

**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  
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

**MOTION RECORD  
(Returnable March 29, 2021)**

March 23, 2021

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# INDEX

## Tab

- (1) Notice of Motion dated March 23, 2021
- (2) Affidavit of Peter Tsebelis sworn March 23, 2021
  - (A) Affidavit of Peter Tsebelis sworn February 5, 2021 (without exhibits)
  - (B) Credit Bid Asset Purchase Agreement
  - (C) Third Amendment to the DIP Term Sheet
- (3) Draft Approval and Vesting Order
- (4) Draft Termination Order
- (5) Blackline of Draft Approval and Vesting Order to Commercial List Model Approval and Vesting Order

# **TAB 1**



*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 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

NOTICE OF MOTION  
(Returnable March 29, 2021)

The Applicants (the “**KSF Group**”) will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on Monday, March 29, 2021 at 10:00 am, or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario. Please refer to the videoconference details attached at Schedule “A” hereto. Please advise Thomas Gertner if you intend to join the hearing of this motion by emailing [Thomas.gertner@gowlingwlg.com](mailto:Thomas.gertner@gowlingwlg.com).

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally via videoconference.

**THE MOTION IS FOR:**

1. An order (the “**Approval and Vesting Order**”) substantially in the form of the draft order attached at Tab 3 of the KSF Group’s Motion Record, among other things:
  - (a) Approving the transaction (the “**Transaction**”) contemplated by an asset purchase agreement dated as of March 23, 2021 (the “**Credit Bid APA**”), between certain of the Applicants (the “**Vendors**”) and the Purchasers (as defined therein) which

are entities controlled directly or indirectly by Third Eye Capital Corporation (“**TECC**”);

- (b) Vesting in the Purchasers the Vendors’ rights, titles and interests in and to the assets being purchased by the Purchasers pursuant to the Credit Bid APA (the “**Purchased Assets**”) free and clear of all Claims (as defined in the Approval and Vesting Order);
  - (c) Terminating the court-ordered charge (the “**DIP Lenders’ Charge**”) securing the debtor-in-possession financing (the “**DIP Loan**”) provided by TECC and certain of its affiliates (the “**DIP Lenders**”) upon a distribution being made to the DIP Lenders, with the remainder of financing for these proceedings (the “**CCAA Proceedings**”) to be provided by payment of the Wind Down Amount (as defined in the Credit Bid APA) to the Monitor, in trust, in accordance with the Credit Bid APA;
  - (d) Authorizing and directing the Monitor to hold the Cash Priority Payables Amount (as defined in the Credit Bid APA) in trust, and to administer the payment of Cash Priority Payables (as defined in the Credit Bid APA); and
  - (e) Sealing Confidential Appendix A to the Third Report of the Monitor (to be filed) (the “**Third Report**”).
2. An order (the “**Termination Order**”) substantially in the form of the draft order attached at Tab 4 of the KSF Group’s Motion Record, among other things:
- (a) Extending the stay of proceedings (the “**Stay**”) to May 31, 2021 (the “**Outside Date**”);
  - (b) Authorizing and approving the KSF Group entering into and borrowing an additional \$775,000 (\$2,700,000 in the aggregate so far in these CCAA Proceedings) (the “**Maximum DIP Amount**”) from the DIP Lenders under a third amendment to the commitment letter dated as of November 5, 2020, as amended by a first amendment dated as of November 12, 2020 and a second

amendment dated as of February 12, 2021 (collectively, the “**DIP Loan Agreement**”), to be executed (the “**Third DIP Amendment**”);

- (c) Terminating these CCAA Proceedings upon the filing by the Monitor of a certificate in the form attached to the Termination Order (the “**Monitor’s Discharge Certificate**”);
- (d) Terminating the Directors’ Charge and the Administration Charge (each as defined in the Amended and Restated Initial Order, as defined below) upon the filing of the Monitor’s Discharge Certificate and subject to confirmation that the obligations secured thereby have been satisfied;
- (e) Approving the fees and disbursements of the Monitor and its counsel;
- (f) Approving the second report of the Monitor dated February 9, 2021 (the “**Second Report**”) and the Third Report and the actions, conduct and activities of the Monitor described therein;
- (g) Upon termination of these CCAA Proceedings, discharging the Monitor and releasing the Monitor from any potential claims against it;
- (h) Authorizing and directing the Monitor to hold the Wind Down Amount in trust, and to administer payments to parties entitled to receive amounts pursuant to the Wind Down Budget (as defined in the Credit Bid APA), from time to time; and
- (i) Authorizing the KSF Group to commence bankruptcy proceedings following the completion of these CCAA Proceedings, and directing that the estates of the KSF Group be procedurally consolidated.

