of assets in an insolvency scenario and remain relevant when considering the statutory test:

- a. whether sufficient effort has been made to obtain the best price and whether the debtor has acted improvidently;
- b. the interests of all parties;
- c. the efficacy and integrity of the process by which offers have been obtained the me:  
and
- d. whether there has been any unfairness in the working out of the process.

[27] I am satisfied that a consideration of all of these factors justifies approval of the Charter Auction Process at this time.

[28] The restructuring efforts of HBC have resulted in the liquidation of many of its assets. No party takes the position that the Charter is not an asset of HBC. HBC submits, and the Monitor agrees, that the Auction is expected to maximize monetization recoveries from the Charter for the benefit of creditors.

[29] The potential sale of the Charter has been known to all stakeholders (and the general public, given the significant media interest) for many months. I am satisfied that the proposed timelines in the Charter Auction Process will provide an opportunity for any Potential Bidder to familiarize themselves with the finalized process (if not done already), make inquiries of the Monitor, and prepare to participate in the auction if so desired.

[30] Importantly, in this unique case, the proposed Charter Auction Process has been structured to benefit not only the broader economic community, but the broader community of Canada and its peoples as well. Put simply, the objective is to maximize the value for stakeholders, but to do so while safeguarding the Charter's unique cultural and historical significance and ensure its future preservation in public trust.

[31] I am also satisfied that, as part of the Charter Auction Process, the Joint Bid should be approved as a Qualified Bid. The Joint Bid has terms that ensure that there will be at least one committed bidder in the Auction. Even if there are no other bids, the terms of the Joint

Bid, within the context of the proposed Charter Auction Process, contain sufficiently robust safeguards to further ensure that the Charter remains in Canada and is made accessible to the public.

[32] Specifically, the Joint Bid contemplates a donation in equal parts, utilizing a shared public custodianship model, to a consortium comprised of the Archives of Manitoba, the Manitoba Museum, the Canadian Museum of History and the Royal Ontario Museum (collectively, the “Public Custodians”). The Joint Bidders have, as noted above, irrevocably committed to participating in the auction and placing a minimum opening bid of \$18 million.

[33] In addition, and if the Joint Bid is ultimately selected as the Successful Bid and approved by the Court, the Joint Bidders have also committed to provide a \$5 million donation to the Public Custodians to fund stewardship, consultation and education in public access related to the Charter. They have advised the Monitor that this contemplated donation is intended to facilitate public engagement that will:

- a. involve consultations with First Nations, Inuit and Métis communities and organizations, as well as other relevant organizations and the broader Canadian public;
- b. promote sharing of the Charter with institutions across Canada for public display;
- c. support the Public Custodians’ educational programs and outreach efforts in connection with the Charter; and
- d. ensure that the Charter remains in Canada, as well as its preservation, stewardship and continuing accessibility for all Canadians.

[34] I also note that:

- a. the Public Custodians are not bound by the Joint Bid and are free to accept a donation from any other Qualified Bidders; and
- b. the Charter will remain in Canada and is in any event subject to export restrictions as set out in the *Cultural Property Export and Import Act*.

[35] The terms of the Charter Auction Process provide that any Potential Bidder must irrevocably commit to permanently donating the Royal Charter, immediately upon closing of the purchase, to one or more Canadian public institutions that are equipped to preserve cultural property for the long term, and ensure public access through exhibitions, programming, publications, research or online platforms, including but not limited to museums or archives. Specifically, the Terms of the Charter Auction Process provide that any Potential Bidder must, in order to be qualified as such, submit a proposal that includes the following:

- a. a commitment, in form and substance, to bid no less than \$18.5 million;
- b. an acknowledgement that the Charter is of outstanding significance, high national importance, and is protected under the *Cultural Property Export and Import Act*;
- c. confirmation that the Potential Bidder is considering the acquisition of the Charter for its own account and is irrevocably committing to permanently donate, immediately after purchase, the Charter to one or more Canadian public institutions with the ability to preserve cultural property for the long term and make it accessible to the public through exhibitions, programming, publication, research or online, and which includes a museum or archives;
- d. details of the donation, including the quantum, if any, that the Potential Bidder will donate to the proposed Public Institution to support a consultation process, sharing of the Charter or other Charter-related activities; and a letter from the Public Institution to which the Charter is proposed to be donated indicating that it will accept the donation, and the terms thereof, and which sets out the capacity of that Public Institution to ensure the continued preservation of the Charter, its plan to conduct a consultation process with respect to chairing the Royal Charter with other Public Institutions and Indigenous groups, and other particulars.

[36] The specific mechanics, steps and timing for the Charter Auction Process are set out in motion materials of HBC and the Ninth Report of the Monitor and the Supplement thereto, all of which are in the public Court file and also publicly available on the website of the Court-appointed Monitor.

[37] Finally, any sale of the Charter to the Successful Bidder (whether the Joint Bidders or other Qualified Bidders) following the Auction is subject to the approval of this Court, to be sought on notice to all stakeholders.

[38] I am satisfied that none of the Company's creditors or stakeholders have a *bona fide* reason to object to the Charter Auction Process, and I am reinforced in this conclusion by the fact that, following a lengthy notice period well in excess of that required by the *Rules*, no creditor or stakeholder opposes approval of the Charter Auction Process. The Senior Lenders of HBC are supportive of the relief sought, and it is recommended by the Monitor.

[39] I am satisfied that approval of the Charter Auction Process will not materially prejudice any stakeholders of the Applicants and that there is no better, viable alternative. Put simply, the historical and cultural significance of the Charter is such that a more typical SISP, designed with the exclusive objective of maximizing monetary proceeds, is not appropriate here.

[40] The Applicants and Reflect, in consultation with the Monitor, evaluated numerous alternative approaches to the disposition of the Charter and determined that the proposed Charter Auction Process represents the best possible process in the circumstances. I agree.

[41] For all of these reasons, the Charter Auction Process, including the Joint Bid for the purposes thereof, is approved.

[42] Order to go in accordance with these reasons.

Osborne J.



Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) THURSDAY, THE 18<sup>TH</sup>  
 )  
JUSTICE MCEWEN ) DAY OF AUGUST, 2022  
 )

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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**SISP APPROVAL ORDER**

**THIS MOTION**, made by the Applicants (together, the Applicants and the partnerships listed on **Schedule “A”** hereto, the “**Just Energy Entities**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*, approving the Sale and Investment Solicitation Process in respect of the Just Energy Entities attached hereto as **Schedule “B”** (the “**SISP**”) and certain related relief, was heard on August 17, 2022 by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the affidavit of Michael Carter sworn August 4, 2022 and the Exhibits thereto (the “**Carter Affidavit**”), the Eleventh Report of FTI Consulting Canada Inc. (the “**Eleventh Report**”), in its capacity as monitor (the “**Monitor**”), dated August 13, 2022, and on hearing the submissions of counsel for the Just Energy Entities, the Monitor, the Sponsor (as hereinafter defined), and such other counsel who were present, no one else appearing although duly served as appears from the affidavits of service of Emily Paplawski sworn August 5, August 8, August 11 and August 16, 2022.

### **SERVICE AND DEFINITIONS**

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 was properly returned on August 17, 2022 and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the SISP, the Second Amended and Restated Initial Order of this Court dated May 26, 2021 (the “**Second ARIO**”), the Claims Procedure Order of this Court dated September 15, 2021 (the “**Claims Procedure Order**”), or the Support Agreement attached as Exhibit “I” to the Carter Affidavit (the “**Support Agreement**”), as applicable.

### **SALES AND INVESTMENT SOLICITATION PROCESS**

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Just Energy Entities are hereby authorized to implement the SISP pursuant to the terms thereof. The Just Energy Entities, the Monitor and the Financial Advisor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder and as directed by the Court in this Order and the related endorsement dated August 18, 2022.

4. **THIS COURT ORDERS** that the Monitor and the Financial Advisor, and their respective affiliates, partners, directors, employees, and agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Monitor or Financial Advisor, as applicable, in performing their obligations under the SISP, as determined by this Court.

#### **SUPPORT AGREEMENT**

5. **THIS COURT ORDERS** that the Support Agreement is hereby approved and the Just Energy Entities are authorized and empowered to enter into the Support Agreement, *nunc pro tunc*, subject to such minor amendments as may be consented to by the Monitor and as may be acceptable to each of the parties thereto, and are authorized, empowered and directed to take all steps and actions in respect of, and to comply with all of their obligations pursuant to, the Support Agreement.

6. **THIS COURT ORDERS** that, notwithstanding the stay of proceedings imposed by the Second ARIO, a counterparty to the Support Agreement may exercise any termination right that may become available to such counterparty pursuant to the Support Agreement, provided that such termination right must be exercised pursuant to and in accordance with the Support Agreement.

#### **STALKING HORSE TRANSACTION AGREEMENT**

7. **THIS COURT ORDERS** that Just Energy Group Inc. (“**Just Energy**”) is hereby authorized and empowered to enter into the stalking horse transaction agreement (the “**Stalking Horse Transaction Agreement**”) dated as of August 4, 2022, between Just Energy and LVS III

SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP, and CBHT Energy I LLC (collectively, the “**Sponsor**”) and attached as Exhibit “A” to the Carter Affidavit, *nunc pro tunc*, and such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor and subject to the terms of the Support Agreement; provided that, nothing herein approves the sale and the vesting of any Property to the Sponsor (or any of its designees) pursuant to the Stalking Horse Transaction Agreement and that the approval of any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Transaction is the Successful Bid pursuant to the SISP.

8. **THIS COURT ORDERS** that, as soon as reasonably practicable following Just Energy (a) entering into any amendment to the Stalking Horse Transaction Agreement permitted pursuant to the terms of this Order; or (b) agreeing upon the final Implementation Steps (as defined in the Stalking Horse Transaction Agreement), the Just Energy Entities shall, in each such case, (i) file a copy thereof with this Court, (ii) serve a copy thereof on the Service List, and (iii) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that Just Energy and the Sponsor, with the consent of the Monitor, agree should be redacted.

#### **BID PROTECTIONS**

9. **THIS COURT ORDERS** that the Break-Up Fee is hereby approved and Just Energy is hereby authorized and directed to pay the Break-Up Fee to the Sponsor (or as it may direct) in the manner and circumstances described in the Stalking Horse Transaction Agreement.

10. **THIS COURT ORDERS** that the Sponsor shall be entitled to the benefit of and is hereby granted a charge (the “**Bid Protections Charge**”) on the Property, which charge shall not exceed

US\$14,660,000, as security for payment of the Break-Up Fee in the manner and circumstances described in the Stalking Horse Transaction Agreement.

11. **THIS COURT ORDERS** that Paragraphs 53, 54 and 56 of the Second ARIO shall be, and are hereby, amended in the manner detailed below:

(a) Paragraph 53 of the Second ARIO shall be amended as follows:

**THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge, the Priority Commodity/ISO Charge, the Cash Management Charge and the Bid Protections Charge (as defined in the Order in these proceedings dated August 18, 2022), as among them, shall be as follows:

First – Administration Charge and FA Charge (to the maximum amount of C\$3,000,000 and C\$8,600,000, respectively), on a *pari passu* basis;

Second – Directors' Charge (to the maximum amount of C\$44,100,000);

Third – KERP Charge (to the maximum amounts of C\$2,012,100 and US\$3,876,024);

Fourth – DIP Lenders' Charge (to the maximum amount of the Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time) and the Priority Commodity/ISO Charge, on a *pari passu* basis; ~~and~~

Fifth – Cash Management Charge; and-

Sixth – Bid Protections Charge (in the amount of US\$14,660,000).

(b) Paragraph 54 of the Second ARIO shall be amended as follows:

**THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge, the Priority Commodity/ISO Charge, the Cash Management Charge, or the Bid Protections Charge (collectively, 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.

(c) Paragraph 56 of the Second ARI0 shall be amended as follows:

**THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Just Energy Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Just Energy Entities also obtain the prior written consent of the Monitor, the DIP Agent on behalf of the DIP Lenders and the beneficiaries of the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the Priority Commodity/ISO Charge, the Cash Management Charge and the Bid Protections Charge or further Order of this Court.

## **PIPEDA**

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor, the Just Energy Entities and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a “**SISP Participant**”) and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a “**Transaction**”). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor or the Just Energy Entities, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor or the Just Energy Entities. Any Successful Party shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Just Energy Entities, and shall return all other personal information to the Monitor or the Just Energy Entities, or ensure

that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor or the Just Energy Entities.

### **THIRD KEY EMPLOYEE RETENTION PLAN**

13. **THIS COURT ORDERS** that the Third KERP, as described in the Carter Affidavit and attached as Confidential Exhibit “L” thereto, is hereby approved and the Just Energy Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the Third KERP.

14. **THIS COURT ORDERS** that the Just Energy Entities, in consultation with the Monitor, are authorized and empowered to reallocate funds under the Third KERP originally allocated to Key Employees who have resigned, or will resign, from their employment with the Just Energy Entities, or who have declined, or will decline, to receive payments(s) under the Third KERP, to remaining Key Employees or other employees of the Just Energy Entities that the Just Energy Entities, in consultation with the Monitor, identify as critical to their ongoing business.

15. **THIS COURT ORDERS** that the KERP Charge established at paragraph 24 of the Second ARIO shall apply equally to, and secure, any remaining payments under the KERP and the Second KERP (as defined in the Order of this Court dated November 10, 2021) to the Key Employees and the payments contemplated to the Key Employees referred to in the Third KERP.

### **STAY EXTENSION**

16. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including October 31, 2022.

## **APPROVAL OF MONITOR'S REPORTS**

17. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to the date hereof in relation to the Just Energy Entities and these CCAA proceedings are hereby ratified and approved.

18. **THIS COURT ORDERS** that each of the Tenth Report of the Monitor dated May 18, 2022, the Supplement to the Tenth Report of the Monitor dated June 1, 2022, and the Eleventh Report be and are hereby approved.

19. **THIS COURT ORDERS** that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 17 and 18 of this Order.

## **CLAIMS PROCEDURE**

20. **THIS COURT ORDERS** that the ongoing claims review, claims determination and dispute resolution processes under (a) the Claims Procedure Order; (b) the Order of this Court dated March 3, 2022, among other things, appointing the Honourable Justice Dennis O'Connor as Claims Officer for the purposes set forth therein; and (c) the Endorsement of this Court dated June 10, 2022, shall be suspended pending further Order of this Court; provided that, for certainty, (x) where (i) a Claimant has not submitted a Proof of Claim or D&O Proof of Claim by the applicable Bar Date, (ii) a Negative Notice Claimant has not submitted a Notice of Dispute of Claim by the applicable Bar Date, or (iii) a Claim or D&O Claim has already been disallowed or revised in accordance with the Claims Procedure Order and the applicable period of time to dispute such revision or disallowance has expired without the Claimant submitting a Notice of Dispute of Revision or Disallowance, such Claimant will continue to be barred from pursuing such Claim or

D&O Claim pursuant to the relevant provisions of the Claims Procedure Order and (y) this Order does not impact the acceptance of any Claims or other final determination or agreement in respect of Claims made pursuant to the Claims Procedure Order prior to the date of this Order; provided further that, notwithstanding anything to the contrary herein, the Just Energy Entities shall be permitted, with the consent of the Monitor, to refer any Claim to a Claims Officer or this Court for adjudication for the purposes of determining entitlement to proceeds to be distributed in accordance with a transaction completed pursuant to the SISP.

## **GENERAL**

21. **THIS COURT ORDERS** that Confidential Exhibits “J” and “L” to the Carter Affidavit shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

22. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Southern District of Texas overseeing the Just Energy Entities’ proceedings under Chapter 15 of the Bankruptcy Code in Case No. 21-30823 (MI), or in any other foreign jurisdiction, to give effect to this Order and to assist the Just Energy Entities, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order

or to assist the Just Energy Entities and the Monitor and their respective agents in carrying out the terms of this Order.



A handwritten signature in black ink, appearing to read "M. S. T.", is positioned above a solid horizontal line.

**SCHEDULE “A”  
PARTNERSHIPS**

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

## SCHEDULE “B” SALE AND INVESTMENT SOLICITATION PROCESS

1. On August 18, 2022, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**SISP Order**”) that, among other things, (a) authorized Just Energy (as defined below) to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof, (b) approved the Support Agreement, (c) authorized and directed Just Energy Group Inc. to enter into the Stalking Horse Transaction Agreement, (d) approved the Break-Up Fee, and (e) granted the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Second Amended & Restated Initial Order granted by the Court in Just Energy’s proceedings under the *Companies’ Creditors Arrangement Act* on May 26, 2021, as amended, restated or supplemented from time to time or the SISP Order, as applicable.
2. This SISP sets out the manner in which (i) binding bids for executable transaction alternatives that are superior to the sale transaction to be provided for in the Stalking Horse Transaction Agreement involving the shares and/or the business and assets of Just Energy Group Inc. and its direct and indirect subsidiaries (collectively, “**Just Energy**”) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court (as defined below) approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of Just Energy’s shares, assets and/or business and/or an investment in Just Energy, each of which shall be subject to all terms set forth in this SISP.
3. The SISP shall be conducted by Just Energy under the oversight of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (the “**Monitor**”), with the assistance of BMO Capital Markets (the “**Financial Advisor**”).
4. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by Just Energy and the Financial Advisor.
5. The SISP will be conducted such that Just Energy and the Financial Advisor will (under the oversight of the Monitor):
  - a) prepare marketing materials and a process letter;
  - b) prepare and provide applicable parties with access to a data room containing diligence information;
  - c) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to Just Energy); and
  - d) request that such parties (other than the Sponsor or its designee) submit (i) a notice of intent to bid that identifies the potential purchaser and a general description of the assets and/or business(es) of the Just Energy Entities that would be the subject of the bid and that reflects a reasonably likely prospect of culminating in a Qualified Bid (as defined below), as determined by the Just Energy Entities in consultation with the Monitor and the Credit Facility Agent (subject to the confidentiality requirements set forth in Section 15 below) (a “**NOI**”) by the NOI Deadline (as defined below) and, if applicable, (ii) a binding offer meeting at least the requirements set forth in Section 7 below, as determined by the Just Energy Entities in consultation with the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).

6. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- a) Just Energy to commence solicitation process on the date of service of the motion for approval of the SISP – August 4, 2022;<sup>1</sup>
  - b) Court approval of SISP and authorizing Just Energy to enter into the Stalking Horse Transaction Agreement – August 18, 2022;
  - c) Deadline to submit NOI – 11:59 p.m. Eastern Daylight Time on September 8, 2022 (the “**NOI Deadline**”);
  - d) Deadline to submit a Qualified Bid – 11:59 p.m. Eastern Daylight Time on October 13, 2022 (the “**Qualified Bid Deadline**”);
  - e) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. Eastern Daylight Time on October 20, 2022;
  - f) Just Energy to hold Auction (if applicable) – 10:00 a.m. Eastern Daylight Time on October 22, 2022; and
  - g) Implementation Order (as defined below) hearing:
    - o (if no NOI is submitted) – by no later than September 16, 2022, subject to Court availability.
    - o (if there is no Auction) – by no later than October 29, 2022, subject to Court availability.
    - o (if there is an Auction) – by no later than twelve (12) days after completion of the Auction, subject to Court availability.
7. In order to constitute a Qualified Bid, a bid must comply with the following:
- a. it provides for (i) the payment in full in cash on closing of the BP Commodity/ISO Services Claim (as defined in the Support Agreement), unless otherwise agreed to by the holder of such claim in its sole discretion; (ii) the payment in full in cash on closing of the Credit Facility Claims, unless otherwise agreed to by the Credit Facility Agent in its sole discretion; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) or (ii) including any claims secured by Court-ordered charges, unless otherwise agreed to by the applicable holders thereof in their sole discretion (iv) the return of all outstanding letters of credit and release of all Credit Facility LC Claims or arrangements satisfactory to the applicable Credit Facility Lenders in their discretion to secure with cash collateral or otherwise any Credit Facility LC Claims not released, and (v) the payment in full in cash on closing of any outstanding Cash Management Obligations or arrangements satisfactory to the applicable Credit Facility Lenders or their affiliates to secure with cash collateral or otherwise any outstanding Cash Management Obligations.
  - b. it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the “**Cash Consideration Value**”) and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus Just Energy’s cash on hand must be sufficient for payment in full of the items contemplated in Sections 7(a)(i) and 7(a)(ii) herein, 3.2 of the Stalking Horse Transaction Agreement and the Break-Up Fee, plus USD\$1,000,000, on closing, which Cash Consideration Value is estimated to be USD\$460,000,000 as of December 31, 2022.

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<sup>1</sup> To the extent any dates would fall on a non-business day, to be the first business day thereafter.

- c. it is reasonably capable of being consummated by 90 days after completion of the Auction if selected as the Successful Bid;
- d. it contains:
  - i. duly executed binding transaction document(s);
  - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
  - iii. a redline to the form of transaction document(s) provided by Just Energy, if applicable;
  - iv. evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);
  - v. disclosure of any connections or agreements with Just Energy or any of its affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of Just Energy or any of its affiliates; and
  - vi. such other information reasonably requested by Just Energy or the Monitor;
- e. it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the selection of the Successful Bid; provided, however, that if such bid is selected as the Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- f. it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the Purchaser in connection with the Transaction Agreement;
- g. it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- h. it is not conditional upon:
  - i. approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
  - ii. the outcome of any due diligence by the bidder; or
  - iii. the bidder obtaining financing;
- i. it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- j. it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the energy sector, including an electric utility, retail service provider, a company with a tariff on file with the Federal Energy Regulatory Commission, or any intermediate holding company;
- k. it includes full details of the bidder's intended treatment of Just Energy's employees under the proposed bid;
- l. it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with this SISP;
- m. a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
- n. it is received by the Qualified Bid Deadline.

8. The Qualified Bid Deadline may be extended by (i) Just Energy for up to no longer than seven days with the consent of the Monitor, the Credit Facility Agent and the Sponsor, acting reasonably, or (ii) further order of the Court. In such circumstances, the milestones contained in Subsections 6(f) and (g) shall be extended by the same amount of time.
9. Just Energy, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified in Section 7 above and deem a non-compliant bid to be a Qualified Bid, provided that Just Energy shall not waive compliance with the requirements specified in Subsections 7(a), (b), (d), (e), (f), (g), (i) or (l) without the prior written consent of the Sponsor and Credit Facility Agent, each acting reasonably.
10. Notwithstanding the requirements specified in Section 7 above, the transactions contemplated by the Stalking Horse Transaction Agreement (the “**Stalking Horse Transaction**”), is deemed to be a Qualified Bid, provided that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
11. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, Just Energy shall proceed with an auction process to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, Just Energy shall provide written notice to each party that submitted a Qualified Bid (including the Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by Just Energy specifying which Qualified Bid is the leading bid.
12. If, by the NOI Deadline no NOI has been received, then the SISP shall be deemed to be terminated and the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement. If no Qualified Bid (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, then the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement.
13. Following selection of a Successful Bid, Just Energy, with the assistance of its advisors, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 6. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by Just Energy, in consultation with the Monitor, Just Energy shall apply to the Court for an order or orders approving such Successful Bid and/or the mechanics to authorize Just Energy to complete the transactions contemplated thereby, as applicable, and authorizing Just Energy to (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
14. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid, will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten

(10) business days) after the date upon which the Successful Bid is approved pursuant to an Implementation Order or such earlier date as may be determined by Just Energy, in consultation with the Monitor.

15. Just Energy shall provide information in respect of the SISP to the DIP Lenders, the holder of the BP Commodity/ISO Services Claim and the Supporting Secured CF Lenders on a confidential basis, including (A) copies (or if not provided to the Just Energy Entities in writing, a detailed description) of any NOI and any bid received, including any Qualified Bid, no later than one (1) calendar day following receipt thereof by the Just Energy Entities or their advisors and (B) such other information as reasonably requested by the DIP Lenders', the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders' respective legal counsel or financial advisors or as necessary to keep the DIP Lenders, the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders informed no later than one (1) calendar day after any such request or any material change to the proposed terms of any bid received, including any Qualified Bid, as to the terms of any bid, including any Qualified Bid, (including any changes to the proposed terms thereof) and the status and substance of discussions related thereto. Just Energy shall be permitted, in its discretion, to provide general updates and information in respect of the SISP to counsel to any unsecured creditor of Just Energy (a "**General Unsecured Creditor**") on a confidential basis, upon: (i) the irrevocable confirmation in writing from such counsel that the applicable General Unsecured Creditor will not submit any NOI or bid in the SISP, and (ii) counsel to such General Unsecured Creditor executing confidentiality agreements with Just Energy, in form and substance satisfactory to Just Energy and the Monitor.
16. Any amendments to this SISP may only be made by Just Energy with the written consent of the Monitor and after consultation with the Credit Facility Agent, or by further order of the Court, provided that Just Energy shall not amend Subsections 7(a), (b), (d), (e), (f), (g), (i) or (l) or Section 14 without the prior written consent of the Sponsor and the Credit Facility Agent.

