

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



THE HONOURABLE MR.)

FRIDAY, THE 13th

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

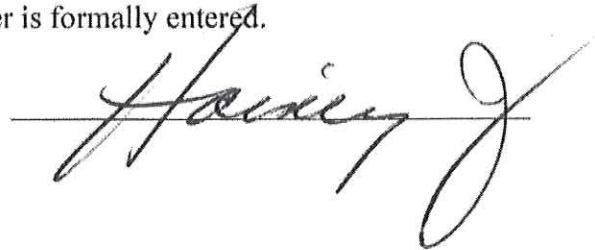
GENERAL

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.

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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:

Milestone	Deadline
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

With a copy to Craig Mills (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 / gus@kingstreetfood.com

With a copy to Virginie Gauthier/Thomas Gertner
 (virginie.gauthier@gowlingwlg.com / 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

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

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

Proceeding commenced at Toronto

ORDER

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