## **THE GROUNDS FOR THIS MOTION ARE**

### ***Background***

3. On November 6, 2020, the KSF Group applied for and obtained protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”);

4. On November 13, 2020, the KSF Group sought and obtained an amended and restated initial order (the “**Amended and Restated Initial Order**”), which, among other things extended the Stay to February 19, 2021;
5. On February 12, 2021, the KSF Group sought and obtained a further order (the “**February 12 Order**”), which, among other things, extended the Stay until April 2, 2021 and increased the permitted borrowings under the DIP Loan;

***Approval of the Transaction contemplated by the Credit Bid APA***

6. The Credit Bid APA is fair and reasonable in the circumstances and the Transaction contemplated thereunder is in the best interest of the KSF Group and its stakeholders;
7. Upon closing of the Transaction contemplated by the Credit Bid APA, the Purchasers will be in a position to reopen a significant portion of the KSF Group's restaurant portfolio for indoor and outdoor dining when government restrictions are lifted or the COVID-19 pandemic has subsided;

***Extension of the Stay Period***

8. The Stay expires on April 2, 2021. The KSF Group is seeking an extension of the Stay to and including the date of the Outside Date;
9. Since the KSF Group last appeared before this Court, and throughout the CCAA Proceedings, the KSF Group has acted in good faith and with due diligence;
10. An extension of the Stay to and including the date of the Outside Date is necessary in the circumstances as it will allow the KSF Group to close the Transaction contemplated under the Credit Bid APA and resolve remaining administrative issues that will need to be resolved in the CCAA Proceedings, including administering any post-closing transition items in accordance with the terms of the Credit Bid APA (collectively, the “**Remaining Matters**”);
11. The granting of an extension of the Stay to and including the Outside Date is in the best interest of the KSF Group’s stakeholders generally;

***Increase in Availability under the DIP Loan***

12. The KSF Group is seeking authorization to enter into the Third DIP Amendment and to borrow up to the Maximum DIP Amount in respect of the DIP Loan;
13. The authorization being sought is necessary and appropriate in the circumstances;

***Termination of the CCAA Proceedings***

14. The KSF Group is seeking an order terminating the CCAA Proceedings on the filing of the Monitor's Discharge Certificate;
15. Termination of the CCAA Proceedings upon the filing of the Monitor's Discharge Certificate is necessary and appropriate in the circumstances and will allow the KSF Group, the Monitor and their respective counsel to deal with any remaining issues in the CCAA Proceedings efficiently;

***Termination of the Directors' Charge and the Administration Charge***

16. The KSF Group is seeking an order terminating the Directors' Charge and the Administration Charge on the filing of the Monitor's Discharge Certificate, and subject to confirmation that the obligations secured thereby have been satisfied;
17. Upon the filing of the Monitor's Discharge Certificate, the Directors' Charge and the Administration Charge will no longer be necessary;

***Approval of the Monitor's Fees and Disbursements***

18. The KSF Group is seeking the approval of the fees and disbursements of the Monitor and its counsel;
19. Approval of the Monitor's fees and disbursements is appropriate in the circumstances;

***Approval of the Second Report and the Third Report and the Monitor's Activities***

20. The KSF Group is seeking the approval of the Second Report and the Third Report and the actions, conduct and activities of the Monitor described therein;

21. The Monitor has carried out its activities in compliance with the Amended and Restated Initial Order and in a manner consistent with the provisions of the CCAA;

***Authorization for the Monitor to Act as Trustee***

22. Upon completion of the Remaining Matters, the KSF Group is seeking an order authorizing MNP to act as trustee in bankruptcy (the “**Proposed Trustee**”) for the KSF Group, and directing that such bankruptcy proceedings proceed on a consolidated basis;
23. A procedural consolidation of the KSF Group’s bankrupt estates will enable the Proposed Trustee to administer the estates as one and will significantly reduce and streamline the costs of administration. Procedural consolidation of the bankruptcy proceedings will not result in any prejudice to the KSF Group’s creditors;

***Authorization Grounds for the Relief Sought***

24. Those other grounds set out in the Affidavit of Peter Tsebelis sworn March 23, 2021 and the exhibits thereto (the “**Tsebelis March 23 Affidavit**”);
25. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
26. Section 106 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended;
27. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended; and
28. Such further and other grounds as counsel for the KSF Group may advise and this Honourable Court may permit.