## **SCHEDULE “A”: AUCTION PROCEDURES**

1. **Auction.** If Just Energy receives at least one Qualified Bid (other than the Stalking Horse Transaction), Just Energy will conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. Eastern Daylight Time on the day prior to the Auction, each Qualified Party (other than the Sponsor) must inform Just Energy whether it intends to participate in the Auction. Just Energy will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- (a) **Attendance.** Only Just Energy, the other counterparties to the Support Agreement, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
- (b) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
- (c) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by Just Energy, in consultation with the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to Just Energy’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of USD\$1,000,000;
- (d) **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that Just Energy, in its discretion, may establish separate video conference rooms to permit interim discussions between Just Energy and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- (e) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and

- (f) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.

#### **Selection of Successful Bid**

4. **Selection.** Before the conclusion of the Auction, Just Energy, in consultation with the Monitor, will: (a) review each Qualified Bid, considering the factors set out in Section 7 of the SISP and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party's ability to close a transaction by 90 days after completion of the Auction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Successful Bid, (v) the net benefit to Just Energy and (vi) any other factors Just Energy may, consistent with its fiduciary duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**").

5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by Just Energy in its sole discretion, subject to the milestones set forth in Section 6 of the SISP.

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

Court File No: CV-21-00658423-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., et al.

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SISP APPROVAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**

P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)  
Michael De Lellis (LSO# 48038U)  
Jeremy Dacks (LSO# 41851R)

Tel: (416) 362-2111  
Fax: (416) 862-6666

Lawyers for the Just Energy Entities

**CITATION:** *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.*, 2024 ONSC 3739  
**COURT FILE NO.:** CV-23-00707839-00CL  
**DATE:** 20240611

**ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**RE:** KEB HANA BANK as trustee of IGIS GLOBAL PRIVATE PLACEMENT REAL ESTATE FUND NO. 301 and as trustee of IGIS GLOBAL PRIVATE PLACEMENT REAL ESTATE FUND NO. 434, Applicant

**AND:**

MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP INC., Respondents

**BEFORE:** Peter J. Osborne J.

**COUNSEL:** *Brendan O’Neill, Christopher Armstrong, Mark Dunn and Jennifer Linde*, for the Receiver

*Stephen Ferguson, Josh Nevsky and Melanie MacKenzie*, Receiver

*David Bish and Nina Perfetto*, Counsel for Coco International Inc. and 12823543 Canada Ltd.

*Steven Weisz and Trafford*, Counsel for Mizrahi Inc., Respondent

*Michael De Lellis, Jeremy Dacks and Shawn Irving*, Counsel for the KEB Hana Bank, Applicant

*Brittany Rabinovitch*, Counsel for CERIECO Canada Corp.

*Glenn Grenier and Jeffrey Levine*, Counsel for Gamma Windows and Walls International Inc.

*Andrew Basso and Aslan Farjam*, Modern Niagara Toronto (observing)

*Chris Roberts*, City of Toronto (observing)

**HEARD:** June 6, 2024

**REASONS FOR DECISION**

1. The Court-appointed Receiver seeks various relief on this motion, proposed to be granted in three orders of this Court:
  - a. a proposed SISP Approval Order:
    - i. approving a sale and investment solicitation process (“SISP”);
    - ii. authorizing and directing the Receiver and Jones Lang LaSalle Real Estate Services Inc. (the “Broker”) to implement the SISP;
    - iii. approving the Broker Agreement and the retention of the Broker under the terms thereof;
  - b. a proposed Reconfiguration and LC Order:
    - i. approving the Letters of Credit Arrangement pursuant to which the Receiver proposes to issue letters of credit in favour of the City of Toronto in respect of municipal requirements, together with related relief, including authority to use the Property and/or borrowings under the Receivership Funding Credit Agreement (“RFCA”) to purchase such investments as may be required to fully collateralize the Replacement LCs and grant the Royal Bank of Canada (“RBC”) a security interest in the RBC Collateral Account and the RBC Collateral;
    - ii. granting to RBC a charge on the RBC Collateral Account in the RBC Collateral as additional security in connection with the letters of credit, which shall form a first charge on the RBC Collateral Account and the RBC Collateral;
    - iii. approving the Reconfiguration Plan for the Residential Component of the Project to allow for the reconfiguration of level 62 and above to accommodate an additional 88 condominium units, together with related relief;
    - iv. approving the Second Report and the activities of the Receiver described therein;
  - c. a proposed Holdback Release Order:
    - i. authorizing the Receiver to pay the Holdback Amount on behalf of the Nominee as specified in Appendix “C” to the Second Report, and to pay additional holdback amounts pursuant to the Provincial Lien Legislation owing to a Holdback Party as set out in the motion materials; in each case, subject to the Holdback Release Conditions being satisfied or waived; and

- ii. implementing a claims bar against the Holdback Amount (or to funds or entitlements in the place thereof), except for the payments of the Holdback Amount to the Holdback Parties, for the period prior to the Effective Date.

2. At the conclusion of the hearing, I granted the orders with reasons to follow. These are those reasons.
3. Defined terms in these reasons have the meaning given to them in my prior orders and endorsements made in this proceeding, in the motion materials or in the Second Report, unless otherwise stated.
4. The Receiver relies upon the Second Report of the Court-appointed Monitor, together with the appendices thereto, dated May 28, 2024.
5. The Service List has been served with the motion materials. The Reconfiguration and LC Arrangement Order is unopposed. The Holdback Release Order is unopposed by any party, as revised. This is discussed further below. The SISP Approval Order, in the form and on the terms proposed, is opposed by the Coco Parties.
6. I will address the three proposed orders in turn.

#### **Reconfiguration and LC Arrangement Order**

7. The proposed Reconfiguration and LC Arrangement Order is sought, obviously, mid-construction. The Project, an 85 story condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West, Toronto, is not complete.
8. As originally designed, the Project was intended to be comprised, when fully constructed, of a Commercial Component occupying four underground parking levels and 16 above ground levels comprised of a ground level and concourse retail spaces, food and beverage spaces on levels three and four, and a premium hotel space on levels five through 16, together with a Residential Component occupying levels 17 through 84 with an outdoor amenity space on level 85.
9. As of the date of this hearing, concrete tower slabs have been poured up to level 56, and the exterior curtain wall has been erected to level 26.
10. Consistent with the mandate given to the Receiver in the appointment order, it has assessed and evaluated various potential-maximizing opportunities and alternatives for the Project. Those include alternatives to the existing floorplate configuration of the Residential Component. In this context, the Receiver has developed the Reconfiguration Plan which contemplates that floors at level 62 and above in the Residential Component of the Project are proposed to be reconfigured to accommodate an additional 88 condominium units.
11. As more fully set out in the Second Report, the Receiver, in consultation with its advisors (including JLL and Skygrid), has determined that implementing the Reconfiguration Plan is necessary to improve the salability of condominium units in the Project and maximize value.
12. In the existing configuration, the Upper Levels (above level 61) include 69 units, with an average size of over 2600 ft.<sup>2</sup> per unit. At present, those are the largest, most expensive units in the

Project since there are only two or four units per floor (as opposed to six or 10 units per floor below level 62).

13. Of the Upper Level units, only 19 are subject to conditional sales agreements (“CSAs”). Of those, nine are in default with respect to the deposit requirements.

14. The Reconfiguration Advisors have concluded after extensive analysis that there is an extremely limited market for units of the size and sale price of those located in the Upper Levels under the Base Configuration, and that the timeline required to sell the volume of those Units that remain available would be significant. I pause to observe that this is, in part, illustrated by the fact that 72% of those Upper Level units remain unsold and, as noted above, nine (or almost half) of the 19 sold units are in deposit default.

15. In considering alternative configurations for the Upper Levels, the Reconfiguration Advisors, which include the proposed broker, JLL, Skygrid and the Project’s architect and engineering consultants, among others, have considered various inputs including current market conditions, fair market values, anticipated rate of sales, as well as the limits of such reconfiguration presented by zoning and other municipal permit requirements and the existing infrastructure of the Project. They have done so while ensuring that any reconfiguration would maintain the Project’s existing aesthetics, high-quality construction and luxury look and finishes.

16. After full consideration of all of these factors, and consultation with the Senior Secured Lenders, the Receiver has determined it is appropriate to proceed with the proposed Reconfiguration Plan to enhance the value of the Project.

17. To simplify the design and construction process, and importantly, to avoid impacting the Schedule, the design drawings are (for floors comprising four, six and ten Unit layouts) consistent with the respective layouts contemplated in the Base Configuration. The Receiver has prepared a cost-benefit analysis to compare the economic impact of the Reconfiguration Plan against the Base Configuration. It yields the conclusion that the Reconfiguration Plan is anticipated to generate substantial additional net realizable value, relative to the Base Configuration.

18. I also observe that the impact on existing Unit buyers will be relatively minor and the Reconfiguration Plan seeks to minimize any impact. As noted above, nine affected Units are in deposit default. As to the other 10 affected Units, the Reconfiguration Plan provides for virtually identical units (same square footage, exposure and layout) for 8 of them. I observe that it also provides for virtually identical units on a higher floor than contemplated under the Base Configuration in respect of 4 of the 9 Units in deposit default.

19. The Receiver continues to consider design alternatives to allow for the creation of Equivalent Units, or otherwise provide for an acceptable alternative, for the remaining two Qualified Units that do not have a specific location assigned under the Reconfiguration Plan. The Receiver is of the view, based on consultation with Skygrid and the consultants to the Project, that it is feasible from a design and constructability perspective to combine certain Units in the Reconfiguration Plan to provide an Equivalent Unit for each of the remaining two Qualified Units.

20. Finally, of the five Default Units for which there is no Equivalent Unit available, three of the purchaser parties had not paid any deposit at all, and the other two had each paid only \$20,000 of their required deposits (which, at the time of the Second Report, totalled approximately

\$870,000 in one case, and over \$6.2 million in the other case). Those purchasers are both in default according to the terms of the respective CSAs. Accordingly, for these and other reasons identified during its investigations and inquiries, the Receiver has significant concerns about whether the Defaulting Purchasers were or are willing or able to complete the sale transactions in any event. Those concerns are set out in the Second Report (paragraph 7.16).

21. As a result of these concerns, the Receiver sent default notices to the purchasers of each of the five Default Units for which there is no equivalent Unit on May 1, 2024. Those Default Notices required each Defaulting Purchaser to cure their default by May 13, 2024, by paying the overdue deposit amounts, failing which the CSA would be terminated and any deposit amounts that had been paid, forfeited. None of the purchasers responded to the Notice, and none paid any further deposit amounts. Accordingly, the CSA for each of those five Default Units has been terminated.

22. The remaining four Default Units will be monitored as to status, although I observe that three of the four are not impacted by the Reconfiguration Plan in any event.

23. For the reasons set out in the Second Report and amplified in the submissions of counsel for the Receiver at the hearing and supported by counsel for the Senior Secured Lenders, I am satisfied that the Reconfiguration Plan will achieve the intended objectives and should be approved. I accept the recommendation and advice of the Receiver that it is the best option available within existing practical constraints to maximize returns from the Project. I am reinforced in this view by the fact that the Reconfiguration Plan is not opposed by any party.

24. I am also satisfied that the relief sought in respect of the Letters of Credit (“LCs”) should be approved. The Debtors currently have six LCs totaling approximately \$2.24 million issued by KEB Hana, which are collateralized. Those LCs support various obligations to the City of Toronto, including in connection with a heritage easement, park areas, streetscaping and storm sewers. KEB Hana has advised the Receiver that it will not renew those LCs as they mature.

25. In addition, the City of Toronto has also required that the Debtors provide an additional LC in the amount of \$1 million to backstop an indemnity relating to a temporary street occupation permit required for the Project.

26. RBC has agreed to replace the existing LCs and to provide the new required LC on the terms contemplated by the Letters of Credit Arrangement.

27. This relief is not opposed. I am satisfied that it should be approved, and it follows that the granting of the RBC Charge to collateralize the seven LCs to be provided (to replace the collateralization of the existing LCs in favour of KEB Hana and collateralize the new 7<sup>th</sup> LC), should also be approved. These LCs, provided to the municipality, are normal and ordinary course requirements for a project of this scale and complexity, and are necessary for this Project to continue.

28. They are approved, together with the corresponding Charge.

### **Holdback Release Order**

29. Since its appointment, the Construction Manager has been meeting with trades and suppliers to transition their contracts previously held with the Former Developer, to new

subcontracts with the Construction Manager. Certain subcontractors have required that their proportional entitlement to the statutory holdback under the Provincial Lien Legislation be released, as a condition to executing new subcontracts with Skygrid.

30. The Receiver is aware of 38 subcontractors from whom statutory holdback was retained, totaling approximately \$13 million (the “Holdback Amount”) for work performed prior to the Effective Date.

31. The proposed order would authorize the Receiver to pay the Holdback Parties their proportionate share of the Holdback Amount in accordance with the Holdback Schedule, as well as to pay any post-Effective Date holdback amounts owing to subcontractors where such Holdback Party has fully completed its scope of work and is not required for continued construction.

32. I am satisfied that the Holdback Schedule is appropriate. Notice of the proposed payment of the Holdback Amount will be provided to all known contractors, subcontractors and suppliers for which the Receiver has contact information. The payment will be subject to the Holdback Release Conditions. More than 45 days have passed since the Effective Date.

33. In short, the proposed order will facilitate the entry by the Construction Manager into new sub-contracts and otherwise contribute to the continuation of the construction of the Project for the benefit of stakeholders. In my view, disruption to or suspension of construction is to be avoided if at all possible.

34. The Holdback Release Order is not opposed by any party, acknowledging as I do the submissions of Gamma Windows and Walls International Inc. which have resulted in amendments to the draft order to carve out that party from the effect of the order. The Holdback Release Order, as revised, is supported by the Senior Secured Lenders and I am satisfied that it is appropriate for the reasons set out in the Second Report. It is approved.

### **Proposed SISP**

35. The proposed SISP Approval Order would approve the SISP and authorize the Receiver, *nunc pro tunc*, to enter into the Broker Agreement which JLL will allow on the terms proposed. The full Broker Agreement is in the motion materials (Second Report, Appendix “E”).

36. I will address JLL and the proposed Broker Agreement first. JLL was retained in March, 2024, following a request for proposal (RFP) process, to design and present a proposed SISP that contemplated value-maximizing transactions or investments for the sale of the Project, or in the alternative, go-forward arrangements with developers, with a view to achieving in either case, the continuation of the construction of the Project without disruption.

37. The basis for the recommendation of the Receiver to select JLL and to retain that broker on the terms set out in the Broker Agreement are fully set out in the Second Report (6.9 – 6.14). I am satisfied that the recommendation of the Receiver should be accepted.

38. JLL is qualified, experienced and capable of acting as the Broker for this Project and has substantial experience, particularly in residential, hotel and commercial asset disposition, marketing and sales, including but not limited to sales in the context of insolvency proceedings. JLL has a broad and extensive sales network across North America and internationally.

39. I am also satisfied that the proposed fee structure for the Broker in the SISP is reasonable, represents competitive market terms, and is appropriate in the circumstances. The fee schedule is fully disclosed in the motion materials. It contemplates a flat fee for any Third Party Transaction, and a transaction fee in addition thereto essentially on a sliding scale, designed to incentivize the Broker to maximize the quantum of any third-party investment.

40. The Coco Parties do not oppose the retention of the proposed Broker or the terms of the Broker Agreement, including the fee structure, although as more particularly discussed below, they submit that the proposed fee structure with its contemplated highest fee threshold category beginning at \$1.1 billion, is reflective of the fact that there is no genuine belief that the SISP will generate any higher amount.

41. No party other than the Receiver has filed any evidence in respect of the proposed retention of JLL or the proposed terms of the engagement. For the reasons fully set out in the Second Report as amplified by the submissions of counsel for the Receiver and for the Senior Secured Lenders, and summarized above, I am satisfied that the retention of the Broker is appropriate.

42. This Court has broad discretion pursuant to s.243(1)(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, to approve the engagement by the Receiver of a real estate broker and to approve broker agreements.

43. As described above, the Receiver conducted an RFP process, carefully considered the proposals received, consulted with the Senior Secured Lenders and their advisors, and selected JLL for the reasons set above, and with which I agree.

44. Accordingly, the retainer of JLL and the Broker Agreement are approved.

45. With respect to the SISP itself, all parties (including, for greater certainty, the Coco Parties) are, or at least were previously, in agreement that a SISP should be conducted. Indeed, the Coco Parties emphasized their frustration that it has not been commenced sooner.

46. The Receiver, together with various inputs including from the proposed Broker as described above, has designed the SISP to canvass the market, efficiently and effectively, for any and all potential forms of value-maximizing transactions or investments for the sale of the Project or, alternatively, for go-forward arrangements with developers or others for completion of construction and the later sale of Units and the Commercial Component.

47. Significant work prior to the proposed implementation of the SISP has been undertaken, all with a view to ensuring that the Project was positioned and construction was advanced to a point where the SISP had the best chances of success. The Project is now at that point.

48. The pre-SISP work streams included the Reconfiguration Plan discussed above, finalizing arrangements with the Construction Manager (the Skygrid construction management contract has now been executed), reaching arrangements with trades, developing a revised budget and schedule, and selecting a Broker. The virtual data room is now ready.

49. Accordingly, I am satisfied that now is the appropriate time to approve and implement a SISP.

50. The Receiver submits that a broadly marketed and flexible SISP in the form presented is the best way to proceed in order to solicit interest in the Project and, to put it plainly, to demonstrate through testing of the market whether there is value in the Project beyond the amounts owed to the Senior Secured Lenders.

51. The proposed SISP will, as described briefly above, solicit interest in the opportunity to do one of two things.

52. First, it will solicit the interest of any party to acquire or invest in the entire Project, or in either of the Residential Component or the Commercial Component, pursuant to one or more sale or investment transactions. In other words, a proposal need not contemplate an acquisition or investment in the entire Project.

53. Importantly, however, the proposed SISP contemplates a Minimum Bid Threshold of \$1.2 billion. Accordingly, any Transaction Proposal or Transaction Proposals must have a purchase price or investment amount, in the aggregate, that equals or exceeds \$1.2 billion, being the Minimum Bid Threshold required by the Senior Secured Lenders. This is discussed further below.

54. Second, the proposed SISP will solicit interest, in the alternative, of any party to enter into an arrangement with the Senior Secured Lenders to complete the construction, development and realization of value from the Project on terms acceptable to them, as well as to the Receiver. Put simply, this alternative contemplates an arrangement to facilitate the continuation and completion of construction of the Project, and deferring the sale of Units and/or the Commercial Component until a later date.

55. The proposed SISP has two phases, and the terms and relevant timelines are fully set out in the Second Report. They are designed to give interested parties sufficient time to perform diligence and pursue the Opportunities, balanced as against the need to advance this restructuring as quickly as reasonably possible.

56. I pause to observe that, as noted above, the virtual data room is ready now. Moreover, I accept the submission of the Receiver, supported by the Broker, that the scale, complexity and value of this Project is such that the universe of potentially interested parties will be relatively small and will likely consist of highly sophisticated, experienced, industry players.

57. During Phase I, the Broker will solicit indications of interest in the form of non-binding letters of intent, to be submitted by a Phase I Bid Deadline of July 30, 2024. Phase II will include the opportunity for additional due diligence with a view to bidders submitting a final binding Transaction, Proposal or Development Proposal by the Phase II Bid Deadline of September 24, 2024. The Receiver may terminate the SISP following Phase I if no Qualified LOIs are received.

58. The Receiver and the Senior Secured Lenders submit that proceeding with the SISP now, and on the proposed terms, is in the best interests of the stakeholders and will address the threshold issue “hanging over” the Project at this time, in the sense of determining whether there is a third party transaction available that will maximize value and facilitate completion of the Project, or alternatively establish that the Senior Secured Lenders, as the priority economic stakeholder in the Project, will need to pursue their recovery through the completion of the construction and realization of the Project, either on their own or in conjunction with a new developer that may emerge as a result of the SISP.

59. This Court has held that when considering a sales solicitation process, the Court should assess the following factors (See: *CCM Master Qualified Fund v. Bluetip Power Technologies*, 2012 ONSC 1750 at para. 6):

- a. the fairness, transparency and integrity of the proposed process;
- b. the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- c. whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

60. These factors are to be considered in light of the well-known *Soundair* Principles, which, while applicable to the test for approving a transaction following a sales process, not surprisingly track the same principles applicable to that process itself. (See *Royal Bank of Canada v. Soundair Corp.*, (1991), 4 O.R. (3d) 1 (Ont. C.A.) at para. 16):

- a. whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- b. the interests of all parties;
- c. the efficacy and integrity of the process by which the party obtained offers; and
- d. whether the working out of the process was unfair.

61. In *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169, 2009 CanLII 39492 (ONSC) (“Nortel”), Morawetz, J. (now Chief Justice Morawetz) described several factors to be considered in a determination of whether to approve a proposed sales process, including:

- a. is a sale transaction warranted at this time?
- b. will it benefit the whole economic community?
- c. do any of the debtor’s creditors have a *bona fide* reason to object to a sale? and
- d. is there a better viable alternative?

62. In short, the Court must consider whether the proposed sale process will optimize the chances, in the particular factual circumstances of any case, of securing the best possible price for the assets being proposed to be sold: *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 5338 at paras. 7–8.

63. Substantial deference should be given to the business judgment and recommendation of a Court-appointed receiver as an officer of the Court with expertise and insolvency proceedings: *Marchant Realty Partners Inc v. 2407553 Ontario Inc*, 2021 ONCA 375 at paras. 10, 15 and 19. See also *Ontario Securities Commission v. Bridging Finance Inc*, 2022 ONSC 1857 at paras. 43–45.

64. In my view, this is particularly applicable where, as here, the recommendations of the Receiver are informed by the additional expertise of the proposed Broker, the Construction Manager and are fully supported by the fulcrum creditors, the Senior Secured Lenders as informed by their own advisors.

65. In the present case, those Senior Secured Lenders have first-ranking security over the Property of the Borrower and GP Inc., including the Project. Today, they are owed approximately \$1.5 billion, including amounts advanced by the RFCA Lender pursuant to the Receivership Order. The Borrower is in default of the Credit Agreement. The Senior Secured Lenders fully support the SISP on the proposed terms.

66. In particular, they support, and candidly admit that they have insisted upon, the inclusion of a Minimum Bid Threshold of \$1.2 billion. This represents approximately 80% of the outstanding indebtedness owed to them, a threshold below which they will not support any Bid.

67. Submitting that they could have proposed a Minimum Bid Threshold of 100% of the principal and interest owed to them, they take the position that this notional “discount” to 100% debt recovery is intended to maximize the chances of the SISP soliciting interest from the market, and represents a compromise on their part. Moreover, they emphasize that the SISP also contemplates an alternative transaction in the absence of a sale, in which case the Minimum Bid Threshold is not relevant at all.

68. Given the position of the Senior Secured Lenders, but importantly, informed also by its own analysis (informed in turn by the input from the Broker), the Receiver supports the inclusion of this Minimum Bid Threshold. The Receiver submits that it would be both a waste of resources and would be disingenuous to the market and inefficient to conduct the sales process without a Minimum Bid Threshold and thereby represent to the market that any bid, at any quantum, had a realistic prospect of being accepted, when in fact such is not the case.

69. As noted above, the Coco Parties fully support a SISP in principle. They object to approval of this SISP on the proposed terms, however, with the result that they oppose approval of the SISP and submit that it is doomed to failure with the result that it should not be approved on these terms at this time.

70. The Coco Parties have not, however, filed any evidence on this motion. In particular, there is no evidence to challenge the evidence put forward by the Receiver in the Second Report. Instead, they have filed a “Notice of Objection” without affidavit or other evidence (factual or expert).

71. The Coco Parties object to several proposed terms of the SISP. Most particularly, they oppose the Minimum Bid Threshold of \$1.2 billion. They submit that “it is a certainty” that this bid floor will result in no qualified bids, and will deter purchasers from engaging in the SISP. Indeed, they go further and submit bluntly that: “[t]he SISP with this bid floor has been intentionally designed to fail - that is, to produce no bids - so as to then justify permitting the Senior Secured Lenders to finance construction of the Project for the next 3 ½ years.”

72. The Coco Parties go even further still and submit that the Receiver is “well aware that the SISP as designed with this bid floor will produce no bids”. While stating that they “do not question and are not impugning the competence or integrity of the Receiver”, the Coco Parties submit that the Senior Secured Lenders are purporting to “dictate a commercially unreasonable path” and that the Receiver is accepting this because it believes that those parties are the fulcrum creditors and their interest is the only economic interest at stake.

73. Accordingly, the Coco Parties ask this Court to do one of two things:

- d. “if the Court is satisfied that the position of the Senior Secured Lenders entitles them to do as they wish, then the court should dispense with the pretense of a SISP that is designed to produce no bids ... and set up the Senior Secured Lenders’ funding plans”. They submit that the Receiver should bring a motion to approve construction financing plans and “dispense with the pretense of a market check”; or
- e. “if the Court believes that a SISP is an appropriate course to pursue, the Court should be satisfied that the SISP is structured to maximize the prospects of receiving bids rather than serve only to confirm that there are no other bids on the terms dictated by the Senior Secured Lenders”.

74. The Coco Parties submit that what is unprecedented in this case is that the Senior Secured Lenders are insisting on a Minimum Bid Threshold, but are not credit bidding their debt or stepping forward with a stalking horse bid. Instead, it is submitted, they are “simply blocking the sale of the Project” by imposing a bid floor of \$1.2 billion that precludes anyone else from buying the Project. The submission is that they are, at once, both refusing to put forward their own bid, yet at the same time insisting on a process that by design precludes anyone else from buying the Project.

75. The Coco Parties submit that this amounts to an unacceptable “third alternative” by which the Senior Secured Lenders “are entitled to both block a sale of the collateral to others, even though they are unwilling to purchase the collateral themselves” and further that by so doing, the Senior Secured Lenders “are now obstructing one of the principal objectives of the receivership remedy: the realization upon the collateral over which the receiver is appointed”.

76. This is strong language indeed. While attempting to qualify their submissions by saying they do not impugn the integrity of the Receiver, the Coco Parties effectively do just that, by maintaining their submission that the Receiver is improperly acquiescing to the demands of unreasonable creditors acting in their own self-interest (the Senior Secured Lenders) and endorsing and recommending to this Court a process that is not only doomed to fail, but is one which the Receiver knows full well is doomed to fail, and yet is recommending it anyway.

77. Moreover, and as noted above, the Coco Parties make these submissions in the absence of putting forward any evidence. There is not, for example, any expert evidence from an appraiser, valuator, real estate broker or other experienced market participant to challenge the position of the Receiver and the Broker. There is certainly no challenge to the independence or expertise of JLL, although the Coco Parties submit that the fact that the fee schedule does not include defined incentivization levels above the Minimum Bid Threshold amount of \$1.2 billion is itself evidence of the fact of the lack of any *bona fide* belief in the Receiver or the Broker that there will be any such bid.

78. I observe that there is no request for an adjournment from the Coco Parties, nor any suggestion from them that if an adjournment were granted, such evidence would be available.

79. In the absence of any evidence from the Coco Parties, I am left with the evidence in the Record which consists (in relevant part) of the Second Report of the Receiver and the Affidavit of Mark Sheeley sworn June 5, 2024 filed on behalf of the Senior Secured Lenders.

80. Having considered the evidence as against the *Soundair* Principles and the other factors set out above relevant to the determination of whether a proposed sales process should be approved, I am satisfied that the proposed SISP should be approved.

81. First, I am satisfied that now is the appropriate time to canvass the market for interest through the proposed SISP. Simply put, it is in the best interests of all stakeholders, not only the Senior Secured Lenders (although certainly, including those parties) to find out, now that the Project is sufficiently advanced so as to be at a marketable stage, whether there is any market interest.

82. To be very clear, in making this conclusion, I accept the (obvious) fact that no one knows what potential bids the process may yield. But that is exactly the point. In my view, it is in the best interests of the stakeholders to find out the answer to that question and let the market speak. It may very well be that, just as the Coco Parties submit, there will be no Qualified Bid (i.e., one that includes, on its own or when aggregated with others, a Minimum Bid Threshold of \$1.2 billion).

83. What I cannot do is conclude today on the evidence that such will inevitably be the result, and I certainly cannot reach that conclusion, contrary to the recommendation in the Second Report and the clear and unequivocal submissions of the Receiver and of the Senior Secured Lenders that they, respectively, are of the view that the proposed SISP has a reasonable chance of success and should be undertaken.

84. To go even further, I certainly cannot reach that conclusion with any degree of likelihood or certainty, let alone such as would be required, in my view, to deprive the stakeholders of the chance of testing the market and applying the ultimate litmus test of market appetite. There is simply no evidence upon which I can conclude today that the proposed SISP is hopeless, let alone disingenuously and intentionally so.

85. I also note that while the Senior Secured Lenders are acting in their own self-interest, as is their right as creditors, it is their money principally at risk as interest continues to accrue. They are fully supportive of the proposed process and the time it will take.

86. I further note that the Receiver has a different mandate, and reports to a different constituency: it is a Court-appointed officer with the fiduciary duties appurtenant to that office. While the Receiver is entitled, indeed in the circumstances of this case it is obligated, to take into account the views of the fulcrum creditors, its mandate is broader than that of any individual stakeholder and includes the duty to make recommendations to the Court in the best interests of all stakeholders. I am satisfied that it has done that, in recommending approval of the SISP.

87. I also reject the submission that the Senior Secured Creditors are required to make a binary decision: either step up with a stalking horse bid, or agree to a sales process without any Minimum Bid Threshold.

88. First, there is no requirement that they put forward a stalking horse bid, just as there is no foregone conclusion that such a proposal would make the SISP more beneficial to stakeholders in any event. Creditors are entitled to consider whether or not they wish to put forward such an offer.

89. Second, I do not accept the submission that an automatic consequence of the decision by a fulcrum creditor to not propose a stalking horse bid has the effect of preventing that creditor from

insisting on a minimum bid amount or any other terms of a proposed SISP. The fact that a fulcrum creditor may insist on any particular term does not mean that a Court-appointed Receiver, or this Court, will accept such a proposed term, and the result may be that the proposed sales process is not approved.

90. At the risk of being repetitive, I note that any proposed sales process, including all of its terms, must be evaluated as against any available alternatives and considered, according to the *Soundair* Principles and the other factors set out above. The constellation of relevant factors includes, but is certainly not limited to, the presence or absence of a stalking horse bid and any minimum bid amount, together with all other proposed terms. The analysis is necessarily informed by the particular facts of any individual case, and what is appropriate in one case may be wholly inappropriate in another.

91. Third, I reject the submission that a requirement imposing a minimum bid amount generally, or the requirement of the Minimum Bid Threshold of \$1.2 billion proposed in this particular case, is inappropriate.

92. Courts regularly impose minimum bid amounts, and there is nothing improper about doing so. Sometimes, they are imposed without that label, although that is precisely what they are in the sense that courts regularly approve SISPs with a term stipulating, for example, that any qualified bid must satisfy the indebtedness of a creditor with first ranking security. In effect, that is simply a minimum bid amount equal to 100% of the indebtedness of the fulcrum creditor.

93. In the present case, the Senior Secured Lenders propose the Minimum Bid Amount of \$1.2 billion. That is a very material sum, to be certain. However, it represents approximately 80% of their outstanding indebtedness. Is it an arithmetically calculated amount? No. Is it a judgment call on their part? Yes. It represents a commercial decision on the part of those parties to require that bids, individually or in the aggregate, yield an amount roughly equal to an 80% recovery rate on their debt, or risk that the proposed SISP may not be approved by the Court.

94. Even if it is approved, they are accepting the risk that it may not yield any qualified bids, with the result that they will be left with the Project, and will be compelled to consider whether they wish to finance the completion of the Project without a transaction, or try again.

95. I pause again to observe for completeness that as noted above, the proposed SISP here contemplates an alternative to an investment or sale as set out above, such that the Minimum Bid Threshold would not be relevant anyway.

96. Having considered the legal test as against the evidence in this case, I am satisfied that the inclusion of this term is reasonable and appropriate. I accept the submission of the Receiver that there is little utility in conducting a sales process to yield a bid below the Minimum Bid Threshold that the Receiver knows will not be accepted by the Senior Secured Lenders.

97. Potential bidders, particularly in a complex mid-construction scenario such as the stakeholders are faced with here, and with a Project of such scale and value, will likely expend material resources in conducting due diligence and considering whether to submit a bid. In my view, all parties are assisted, and the process is improved, if potential bidders have an understanding of whether or not a potential bid has a reasonable prospect of gaining traction.

98. For all of these reasons, I am satisfied that the proposed SISP, including the Minimum Bid Threshold, is appropriate and should be approved.

99. I have also considered the other objections to the process submitted by the Coco Parties (See, for example, Notice of Objection at para. 21). In the main, these objections relate to the built-in flexibility of the process, including what I accept is potentially significant discretion on the part of the Receiver to adapt and modify the process as it advances, including the discretion to terminate the process. If Phase I is unsuccessful, the Receiver can change milestones, if appropriate, it can require non-disclosure agreements from bidders and their advisors, there is no fixed deposit amount, and it can amend other terms.

100. In my view, it is appropriate to grant the discretion to the Receiver to the extent provided for in this proposed SISP. It is neither efficient nor beneficial to require the Receiver to return to Court, with the attendant expense to all stakeholders, on potentially multiple locations, to tweak the process as it advances.

101. I accept that the process may have to be modified as it proceeds, and that the Receiver is well placed to conduct the process, with the Broker, within the parameters of the Court order approving the SISP. The Receiver is the Court-appointed officer, and in my view, if it cannot be entrusted with the (limited and defined) discretion to adjust the process along the way to yield the maximum beneficial outcome for stakeholders, it ought not to be acting as the Court-appointed officer in the first place.

102. I am satisfied that this Receiver, assisted by JLL, Skygrid and the other advisors, will carry out its mandate according to the terms I have imposed. Finally, if an issue arises that cannot be resolved, any affected party can seek directions from this Court.

103. I pause to observe that both the Coco Parties on the one hand, and the Senior Secured Lenders on the other hand, made opaque references to other proceedings and other facts not before this Court as potentially impacting the motivations of various parties. In the complete absence of evidence, however, I have given no weight to these submissions.

104. On this record, the Notice of Objection of the Coco Parties is filed on behalf of Coco International Inc. and 12823543 Canada Ltd. I have considered the objections raised, and the weight that should be given to those objections raised by these parties.

105. Coco International is a subordinate lender to the Project, and a party to the Coco Priority Agreements with the Senior Secured Lenders and the Borrower.

106. I accept the submission of the Senior Secured Lenders that the purpose and intention of the parties in entering into the Coco Priority Agreements was to give effect to the first ranking security interest of the Senior Secured Lenders.

107. As a term of the Coco Priority Agreements, Coco International subordinates and postpones its security and indebtedness in all respects to the security indebtedness of the Senior Secured Lenders, which must be paid in full before Coco International is entitled to be paid anything with respect to the Subordinate Indebtedness (Priority Agreement, Clause 6).

108. In addition, pursuant to Clause 13 of the Priority Agreement, Coco International agreed that in the event that the [senior indebtedness] is in default (as it now is), “no actions, steps or proceedings can be taken by or on behalf of [Coco International] that might negatively or detrimentally impact upon the Senior Secured Lenders’ ability to expeditiously complete the development, construction management of the Project and/or which might restrict, inhibit, hinder or delay the sale and closing of any portion of the Commercial Component or the individual condominium unit sale transactions in respect of the Condominium Project by or on behalf of the Senior Lender”.

109. Finally, and perhaps most importantly, pursuant to Clause 23, in the context of an insolvency involving the Registered Owner, the Beneficial Owner and the Collateral (as this proceeding is), until the Senior Indebtedness is paid in full, Coco International will not “seek any relief or file any motion, application or other action in respect of the Collateral or the Registered or Beneficial Owner without the prior written consent of the Senior Secured Lenders”. No such consent has been sought or granted.

110. The Coco Parties submit that none of these contractual provisions operate so as to prevent them from raising objections as they do to the mechanics of a sale process. In my view, the Coco Parties are affected stakeholders and they are entitled to be heard on issues such as the proposed SISP. That is exactly why I have given them that opportunity to be heard, and considered carefully their objections.

111. However, those objections must be informed by, and considered in the context of, the contractual obligations to which the Coco Parties (as sophisticated and well advised commercial parties) consented and agreed. I accept the submission of the Senior Secured Lenders that the objections by the Coco Parties to various terms of the proposed SISP, and to the Minimum Bid Threshold in particular, are (at least) a breach of Clause 23 of the Priority Agreement and their covenant not to seek any relief in respect of the Collateral or the Registered or Beneficial Owner without the prior written consent of the Senior Secured Lenders.

112. This flows from my interpretation of the Priority Agreements to determine the intent of the parties and the scope of their understanding, giving the words the parties used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of the formation of the contract: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 47.

113. Even absent the contractual obligations, however, and while a subordinate lender, such as is Coco International here, is certainly entitled to be heard, generally, the position of the senior lender, and particularly a party such as the Senior Secured Lenders here who are the fulcrum creditors, will be accorded more weight. Unless and until the Senior Indebtedness has been repaid in full (and that is far from certain here), the Subordinate Lender has no economic stake in the proceeding.

114. As submitted by the Senior Secured Lenders, it is ironic that the proposed SISP to which the Coco Parties object (on the basis that the costs ought not to be incurred and the time required to run a sales process ought not to be spent) affords the only hope that recoveries might exceed the value of the indebtedness owed to the Senior Secured Lenders such that the Coco Parties might recover anything on their own indebtedness.

115. It is even more ironic that the Coco Parties object to the Minimum Bid Threshold at 80% of that indebtedness, when in fact they are “out of the money” and not contractually entitled to recover anything on their own indebtedness unless and until the Senior Secured Lenders recover fully 100% of their own indebtedness.

116. Finally, with respect to the other Coco party to the Notice of Objection, 12823543 Canada Ltd., it is an equity holder of one of the Borrowers. Specifically, it is a limited partner in, and a 50% equity holder of, the corporate general partner of one of the Borrowers under the Credit Agreement. As such, it is at best an equity holder, the interest of which would rank subordinate to the interests of all creditors in any event. In the circumstances, it is not anticipated that all secured creditors will be paid in full, let alone all unsecured creditors.

117. Accordingly, and having considered the objections raised by the Coco Parties, I am satisfied that the SISP should be approved on the terms proposed.

### **Result and Disposition**

118. For all of the above reasons, the SISP Approval Order, the Reconfiguration Plan and LC Order, and the Holdback Release Order, are approved.

119. Orders to go in the form signed by me today. They are effective immediately and without the necessity of issuing and entering.

Osborne J.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST



THE HONOURABLE MR. )

FRIDAY, THE 13<sup>th</sup>

JUSTICE HAINEY )

DAY OF NOVEMBER, 2020

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 KING STREET COMPANY INC., THE KING STREET HOSPITALITY GROUP INC., BONTA TRADING CO. INC., 2268218 ONTARIO INC., 1733667 ONTARIO LIMITED, THE KING STREET FOOD COMPANY INC., THE KING STREET RESTAURANT COMPANY INC., 2112047 ONTARIO LTD., JI YORKDALE INC., JI SQUARE ONE INC., 1771669 ONTARIO INC., CXBO INC., 2608765 ONTARIO INC., 2272224 ONTARIO INC., 2327729 ONTARIO INC., 2577053 ONTARIO INC., 2584858 ONTARIO INC., 2621298 ONTARIO INC., 2641784 ONTARIO INC., and 2656966 ONTARIO INC.

Applicants

ORDER  
(SALE PROCESS APPROVAL)

**THIS MOTION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an order, *inter alia*, approving the Sale Process (as defined below) and certain related relief, was heard this day by Zoom videoconference in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the affidavits of Peter Tsebelis sworn November 6, 2020 and November 12, 2020 and the Exhibits thereto, the consent of MNP Ltd. ("MNP") to act as the Monitor (in such capacity, the "Monitor"), the pre-filing report of MNP in its capacity as the proposed Monitor dated November 6, 2020, and the first report of the Monitor dated November 12, 2020, and on hearing the submissions of counsel for the Applicants, Third Eye Capital Corporation ("TEC"), in its capacity as Agent for certain lenders including the lenders of the debtor-in-possession loan facility (TEC in such capacity, the "Agent") and the Monitor, and those other

parties listed on the counsel slip, no one else appearing for any other party although duly served as appears from the affidavit of service of Katherine Yurkovich sworn November 12, 2020.

### **SERVICE AND DEFINITIONS**

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 capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them under the Sale and Investment Solicitation Process attached hereto as Schedule "A" (the "**Sale Process**") or the Amended and Restated Initial Order dated November 13, 2020 (the "**Amended and Restated Initial Order**"), as applicable.

### **APPROVAL OF THE SALE PROCESS**

3. **THIS COURT ORDERS** that the Sale Process (subject to any amendments thereto that may be made in accordance therewith and with this Order) be and is hereby approved and the Monitor and Applicants are hereby authorized and directed to carry out the Sale Process in accordance with its terms and the terms of this Order.
4. **THIS COURT ORDERS** that each of the Applicants and the Monitor are hereby further authorized and directed to take such steps as each considers necessary or desirable in carrying out each of their respective obligations under the Sale Process, subject to prior approval of this Court being obtained before completion of any transaction(s) under the Sale Process.
5. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the Sale Process, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Applicants or the Monitor, as applicable, as determined by this Court.

6. **THIS COURT ORDERS** that the Monitor and the Applicants may apply to this Court for directions with respect to the Sale Process at any time.

#### **PIPEDA**

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicants and the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to carry out the Sale Process and to attempt to complete a transaction for some or all of the Property. Each prospective purchaser or bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction for some or all of the Property, and if it does not complete such a transaction, shall return all such information to the Applicants, or in the alternative destroy all such information. The purchaser of any of the Property shall be entitled to continue to use the personal information provided to it, and related to such assets, in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed

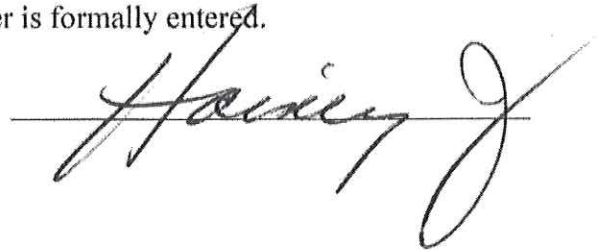
#### **GENERAL**

8. **THIS COURT ORDERS** that, pursuant to the clause 3(c)(i) of the *Electronic Commerce Protections Regulations*, made under *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-Television and Telecommunications Commission Act*, the *Competition Act*, the *Personal Information Protection and Electronic Documents Act* and the *Telecommunications Act*, S.C. 2010, c. 23, the Applicants and the Monitor are authorized and permitted to send, or cause to permit to be sent, commercial electronic messages to an electronic address of prospective purchasers or bidders and to their advisors but only to the extent desirable or required to provide information with respect to the Sale Process.

9. **THIS COURT ORDERS** that each of the Applicants and the Monitor may from time to time apply to this Court for advice and directions in the discharge of their respective powers and duties hereunder.

10. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.

11. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the time indicated in paragraph 10 whether or not this Order is formally entered.

A handwritten signature in black ink, appearing to read "Haining J.", is written over a horizontal line.

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

NOV 16 2020

PER / PAR:

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**SCHEDULE "A" TO  
ORDER DATED NOVEMBER 13, 2020**

**SALE AND INVESTMENT SOLICITATION PROCESS**

**INTRODUCTION**

On November 6, 2020, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted an order pursuant to the *Companies' Creditors Arrangement Act*, 1985, c C-36 (the "**CCAA Proceedings**"), among other things, appointing MNP Ltd. as the monitor (in such capacity, the "**Monitor**") of King Street Company Inc., King Street Hospital Group Inc., Bonta Trading Co. Inc., 2268218 Ontario Inc., 1733667 Ontario Limited, the King Street Food Company Inc., The King Street Restaurant Company Inc., 2112047 Ontario Ltd., JI Yorkdale Inc., JI Square One Inc., 1771669 Ontario Inc., CXBO Inc., 2608765 Ontario Inc., 2272224 Ontario Inc., 2327729 Ontario Inc., 2577053 Ontario Inc., 2584858 Ontario Inc., 2621298 Ontario Inc., 2641784 Ontario Inc., and 2656966 Ontario Inc. (collectively, "the **Debtors**" and each "the **Debtor**").

On November 13, 2020, the Court granted an order (the "**Sale Process Approval Order**") which, among other things, directed and empowered the Debtors, in consultation with the Monitor and Third Eye Capital Corporation ("**TEC**"), as agent on behalf of the Debtors' senior secured pre-petition lenders and debtor-in-possession lenders (collectively, the "**Lenders**") to (i) administer and conduct a Court approved strategic sales and investment solicitation process and related procedures set out herein (the "**SISP**") to solicit offers from qualified parties in an acquisition or refinancing of the business or a sale of the assets and/or the business of the Debtors, which relates primarily to the operation of high-end restaurants and a gourmet chocolate retail operating under the brand names of Jacobs & Co., Cucina, Buca, Bar Buca, La Banane, and CXBO throughout the Greater Toronto Area (the "**Property**"), in whole or in part, by way of merger, reorganization, recapitalization, sale or another similar transaction, and (ii) carry out all necessary steps related thereto, including by leading and/or directing discussions and negotiations with potentially interested parties.

Capitalized terms not defined herein shall have the meaning ascribed to them in the Sale Process Approval Order.

The Debtors, in consultation with the Monitor, intend to conduct the SISP in accordance with the Sale Process Approval Order, and as set out below, to solicit offers from qualified parties in an acquisition or refinancing of the business or a sale of the Property, in whole or in part, by way of merger, reorganization, recapitalization, sale or another similar transaction. Under the SISP, all qualified interested parties will be provided with an opportunity to participate.

The Debtors, in accordance with the Sale Process Approval Order, and in consultation with the Monitor, will administer and carry out the marketing steps contemplated by the SISP. TEC, as agent on behalf of the Lenders in respect of the CCAA Proceedings, will have certain consultation and consent rights as specifically provided for below.

This document outlines the SISP, which is principally comprised of (3) three stages: (i) pre-marketing, (ii) marketing, and (iii) offering/evaluation.

## OPPORTUNITY AND SISP SUMMARY

1. The SISP is intended to solicit interest in, and opportunities for a sale of, or investment in, all or part of the Property (the "**Opportunity**"). The Opportunity may include one or more of a restructuring, recapitalization or other form of investment in or reorganization of the business and affairs of the Debtors as a going concern or a sale of all, substantially all or one or more components of the Property and the Debtors' business as a going concern or otherwise.
2. Except as otherwise set forth in a definitive sale or investment agreement with a successful bidder, any sale will be on an "as is, where is" basis and without any surviving representations or warranties of any kind, nature, or description by the Monitor or the Debtors, or any of their respective affiliates, agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Debtors in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.
3. This solicitation of interest for the Opportunity will be on an unpriced basis whereby no set asking price will be stipulated.
4. As described more fully in this SISP, the major stages in the within procedure will be comprised of the following:
  - (a) Pre-Marketing: preparation of all marketing material, assembly of all relevant due diligence material, establishment of the Data Room (as defined below) and preparation of potential buyer/investor lists;
  - (b) Marketing: advertising, contacting potential buyers/investors, responding to requests for information and disseminating marketing material to potential buyers and investors after their execution an NDA (as defined below); and
  - (c) Offer Submission and Evaluation: solicitation, receipt, evaluation and negotiation of offers from potential buyers and investors, as more fully described below.
5. The offer submission and evaluation stage of the SISP will be comprised of a two (2) phase offering process: "**Phase 1**" being the submission of letters of intent ("**LOIs**") from qualified bidders, and "**Phase 2**" being the submission of formal binding offers from those parties that submitted LOIs and that have been invited by the Debtors, in consultation with the Monitor and TEC, to participate in Phase 2 (each a Phase 1 Qualified Bidder (as defined below)).

## TIMELINE

6. The following table sets out the key milestones under the SISP:

<b>Milestone</b>	<b>Deadline</b>
Commencement Date	November 13, 2020
Publication of Notice and delivery of Teaser Letter and NDA	November 20, 2020
Phase 1 Bid Deadline	December 18, 2020
Phase 2 Bid Deadline	January 22, 2021
Selection of Successful Bid	January 25, 2021
Court Approval of the Successful Bid	By February 3, 2021
Closing of Successful Bid	As soon as reasonably possible following court approval

### **PRE-MARKETING STAGE**

7. As soon as reasonably practicable, but in any event by no later than November 13, 2020 (the "**Commencement Date**"):
- (a) the Debtors will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the terms of the SISP; and (ii) a non-disclosure and confidentiality agreement with the Debtor (an "**NDA**"). The Teaser Letter and NDA shall be in form and substance satisfactory to the Monitor and TEC. The Teaser Letter will specifically stipulate that the Debtors, the Monitor and their advisors make no representations or warranties as to the accuracy or completeness of the information contained in the Teaser Letter, the Data Room, or made available pursuant to the SISP or otherwise, except to the extent expressly contemplated in any definitive sale agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Debtors;
  - (b) the Debtors will gather and review all due diligence materials, it determines to be relevant, to be provided to interested parties and shall establish a secure, electronic data room (the "**Data Room**"), which will be maintained and administered by the Monitor throughout the SISP;
  - (c) the Debtors, in consultation with the Monitor and TEC, will develop a draft form of a purchase and sale agreement for use during the SISP (the "**Draft Sale Agreement**"); and
  - (d) the Debtors, in consultation with the Monitor and TEC, will prepare a list of potential interested parties, including: (i) parties who the Debtors, in consultation with the Monitor and TEC, believe may be interested in the Opportunity; and (ii) parties that have approached one or more of the Debtors, the Monitor or TEC

indicating an interest in the Opportunity (collectively, "**Known Potential Bidders**" and each a "**Potential Bidder**").

## **MARKETING STAGE**

8. As soon as reasonably possible after the Commencement Date, the Debtors shall:
  - (a) arrange for a notice of the SISP (and such other relevant information as the Debtors, in consultation with the Monitor and TEC, considers appropriate) (the "**Notice**") to be published in such newspaper(s) or journal(s) as the Debtors, in consultation with the Monitor and TEC, consider appropriate; and
  - (b) send the Teaser Letter and NDA to all Known Potential Bidders and to any other party who responds to the Notice as soon as reasonably practicable and in any event no later than November 20, 2020.
9. The Monitor will grant access to the Data Room to those parties who have executed and delivered the NDA to the Debtors and Monitor, as soon as reasonably practicable after such execution and delivery.
10. Requests for information and access to the Data Room will be directed to the Monitor and the Debtors:

**The Monitor c/o MNP Ltd.**  
 111 Richmond Street West, Suite 300  
 Toronto, ON

Attention: Sheldon Title, Senior Vice-President  
 Email: [sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)

With a copy to Craig Mills ([cmills@millerthomson.com](mailto:cmills@millerthomson.com))

And to:

**The King Street Group c/o Gowling WLG**  
 100 King Street West, Suite 1600  
 Toronto, ON  
 Phone: 416.369.4618  
 Fax: 416.862.7661

Attention: Peter Tsebelis and Konstantinos Giazitzidis  
 Email: [peter@kingstreetfood.com](mailto:peter@kingstreetfood.com) / [gus@kingstreetfood.com](mailto:gus@kingstreetfood.com)

With a copy to Virginie Gauthier/Thomas Gertner  
 ([virginie.gauthier@gowlingwlg.com](mailto:virginie.gauthier@gowlingwlg.com) / [thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com))

11. Any Potential Bidder must, prior to being given any additional information such as access to the Data Room, provide to the Debtors and the Monitor:
  - (a) An NDA executed by it which shall inure to the benefit of any ultimate Successful Bidder, if any; and
  - (b) details regarding the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals and direct and indirect beneficial owners of the Potential Bidder, in form and substance satisfactory to the Debtors and the Monitor, each acting reasonably.
12. If a Potential Bidder has delivered the materials and information contemplated by paragraphs 11(b), then such Potential Bidder will be deemed to be a "**Phase 1 Qualified Bidder**". No Potential Bidder shall be deemed to be a Phase 1 Qualified Bidder without the approval of the Debtors, in consultation with the Monitor.

## OFFER SUBMISSION AND EVALUATION STAGE

### Phase 1

#### *Due Diligence*

13. The Monitor, subject to such business considerations, if any, as they, in consultation with the Debtors, may deem appropriate to ensure the integrity of the SISP process, will afford each Phase 1 Qualified Bidder access to due diligence materials through the Data Room. Due diligence access may further include management presentations, and/or with participation of the Debtors and Monitor where appropriate and permissible in accordance with, and subject to, reasonable health and safety precautions in light of the COVID-19 pandemic and applicable laws, including municipal by-laws, on-site inspections, and other matters which a Phase 1 Qualified Bidder may reasonably request and to which the Debtors and the Monitor, in their reasonable business judgment, may agree. The Debtors will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated. The Debtors will not be obligated to furnish any information relating to the Property to any person other than to Phase 1 Qualified Bidders. Further and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 1 Qualified Bidders if the Debtors, in consultation with the Monitor, determines such information to represent proprietary or sensitive competitive information, having regard to, among other factors, the information disclosed by such Phase 1 Qualified Bidder pursuant to paragraph 11(b), above.

#### *LOI Submission*

14. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property in connection with their participation in the SISP and any transaction they ultimately enter into with the Debtors.

15. A Phase 1 Qualified Bidder who wishes to pursue the Opportunity further must deliver an executed LOI at the addresses specified in paragraph 10 above, so as to be received by not later than 5:00 p.m. (Toronto time) on or before December 18, 2020 (the "**Phase 1 Bid Deadline**").
16. An LOI submitted will be considered a qualified LOI (each a "**Qualified LOI**") only if:
  - (a) it is submitted on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;
  - (b) it identifies or contains the following:
    - (i) the purchase price, in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
    - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property or obligations of the Property expected to be excluded;
    - (iii) in the case of a refinancing or other investment transaction proposal, a detailed description of the structure of such proposed transaction;
    - (iv) a specific indication of the financial wherewithal of the Phase 1 Qualified Bidder to complete the transaction on the terms set out in the LOI, together with evidence of such capability, including the expected structure and financing of the transaction;
    - (v) a description of the conditions and approvals required for a final and binding offer;
    - (vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer (if any);
    - (vii) a description of the Phase 1 Qualified Bidder's proposed treatment of any liabilities, material contracts and employees; and
    - (viii) any other terms or conditions the Phase 1 Qualified Bidder believes are material to the transaction;
  - (c) it does not contain any requirement or provision for a break fee or reimbursement of expenses associated with the proposed transaction, conducting the due diligence in respect thereof or otherwise; and
  - (d) it contains such other information as reasonably requested by the Debtors and the Monitor from time to time.
17. The Debtors, in consultation with the Monitor and with the consent of TEC, acting reasonably, may waive compliance with any one or more of the requirements specified

above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any transaction shall be subject to the approval of the Court and the requirement for Court approval may not be waived.

***Preliminary Assessment of Phase 1 Bids and Subsequent Process***

18. Following the Phase 1 Bid Deadline, the Debtors, in consultation with the Monitor and TEC, will assess the Qualified LOIs. If it is determined by the Debtors, in consultation with the Monitor and TEC, that a Phase 1 Qualified Bidder that has submitted a Qualified LOI (i) has a *bona fide* interest in completing a proposed transaction; and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then, subject to paragraph 19, below, such Phase 1 Qualified Bidder will be deemed a "**Phase 2 Qualified Bidder**", provided that the Debtors, with the consent of the Monitor, may, in its judgment, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some Phase 1 Qualified Bidders from the process). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.
19. In the event that no Qualified LOIs are submitted by the Phase 1 Bid Deadline, or if none of the Qualified LOIs received provide for consideration in an amount satisfactory to TEC, then the Debtors, in consultation with the Monitor and with the consent of TEC, shall terminate the SISP unless TEC consents to its continuation. For greater certainty, TEC shall not withhold its consent in respect of any transaction providing consideration sufficient to repay the Lenders' pre-filing and post-filing secured debt in full. In the event the SISP is terminated, TEC reserves all rights, including the right to credit bid all or a portion of the Lenders' debt to acquire the Property, in whole or in part.
20. If the SISP is not terminated following the Phase 1 Bid Deadline, the Debtors, in consultation with the Monitor and TEC, will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), which will include the Draft Sale Agreement which will be made available in the Data Room, and the Bid Process Letter will be sent to all Phase 2 Qualified Bidders who are invited to participate in Phase 2. The Bid Process Letter shall be acceptable to TEC.

**Phase 2**

***Formal Binding Offers***

21. Phase 2 Qualified Bidders that wish to make a formal proposal shall submit to the Debtors and the Monitor, at the addresses specified in paragraph 10 above so as to be received by the Debtors and the Monitor not later than 5:00 p.m. (Toronto time) on January 22, 2021 or such other date and time as may be modified in the Bid Process Letter (the "**Phase 2 Bid Deadline**"), a sealed binding offer that complies with all of the following requirements:
  - (a) the bid shall comply with all of the requirements set forth in paragraph 16 in respect of Qualified LOIs;

- (b) cash is the preferred form of consideration, but if the bid utilizes other consideration, a description of the material terms of the consideration shall be provided for consideration;
- (c) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase some or all of the Property on terms and conditions reasonably acceptable to the Debtors, in consultation with the Monitor and with the consent of TEC in its sole discretion;
- (d) unless otherwise agreed, in the case of an asset purchase transaction, the bid shall take the form of the Draft Sale Agreement (with a blackline showing any changes) and shall include a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until Court approval of a Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with such Successful Bidder;
- (e) in the case of a refinancing or other investment transaction proposal, the bid shall include a form of agreement in form and substance satisfactory to the Debtors, the Monitor and TEC;
- (f) the bid includes all requisite details listed in the Draft Sale Agreement; including, but not limited to, the purchase price and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, the name or names of the ultimate direct or indirect beneficial owner(s) of the Phase 2 Qualified Bidder including their respective percentage interests;
- (g) to the extent that a bid is conditional upon new or amended agreements being entered into with any third party or parties currently under contract with the Debtors (or any of them), the Phase 2 Qualified Bidder shall provide the proposed terms of such amended or new agreements and identify how such agreements may differ from existing agreements to which the Debtors may be party. A Phase 2 Qualified Bidder's willingness to proceed without such conditions and, where such conditions are included in the bid, the likelihood of satisfying such conditions shall be an important factor in evaluating the bid;
- (h) the bid shall include written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, including the timetable for obtaining financing and, if appropriate, the amount of senior debt, subordinated debt and other sources of financing contemplated in the pro forma capital structure that will allow the Debtors, in consultation with the Monitor and TEC, to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
- (i) the bid shall not be conditional on the outcome of unperformed due diligence by the Phase 2 Qualified Bidder;

- (j) the bid fully shall disclose the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;
  - (k) the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the Purchase Price offered upon the Phase 2 Qualified Bidder being selected as the Successful Bidder, which shall be paid to the Monitor to be held in trust pending the closing of the proposed transaction;
  - (l) the bid includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property and the Debtors prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever made by the Debtors or the Monitor, whether express, implied, statutory or otherwise, regarding the Property or the Debtors, or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Debtors;
  - (m) all required corporate approvals of the Phase 2 Qualified Bidder to complete the proposed transaction, subject only to selection as the Successful Bidder and Court approval, will have been obtained prior to the submission of the bid;
  - (n) the bid shall identify any material conditions in favour of the purchaser to be resolved prior to closing the transaction;
  - (o) the bid shall be received by the Phase 2 Bid Deadline; and
  - (p) the bid contemplates Court approval for the proposed transaction.
22. Following the Phase 2 Bid Deadline, the Debtors, in consultation with the Monitor and TEC, will assess the Phase 2 Bids received. The Debtors, with the consent of the Monitor, will designate the most competitive bids that comply with the foregoing requirements to be designated as "**Phase 2 Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).
23. The Debtors, in consultation with the Monitor and with the consent of TEC, acting reasonably, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.
24. The Debtors shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constituted a Phase 2 Qualified Bid by January 25, 2021, or at such later time as the Debtors, in consultation with the Monitor and with the consent of TEC, acting reasonably, deems appropriate.
25. If the Debtors and the Monitor are not satisfied with the number or terms of the Phase 2 Qualified Bids, the Debtors, in consultation with the Monitor and with the consent of TEC, acting reasonably, may extend the Phase 2 Bid Deadline without Court approval.

26. The Debtors, in consultation with the Monitor and with the consent of TEC, may terminate further participation in the Phase 2 Bid Process by any interested party, or modify dates or procedures in this SISP as deemed appropriate or necessary, or terminate the process altogether.
27. The Debtors, with the consent of the Monitor, may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one or more "**Phase 2 Qualified Bid(s)**".

#### *Evaluation of Competing Bids*

28. A Phase 2 Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the Purchase Price and the net value and form of consideration to be paid provided by such bid, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transaction, including any conditions attached to the bid and the expected feasibility of such conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction within the timeline established by the Debtors.

#### *Selection of Successful Bid*

29. The Debtors, in consultation with the Monitor and TEC, will: (a) review each Phase 2 Qualified Bid with the applicable Phase 2 Qualified Bidder, and such Phase 2 Qualified Bid may be amended, modified or varied as a result of such discussions, and (b) identify the highest or otherwise best bid or bids (the "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid (the "**Successful Bidder**") for the Property, in whole or part. The determination of any Successful Bid by the Debtors shall be subject to approval by the Court. In order to be selected as a Successful Bid, a Phase 2 Qualified Bid must be acceptable to TEC, in its sole discretion. For greater certainty, TEC shall not withhold its consent in respect of any transaction providing cash consideration sufficient to repay the Lenders' pre-filing and post-filing secured debt in full.
30. The Debtors, in consultation with the Monitor and TEC, shall have no obligation to select a Successful Bid, and the Debtors, in consultation with the Monitor and TEC, reserves the right to reject any or all Phase 2 Qualified Bids. Further, the Debtors shall have no obligation to enter into a definitive agreement with a Phase 2 Qualified Bidder.
31. In the event that the Debtors, in consultation with the Monitor and TEC, does not select a Successful Bid and/or the Debtors do not enter into a definitive agreement with a Phase 2 Qualified Bidder, then the Debtors, in consultation with the Monitor and with the consent of TEC, shall terminate the SISP. In the event the SISP is terminated, TEC reserves all rights, including the right to credit bid all or a portion of its debt to acquire the Property, in whole or in part.

### *Sale Approval Hearing*

32. In the event that a Successful Bidder is selected, at the hearing of the motion to approve the transaction proposed by such Successful Bidder (the "**Sale Approval Application**"), the Debtors shall seek, among other things, approval from the Court to consummate such Successful Bid. All the Phase 2 Qualified Bids other than the Successful Bid(s), if any, shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid(s) by the Court.
33. The Sale Approval Application shall be heard as soon as reasonably practicable following the selection of the Successful Bidder.

### *Confidentiality and Access to Information*

34. Unless otherwise set out herein, participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, LOIs, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Debtors, the Monitor and such other bidders or Potential Bidders in connection with the SISP. The Debtors may however, with the consent of the applicable participants, disclose such information to other bidders for the purpose of seeking to combine separate bids from Phase 1 Qualified Bidders or Phase 2 Qualified Bidders. Further, the Debtors may disclose information to TEC in accordance with the terms of this SISP.

### *Supervision of the SISP*

35. The Debtors and the Monitor will each participate in the SISP in the manner set out in this SISP procedure and the SISP Order and is entitled to receive all information in relation to the SISP.
36. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Debtors or the Monitor and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Debtors and approved by the Court.
37. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, or any other creditor or other stakeholder of the Debtors, for any act or omission related to the process contemplated by the SISP, except to the extent such act or omission is the result of gross negligence or willful misconduct of the Monitor. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent such claim is the result of gross negligence or willful misconduct of the Monitor.
38. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, Phase 2 Bid, due diligence activities,

and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

39. The Debtors shall have the right, in consultation with the Monitor and with the consent of TEC, to modify the SISP and the deadlines set out herein (including, without limitation, pursuant to the Bid Process Letter) if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP.

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

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Court File No: CV-20-00650945-00CL

**ONTARIO SUPERIOR COURT OF  
JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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**ORDER**

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**Gowling WLG (Canada) LLP**  
Suite 1600, 1 First Canadian  
Place, 100 King Street West  
Toronto ON M5X 1G5  
Tel: 416-862-7525

**Virginie Gauthier** ISO#: 41097D  
Tel: 416-844-5391  
Email: [Virginie.gauthier@gowlingwlg.com](mailto:Virginie.gauthier@gowlingwlg.com)

**Thomas Gertner** ISO#: 67756S  
Tel: 416-369-4618  
Email: [Thomas.gertner@gowlingwlg.com](mailto:Thomas.gertner@gowlingwlg.com)

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

**RE:                   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 NORTEL NETWORKS CORPORATION,  
NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL  
CORPORATION, NORTEL NETWORKS INTERNATIONAL  
CORPORATION AND NORTEL NETWORKS TECHNOLOGY  
CORPORATION**

**APPLICANTS**

**APPLICATION UNDER THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**BEFORE:           MORAWETZ J.**

**COUNSEL:       Derrick Tay and Jennifer Stam, for Nortel Networks Corporation, et al**

**Lyndon Barnes and Adam Hirsh, for the Board of Directors of Nortel  
Networks Corporation and Nortel Networks Limited**

**J. Carfagnini and J. Pasquariello, for Ernst & Young Inc., Monitor**

**M. Starnino, for the Superintendent of Financial Services and  
Administrator of PBGF**

**S. Philpott, for the Former Employees**

**K. Zych, for Noteholders**

**Pamela Huff and Craig Thorburn, for MatlinPatterson Global Advisors  
LLC, MatlinPatterson Global Opportunities Partners III L.P. and Matlin  
Patterson Opportunities Partners (Cayman) III L.P.**

**David Ward, for UK Pension Protection Fund**

**Leanne Williams, for Flextronics Inc.**

**Alex MacFarlane, for the Official Committee of Unsecured Creditors**

**Arthur O. Jacques and Tom McRae, for Felske & Sylvain (de facto Continuing Employees' Committee)**

**Robin B. Schwill and Matthew P. Gottlieb, for Nortel Networks UK Limited**

**A. Kauffman, for Export Development Canada**

**D. Ullman, for Verizon Communications Inc.**

**G. Benchetrit, for IBM**

**HEARD &  
DECIDED:**

**JUNE 29, 2009**

## **ENDORSEMENT**

### **INTRODUCTION**

[1] On June 29, 2009, I granted the motion of the Applicants and approved the bidding procedures (the “Bidding Procedures”) described in the affidavit of Mr. Riedel sworn June 23, 2009 (the “Riedel Affidavit”) and the Fourteenth Report of Ernst & Young, Inc., in its capacity as Monitor (the “Monitor”) (the “Fourteenth Report”). The order was granted immediately after His Honour Judge Gross of the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”) approved the Bidding Procedures in the Chapter 11 proceedings.

[2] I also approved the Asset Sale Agreement dated as of June 19, 2009 (the “Sale Agreement”) among Nokia Siemens Networks B.V. (“Nokia Siemens Networks” or the “Purchaser”), as buyer, and Nortel Networks Corporation (“NNC”), Nortel Networks Limited (“NNL”), Nortel Networks, Inc. (“NNI”) and certain of their affiliates, as vendors (collectively the “Sellers”) in the form attached as Appendix “A” to the Fourteenth Report and I also approved and accepted the Sale Agreement for the purposes of conducting the “stalking horse” bidding process in accordance with the Bidding Procedures including, the Break-Up Fee and the Expense Reimbursement (as both terms are defined in the Sale Agreement).

[3] An order was also granted sealing confidential Appendix “B” to the Fourteenth Report containing the schedules and exhibits to the Sale Agreement pending further order of this court.

[4] The following are my reasons for granting these orders.

[5] The hearing on June 29, 2009 (the “Joint Hearing”) was conducted by way of video conference with a similar motion being heard by the U.S. Court. His Honor Judge Gross presided over the hearing in the U.S. Court. The Joint Hearing was conducted in accordance with the provisions of the Cross-Border Protocol, which had previously been approved by both the U.S. Court and this court.

[6] The Sale Agreement relates to the Code Division Multiple Access (“CMDA”) business Long-Term Evolution (“LTE”) Access assets.

[7] The Sale Agreement is not insignificant. The Monitor reports that revenues from CDMA comprised over 21% of Nortel’s 2008 revenue. The CDMA business employs approximately 3,100 people (approximately 500 in Canada) and the LTE business employs approximately 1,000 people (approximately 500 in Canada). The purchase price under the Sale Agreement is \$650 million.

## **BACKGROUND**

[8] The Applicants were granted CCAA protection on January 14, 2009. Insolvency proceedings have also been commenced in the United States, the United Kingdom, Israel and France.

[9] At the time the proceedings were commenced, Nortel’s business operated through 143 subsidiaries, with approximately 30,000 employees globally. As of January 2009, Nortel employed approximately 6,000 people in Canada alone.

[10] The stated purpose of Nortel’s filing under the CCAA was to stabilize the Nortel business to maximize the chances of preserving all or a portion of the enterprise. The Monitor reported that a thorough strategic review of the company’s assets and operations would have to be undertaken in consultation with various stakeholder groups.

[11] In April 2009, the Monitor updated the court and noted that various restructuring alternatives were being considered.

[12] On June 19, 2009, Nortel announced that it had entered into the Sale Agreement with respect to its assets in its CMDA business and LTE Access assets (collectively, the “Business”) and that it was pursuing the sale of its other business units. Mr. Riedel in his affidavit states that Nortel has spent many months considering various restructuring alternatives before determining in its business judgment to pursue “going concern” sales for Nortel’s various business units.

[13] In deciding to pursue specific sales processes, Mr. Riedel also stated that Nortel’s management considered:

- (a) the impact of the filings on Nortel’s various businesses, including deterioration in sales; and

- (b) the best way to maximize the value of its operations, to preserve jobs and to continue businesses in Canada and the U.S.

[14] Mr. Riedel notes that while the Business possesses significant value, Nortel was faced with the reality that:

- (a) the Business operates in a highly competitive environment;
- (b) full value cannot be realized by continuing to operate the Business through a restructuring; and
- (c) in the absence of continued investment, the long-term viability of the Business would be put into jeopardy.

[15] Mr. Riedel concluded that the proposed process for the sale of the Business pursuant to an auction process provided the best way to preserve the Business as a going concern and to maximize value and preserve the jobs of Nortel employees.

[16] In addition to the assets covered by the Sale Agreement, certain liabilities are to be assumed by the Purchaser. This issue is covered in a comprehensive manner at paragraph 34 of the Fourteenth Report. Certain liabilities to employees are included on this list. The assumption of these liabilities is consistent with the provisions of the Sale Agreement that requires the Purchaser to extend written offers of employment to at least 2,500 employees in the Business.

[17] The Monitor also reports that given that certain of the U.S. Debtors are parties to the Sale Agreement and given the desire to maximize value for the benefit of stakeholders, Nortel determined and it has agreed with the Purchaser that the Sale Agreement is subject to higher or better offers being obtained pursuant to a sale process under s. 363 of the U.S. Bankruptcy Code and that the Sale Agreement shall serve as a “stalking horse” bid pursuant to that process.

[18] The Bidding Procedures provide that all bids must be received by the Seller by no later than July 21, 2009 and that the Sellers will conduct an auction of the purchased assets on July 24, 2009. It is anticipated that Nortel will ultimately seek a final sales order from the U.S. Court on or about July 28, 2009 and an approval and vesting order from this court in respect of the Sale Agreement and purchased assets on or about July 30, 2009.

[19] The Monitor recognizes the expeditious nature of the sale process but the Monitor has been advised that given the nature of the Business and the consolidation occurring in the global market, there are likely to be a limited number of parties interested in acquiring the Business.

[20] The Monitor also reports that Nortel has consulted with, among others, the Official Committee of Unsecured Creditors (the “UCC”) and the bondholder group regarding the Bidding Procedures and is of the view that both are supportive of the timing of this sale process. (It is noted that the UCC did file a limited objection to the motion relating to certain aspects of the Bidding Procedures.)

[21] Given the sale efforts made to date by Nortel, the Monitor supports the sale process outlined in the Fourteenth Report and more particularly described in the Bidding Procedures.

[22] Objections to the motion were filed in the U.S. Court and this court by MatlinPatterson Global Advisors LLC, MatlinPatterson Global Opportunities Partners III L.P. and Matlin Patterson Opportunities Partners (Cayman) III L.P. (collectively, “MatlinPatterson”) as well the UCC.

[23] The objections were considered in the hearing before Judge Gross and, with certain limited exceptions, the objections were overruled.

## ISSUES AND DISCUSSION

[24] The threshold issue being raised on this motion by the Applicants is whether the CCAA affords this court the jurisdiction to approve a sales process in the absence of a formal plan of compromise or arrangement and a creditor vote. If the question is answered in the affirmative, the secondary issue is whether this sale should authorize the Applicants to sell the Business.

[25] The Applicants submit that it is well established in the jurisprudence that this court has the jurisdiction under the CCAA to approve the sales process and that the requested order should be granted in these circumstances.

[26] Counsel to the Applicants submitted a detailed factum which covered both issues.

[27] Counsel to the Applicants submits that one of the purposes of the CCAA is to preserve the going concern value of debtors companies and that the court’s jurisdiction extends to authorizing sale of the debtor’s business, even in the absence of a plan or creditor vote.

[28] The CCAA is a flexible statute and it is particularly useful in complex insolvency cases in which the court is required to balance numerous constituents and a myriad of interests.

[29] The CCAA has been described as “skeletal in nature”. It has also been described as a “sketch, an outline, a supporting framework for the resolution of corporate insolvencies in the public interest”. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5<sup>th</sup>) 163 (Ont. C.A.) at paras. 44, 61, leave to appeal refused [2008] SCCA 337. (“ATB Financial”).

[30] The jurisprudence has identified as sources of the court’s discretionary jurisdiction, *inter alia*:

- (a) the power of the court to impose terms and conditions on the granting of a stay under s. 11(4) of the CCAA;
- (b) the specific provision of s. 11(4) of the CCAA which provides that the court may make an order “on such terms as it may impose”; and

- (c) the inherent jurisdiction of the court to “fill in the gaps” of the CCAA in order to give effect to its objects. *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4<sup>th</sup>) 299 (Ont. Gen. Div.) at para. 43; *Re PSINet Ltd.* (2001), 28 C.B.R. (4<sup>th</sup>) 95 (Ont. S.C.J.) at para. 5, *ATB Financial, supra*, at paras. 43-52.

[31] However, counsel to the Applicants acknowledges that the discretionary authority of the court under s. 11 must be informed by the purpose of the CCAA.

Its exercise must be guided by the scheme and object of the Act and by the legal principles that govern corporate law issues. *Re Stelco Inc.* (2005), 9 C.B.R. (5<sup>th</sup>) 135 (Ont. C.A.) at para. 44.

[32] In support of the court’s jurisdiction to grant the order sought in this case, counsel to the Applicants submits that Nortel seeks to invoke the “overarching policy” of the CCAA, namely, to preserve the going concern. *Re Residential Warranty Co. of Canada Inc.* (2006), 21 C.B.R. (5<sup>th</sup>) 57 (Alta. Q.B.) at para. 78.

[33] Counsel to the Applicants further submits that CCAA courts have repeatedly noted that the purpose of the CCAA is to preserve the benefit of a going concern business for all stakeholders, or “the whole economic community”:

The purpose of the CCAA is to facilitate arrangements that might avoid liquidation of the company and allow it to continue in business to the benefit of the whole economic community, including the shareholders, the creditors (both secured and unsecured) and the employees. *Citibank Canada v. Chase Manhattan Bank of Canada* (1991), 5 C.B.R. (3<sup>rd</sup>) 167 (Ont. Gen. Div.) at para. 29. *Re Consumers Packaging Inc.* (2001) 27 C.B.R. (4<sup>th</sup>) 197 (Ont. C.A.) at para. 5.

[34] Counsel to the Applicants further submits that the CCAA should be given a broad and liberal interpretation to facilitate its underlying purpose, including the preservation of the going concern for the benefit of all stakeholders and further that it should not matter whether the business continues as a going concern under the debtor’s stewardship or under new ownership, for as long as the business continues as a going concern, a primary goal of the CCAA will be met.

[35] Counsel to the Applicants makes reference to a number of cases where courts in Ontario, in appropriate cases, have exercised their jurisdiction to approve a sale of assets, even in the absence of a plan of arrangement being tendered to stakeholders for a vote. In doing so, counsel to the Applicants submits that the courts have repeatedly recognized that they have jurisdiction under the CCAA to approve asset sales in the absence of a plan of arrangement, where such sale is in the best interests of stakeholders generally. *Re Canadian Red Cross Society, supra, Re PSINet, supra, Re Consumers Packaging, supra, Re Stelco Inc.* (2004), 6 C.B.R. (5<sup>th</sup>) 316 (Ont. S.C.J.) at para. 1, *Re Tiger Brand Knitting Co.* (2005) 9 C.B.R. (5<sup>th</sup>) 315, *Re Caterpillar*

*Financial Services Ltd. v. Hardrock Paving Co.* (2008), 45 C.B.R. (5<sup>th</sup>) 87 and *Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3<sup>rd</sup>) 24 (Ont. Gen. Div.).

[36] In *Re Consumers Packaging, supra*, the Court of Appeal for Ontario specifically held that a sale of a business as a going concern during a CCAA proceeding is consistent with the purposes of the CCAA:

The sale of Consumers' Canadian glass operations as a going concern pursuant to the Owens-Illinois bid allows the preservation of Consumers' business (albeit under new ownership), and is therefore consistent with the purposes of the CCAA.

...we cannot refrain from commenting that Farley J.'s decision to approve the Owens-Illinois bid is consistent with previous decisions in Ontario and elsewhere that have emphasized the broad remedial purpose of flexibility of the CCAA and have approved the sale and disposition of assets during CCAA proceedings prior to a formal plan being tendered. *Re Consumers Packaging, supra, at paras. 5, 9.*

[37] Similarly, in *Re Canadian Red Cross Society, supra*, Blair J. (as he then was) expressly affirmed the court's jurisdiction to approve a sale of assets in the course of a CCAA proceeding before a plan of arrangement had been approved by creditors. *Re Canadian Red Cross Society, supra, at paras. 43, 45.*

[38] Similarly, in *PSINet Limited, supra*, the court approved a going concern sale in a CCAA proceeding where no plan was presented to creditors and a substantial portion of the debtor's Canadian assets were to be sold. Farley J. noted as follows:

[If the sale was not approved,] there would be a liquidation scenario ensuing which would realize far less than this going concern sale (which appears to me to have involved a transparent process with appropriate exposure designed to maximize the proceeds), thus impacting upon the rest of the creditors, especially as to the unsecured, together with the material enlarging of the unsecured claims by the disruption claims of approximately 8,600 customers (who will be materially disadvantaged by an interrupted transition) plus the job losses for approximately 200 employees. *Re PSINet Limited, supra, at para. 3.*

[39] In *Re Stelco Inc., supra*, in 2004, Farley J. again addressed the issue of the feasibility of selling the operations as a going concern:

I would observe that usually it is the creditor side which wishes to terminate CCAA proceedings and that when the creditors threaten to take action, there is a realization that a liquidation scenario will not only have a negative effect upon a CCAA applicant, but also upon its workforce. Hence, the CCAA may be employed to provide stability during a period of necessary financial and operational restructuring – and if a restructuring of the “old company” is not

feasible, then there is the exploration of the feasibility of the sale of the operations/enterprise as a going concern (with continued employment) in whole or in part. *Re Stelco Inc, supra*, at para. 1.

[40] I accept these submissions as being general statements of the law in Ontario. The value of equity in an insolvent debtor is dubious, at best, and, in my view, it follows that the determining factor should not be whether the business continues under the debtor's stewardship or under a structure that recognizes a new equity structure. An equally important factor to consider is whether the case can be made to continue the business as a going concern.

[41] Counsel to the Applicants also referred to decisions from the courts in Quebec, Manitoba and Alberta which have similarly recognized the court's jurisdiction to approve a sale of assets during the course of a CCAA proceeding. *Re Boutique San Francisco Inc.* (2004), 7 C.B.R. (5<sup>th</sup>) 189 (Quebec S. C.), *Re Winnipeg Motor Express Inc.* (2008), 49 C.B.R. (5<sup>th</sup>) 302 (Man. Q.B.) at paras. 41, 44, and *Re Calpine Canada Energy Limited* (2007), 35 C.B.R. (5<sup>th</sup>) (Alta. Q.B.) at para. 75.

[42] Counsel to the Applicants also directed the court's attention to a recent decision of the British Columbia Court of Appeal which questioned whether the court should authorize the sale of substantially all of the debtor's assets where the debtor's plan "will simply propose that the net proceeds from the sale...be distributed to its creditors". In *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.* (2008), 46 C.B.R. (5<sup>th</sup>) 7 (B.C.C.A.) ("*Cliffs Over Maple Bay*"), the court was faced with a debtor who had no active business but who nonetheless sought to stave off its secured creditor indefinitely. The case did not involve any type of sale transaction but the Court of Appeal questioned whether a court should authorize the sale under the CCAA without requiring the matter to be voted upon by creditors.

[43] In addressing this matter, it appears to me that the British Columbia Court of Appeal focussed on whether the court should grant the requested relief and not on the question of whether a CCAA court has the jurisdiction to grant the requested relief.

[44] I do not disagree with the decision in *Cliffs Over Maple Bay*. However, it involved a situation where the debtor had no active business and did not have the support of its stakeholders. That is not the case with these Applicants.

[45] The *Cliffs Over Maple Bay* decision has recently been the subject of further comment by the British Columbia Court of Appeal in *Asset Engineering L.P. v. Forest and Marine Financial Limited Partnership* (2009) B.C.C.A. 319.

[46] At paragraphs 24 - 26 of the *Forest and Marine* decision, Newbury J.A. stated:

24. In *Cliffs Over Maple Bay*, the debtor company was a real estate developer whose one project had failed. The company had been dormant for some time. It applied for CCAA protection but described its proposal for restructuring in vague terms that amounted essentially to a plan to "secure sufficient funds" to complete the stalled project (Para. 34). This court, per Tysoe J.A., ruled that although the

Act can apply to single-project companies, its purposes are unlikely to be engaged in such instances, since mortgage priorities are fully straight forward and there will be little incentive for senior secured creditors to compromise their interests (Para. 36). Further, the Court stated, the granting of a stay under s. 11 is “not a free standing remedy that the court may grant whenever an insolvent company wishes to undertake a “restructuring”...Rather, s. 11 is ancillary to the fundamental purpose of the CCAA, and a stay of proceedings freezing the rights of creditors should only be granted in furtherance of the CCAA’s fundamental purpose”. That purpose has been described in *Meridian Developments Inc. v. Toronto Dominion Bank* (1984) 11 D.L.R. (4<sup>th</sup>) 576 (Alta. Q.B.):

The legislation is intended to have wide scope and allow a judge to make orders which will effectively maintain the status quo for a period while the insolvent company attempts to gain the approval of its creditors for a proposed arrangement which will enable the company to remain in operation for what is, hopefully, the future benefit of both the company and its creditors. [at 580]

25. The Court was not satisfied in *Cliffs Over Maple Bay* that the “restructuring” contemplated by the debtor would do anything other than distribute the net proceeds from the sale, winding up or liquidation of its business. The debtor had no intention of proposing a plan of arrangement, and its business would not continue following the execution of its proposal – thus it could not be said the purposes of the statute would be engaged...

26. In my view, however, the case at bar is quite different from *Cliffs Over Maple Bay*. Here, the main debtor, the Partnership, is at the centre of a complicated corporate group and carries on an active financing business that it hopes to save notwithstanding the current economic cycle. (The business itself which fills a “niche” in the market, has been carried on in one form or another since 1983.) The CCAA is appropriate for situations such as this where it is unknown whether the “restructuring” will ultimately take the form of a refinancing or will involve a reorganization of the corporate entity or entities and a true compromise of the rights of one or more parties. The “fundamental purpose” of the Act – to preserve the *status quo* while the debtor prepares a plan that will enable it to remain in business to the benefit of all concerned – will be furthered by granting a stay so that the means contemplated by the Act – a compromise or arrangement – can be developed, negotiated and voted on if necessary...

[47] It seems to me that the foregoing views expressed in *Forest and Marine* are not inconsistent with the views previously expressed by the courts in Ontario. The CCAA is intended to be flexible and must be given a broad and liberal interpretation to achieve its objectives and a sale by the debtor which preserves its business as a going concern is, in my view, consistent with those objectives.

[48] I therefore conclude that the court does have the jurisdiction to authorize a sale under the CCAA in the absence of a plan.

[49] I now turn to a consideration of whether it is appropriate, in this case, to approve this sales process. Counsel to the Applicants submits that the court should consider the following factors in determining whether to authorize a sale under the CCAA in the absence of a plan:

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole “economic community”?
- (c) do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
- (d) is there a better viable alternative?

I accept this submission.

[50] It is the position of the Applicants that Nortel’s proposed sale of the Business should be approved as this decision is to the benefit of stakeholders and no creditor is prejudiced. Further, counsel submits that in the absence of a sale, the prospects for the Business are a loss of competitiveness, a loss of value and a loss of jobs.

[51] Counsel to the Applicants summarized the facts in support of the argument that the Sale Transaction should be approved, namely:

- (a) Nortel has been working diligently for many months on a plan to reorganize its business;
- (b) in the exercise of its business judgment, Nortel has concluded that it cannot continue to operate the Business successfully within the CCAA framework;
- (c) unless a sale is undertaken at this time, the long-term viability of the Business will be in jeopardy;
- (d) the Sale Agreement continues the Business as a going concern, will save at least 2,500 jobs and constitutes the best and most valuable proposal for the Business;
- (e) the auction process will serve to ensure Nortel receives the highest possible value for the Business;
- (f) the sale of the Business at this time is in the best interests of Nortel and its stakeholders; and
- (g) the value of the Business is likely to decline over time.

[52] The objections of MatlinPatterson and the UCC have been considered. I am satisfied that the issues raised in these objections have been addressed in a satisfactory manner by the ruling of Judge Gross and no useful purpose would be served by adding additional comment.

[53] Counsel to the Applicants also emphasize that Nortel will return to court to seek approval of the most favourable transaction to emerge from the auction process and will aim to satisfy the elements established by the court for approval as set out in *Royal Bank v. Soundair* (1991), 7 C.B.R. (3<sup>rd</sup>) 1 (Ont. C.A.) at para. 16.

## **DISPOSITION**

[54] The Applicants are part of a complicated corporate group. They carry on an active international business. I have accepted that an important factor to consider in a CCAA process is whether the case can be made to continue the business as a going concern. I am satisfied having considered the factors referenced at [49], as well as the facts summarized at [51], that the Applicants have met this test. I am therefore satisfied that this motion should be granted.

[55] Accordingly, I approve the Bidding Procedures as described in the Riedel Affidavit and the Fourteenth Report of the Monitor, which procedures have been approved by the U.S. Court.

[56] I am also satisfied that the Sale Agreement should be approved and further that the Sale Agreement be approved and accepted for the purposes of conducting the “stalking horse” bidding process in accordance with the Bidding Procedures including, without limitation the Break-Up Fee and the Expense Reimbursement (as both terms are defined in the Sale Agreement).

[57] Further, I have also been satisfied that Appendix B to the Fourteenth Report contains information which is commercially sensitive, the dissemination of which could be detrimental to the stakeholders and, accordingly, I order that this document be sealed, pending further order of the court.

[58] In approving the Bidding Procedures, I have also taken into account that the auction will be conducted prior to the sale approval motion. This process is consistent with the practice of this court.

[59] Finally, it is the expectation of this court that the Monitor will continue to review ongoing issues in respect of the Bidding Procedures. The Bidding Procedures permit the Applicants to waive certain components of qualified bids without the consent of the UCC, the bondholder group and the Monitor. However, it is the expectation of this court that, if this situation arises, the Applicants will provide advance notice to the Monitor of its intention to do so.

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**MORAWETZ J.**

**Heard and Decided: June 29, 2009**

**Reasons Released: July 23, 2009**

**CITATION:** Re LJM Developments (Hamilton) Inc., 2026 ONSC 2114  
**COURT FILE NO.:** CL-2600000053-0000  
**DATE:** 20260904

**SUPERIOR COURT OF JUSTICE – ONTARIO [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 LJM  
DEVELOPMENTS (HAMILTON) INC.

**BEFORE:** Justice Jana Steele

**COUNSEL:** *Jeffrey Larry, Ryan Shah & Muhammad Ahsan*, for the Applicant LJM  
Developments (Hamilton) Inc.

*Ronald Flom*, for the Applicant (In Related Proceedings)

*Amir Khan*, for the Respondent, Wentworth Standard Condominium Corp. No. 664

*Raj Sahni & Jamie Ernst*, for the Monitor KPMG Inc.

*Adam Slavens*, for Tarion Warranty Corporation

*Jaspal Sangha*, for Colour of Painting Ltd.

*Varoujan Arman*, for Maple Terrazzo Marble & Tile Partnership

*Madhavi Gupta*, Appearing for Home Construction Regulatory Authority

*Steve Weisz*, for the City of Hamilton

*Robert Trifts*, for LJM Companies (except LJM Hamilton Inc.)

*James Dunn*, for SM Cladding Solutions Inc.

*Akhil Shah*, for the Carpenters Union

*Raphael Fernandes*, for Classic Tile Contractors Ltd.

*Liz Pillon, Philip Yang & Brittney Ketwaroo*, for Aviva and DIP Lender

*Fernando Souza*, for Speedy Electrical Contractors Ltd.

*Huda Laiq & Syed Tariq Izhar*, Self-Represented Respondents

**HEARD:** April 8, 2026

**ENDORSEMENT**

[1] The applicant, LJM Developments (Hamilton) Inc. (“LJM Hamilton” or the “Applicant”) seeks three orders:

- a. A Sales Process Order, which will enable the Applicant to sell unsold condominium units in its Project (defined below) without the need to return to court for an approval and vesting order in each instance as long as the purchase price for the unit exceeds a minimum threshold price (the unit’s “Target Price”);
- b. A Lien Claims Process Order, which sets out the liens claim process to be conducted by the Monitor to facilitate the evaluation of the quantum and validity of any construction lien claims related to the unsold condominium units; and
- c. An Ancillary Relief Order, which, among other things, extends the stay of proceedings, authorizes further advances under the second DIP facility, stays proceedings commenced by the Home Construction Regulatory Authority (the “HCRA”), seals the Target Price List, and approves Monitor reports.

[2] The motion first came before me on March 31, 2026. The motion was opposed by a number of parties, including certain construction lien claimants. At the March 31, 2026 attendance, I extended the stay to April 8, 2026. However, I adjourned the balance of the relief sought to April 8, 2026 and directed the parties to have discussions to attempt to resolve or narrow the issues among them. At the return of the motion, following discussions between the parties, the Applicants revised the terms of the orders sought.

[3] The Applicant’s revised proposed orders were not opposed, other than with regard to two issues:

- a. Certain construction lien claimants continue to seek access to the Target Price List, which the Applicant and Monitor ask the court to seal; and
- b. HCRA opposes the Applicant’s request to stay its proceedings.

[4] For the reasons set out below the three orders sought by the Applicant are granted, subject to a change to the Ancillary Order addressed in para. 21 below.

**Background**

[5] On February 10, 2026, the Court granted the Applicant protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) pursuant to an Initial Order.

[6] The Initial Order has been amended and restated twice, most recently on February 27, 2026, which extended the stay of proceedings to April 3, 2026 (which stay was extended to April 8, 2026 by order on March 31, 2026) and authorized the Applicant to draw up to \$1.6 million under the Second DIP Facility.

[7] Following the attendance on April 8, 2026, I granted the stay extension to July 3, 2026, with reasons to follow.

[8] The Applicant is a single purpose corporation, incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16, with its registered office located in Burlington, Ontario. It was established to develop a residential condominium development known as LJM Tower in Hamilton, Ontario (the “Project”). The Project is substantially complete. However, there are about 55 unsold condominium units in the Project (the “Unsold Units”). A number of construction and condominium fee liens have been registered on title to the Unsold Units.

[9] The Home Construction Regulatory Authority (“HCRA”) regulates new home vendors pursuant to the *New Home Construction Licensing Act, 2017* (“NHCLA”).

### **Analysis**

[10] As noted above, there is no opposition to the Orders sought, other than the two issues set out above. I will address the two issues first, then address why I am satisfied that the three orders should be granted.

*Are construction lien claimants entitled to receive a copy of the Target Price List?*

[11] The Applicant and the Monitor have established a Target Price List for the Unsold Units. It is confidential appendix A to the Monitor’s Second Report. It contains, among other things, a list of the 55 Unsold Units, the size of each unit, number of bedrooms and bathrooms, and the minimum target price in respect of each Unsold Unit. This price has been set as a floor for each Unit so that the Unsold Units can be sold to purchasers without the need to attend at Court to obtain an approval and vesting order in respect of each proposed unit sale, as long as the price exceeds the minimum for such unit.

[12] First, the Monitor seeks the sealing of Confidential Appendix A, which is appropriate. The sealing order that is sought satisfies the test set out in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.

[13] Confidential Appendix A contains highly sensitive commercial information. It is appropriate to seal the appendix to prevent any negative impact on the efforts of the Applicant to obtain the highest price possible for each Unsold Unit. There is no reasonable alternative measure to protect this highly confidential commercial information. As noted by the Applicant, if the pricing information was made public, it would compromise the Applicant’s ability to obtain the best price for the Unsold Units because it would, in effect, permit a potential purchaser to know the “minimum price” at which the Applicant would be prepared (with the Monitor’s approval) to sell each unit. No stakeholder will be materially prejudiced by the requested sealing order, which

applies to only a limited amount of information. Further the sealing order is time limited. It will cease to apply once all of the Unsold Units have been sold. I am satisfied that the benefits of the proposed sealing order outweigh the negative effects of the order.

[14] The Monitor supports the proposed sealing order. The Monitor recommends, at para. 17 of the Supplement to the Second Report: “In the Monitor’s view, the Target Price List must be guarded and disclosed under strict non-disclosure agreements, with a very narrow permitted use clause, and only in circumstances where recipients of the information have demonstrated to the satisfaction of the Applicant and the Monitor or this Court as to their actual need for such information.” I agree.

[15] Certain lien claimants seek either disclosure of the Target Price List, subject to execution of a non-disclosure agreement, or disclosure of the methodology and analysis underlying the Target Price List.

[16] The Monitor, in the Supplement to the Second Report, sets out the Monitor’s analysis of the Target Price List. In developing the Target Price List, the Applicant and the Monitor considered, among other things, prices obtained for condominium units that were sold before these proceedings commenced and sales data for comparable developments in the region. The Monitor engaged its Real Estate team, consisting of professionals with significant expertise, in developing the Target Price List. The Monitor’s Supplement to the Second Report indicates, at para. 14, that the Target Prices for each Unsold Unit “are reasonable given current market conditions and the implementation of the Unit Sales Process would be accretive to the Applicant’s estate and in the best interests of the Applicant’s stakeholders.” Further, as noted by the Monitor, the Monitor’s oversight will continue as the sale process unfolds. For each Unsold Unit, the Monitor will have to review any proposed sale.

[17] The Target Price List is a highly confidential document, which is now the subject of a sealing order. The sealing Order permits disclosure prior to the sale of all the Unsold Units in the event of further court order. The Monitor, as the “eyes and ears” of the Court can make recommendations to the court, when and if appropriate, and on what terms, the Target Price List may be disclosed to a given stakeholder. So far, no such recommendation has been made.

*Should the Court make an Order staying the HCRA Notice?*

[18] On or about November 28, 2025, the HCRA issued a Notice of Proposal to Renew/Revoke a Licence (“NOP”) to LJM Hamilton and seven related entities pursuant to s. 40(1)(a) of the *NHCLA*. The conclusion set out in the NOP is as follows:

For the reasons stated above, and further to the mandate of the HCRA under section 3(3) of the *NHCLA* to maintain a fair, safe and informed marketplace and promote the protection of the public interest, the Registrar maintains that the LJM Development Group are not entitled to be licenced under the *NHCLA*.

[19] LJM Hamilton, and the seven related entities, have appealed the NOP to the Licence Appeal Tribunal (the “LAT”). The hearing of the appeal by the LAT (the “LAT Appeal”) has not yet been scheduled.

[20] As a result of the appeal of the NOP, the HCRA Notice is presently stayed.

[21] LJM Hamilton seeks the application of the *CCAA* stay to the NOP and LAT Appeal and seeks specific language in the proposed Order to address this issue. While I accepted the language in the draft Order confirming that the NOP and the LAT Appeal are stayed as against the Applicant, I did not include the declaratory language in the Order requested by the Applicant. The proposed language would have the court declare that the Applicant’s HCRA license is active, and continues to be active during the stay period, provided the Applicant complies with certain conditions. It was unclear based on the materials why the additional declaratory language was required and whether the court could grant it. Specific submissions were not made on this language at the hearing. If the Applicant remains of the view that it is necessary and appropriate, a further attendance before the Court may be requested.

[22] Under s. 11.1(2) of the *CCAA* a stay of proceedings granted under the *CCAA* does not affect proceedings before a “regulatory body,”<sup>1</sup> other than the enforcement of a payment ordered by the regulatory body or the court.

[23] Section 11.1(3) of the *CCAA* sets out the exception to section 11.1(2):

On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court’s opinion

- a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and
- b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

[24] HCRA submits that the regulatory stay is not necessary because the LAT has sufficient discretion to account for the *CCAA* proceedings in deciding the appeal and can impose conditions. HCRA states that it would request that the LAT make a disposition with conditions allowing the Applicant to dispose of its remaining inventory provided that the Applicant remains subject to the supervision of the court and the Monitor. HCRA points out that the Applicant has full use of its

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<sup>1</sup> “regulatory body” is defined to mean “a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

license at present until the LAT issues a final decision and therefore submits that there is no imminent risk to the Applicant's licence.

[25] While there may be no imminent risk, the timing remains uncertain. I am concerned that without the stay a viable compromise or arrangement may not be possible. Any purchaser buying through the sale process needs certainty that it will acquire good title to the units. Among other things, continuation of the licence is vital to that process. There cannot be a risk that at any moment the Applicant's licence can be revoked. Purchasers of condo units will likely require more certainty.

[26] In *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645, Osborne J. (as he then was) granted a regulatory stay over the Applicants' cannabis licences, noting, at para. 49, that "[t]he cannabis licences of the Applicants are among their most valuable assets" and are "required to permit the Applicants to continue operating their underlying business." Similarly, the Applicants in the instant case need to maintain their HCRA licence to sell the Unsold Units.

[27] The Monitor noted in its Second Report: "The Monitor understands that if the HCRA license were to be cancelled or revoked, the Applicant would be unable to sell the Unsold Units, severely impairing its ability to operate as a going concern. In the Monitor's view, such an outcome would be counterproductive to the objectives of these CCAA Proceedings, as it would impede the Applicant's restructuring efforts, and hinder the Applicant's ability to maximize recoveries for the benefit of its creditors and other stakeholders."

[28] HCRA submits that it is contrary to the public interest for the court to order a stay under s. 11.1(3) of the CCAA because of the potential impact on other related companies subject to the LAT Appeal. HCRA acknowledges that the supervision of the Monitor and the Court would address concerns regarding financial responsibility insofar as it applies to the Applicant but not the other seven related entities. HCRA submits that if the stay were granted in respect of the Applicant, it would likely result in a stay for the other seven related companies because the LAT has decided to hear the appeals from the eight members of the LJM Group together.

[29] The order sought by the Applicant only stays the NOP and LAT Appeal in respect of the Applicant. It does not stay the order in respect of the related companies. I am satisfied that it is not contrary to the public interest for the court to order the requested stay in these CCAA proceedings, which applies only to the Applicant.

*Should the Other Relief sought be granted?*

[30] As set out above, there is no opposition to the other relief sought. The following addresses such other relief.

(i) *Proposed Unit Sale Process*

[31] Under the proposed Unit Sale Process, the Applicant, with the consent of the Monitor, can enter into agreements of purchase and sale in the form of a template, with any necessary minor

amendments (approved by the Monitor), and sell any Unsold Units provided that the total consideration in respect of a given unit is not less than the Target Price for that unit.

[32] I am satisfied that the Court should approve the Unit Sales Process. In the normal course, the Applicant would have to bring a motion for each transaction to sell an Unsold Unit. There are 55 Unsold Units, which would result in numerous court appearances and additional cost, reducing the net proceeds available to creditors.

[33] The Court has approved similar mechanisms in insolvency proceedings involving the sale of multiple units in a real estate development: See for example, *Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp.* CV-23-00710795-00CL (Order and Endorsement of Justice J. Dietrich, December 19, 2025), leave to appeal denied, 2026 ONCA 77; *KingSett Mortgage Corporation and Dorr Capital Corporation v. Vandyk – Uptown Limited et al*, CV-23-00709180-00CL (Order of Justice Myers, dated October 16, 2025).

[34] The CCAA confers broad powers on the Court to facilitate restructurings. As noted by Morawetz J. in *Nortel Networks Corporation (Re)*, 55 CBR (5<sup>th</sup>) 229, at para. 47, in concluding (at para. 48) that the court can authorize a sale under the CCAA where there is no plan: “[t]he CCAA is intended to be flexible and must be given a broad and liberal interpretation to achieve its objectives.” In *Nortel* the Court accepted, at para. 49, that the following factors should be considered by the court in determining whether to approve a sale:

- a. Is a sale transaction warranted at this time?
- b. Will the sale benefit the whole “economic community”?
- c. Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
- d. Is there a better viable alternative?

[35] In determining whether to approve a proposed sale process, the court will also consider the factors set out in s. 36(3) of the CCAA:

- a. Whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b. Whether the monitor approved the process leading to the proposed sale or disposition;
- c. Whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d. The extent to which the creditors were consulted;

- e. The effects of the proposed sale or disposition on the creditors and other interested parties; and
- f. Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[36] The Project is a 16-story building comprising 313 residential condominium units. As set out above, all have been sold but the 55 Unsold Units. Prior to these proceedings, the Applicant had engaged real estate brokers, including EXP Realty Inc., to market the condominium units. The Monitor's Second Report indicates its understanding that the Applicant intends to engage EXP Realty in respect of a number of Unsold Units given EXP Realty's familiarity with the Project. The Monitor supports the Applicant's ability to engage real estate brokers to sell the Unsold Units, as it would in the ordinary course. As noted in the Second Report, the Monitor intends to continue to assess the marketing and selling efforts of the brokers that are engaged to sell the Unsold Units.

[37] The Monitor supports the proposed Unit Sale Process. Among other things, it will facilitate an efficient sale process for the Unsold Units, and any proposed transactions will have to be approved by the Monitor and meet or exceed the applicable minimum price in the Target Price List.

[38] I am satisfied that the Unit Sale Process satisfies the *Nortel* criteria and the factors set out in section 36(3) of the CCAA. Among other things, the proposed Unit Sale Process will allow the Applicant to sell the Unsold Units in an efficient, cost effective, and uniform manner. The Monitor and Surety DIP Lender both support the proposed Unit Sale Process, and no one opposes the proposed process. As noted, the Unit Sale Process is designed to ensure that condo units are sold for at least the Target Price.

(ii) *Construction Lien Claims Process*

[39] The Applicants seek approval of a Lien Claims Process, which sets out the proposed claim process for lien claimants.

[40] The court has routinely granted claims procedure orders: *Re Toys "R" us (Canada) Ltd.*, 2018 ONSC 609, at para. 8. The CCAA gives the court a broad, discretionary jurisdiction, recognizing the need for practicality in fast-moving insolvency matters: *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, at para. 48.

[41] The Court has the jurisdiction under s. 11 of the CCAA to make any order it considers appropriate in the circumstances. Under s. 12 of the CCAA, "[t]he court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement." Together these provisions give the court the jurisdiction to make an order approving a process for the solicitation and determination of claims.

[42] The Order sought is similar to past Orders made by the Court in respect of a process to address construction lien claims. The proposed Order contemplates that each person claiming a construction lien shall file their proof of lien claim within 30 days of the Order, and, if applicable,

dispute the Monitor's determination of their claim within 30 days of the determination having been made.

[43] As noted above, there are several construction lien claimants. However, there is no objection to the proposed Lien Claims Process Order (as revised).

[44] The Lien Claims Process proposed is consistent with the purposes of a claims process in an insolvency. In particular, it should be "efficient and flexible" so that the "claims of creditors can be established expeditiously with a view to distribution of available assets as soon as reasonably possible:" *Computershare Trust Company of Canada v. Cookstown Holdings Ltd.*, 2014 ONSC 685, at para. 13.

[45] Further, as noted by the Applicant, the proposed Lien Claims Process will minimize litigation and conserve judicial resources.

[46] I am satisfied that the proposed Lien Claims Process should be approved.

(iii) *Extension of Stay of Proceedings*

[47] As noted above, following the attendance on April 8, 2026, I granted an order extending the stay to July 3, 2026, with reasons to follow.

[48] Section 11.02(2) of the *CCAA* confers on the Court broad jurisdiction to extend a stay of proceedings "for any period that the court considers necessary." Section 11.02(3) of the *CCAA* provides that the court shall not grant the order extending the stay unless the court is satisfied that circumstances exist that make the order appropriate, and the applicant has acted and continues to act in good faith and with due diligence.

[49] I am satisfied that the stay extension should be granted. The Project is near completion, and the Applicant needs to realize on the remaining Unsold Units. The Applicant has worked with the Monitor in good faith and with due diligence to develop the Unit Sale Process and the Construction Lien Claims Process. The Applicant has also started work on the remaining construction steps for the Project.

(iv) *Authorization to draw up to \$2.5 million under the Second DIP Facility*

[50] The Applicant seeks authorization to draw up to the maximum under the Second DIP Facility (\$2.5 million).

[51] Section 11.2(4) of the *CCAA* sets out the factors for the court to consider in determining whether to make an order for interim financing:

- a. the period during which the company is expected to be subject to proceedings under this Act;

- b. how the company's business and financial affairs are to be managed during the proceedings;
- c. whether the company's management has the confidence of its major creditors;
- d. whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- e. the nature and value of the company's property;
- f. whether any creditor would be materially prejudiced as a result of the security or charge; and
- g. the monitor's report, if any.

[52] I am satisfied that the increase to the Second DIP Facility should be authorized. Among other things, the Monitor supports this relief, and the requested borrowing is required to meet the Applicant's obligations as set out in the revised cash flow forecast. The Applicant does not have any other reasonable means of satisfying its near-term obligations while the Applicant tries to sell the Unsold Units in accordance with the Unit Sales Process.

(v) *Approval of Monitor's Reports and Activities*

[53] The Monitor seeks approval of its First Report, Second Report and Supplement to the Second Report and the activities set out therein.

[54] The Court in *Re Target Canada Co.*, 2015 ONSC 7574, at paras. 22-23, identified several good policy and practical reasons for court officers to routinely seek court approval of their reports and activities.

[55] The Monitor has conducted its activities in accordance with the Second ARIO. I am satisfied that the activities of the Monitor set out in the reports were reasonable and undertaken in good faith and should be approved.

[56] Three Orders to go in the form signed by me today, with immediate effect.

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Justice Jana Steele

**Date:** April 9, 2026



Court File No. CV-12-9667-00-  
CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

HONOURABLE MR. )

FRIDAY, THE 30<sup>th</sup>

JUSTICE MORAWETZ )

DAY OF MARCH, 2012

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 SINO-FOREST CORPORATION

**SALE PROCESS ORDER**

THIS APPLICATION, made by Sino-Forest Corporation (the "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of W. Judson Martin sworn March 30, 2012 and the Exhibits thereto and the Pre-Filing Report of the Proposed Monitor, FTI Consulting Canada Inc. ("FTI"), and on hearing the submissions of counsel for the Applicant, the Applicant's board of directors, FTI, the Ad Hoc Noteholders, and no one else appearing for any other party,

**DEFINED TERMS**

1. THIS COURT ORDERS that unless otherwise defined in this Order, all capitalized terms used in this Order shall have the meanings ascribed to such terms in the Initial Order granted in these proceedings on March 30, 2012.

**SERVICE**

2. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**SALE PROCESS**

3. THIS COURT ORDERS AND DIRECTS that sale process procedures substantially in the form attached hereto as Schedule "A", together with all schedules, appendices and exhibits thereto (collectively, the "Sale Process Procedures"), are hereby approved and the Applicant, the Monitor and the Financial Advisor are authorized and directed to perform each of their obligations thereunder and to do all things reasonably necessary to perform their obligations thereunder.

4. THIS COURT ORDERS that each of the Monitor and the Financial Advisor, and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process Procedures, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor or the Financial Advisor, as applicable, in performing its obligations under the Sale Process Procedures (as determined by this Court).

**GENERAL**

5. THIS COURT ORDERS that the Applicant and the Monitor may from time to time apply to this Court for advice and directions with respect to any matter relating to this Order and the Sale Process Procedures and their powers and duties in relation thereto.

6. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and are 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.

*[Handwritten signature]*

*NB*

7. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

*NB*

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

APR 2 - 2012

*NB*

## Schedule "A"

### SINO-FOREST CORPORATION

#### Sale Process Procedures

On March 30, 2012, Sino-Forest Corporation ("SFC") obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* ("CCAA") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

On March 30, 2012, SFC also obtained a sale process order (the "**Sale Process Order**") under the CCAA from the Court approving the sale solicitation process (the "**Sale Process**") and the procedures to be followed with respect to the Sale Process set forth herein (the "**Sale Process Procedures**") to determine whether a Successful Bid (as defined herein) can be obtained.

Set forth below are the Sale Process Procedures to be followed with respect to the Sale Process to be undertaken to seek a Successful Bid, and if there is a Successful Bid, to complete the transactions contemplated by the Successful Bid.

All dollar amounts expressed herein, unless otherwise noted, are in United States currency. Unless otherwise indicated herein any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day. Capitalized terms used herein but not otherwise defined herein have the meanings ascribed thereto in Schedule "A".

#### Solicitation Process

(1) The Sale Process Procedures set forth herein describe, among other things, (a) the Assets available for sale, (b) the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning SFC, the Assets, and the SFC Business, (c) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, (d) the receipt and negotiation of bids received, (e) the ultimate selection of a Successful Bidder, and (f) the approval thereof by the Court (collectively, the "**Solicitation Process**").

(2) SFC, in consultation with the Financial Advisor, and with oversight by the Monitor, shall conduct the Sale Process Procedures and the Solicitation Process as outlined herein. Certain stages of the Sale Process Procedures may be conducted by SFC simultaneously to the preparation, solicitation or confirmation of a CCAA Plan by SFC. In addition, the closing of any sale may involve additional intermediate steps or transactions to facilitate consummation of such sale, including additional Court filings. If there is disagreement or clarification required as to the interpretation or application of these Sale Process Procedures, the Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor, SFC or the Initial Consenting Noteholders with a hearing on no less than three (3) Business Days notice.

### CCAA Plan

(3) The sale of the Assets to the Successful Bidder, if any, will be completed pursuant to a plan of compromise and arrangement pursuant to the CCAA, such plan to be in form and substance acceptable to SFC and the Initial Consenting Noteholders (the “**CCAA Plan**”).

### “As Is, Where Is”

(4) The sale of the Assets will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Financial Advisor, the Monitor, SFC or any of their respective agents, estates, advisors, professionals or otherwise, except to the extent set forth in a definitive purchase agreement with a Successful Bidder.

### Free Of Any And All Claims And Interests

(5) The sale of the Assets to the Successful Bidder, if any, will result in all of the rights, title and interests of SFC in and to the Assets to be acquired being transferred free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the “**Claims and Interests**”) pursuant to an approval and vesting order made by the Court. Contemporaneously with such approval and vesting order being made, all such Claims and Interests shall attach to the net proceeds of the sale of such property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant definitive purchase agreement with a Successful Bidder.

### Publication Notice

(6) Within seven (7) days of the date the Sale Process Order is granted, (i) the Monitor shall cause a notice of the Sale Process to be published in The Globe and Mail and The Wall Street Journal, which notice shall be in substantially similar form as attached hereto as Schedule “B”; and (ii) SFC shall issue a press release regarding the Sale Process through Canada Newswire, designating dissemination in Canada and major financial centers in the United States.

(7) [Intentionally deleted]

### Solicitation of Interest

(8) As soon as reasonably practicable after the granting of the Sale Process Order, SFC, in consultation with the Financial Advisor and the Monitor, will prepare (if not already prepared) an initial offering summary (the “**Teaser Letter**”) notifying prospective purchasers of the Assets (both strategic and financial parties (including existing shareholders and noteholders of SFC and parties proposed by the Noteholder Advisors)) of the existence of the Solicitation Process and inviting prospective purchasers to express their interest in making an offer for the Assets.

### Participation Requirements

(9) Unless otherwise ordered by the Court, or otherwise determined by SFC (in consultation with the Monitor), in order to participate in the Solicitation Process, each interested person (a **"Potential Bidder"**) must deliver to the Financial Advisor with a copy to the Monitor and the other parties listed on Schedule "C" at the addresses specified in Schedule "C" (by email), prior to the distribution of any confidential information by the Financial Advisor to a Potential Bidder, the following documents (the **"Participation Materials"**):

- (a) an executed Confidentiality Agreement;
- (b) a specific indication of anticipated sources of capital for the Potential Bidder and, if requested by SFC, in consultation with the Monitor and the Financial Advisor, preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow SFC, in consultation with the Monitor and the Financial Advisor, to make, in its reasonable business judgment, a determination as to the Potential Bidder's financial and other capabilities to consummate an acquisition of the Assets; and
- (c) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and, if requested by SFC, in consultation with the Monitor and the Financial Advisor, full disclosure of the direct and indirect owners of the Potential Bidder and their principals.

(10) If it is determined by SFC, after consultation with the Monitor and the Financial Advisor, that a Potential Bidder (i) has *bona fide* interest in an acquisition of the Assets; (ii) has the financial capability to consummate such a transaction based on such Potential Bidder's financial information; and (iii) has provided all of the Participation Materials, such Potential Bidder will be deemed a **"Phase 1 Qualified Bidder"**. The Financial Advisor will promptly notify the Potential Bidder of such determination, and will inform the Noteholder Advisors of any such determination with respect to a Potential Bidder.

(11) The determination as to whether a Potential Bidder is a Phase 1 Qualified Bidder will be made as promptly as practicable after a Potential Bidder delivers all of the Participation Materials.

(12) If there is no Phase 1 Qualified Bidder by the end of Phase 1, SFC shall, in consultation with the Monitor, the Financial Advisor and the Noteholder Advisors, (a) forthwith terminate the Sale Process; and (b) as soon as reasonably practicable take such steps (including bringing motions, holding meetings of creditors, etc.) as may be necessary to complete the Restructuring Transaction.

(13) If the Sale Process has been terminated as provided in section 12, the Financial Advisor shall notify each Potential Bidder that submitted Participation Materials that the Sale Process has been terminated.

### Confidential Information Memorandum and Due Diligence for Phase 1 Qualified Bidders

(14) The Confidential Information Memorandum will be made available by the Financial Advisor to Phase 1 Qualified Bidders as soon as practicable after the determination that such party is a Phase 1 Qualified Bidder.

(15) During Phase 1, SFC shall afford each Phase 1 Qualified Bidder (including, for greater certainty, its potential lenders or financiers and its financial and legal advisors, provided however, that such persons have also signed a Confidentiality Agreement (or are representatives for whom the relevant Phase 1 Qualified Bidder is responsible under its Confidentiality Agreement)) access to such due diligence materials and information relating to the Assets and the SFC Business as SFC, in its reasonable business judgment, in consultation with the Monitor and the Financial Advisor, deems appropriate, and which may include discussions with the Financial Advisor and SFC's legal advisors. Unless otherwise determined by SFC, in consultation with the Monitor and the Financial Advisor, Phase 1 Qualified Bidders will not be provided access to the Data Room.

(16) The Monitor, the Financial Advisor and SFC make no representation or warranty as to the information in the materials provided, except, in the case of SFC, to the extent contemplated under any definitive purchase agreement with a Successful Bidder. A copy of the Confidential Information Memorandum shall be provided to the Noteholder Advisors pursuant to their confidentiality agreements with SFC.

### Phase 1

#### Seeking Letters of Intent by the Phase 1 Qualified Bidders

(17) For the period following the date of the Sale Process Order until the Phase 1 Bid Deadline (as defined below) ("**Phase 1**"), SFC and the Financial Advisor, under the supervision of the Monitor, will solicit non-binding letters of intent from Phase 1 Qualified Bidder to acquire the Assets from SFC pursuant to a CCAA Plan (each, a "**Letter of Intent**").

(18) A Phase 1 Qualified Bidder that desires to continue to participate in the Solicitation Process shall deliver written copies of a Letter of Intent to SFC through the Financial Advisor with a copy to the Monitor and the other parties listed on Schedule "C" at the addresses specified in Schedule "C" (by email) so as to be received by all such parties not later than 5:00 p.m. (Toronto time) on June 28, 2012 (the "**Phase 1 Bid Deadline**").

#### Qualified Letters of Intent

(19) A Letter of Intent will be considered a Qualified Letter of Intent only if it is submitted on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder and contains the following information (a "**Qualified Letter of Intent**"):

- (a) a statement that the Phase 1 Qualified Bidder is offering to acquire the Assets from SFC pursuant to a CCAA Plan for consideration not less than the Qualified Consideration (a "**Sale Proposal**");

- (b) a specific indication of (i) the purchase price range expressed in United States dollars (including details of liabilities to be assumed by the Phase 1 Qualified Bidder and the projected net proceeds to be received by SFC on closing); (ii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the proposed transaction and any related contingencies, as applicable); (iii) an outline of the Phase 1 Qualified Bidder's plans for the SFC Business for the first 12 months after completion of the transaction; (iv) the Phase 1 Qualified Bidder's expectations regarding the continued employment of the employees of the direct and indirect subsidiaries of SFC; (v) the general terms of any new agreements or arrangements to be entered into with any current or former employees of SFC and its direct and indirect subsidiaries; (vi) any anticipated corporate, shareholder, internal, regulatory or other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; (vii) a description of any additional due diligence required or desired to be conducted during Phase 2; (viii) any conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and (ix) any other terms or conditions of the Sale Proposal which the Phase 1 Qualified Bidder believes are material to the transaction; and
- (c) such other information reasonably requested by SFC, in consultation with the Monitor and the Financial Advisor.

(20) SFC, in consultation with the Monitor and the Financial Advisor, will assess each such Letter of Intent received by the Phase 1 Bid Deadline, if any, and determine whether it is a Qualified Letter of Intent. Such determination will be made as promptly as practicable but no later than seven (7) Business Days after the receipt of any such Letter of Intent. For the purpose of such consultations and assessments, SFC, the Financial Advisor and/or the Monitor may seek clarification from any Phase 1 Qualified Bidder with respect to the terms of such Letter of Intent.

(21) Notwithstanding section 19, in respect of any non-compliant Letter of Intent, SFC may, in consultation with the Monitor and the Financial Advisor, waive compliance with any one or more of the requirements specified herein and deem such non-compliant Letter of Intent to be a Qualified Letter of Intent; provided that, SFC shall not, without the consent of the Monitor and the Initial Consenting Noteholders, waive the requirement that the consideration offered by the Phase 1 Qualified Bidder must be not less than the Qualified Consideration. A Phase 1 Qualified Bidder shall only be deemed a "**Qualified Bidder**" if it submits a Qualified Letter of Intent.

(22) If SFC (a) has received one or more Qualified Letters of Intent prior to the Phase 1 Bid Deadline; and (b) in consultation with the Monitor and the Financial Advisor, determines that there is a reasonable prospect of obtaining a Qualified Bid, the Sale Process will continue until the Phase 2 Bid Deadline in accordance with these Sale Process Procedures ("**Phase 2**").

(23) Subject to the terms of the Sale Process Order, SFC shall, in consultation with the Monitor, the Financial Advisor and the Noteholder Advisors, terminate the Sale Process at the end of Phase 1 if:

- (a) no Qualified Letter of Intent was received by SFC by the Phase 1 Bid Deadline;
- (b) SFC, in consultation with the Monitor and the Financial Advisor, determines that there is no reasonable prospect that any Qualified Letter of Intent received will result in a Qualified Bid that is likely to be consummated; or
- (c) SFC, in consultation with the Monitor and the Financial Advisor, determines that continuing with the Sale Process is not in the best interests of SFC.

(24) If the Sale Process is terminated by SFC in accordance with section 23, or pursuant to an order of the Court, SFC shall, as soon as reasonably practicable, take such steps (including bringing motions, holding meetings of creditors, etc.) as may be necessary to complete the Restructuring Transaction.

(25) If the Sale Process has been terminated as provided in section 23, the Financial Advisor shall notify each Phase 1 Qualified Bidder that submitted a Letter of Intent that the Sale Process has been terminated.

## Phase 2

### Seeking Qualified Bids by Qualified Bidders

(26) A Qualified Bidder wishing to continue to participate in the Solicitation Process must deliver written copies of a Qualified Bid to SFC through the Financial Advisor with a copy to the Monitor and the other parties listed on Schedule "C" at the addresses specified in Schedule "C" (by email) so as to be received by all such parties not later than 5:00 pm (Toronto time) on September 26, 2012 (the "**Phase 2 Bid Deadline**").

(27) During Phase 2, SFC shall afford each Qualified Bidder (including, for greater certainty, its potential lenders or financiers and its financial and legal advisors, provided, however, that such persons have also signed a Confidentiality Agreement (or are representatives for whom the relevant Qualified Bidder is responsible under its Confidentiality Agreement)) access to such due diligence materials and information relating to the Assets and the SFC Business as SFC, in its reasonable business judgment, in consultation with the Monitor and the Financial Advisor, deems appropriate, including, as appropriate, meetings with senior management of SFC, access to the Data Room and site tours.

(28) The Monitor, the Financial Advisor and SFC make no representation or warranty as to the information in the materials provided, except, in the case of SFC, to the extent contemplated under any definitive purchase agreement with a Successful Bidder.

### Qualified Bids

(29) SFC shall make available to each Qualified Bidder a form of purchase agreement developed by SFC in consultation with the Monitor and the Financial Advisor (the "**Form of Purchase Agreement**") no later than 20 days after the Phase 1 Bid Deadline.

(30) A bid submitted by a Qualified Bidder will be considered a Qualified Bid only if it complies with all of the following (a "Qualified Bid"):

- (a) it includes a letter stating that the Qualified Bidder's bid is irrevocable until the earlier of (x) the approval by the Court of the Successful Bid by the Successful Bidder and (y) the Outside Date, provided that if such Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the earlier of (i) the closing of the sale of the Assets to the Successful Bidder and (ii) the Outside Date;
- (b) it includes a duly authorized and executed purchase agreement substantially in the form of the Form of Purchase Agreement, including the purchase price, expressed in United States dollars, the net proceeds to be paid to SFC on closing, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto as well as copies of such materials marked to show those amendments and modifications to the Form of Purchase Agreement and such ancillary agreements;
- (c) it provides for the acquisition of the Assets from SFC pursuant to a CCAA Plan for consideration not less than the Qualified Consideration;
- (d) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing to consummate the proposed transaction, including the sources and uses of capital, or other evidence satisfactory to SFC, in consultation with the Monitor and the Financial Advisor that will allow SFC, in consultation with the Monitor and the Financial Advisor, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the bid;
- (e) it is not conditioned on (i) the outcome of unperformed due diligence by or on behalf of the Qualified Bidder and/or (ii) obtaining any financing or capital;
- (f) it outlines any anticipated regulatory and other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (g) it provides a timeline to closing that is no later than the Outside Date, with critical milestones;
- (h) it fully discloses the identity of each entity that is bidding or that will be sponsoring, participating or beneficially interested in the bid, and the complete terms of any such sponsorship, participation or beneficial interest;
- (i) it includes an acknowledgement and representation that the Qualified Bidder (i) has relied solely upon its own independent review, investigation and/or inspection of the documents and/or the assets to be acquired and liabilities to be assumed in making its bid; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express

or implied (by operation of law or otherwise), regarding the Assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase agreement; (iii) is a sophisticated party capable of making its own assessments in respect of making its bid; and (iv) has had the benefit of independent legal advice in connection with its bid;

- (j) it includes evidence, in form and substance reasonably satisfactory to SFC, in consultation with the Monitor and the Financial Advisor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (k) it is accompanied by a deposit in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to SFC and the Monitor, payable to the order of the Monitor, in trust, of US\$10 million (or any other currency acceptable to the Monitor) to be held and dealt with in accordance with these Sale Process Procedures (the "**Deposit**");
- (l) if the Qualified Bidder is an entity newly formed for the purpose of the transaction or otherwise has limited net assets and/or operating history, the bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to SFC, in consultation with the Monitor and the Financial Advisor;
- (m) it contains any other information reasonably requested by SFC, in consultation with the Monitor and the Financial Advisor; and
- (n) it is received by the Phase 2 Bid Deadline and otherwise in accordance with section 26; provided, however, that SFC reserves the right following the Phase 2 Bid Deadline to conduct negotiations with each Qualified Bidder with respect to the terms and provisions of a bid and any qualifications or modifications that SFC, in consultation with the Monitor and the Financial Advisor, may seek in order for such bid to be classified as a Qualified Bid.

(31) Notwithstanding section 30, in respect of any non-compliant bid, SFC may, with the consent of the Monitor, waive compliance with any one or more of the requirements specified herein; provided, however, if such consent is not obtained, SFC may seek authority from the Court to waive compliance with any one or more of the requirements specified herein, provided that, in no circumstances shall the requirements in Sections (30)(a) (only with respect to the requirement that if such Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the earlier of (i) the closing of the sale of the Assets to the Successful Bidder and (ii) the Outside Date), (30)(c), (30)(d), (30)(g), (30)(k) and (30)(n) be waived, without the consent of the Monitor and the Initial Consenting Noteholders.

(32) SFC will, in consultation with the Monitor, the Financial Advisor and the Noteholder Advisors, review each bid received by the Phase 2 Bid Deadline, if any, as set forth herein, and

determine whether it is a Qualified Bid. Such determination will be made as promptly as practicable but no later than seven (7) Business Days after the receipt of any such bid.

#### **No Qualified Bids**

(33) If at any point during the Sale Process, SFC determines, in consultation with the Monitor, the Financial Advisor and the Noteholder Advisors, that a Qualified Bid will not be obtained by the Phase 2 Bid Deadline, SFC shall (a) forthwith terminate the Sale Process; and (b) as soon as reasonably practicable take such steps (including bringing motions, holding meetings of creditors, etc.) as may be necessary to complete the Restructuring Transaction.

(34) If the Sale Process has been terminated as provided in section 33, the Financial Advisor shall notify each Qualified Bidder that the Sale Process has been terminated.

#### **Evaluation and Selection of Successful Bid**

(35) Evaluation criteria with respect to a Qualified Bid may include, but are not limited to items such as: (a) the purchase price (including assumed liabilities and other obligations to be performed or assumed by the bidder) and the net cash proceeds provided by such bid; (b) the claims likely to be created by such bid in relation to other bids; (c) the counterparties to, and the parties beneficially interested in, the transaction; (d) the proposed revisions to the Form of Purchase Agreement and the terms of the transaction documents (any such revisions to be acceptable to SFC in consultation with the Monitor and the Financial Advisor); (e) other factors affecting the speed, certainty and value of the transaction (including any regulatory or other approvals required to close the transaction); (f) the bidder's plans for the SFC Business for the first 12 months after completion of the transaction; (g) the bidder's expectations regarding the continued employment of the employees of the direct and indirect subsidiaries of SFC; (h) the terms of any new agreements or arrangements to be entered into with any current or former employees of the SFC and its direct and indirect subsidiaries; and (i) the likelihood and timing of consummating the transaction.

(36) If one or more Qualified Bids is received, SFC will, after consultation with the Monitor and the Financial Advisor, identify the highest or otherwise most favourable Qualified Bid (the "**Selected Superior Offer**") by October 5, 2012. SFC shall then finalize a definitive agreement in respect of the Selected Superior Offer by October 17, 2012, conditional upon approval of the Court, a vote of affected creditors (if not already obtained) and on the Selected Superior Offer closing on or before the Outside Date.

(37) Once a definitive agreement has been finalized and settled in respect of the Selected Superior Offer and approved by order of the Court in accordance with the provisions hereof, the Selected Superior Offer shall be the "**Successful Bid**" hereunder and the Qualified Bidder who made the Selected Superior Offer shall be the "**Successful Bidder**" hereunder.

(38) All Qualified Bids (other than the Successful Bid) shall be deemed rejected by SFC on and as of the date of approval of the Successful Bid by order of the Court.

(39) Notwithstanding anything contained herein, SFC, in consultation with the Monitor, the Financial Advisor and the Noteholder Advisors, may terminate the Sale Process at any time and

may reject one or more Qualified Bids, if SFC, in consultation with the Monitor and the Financial Advisor, determines that the Sale Process or any such Qualified Bid is not in the best interests of SFC.

(40) If the Sale Process is terminated by SFC in accordance with section 39, SFC shall as soon as reasonably practicable take such steps (including bringing motions, holding meetings of creditors, etc.) as may be necessary to complete the Restructuring Transaction.

(41) If the Sale Process has been terminated as provided in section 39, the Financial Advisor shall notify each Qualified Bidder that the Sale Process has been terminated.

### Approval Motion

(42) The hearing to, among other things, (a) approve the Successful Bid; (b) authorize SFC's entering into of agreements with respect to the Successful Bid; and (c) authorize SFC's completing the transaction contemplated thereby including, without limitation, seeking an order directing that a meeting of creditors of SFC be held to consider the CCAA Plan to implement the Successful Bid (the "**Approval Motion**") will be held on a date to be scheduled by the Court upon application by SFC. Subject to SFC's covenants under the Support Agreement, the Approval Motion may be adjourned or rescheduled by SFC with the consent of the Monitor, without further notice by an announcement of the adjourned date at the Approval Motion. If the Successful Bid is not, or, in the reasonable determination of SFC, in consultation with the Monitor and the Financial Advisor, is not likely to be, consummated on or before Outside Date, then SFC shall, and any other party in interest may, seek direction from the Court in regard to the Sale Process, after notice and a hearing, subject to the respective rights of SFC and all parties in interest, including the Initial Consenting Noteholders, to be heard regarding such relief.

(43) If following approval of the Successful Bid by the Court, the Successful Bidder fails to consummate the transaction for any reason, SFC shall as soon as reasonably practicable after such failure take such steps (including bringing motions, holding meetings of creditors, etc.) as may be necessary to complete the Restructuring Transaction.

### Deposits

(44) All Deposits shall be retained by the Monitor and invested in an interest bearing (if available) trust account. If there is a Successful Bid, the Deposit (plus any accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion shall be non-refundable and applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction. The Deposits (plus any accrued interest) of Qualified Bidders not selected as the Successful Bidder shall be returned to such bidders within five (5) Business Days of the date upon which the Successful Bid is approved by the Court. If there is no Successful Bid, all Deposits (plus any accrued interest) shall be returned to the bidders within five (5) Business Days of the date upon which the Sale Process is terminated in accordance with these Sale Process Procedures.

(45) If a Successful Bidder breaches its obligations to close the transaction subsequent to the approval by the Court of the Successful Bid, it shall forfeit the Deposit, provided however, that

the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that SFC has against such breaching entity.

#### **Approvals**

(46) For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement the Successful Bid.

#### **Amendments/Extensions of Time**

(47) There shall be no amendments to this Sale Process, including, for greater certainty the process and procedures set out herein, without the prior written consent of the Monitor and the Initial Consenting Noteholders unless otherwise ordered by the Court upon application and appropriate notice, including to the Initial Consenting Noteholders, the Noteholder Advisors and each of the parties listed in Schedule "C". Dates or deadlines set forth herein may be amended or extended by SFC with the prior written consent of the Monitor and the Initial Consenting Noteholders, unless otherwise ordered by the Court upon application and appropriate notice, including to the Initial Consenting Noteholders, the Noteholder Advisors and each of the parties listed in Schedule "C". Notwithstanding the foregoing, SFC may, in consultation with the Monitor and the Financial Advisor, decrease the length of time of Phase 1, and increase or decrease the length of time of Phase 2; provided that in no case shall the number of days in Phases 1 and 2 exceed 180 days in the aggregate.

#### **Consultation**

(48) SFC will keep the Noteholder Advisors generally informed regarding the status of the Sale Process and, if determined advisable by SFC in its discretion, may, in consultation with the Monitor and the Financial Advisor, provide the Noteholder Advisors with an opportunity for the Noteholder Advisors to participate in material discussions with interested parties in relation to the Sale Process.

#### **Initial Consenting Noteholder Consent**

(49) For the purposes of these Sale Process Procedures, any matter requiring agreement, waiver, consent or approval of the consent of the Initial Consenting Noteholders shall require the agreement, waiver, consent or approval, as the case may be, of Initial Consenting Noteholders representing at least 66 2/3% of the aggregate principal amount of Notes held by the Initial Consenting Noteholders. SFC shall be entitled to rely on written confirmation from the Noteholder Advisors that the Initial Consenting Noteholders representing at least the foregoing percentage of the aggregate principal amount of Notes held by the Initial Consenting Noteholders have agreed, waived, consented to or approved a particular matter.

#### **Further Orders**

(50) At any time during the Sales Process, SFC or the Monitor may, following consultation with the Financial Advisor and the Noteholder Advisors, and upon notice to the Initial Consenting Noteholders, the Noteholder Advisors and each of the parties listed in Schedule "C",

apply to the Court for advice and directions with respect to the discharge of their respective powers and duties hereunder following a hearing. For greater certainty, nothing herein provides any Qualified Bidder with any rights other than as expressly set forth herein.

## SCHEDULE "A"

### DEFINED TERMS

In these Sale Process Procedures:

**"Approval Motion"** has the meaning ascribed thereto in section 42;

**"Assets"** means all of SFC's right, title and interest in and to its properties, assets and rights of every kind and description (including, without limitation, all restricted and unrestricted cash, contracts, real property, receivables or other debt owed to SFC, intellectual property, the SFC name and all related marks, all of its shares in its subsidiaries (including, without limitation, all of the shares of the Direct Subsidiaries) and all intercompany debt owed to SFC by any of its subsidiaries), other than the Excluded Assets;

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario and Hong Kong, Special Administrative Region of the People's Republic of China;

**"CCAA"** has the meaning ascribed thereto in the recitals to these Sale Process Procedures;

**"CCAA Plan"** has the meaning ascribed thereto in section 3;

**"Claims and Interest"** has the meaning ascribed thereto in section 5;

**"Confidential Information Memorandum"** means the memorandum relating to the SFC Business and the opportunity to acquire the Assets to be distributed to Phase 1 Qualified Bidders as part of the Sale Process;

**"Confidentiality Agreement"** means an executed confidentiality agreement in favor of SFC, in form and substance satisfactory to the Monitor, the Financial Advisor and SFC, which shall inure to the benefit of SFC and any purchaser of the Assets (including a purchaser pursuant to the Restructuring Transaction);

**"Consenting Noteholders"** has the meaning ascribed thereto in the Support Agreement;

**"Court"** has the meaning ascribed thereto in the recitals to these Sale Process Procedures;

**"Data Room"** means the virtual data room maintained by SFC through the facilities of Merrill Corporation.

**"Deposit"** has the meaning ascribed thereto in section 30(k);

**"Direct Subsidiaries"** means Sino-Panel Holdings Limited, Sino-Global Holdings Inc., Sino-Panel Corporation, Sino-Wood Partners, Sino-Capital Global Inc., Sino-Forest International (Barbados) Corporation and Sino-Forest Resources Inc. (BVI);

**“Excluded Assets”** means cash equal to \$20 million, the claims of SFC to be transferred to the Litigation Trust and any other assets and rights of SFC that are not transferred to the Successful Bidder pursuant to the Successful Bid as determined by SFC and the Successful Bidder and identified in the CCAA Plan;

**“Financial Advisor”** means Houlihan Lokey;

**“Form of Purchase Agreement”** has the meaning ascribed thereto in section 29;

**“Initial Consenting Noteholders”** has the meaning ascribed thereto in the Support Agreement;

**“Initial Order”** has the meaning ascribed thereto in the recitals to these Sale Process Procedures;

**“Letter of Intent”** has the meaning ascribed thereto in section 17;

**“Litigation Trust”** means the litigation trust to be established pursuant to the CCAA Plan pursuant to which all claims of SFC and its subsidiaries against any Person shall be transferred on the implementation date of the CCAA Plan.

**“Meeting Order”** means the order of the Court establishing the procedures for voting on the CCAA Plan, which shall be in form and substance satisfactory to SFC and the Noteholder Advisors, each acting reasonably, as such order may be amended at any time prior to the time the sale transaction that forms part of a Successful Bid is implemented with the consent of SFC and the Noteholder Advisors.

**“Monitor”** means FTI Consulting Canada Inc., in its capacity as monitor pursuant to the Initial Order and not in its personal or corporate capacity;

**“NI 51-102”** has the meaning ascribed thereto in section **Error! Reference source not found.;**

**“Noteholder Advisors”** means Goodmans LLP, Hogan Lovells LLP, Moelis & Company LLC and Moelis & Company Asia Limited, in their capacity as advisors to the Initial Consenting Noteholders;

**“Notes”** means the 5% Convertible Senior Notes due 2013 issued by SFC, the 10.25% Guaranteed Senior Notes due 2014 issued by SFC, the 4.25% Convertible Senior Notes due 2016 issued by SFC and the 6.25% Guaranteed Senior Notes due 2017 issued by SFC;

**“Outside Date”** means November 30, 2012, as the same may be amended with the consent of the Initial Consenting Noteholders.

**“Participation Materials”** has the meaning ascribed thereto in section 9;

**“Person”** means any individual, sole proprietorship, limited or unlimited liability corporation, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, body corporate, joint venture, trust, pension fund, union, governmental entity, and a natural person including in such person’s capacity as trustee, heir, beneficiary, executor, administrator or other legal representative;

“**Phase 1**” has the meaning ascribed thereto in section 17;

“**Phase 1 Bid Deadline**” has the meaning ascribed thereto in section 18;

“**Phase 1 Qualified Bidder**” has the meaning ascribed thereto in section 10;

“**Phase 2**” has the meaning ascribed thereto in section 22;

“**Phase 2 Bid Deadline**” has the meaning ascribed thereto in section 26;

“**Potential Bidder**” has the meaning ascribed thereto in section 9;

“**Qualified Bid**” has the meaning ascribed thereto in section 30;

“**Qualified Bidder**” has the meaning ascribed thereto in section 21;

“**Qualified Consideration**” means cash consideration payable to SFC (or such other form of consideration as may be acceptable to SFC and the Initial Consenting Noteholders) in an amount equal to 85% of the aggregate principal amount of the Notes, plus all accrued and unpaid interest on Notes, at the regular rates provided therefor pursuant to the Note indentures, up to and including March 30, 2012;

“**Qualified Letter of Intent**” has the meaning ascribed thereto in section 19;

“**Restructuring Transaction**” means the restructuring transaction contemplated by the Support Agreement in the event a Successful Bid is not obtained and/or SFC does not consummate the sale transaction;

“**Sale Process**” has the meaning ascribed thereto in the recitals to these Sale Process Procedures;

“**Sale Process Order**” has the meaning ascribed thereto in the recitals to these Sale Process Procedures;

“**Sale Process Procedures**” has the meaning ascribed thereto the recitals to these Sale Process Procedures;

“**Sale Proposal**” has the meaning ascribed thereto in section 19(a);

“**Selected Superior Offer**” has the meaning ascribed thereto in section 36;

“**SFC**” has the meaning ascribed thereto in the recitals to these Sale Process Procedures;

“**SFC Business**” means the business carried on by SFC and its direct and indirect subsidiaries;

“**Solicitation Process**” has the meaning ascribed thereto in section 1;

“**Successful Bid**” has the meaning ascribed thereto in section 37;

“**Successful Bidder**” has the meaning ascribed thereto in section 37;

**“Support Agreement”** means the support agreement dated March 30, 2012, between SFC and the Initial Consenting Noteholders and the other Consenting Noteholders, as amended from time to time;

**“Teaser Letter”** has the meaning ascribed thereto in section 8; and

**“Voting Deadline”** means the deadline for voting on the CCAA Plan, as established by the Meeting Order.

## **SCHEDULE "B"**

### **FORM OF NOTICE OF SALE PROCESS**

TAKE NOTICE THAT pursuant to an order (the "Order") of the Ontario Superior Court of Justice (the "Court") issued on March 30, 2012 under the *Companies' Creditors Arrangement Act*, Sino-Forest Corporation obtained Court approval to conduct a sale solicitation process (the "Sale Process").

Pursuant to the Sale Process, Sino-Forest Corporation's financial advisor, Houlihan Lokey, is soliciting proposals from prospective strategic and financial parties to acquire substantially all of the property, assets and business of Sino-Forest Corporation and its subsidiaries, other than certain excluded assets. Sino-Forest Corporation is a leading commercial forest plantation operator in China. Its principal businesses include the ownership and management of tree plantations, the sale of standing timber and wood logs, and the complementary manufacturing of downstream engineered-wood products.

Interested parties can obtain additional information by contacting Houlihan Lokey at:

Houlihan Lokey  
Attention: David Putnam  
Telephone: +852.3551.2300  
Email: [dputnam@hl.com](mailto:dputnam@hl.com)

**SCHEDULE "C"**

**NOTICE PARTIES**

1.	<p>Sino-Forest Corporation Room 3815-29 38/F, Sun Hung Kai Centre 30 Harbour Road, Wanchai, Hong Kong</p> <p>Attention: Mr. Judson Martin, Chief Executive Officer Email: <a href="mailto:1atson-martin@sinoforest.com">1atson-martin@sinoforest.com</a></p>
2.	<p>Houlihan Lokey 2101 Two Exchange Square, 8 Connaught Place Central, Hong Kong</p> <p>Attention: David Putnam Email: <a href="mailto:dputnam@hl.com">dputnam@hl.com</a></p>
3.	<p>Bennett Jones LLP One First Canadian Place, Suite 3400, P.O. Box 130 Toronto, Ontario M5X 1A4</p> <p>Attention: Kevin J. Zych and Raj S. Sahni Email: <a href="mailto:zychk@bennettjones.com">zychk@bennettjones.com</a> and <a href="mailto:sahnir@bennettjones.com">sahnir@bennettjones.com</a></p>
4.	<p>FTI Consulting Canada Inc. TD Waterhouse Tower 79 Wellington Street West, Suite 2010, P.O. Box 104 Toronto, Ontario M5K 1G8</p> <p>Attention: Greg Watson Email: <a href="mailto:greg.watson@fticonsulting.com">greg.watson@fticonsulting.com</a></p>

**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 OR COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION**  
Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**SALES PROCESS ORDER**

**BENNETT JONES LLP**

One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

Rob Staley (LSUC #27115J)

Kevin Zych (LSUC #33129T)

Derek Bell (LSUC #43420J)

Jonathan Bell (LSUC #55457P)

Tel: 416-863-1200

Fax: 416-863-1716

Lawyers for the Applicant



Court File No. CL-26-00000052-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 12<sup>TH</sup>  
JUSTICE CAVANAGH )  
DAY OF MARCH, 2026

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

B E T W E E N:

THENTIA GLOBAL SYSTEMS INC., THENTIA CANADA INC., THENTIA  
USA INC., THENTIA UK LIMITED, THENTIA PAYMENTS CANADA INC.,  
THENTIA CONSULTING SERVICES CANADA INC., THENTIA QUEBEC  
INC., THENTIA PAYMENTS USA INC., THENTIA CONSULTING  
SERVICES USA INC., and THENTIA EUROPE LIMITED

Applicants

**SALE AND INVESTMENT SOLICITATION PROCESS APPROVAL ORDER**

**THIS MOTION**, made by Grant Thornton Limited (“**GTL**”), in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of Thentia Global Systems Inc., Thentia Canada Inc., Thentia USA Inc., Thentia UK Limited, Thentia Payments Canada Inc., Thentia Consulting Services Canada Inc., Thentia Quebec Inc., Thentia Payments USA Inc., Thentia Consulting Services USA Inc., and Thentia Europe Limited (the “**Applicants**”), for an order, *inter alia*, (i) approving the sale and investment solicitation process (“**SISP**”) attached hereto as **Schedule “A”**; and (ii) authorizing and directing the Monitor to conduct the SISP was heard this day at 330 University Avenue, Toronto, Ontario by judicial videoconference via Zoom.

**ON READING** the first report of the Monitor dated February 17, 2026 (the “**First Report**”), the Supplement to the First Report (the “**Supplemental First Report**”) dated March 9, 2026, and on hearing the submissions of counsel for the Monitor, the Applicants, Espresso Capital Ltd. and Espresso Venture Debt (together, the “**DIP Lender**”), LP, TTA Investments LLC, First Ascent Ventures NR II LP and First Ascent Ventures II LLP, no one else appearing for any other

party although duly served as appears from the affidavit of service of Armando Ranjbar, sworn March 11, 2026, filed,

### **DEFINED TERMS**

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them under the SISP.

### **SERVICE**

2. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

### **APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS**

3. **THIS COURT ORDERS** that the SISP is hereby approved.

4. **THIS COURT ORDERS** that each of the Monitor and the Sales Advisor (as defined below) are hereby authorized and directed to implement the SISP pursuant to the terms thereof. The Monitor and the Sales Advisor are hereby authorized and directed to perform their respective obligations and to do all things as are reasonably necessary to give full effect to the SISP and carry out their respective obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SISP.

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

6. **THIS COURT ORDERS** that the Monitor and the Sales Advisor, and their respective counsel, be and are hereby authorized, but not obligated, to serve or distribute this SISP Order, any other materials, orders, communication, correspondence, or other information as may be necessary or desirable in connection with the SISP, to any Person (as defined in the Initial Order dated February 9, 2026, as amended and restated on February 19, 2026 and as further amended

and restated) or interested party that the Monitor and the Sales Advisor consider appropriate. For greater certainty, any such distribution, communication, or correspondence shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **RETENTION OF SALES ADVISOR**

7. **THIS COURT ORDERS** that the Monitor is hereby authorized to engage Doane Grant Thornton Corporate Finance Inc. as the sales advisor (the “**Sales Advisor**”) pursuant to the terms of the engagement letter between the Monitor and the Sales Advisor dated January 20, 2026 (the “**Engagement Letter**”), an unredacted copy of which is appended as Confidential Appendix “2” to the First Report (the “**Confidential Appendix**”), and the Monitor is authorized and directed to do all things as are reasonably necessary to conduct and give effect to the Engagement Letter and carry out their obligations thereunder, including payment of amounts due to be paid pursuant to the terms of the Engagement Letter.

#### **SEALING**

8. **THIS COURT ORDERS** that the Confidential Appendices to the First Report and Supplemental First Report, which contain an unredacted copy of the Engagement Letter and the sales advisor comparison chart, shall be sealed and kept confidential pending further Order of this Court, and shall not form part of the public record.

#### **PROTECTION OF PERSONAL INFORMATION**

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, in accordance with the terms of the SISIP, the Monitor and the Sales Advisor are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their advisors, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Applicants’ records pertaining to its past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Property (“**Sale**”) or investment in the Business (“**Investment**”), or a combination thereof. Each Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale or Investment, and

if it does not complete a Sale or Investment, shall return all such information to the Monitor and the Sales Advisor, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Property or Business acquired pursuant to the Sale, or invested in pursuant to the Investment, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Monitor and the Applicants, and otherwise ensure that all other personal information in their possession is destroyed.

## **GENERAL**

10. **THIS COURT ORDERS** that any interested party (including the Monitor, the Sales Advisor, or the DIP Lender) may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory, or administrative body having jurisdiction in Canada, the United States, or elsewhere, to give effect to this Order and to assist the Monitor and its 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 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 Monitor and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that 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.

13. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.



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## Sale and Investment Solicitation Process

**Thentia Global Systems Inc., Thentia Canada Inc., Thentia USA Inc., Thentia UK Limited, Thentia Payments Canada Inc., Thentia Consulting Services Canada Inc., Thentia Quebec Inc., Thentia Payments USA Inc., Thentia Consulting Services USA Inc. and Thentia Europe Limited**

### Introduction

1. On February 9, 2026, Thentia Global Systems Inc. and its subsidiaries, Thentia Canada Inc., Thentia USA Inc., Thentia UK Limited, Thentia Payments Canada Inc., Thentia Consulting Services Canada Inc., Thentia Quebec Inc., Thentia Payments USA Inc., Thentia Consulting Services USA Inc. and Thentia Europe Limited (collectively, the “**Applicants**”) were granted an initial order (as amended or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
2. On March 12, 2026, the Court issued an order (the “**SISP Approval Order**”) approving and authorizing the Monitor to commence a sale and investment solicitation process (“**SISP**”) in accordance with the terms of these bidding procedures.
3. According to the SISP Approval Order, Grant Thornton Limited, in its capacity as the Court-appointed Monitor of the Applicants (in such capacity, the “**Monitor**”), with the assistance of Doane Grant Thornton Corporate Finance Inc. (the “**Sales Advisor**”) will conduct the SISP in consultation with the Applicant’s stakeholders, including Espresso Capital Ltd. and Espresso Venture Debt LP (together, the “**DIP Lender**”), and other relevant stakeholders, as determined by the Monitor. The Monitor will provide all qualified interested parties with an opportunity to participate in the SISP.

### Opportunity

4. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Applicants’ assets and business operations (the “**Opportunity**”). The Opportunity may include one or more of a restructuring, recapitalization or other form or reorganization of the business and affairs of the Applicants as a going concern or a sale of all, substantially all or one or more components of the Applicants’ assets (the “**Property**”) and business operations (the “**Business**”) as a going concern or otherwise. The SISP will solicit bids for the Property and Business, with the highest and/or best bid being the “**Successful Bid**”, as determined in accordance with the terms and conditions contained herein.
5. Except to the extent otherwise set forth in a definitive sale or investment agreement with the party submitting the Successful Bid (the “**Successful Bidder**”), any sale of the Property or investment in the Business will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Sales Advisor, the Applicants, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.

## Timeline

6. The following table sets out the key milestones under the SISP:

<b>Milestone</b>	<b>Deadline</b>
Deadline to Publish Notice of SISP and deliver Teaser Letter and NDA to Known Potential Bidders	As soon as practicable following the issuance of the SISP Order
Phase 1 Due Diligence Period	March 16, 2026 to May 15, 2026
Insider Bid Notice Deadline	March 2, 2026
Phase 1 Bid Deadline	May 15, 2026
Phase 2 Due Diligence Period	May 16, 2026 to June 12, 2026
Phase 2 Bid Deadline	June 12, 2026
Auction Date	June 17, 2026
Sale Approval Motion	No later than June 26, 2026, subject to the availability of the Court
Closing	July 10, 2026

7. Subject to any order of the Court, the dates set out in the SISP may be extended by the Monitor in consultation with the DIP Lender and other relevant stakeholders, as determined by the Monitor.

### **Solicitation of Interest: Notice of the SISP**

8. As soon as reasonably practicable, but in any event by no later than March 16, 2026:

- (a) the Monitor, in consultation with the Sales Advisor, the DIP Lender and other relevant stakeholders, as determined by the Monitor, will prepare a list of potential bidders, including: (i) parties that have previously expressed an interest in the Opportunity; (ii) parties that have approached the Applicants or the Monitor indicating an interest in the

Opportunity; and (iii) local and international strategic and financial parties who the Monitor and the Sales Advisor, in consultation with the DIP Lender and other relevant stakeholders, as determined by the Monitor, believe may be interested in purchasing all or part of the Business and Property or investing in the Applicants pursuant to the SISP, in each case whether or not such party has submitted a letter of intent or similar document (collectively, “**Known Potential Bidders**”);

- (b) the Monitor will arrange for a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Sale Advisor, considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition), and any other newspaper or journal as the Monitor or the Sales Advisor, consider appropriate, if any; and
  - (c) the Monitor and the Sales Advisor, in consultation with the DIP Lender and other relevant stakeholders, as determined by the Monitor, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement (“**NDA**”).
9. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than March 17, 2026 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

#### **Potential Bidders and Due Diligence Materials**

10. Any party who wishes to participate in the SISP (a “**Potential Bidder**”) must provide to the Monitor (a) an NDA executed by it, and which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof, and (b) a letter setting forth (i) the identity of the Potential Bidder, (ii) the contact information for such Potential Bidder, and (iii) disclosure of the direct and indirect principals of the Potential Bidder, including whether any current director, officer, employee, contractor, or shareholder (such persons being “**Insiders**”) are direct or indirect principals or otherwise working with such Potential Bidder.
11. Any Insider seeking or intending to submit or participate in the submission of a bid (an “**Insider Bid**”) shall give written notice of its intention to submit or participate in an Insider Bid to the Monitor (an “**Insider Bid Notice**”) by no later than seven days after the commencement of the Phase 1 Due Diligence Period (the “**Insider Bid Notice Deadline**”). Upon delivery of an Insider Bid Notice to the Monitor, such Insider shall be excluded from receipt of any disclosure from the Monitor or the Sales Advisor in respect of updates on the SISP or any consultation or consent rights provided for herein and shall be excluded from assisting the Monitor and the Sales Advisor with the conduct of the SISP or from any discussions with Potential Bidders.
12. The Monitor and the Sales Advisor shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered an NDA to the Monitor and provided information as to their financial wherewithal to close a transaction such access to due diligence material and information relating to the Property and Business as the Monitor deems appropriate. Due diligence shall include access to a confidential electronic data room (the “**Data Room**”) containing information about the Applicants and the Business. The Data Room shall be made available as soon as practicable and may include standard

financial information, management presentations and material contracts, together with other materials which a Potential Bidder may reasonably request and as to which the Monitor may consider appropriate. Managers of the Applicants, in all cases with the Monitor and Sales Advisor present, will be available for management meetings. Following the completion of Phase 1 of the SISP, additional information may be added to the Data Room to enable Phase 1 Qualified Bidders (as defined herein) to complete any confirmatory due diligence required in connection with submitting a Phase 2 Bid (as defined herein). The Monitor may establish or cause the Applicants to establish separate Data Rooms if the Monitor reasonably determines that doing so would further the Applicants' and any Potential Bidders' compliance with applicable laws, or would prevent significant harm to the Business, including the distribution of commercially sensitive competitive information to competitors. The Monitor may also limit the access of any Potential Bidder to any confidential information in the Data Room where the Monitor reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business or its value. Without limiting the generality of the foregoing, the Monitor intends to limit access to especially sensitive proprietary information, including source code, by providing supervised access to physical documents in Phase 2 of the SISP.

13. The Monitor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Applicants, the Sales Advisor, or the Monitor will be permitted to furnish any information relating to the Property or Business to any person other than to Potential Bidders and, for greater certainty, none of the Applicants, the Sales Advisor, the Monitor, or their advisors, employees, consultants, managers, directors or officer shall provide any information about the Opportunity to any person, with the exception of the Teaser Letter, unless such person executes the NDA. None of the Applicants, the Sales Advisor or the Monitor is responsible for, or will bear any liability with respect to, any information obtained by any party in connection with the sale of the Property or the Business, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Applicants, the Monitor or the Sales Advisor.
14. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Monitor on behalf of the Applicants.

#### **Phase 1: Conditional Offers**

15. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or their Property or Business (each a "**Phase 1 Bidder**") shall submit a non-binding offer (a "**Phase 1 Bid**") to the Monitor and the Sales Advisor at the address specified in Schedule "1" hereto (including by e-mail), so as to be received by them not later than **5:00 PM (Eastern Time) on May 15, 2026** or as may be modified by the Monitor in accordance with this SISP (the "**Phase 1 Bid Deadline**").
16. A Phase 1 Bid shall be deemed to be a "**Phase 1 Qualified Bid**" if it satisfies the following criteria, as determined by the Monitor in accordance with the terms of this SISP:
  - (a) the Phase 1 Bid (either individually or in combination with other bids that make up one bid) must be either an offer to:

- (i) acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”); and/or
  - (ii) make an investment in, restructure, reorganize or refinance the Business or the Applicants (an “**Investment Proposal**”);
- (b) the Phase 1 Bid shall be non-binding, and may be conditional upon further due diligence to be conducted during Phase 2 of the SISF and, for certainty, the Phase 1 Bid may be amended following the completion of such diligence;
- (c) the Phase 1 Bid shall be consistent with the terms and conditions established by the Monitor herein and communicated to Potential Bidders;
- (d) the Phase 1 Bid shall include a non-binding letter of intent (“**LOI**”) indicating the purchase price, investment amount and any other key economic terms expressed in Canadian or American dollars (the “**Purchase Price**”), together with other items and concepts required by this Section 16;
- (e) the Phase 1 Bid shall fully disclose the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such Phase 1 Bid and shall disclose whether any Insider is participating in such Phase 1 Bid or is otherwise a director, officer, shareholder, beneficial owner, contractor, or employee, or otherwise involved in such Phase 1 Bidder;
- (f) the Phase 1 Bid shall provide such financial disclosure and credit quality support or enhancement that allows the Monitor, in consultation with the Sales Advisor, to make a reasonable determination as to the Potential Bidder’s financial and other capabilities to consummate a transaction;
- (g) for a Sale Proposal, the LOI shall include:
  - (i) the Purchase Price in Canadian or American dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Phase 1 Bidder and key assumptions supporting the valuation;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a specific indication of the financial capability of the Phase 1 Bidder and the expected structure and financing of the transaction, including a whether the Phase 1 Bidder anticipates using a “reverse vesting” structure and the extraordinary considerations giving rise to the justification for such structure;
  - (iv) a description of the conditions and approvals required to complete the closing of the transaction, including any remaining diligence to be completed;
  - (v) a description of those liabilities and obligations (including operating liabilities) which the Phase 1 Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and

- (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Bidder believes are material to the transaction;
  - (h) for an Investment Proposal, the LOI shall include:
    - (i) a description of how the Phase 1 Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;
    - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian or American dollars;
    - (iii) the underlying assumptions regarding the pro forma capital structure;
    - (iv) a specific indication of the sources of capital for the Phase 1 Bidder and the structure and financing of the transaction;
    - (v) a description of the conditions and approvals required to complete the closing of the transaction, including any remaining diligence to be completed;
    - (vi) a description of those liabilities and obligations (including operating liabilities) which the Phase 1 Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
    - (vii) any other terms or conditions of the Investment Proposal; and
  - (i) the Phase 1 Bid shall be received by no later than the Phase 1 Bid Deadline.
17. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the Sales Advisor the DIP Lender, and other relevant stakeholders, as determined by the Monitor, will assess the Phase 1 Bids received and seek clarification with respect to any of the terms or conditions of such Phase 1 Bids and/or request and negotiate one or more amendments to such Phase 1 Bids prior to determining whether a Phase 1 Bid constitutes a Phase 1 Qualified Bid. The Monitor, in consultation with the Sales Advisor and the DIP Lender, and other relevant stakeholders, as determined by the Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Phase 1 Bids to be a Phase 1 Qualified Bid.
18. Subject to paragraph 19, following such process, the Monitor, in consultation with the Applicants and the DIP Lender, shall confirm which Phase 1 Bids constitute Phase 1 Qualified Bids. No Phase 1 Bid received shall be deemed not to be a Phase 1 Qualified Bid without the approval of the Monitor. Only Phase 1 Bidders whose Phase 1 Bids have been designated as Phase 1 Qualified Bids (“**Phase 1 Qualified Bidders**”) are eligible to participate in Phase 2 of the SISF. The Monitor shall notify each Phase 1 Bidder in writing as to whether its Phase 1 Bid constitutes a Phase 1 Qualified Bid within two (2) business days of the Phase 1 Bid Deadline, or at such later time as the Monitor deems appropriate.
19. Notwithstanding any other provision in this SISF, no Phase 1 Bid shall be designated as a Phase 1 Qualified Bid if the aggregate value of such Phase 1 Bid is less than the aggregate amount of obligations in priority to and owing to the DIP Lender (including for certainty all indebtedness

under (a) the Administration Charge, as defined in the Initial Order, as amended, (b) the DIP facility, (c) all receiver's certificates issued by Grant Thornton Limited, in its capacity as receiver, provided that such determination shall solely relate to amounts allocated to the property of TGS, (d) the KERP Charge, (e) the Fourth Amended and Restated Loan Facility and Security Agreement between the Applicants, as borrowers, and the DIP Lender, as amended, and (f) the Junior Loan Facility and Security Agreement between the Applicants and the DIP Lender dated January 25, 2024 (collectively, the "**Priority Obligations**") without the prior written consent of the DIP Lender, which consent may be withheld in the DIP Lender's sole discretion.

20. The Monitor may, in consultation with the Sales Advisor, the DIP Lender, and other relevant stakeholders, as determined by the Monitor, aggregate separate Phase 1 Bids from unaffiliated Phase 1 Bidders to create one Phase 1 Qualified Bid.
21. If the Monitor, in consultation with the Sales Advisor and the DIP Lender and other relevant stakeholders, as determined by the Monitor, is not satisfied with the number or terms of the Phase 1 Qualified Bids, or if no Phase 1 Qualified Bids are received, the Monitor may, with the approval of the DIP Lender, extend the Phase 1 Bid Deadline or seek Court approval of an amendment to the SISP or terminate the SISP and seek the Court's advise and direction.
22. If the Monitor, in consultation with the Sales Advisor and the DIP Lender, determines that only one Phase 1 Bid constitutes a Phase 1 Qualified Bid, the Monitor may dispense with Phase 2 of the SISP, designate the party that submitted the Phase 1 Qualified Bid as the Successful Bidder in the SISP, and work exclusively with such Successful Bidder to complete any required diligence, satisfy any conditions, and obtain Court approval of the Successful Bid.

## **Phase 2: Formal Offers and Removal of Conditions**

23. Any Phase 1 Qualified Bidder that wishes to participate in Phase 2 of the SISP (each a "**Phase 2 Bidder**") must submit a binding offer with respect to its Sale Proposal or Investment Proposal (a "**Phase 2 Bid**") to the Monitor at the address specified in Schedule "1" hereto (including by e-mail), so as to be received by them not later than **5:00 PM (Eastern Time) on June 12, 2026** or as may be modified by the Monitor in accordance with this SISP (the "**Phase 2 Bid Deadline**").
24. The Phase 2 Bid shall be: (a) in the case of a Sale Proposal, in the form of the template agreement of purchase and sale provided in the Data Room, along with a marked version showing edits to the original form of the template provided; or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Monitor, in consultation with the DIP Lender and other relevant stakeholders, as determined by the Monitor.
25. A Phase 2 Bid shall be deemed to be a "**Phase 2 Qualified Bid**" if it satisfies all of the criteria of a Phase 1 Qualified Bid, together with the following additional criteria, as determined by the Monitor in accordance with the terms of this SISP:
  - (a) the Phase 2 Bid shall be a binding Sale Proposal or Investment Proposal, accompanied by a letter confirming that the Phase 2 Bid: (i) may be accepted by the Monitor, on behalf of the Applicants by countersigning the Phase 2 Bid; and (ii) is irrevocable and capable of acceptance until two business days after the date of closing of the Successful Bid (the "**Irrevocability Date**");

- (b) the Phase 2 Bid shall be not subject to any financing condition;
- (c) the Phase 2 Bid shall be accompanied by a deposit equal to at least 10% of the Purchase Price offered by the Phase 2 Bidder, in the case of a Sale Proposal, or at least 10% of the total new investment contemplated in the bid, in the case of an Investment Proposal (the “**Deposit**”), along with acknowledgements that: (i) the Deposit will be retained by the Monitor and deposited in a non-interest bearing trust account; (ii) the Deposit is non-refundable, subject to approval of the Successful Bid by the Court, and if the Phase 2 Bidder is not selected as the Successful Bidder, the Deposit will be refunded as soon as practicable following the Irrevocability Date; (iii) if the Phase 2 Bidder is selected as the Successful Bidder, the Deposit will be applied to the Purchase Price at the closing of the transaction contemplated by the Successful Bid;
- (d) the Phase 2 Bid shall be unconditional, other than a condition requiring the issuance of an order of the Court approving the Phase 2 Bid in form and substance satisfactory to the Phase 2 Bidder (the “**Approval Order**”) and, if necessary, any necessary regulatory approvals (“**Regulatory Approvals**”);
- (e) the Phase 2 Bid shall contain or identify the key terms and provisions to be included in any Approval Order, including whether such order will be a “reverse vesting order”;
- (f) the Phase 2 Bid shall not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- (g) for a Sale Proposal, the Phase 2 Bid shall include:
  - (i) the Purchase Price and a description of any non-cash consideration, including details of any liabilities to be assumed by the Phase 2 Bidder and key assumptions supporting the valuation, and including any contemplated Purchase Price adjustments;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a specific indication of the financial capability of the Phase 2 Bidder and the expected structure and financing of the transaction;
  - (iv) confirmation that there are no conditions or approvals required to complete the closing of the transaction, except the issuance of the Approval Order and any Regulatory Approvals;
  - (v) a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
  - (vi) any other terms or conditions of the Sale Proposal that the Phase 2 Bidder believes are material to the transaction;

- (h) for an Investment Proposal, the Phase 2 Bid shall include:
  - (i) a description of how the Phase 2 Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;
  - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian or American dollars;
  - (iii) the underlying assumptions regarding the pro forma capital structure;
  - (iv) a specific indication of the sources of capital for the Phase 2 Bidder and the structure and financing of the transaction;
  - (v) a description of the conditions and approvals required to complete the closing of the transaction, including any remaining diligence to be completed;
  - (vi) a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
  - (vii) any other terms or conditions of the Investment Proposal;
- (i) the Phase 2 Bid includes acknowledgements and representations of the Phase 2 Bidder that the Phase 2 Bidder:
  - (i) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its offer;
  - (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and
  - (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Monitor on behalf of the Applicants;
- (j) the Phase 2 Bid shall contemplate and reasonably demonstrate a capacity to consummate a closing of the transaction set out therein on or before June 26, 2026, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing and in any event no later than July 10, 2026; and
- (k) the Phase 2 Bid shall have been received by the Phase 2 Bid Deadline.

### **Evaluation of Competing Bids; Selection of Successful Bid**

26. Following the Phase 2 Bid Deadline, the Monitor, in consultation with the Sales Advisor and the DIP Lender and other relevant stakeholders, as determined by the Monitor, will assess the Phase 2 Bids received and seek clarification with respect to any of the terms or conditions of such Phase 2 Bids and/or request and negotiate one or more amendments to such Phase 2 Bids prior to determining whether a Phase 2 Bid should be considered a Phase 2 Qualified Bid. The Monitor, in consultation with the Sales Advisor and the DIP Lender and other relevant stakeholders, as determined by the Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Phase 2 Bid to be a Phase 2 Qualified Bid.
27. The Monitor may, in consultation with the Sales Advisor, the DIP Lender, and other relevant stakeholders, as determined by the Monitor, aggregate separate Phase 2 Bids from unaffiliated Phase 1 Bidders to create one Phase 2 Qualified Bid.
28. Subject to paragraph 29, the Monitor, in consultation with the Sales Advisor, the DIP Lender and other relevant stakeholders, as determined by the Monitor, will: (a) review and evaluate each Phase 2 Qualified Bid; (b) identify and designate the highest or otherwise best as the Successful Bid; and (c) identify the next highest or otherwise second best bid (the “**Back-Up Bid**”, and the Phase 2 Bidder making such Back-Up Bid, the “**Back-Up Bidder**”), in each case pursuant to the paragraphs below. Any Successful Bid and Back-Up Bid will be subject to approval by the Court. Phase 2 Qualified Bids will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the net value provided by such bid, (ii) the identity, circumstances and ability of the bidder to successfully complete such transactions, (iii) the proposed transaction documents, (iv) factors affecting the speed, certainty and value of the transaction, (v) the assets included or excluded from the bid, (vi) any related restructuring costs, and (vii) the likelihood and timing of consummating such transaction.
29. Notwithstanding any other provision in this SISP, no Phase 2 Bid shall be designated as a Phase 2 Qualified Bid if the aggregate value of such Phase 2 Bid is less than the Priority Obligations, without the prior written consent of the DIP Lender, which consent may be withheld in the DIP Lender's sole discretion.
30. If the Monitor, in consultation with the Sales Advisor and the DIP Lender and other relevant stakeholders, as determined by the Monitor, is not satisfied with the number or terms of the Phase 2 Qualified Bids, or if no Phase 2 Qualified Bids are received, the Monitor may, with the approval of the DIP Lender, extend the Phase 2 Bid Deadline or seek Court approval of an amendment to the SISP or terminate the SISP and seek the Court’s advise and direction.
31. In the event that only one Phase 2 Qualified Bid is received, such Phase 2 Qualified Bid shall constitute the Successful Bid and the Monitor will promptly seek Court approval of such Successful Bid. In the event there is more than one Phase 2 Qualified Bid received, the Successful Bid will be identified through an Auction in accordance with the terms of this SISP (the “**Auction**”). Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
32. Only parties that provided a Phase 2 Qualified Bid by the Phase 2 Bid Deadline, as confirmed by the Monitor (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. Toronto Time on the day prior to the Auction, each Qualified Party must

inform the Monitor in writing of whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction.

### **Auction Procedure**

33. The Auction shall be governed by the following procedures:

- (a) **Participation at the Auction.** Only the Applicants, the Qualified Parties, the Monitor, the Sales Advisor, the DIP Lender, and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction. For greater certainty, the Auction shall otherwise be conducted on a private and confidential basis. The Monitor shall provide all Qualified Bidders with the details of the lead bid by 5:00 PM (Eastern Time) two (2) business days after the Bid Deadline;
- (b) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid;
- (c) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor, in consultation with the Sales Advisor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitor’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of \$250,000;
- (d) **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Monitor, in its discretion, may establish separate video conference rooms to permit interim discussions between the Monitor, the Sales Advisor, the Applicants, and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- (e) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s);
- (f) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded; and
- (g) **Auction Procedures.** The Monitor shall be at liberty to set additional procedural rules as the Auction as it sees fit.

### **Selection of Successful Bid**

34. Before the conclusion of the Auction, the Monitor, in consultation with the Sales Advisor and the DIP Lender and other relevant stakeholders, as determined by the Monitor, will:
- (a) review each bid, considering, among others things:
    - (i) the amount of consideration being offered, and, if applicable, the proposed form, composition and allocation of same;
    - (ii) the value of any assumption of liabilities or waiver of liabilities;
    - (iii) the likelihood of the Qualified Party's ability to close a transaction expeditiously, after completion of the Auction and timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments and required governmental or other approvals); the likelihood of the Court's approval of the Successful Bid; the net benefit to the Applicants; and
    - (iv) any other factors the Monitor, in consultation with the Sales Advisor, the DIP Lender and other relevant stakeholders, as determined by the Monitor, deem relevant.
  - (b) subject to paragraph 35, identify the highest or otherwise best bid received at the Auction as the Successful Bid.
35. Notwithstanding any other provision in this SISP, no Overbid shall be designated as the Successful Bid if the aggregate value of such Successful Bid is less than Priority Obligations, without the prior written consent of the DIP Lender, which consent may be withheld in the DIP Lender's sole discretion.
36. The Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within five business days of the Successful Bid being selected as such, unless extended by the Monitor, in consultation with the Sales Advisor and the DIP Lender and other relevant stakeholders, as determined by the Monitor, subject to the milestones set forth herein.

### **Sale Approval Motion Hearing**

37. At the hearing of the motion to approve any transaction with a Successful Bidder (the "**Sale Approval Motion**"), the Monitor shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed to be rejected by the Monitor and the Applicants on and as of the date of the closing of the Successful Bid.

### **Confidentiality and Access to Information**

38. All discussions regarding a Sale Proposal, Investment Proposal, or Bid should be directed through

the Monitor and the Sales Advisor. Under no circumstances should the management of the Applicants be contacted directly. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP.

39. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of bidders, the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Monitor with the consent of the applicable participants, is seeking to combine separate bids from Potential Bidders.
40. Notwithstanding any other provision in this SISP, Potential Bidders shall be permitted to discuss with the Monitor, the Sales Advisor, and the Applicants' management, including the Chief Management Officer, proposals for the continued employment, engagement, retention, or other involvement of the Applicants' employees and management following the closing of a transaction contemplated by such Potential Bidder's bid, provided that the Applicants' management shall remain subject to all confidentiality obligations.
41. In the event that this SISP is terminated for any reason the DIP Lender, Bidders, Known Potential Bidders, and any other person or stakeholder shall not be barred by anything within this SISP, the SISP Order, or any NDA from engaging in discussions regarding the Applicants.
42. Notwithstanding anything else in this SISP, the Monitor may require parties participating in consultations in this SISP to enter into non-disclosure agreements as a condition of their being consulted. Any such non-disclosure agreements shall expressly permit the discussions contemplated by paragraph 41 of this SISP.

#### **Credit Bidding and Debt Assumptions**

43. Notwithstanding anything else in this SISP, the Monitor shall not declare any bid involving either a credit bid or an assumption or retention of secured debt (with the exception of secured debt arising pursuant to the Charges as defined in the Amended and Restated Initial Order) a Successful Bid unless and until the Court makes a determination regarding the priority, enforceability, and quantum of such secured debt.

#### **Supervision of the SISP**

44. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will conduct the SISP in the manner set out in this SISP, the SISP Order, the Initial Order and any other orders of the Court.
45. This SISP does not and will not be interpreted to create any contractual or other legal relationship between the Applicants, the DIP Lender, or the Monitor and any Potential Bidder, any bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Monitor on behalf of the Applicants.
46. The Chief Management Officer shall not communicate with any Potential Bidder or participate in consultations with the Monitor unless and until the Chief Management Officer confirms in writing that he shall not lead or participate in any potential bid.

47. Without limiting the preceding paragraph, the Monitor and the Sales Advisor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, bidder, the Successful Bidder, the Applicants or any other creditor or stakeholder of the Applicants, for any act or omission related to the process contemplated by this SISP, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Monitor or the Sales Advisor. By submitting a bid, each Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct of the Monitor.
48. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, the Auction and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
49. The Monitor shall have the right to modify the SISP in consultation with the Sales Advisor and the DIP Lender if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in these CCAA Proceedings shall be advised of any modification to the procedures set forth herein.

**Schedule "1"**

**Address of Monitor**

**To the Monitor:**

**Grant Thornton Limited**

11<sup>th</sup> Floor, 200 King Street West  
Toronto, ON M5H 3T4

Attention: Darren Crocker and Par Zilka

Email: [Darren.Crocker@doane.gt.ca](mailto:Darren.Crocker@doane.gt.ca) and [par.zilka@doane.gt.ca](mailto:par.zilka@doane.gt.ca)

**To Counsel to the Monitor:**

**Miller Thomson LLP**

Scotia Plaza  
40 King Street West, Suite 6600  
Toronto, ON M5H 3S1

Attention: David Ward and Matthew Cressatti

Email: [dward@millerthomson.com](mailto:dward@millerthomson.com) and [mcressatti@millerthomson.com](mailto:mcressatti@millerthomson.com)

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 THENTIA GLOBAL SYSTEMS INC. et al  
Applicants

Court File No. CL-26-00000052-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding Commenced at Toronto

**SALE AND INVESTMENT SOLICITATION PROCESS**  
**APPROVAL ORDER**

**MILLER THOMSON LLP**  
40 King Street West, Suite 6600  
P.O. Box 1011  
Toronto ON M5H 3S1

**Larry Ellis LSO# 49313K**  
Tel: 416.595.8636  
Email: [lellis@millერთomson.com](mailto:lellis@millერთomson.com)

**David Ward LSO# 33541W**  
Tel: 416.595.8625  
Email: [dward@millერთomson.com](mailto:dward@millერთomson.com)

**Matthew Cressatti LSO#: 77944T**  
Email: [mcressatti@millერთomson.com](mailto:mcressatti@millერთomson.com)  
Tel: 416.597.4311

Lawyers for the Monitor, Grant Thornton Limited