**DOCUMENTARY EVIDENCE**

29. The following documentary evidence will be used at the hearing of the motion:
  - (a) The Tsebelis March 23 Affidavit;
  - (b) The Second Report of the Monitor, MNP Ltd., dated November 12, 2020;

- (c) The Third Report of the Monitor, MNP Ltd., to be filed; and
- (d) Such further and other materials as counsel for the KSF Group may advise and as this Honourable Court may permit.

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## SCHEDULE "A"

### **Join Zoom Meeting**

<https://gowlingwlgca.zoom.us/j/92019427910?pwd=RVdxcHRpNGlVRmc5WW5KTk02ZTJGZz09>

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### **One tap mobile**

+17789072071,,97293347665# Canada

+12042727920,,97293347665# Canada

### **Dial by your location**

+1 647 374 4685 Canada

+1 647 558 0588 Canada

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS Court File No.: CV-20-00650945-00CL  
AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF KING  
STREET COMPANY INC., ET AL.

Applicants

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

(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF MOTION  
(Returnable March 29, 2021)**

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*Lawyers for the KSF Group*

## **TAB 2**

*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 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

AFFIDAVIT OF PETER TSEBELIS  
(Sworn March 23, 2021)

I, **Peter Tsebelis**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a director and senior officer of each of the Applicants (referred to in this affidavit, collectively, as the “**KSF Group**”). I have been involved in the financial and operational management of the KSF Group since its inception in 2007. As a result, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true.

*Overview*

2. As set out in my prior affidavits filed in these proceedings (the “**CCAA Proceedings**”), the KSF Group is a hospitality group that owns, develops and operates high-end restaurants as well as a gourmet chocolate business in the City of Toronto and the surrounding areas (the “**Greater Toronto Area**”).

3. The KSF Group has historically conducted business under the following brand names: (i) Jacobs and Co. Steakhouse; (ii) Buca; (iii) Bar Buca; (iv) La Banane; (v) Jamie's Italian; and (vi) CXBO.

4. Prior to the onset of the COVID-19 pandemic (the “**COVID-19 Pandemic**”), the KSF Group had eight (8) operating restaurants and one (1) chocolate retail store in the Greater Toronto Area. It had also entered into

leases in anticipation of opening a further eight (8) restaurants over the next three (3) years (the “**Planned Restaurants**”). The Planned Restaurants are in various stages of development.

5. In March of 2020, following the issuance of public health restrictions on in-person dining in response to the COVID-19 Pandemic (which restrictions are ongoing), the KSF Group furloughed approximately four hundred and sixty two (462) of its employees.

6. Third Eye Capital Corporation (“**TECC**”), is the administrative agent for and on behalf of certain secured lenders, who are the KSF Group's pre-filing senior lenders (the “**Lenders**”) and debtor-in-possession lenders (the “**DIP Lenders**”). Pursuant to various pre-filing senior secured credit facilities, the KSF Group is indebted to the Lenders as at the date of this affidavit in the amount of approximately \$36,337,254 together with interest, fees and other chargeable costs which continue to accrue, including legal fees and disbursements. Including the TECC DIP Debt (as defined below), as at the date hereof, the aggregate amount of the KSF Group's senior secured indebtedness to both the Lenders and the DIP Lenders is \$38,006,352.

7. On November 6, 2020, in light of, among other things, the economic strain placed on the KSF Group as a direct result of the COVID-19 Pandemic, the KSF Group sought and obtained an initial order under the *Companies' Creditors Arrangement Act* (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).

8. The following week, on November 13, 2020, the Court granted:

- (a) an order amending and restating the Initial Order (the “**Amended and Restated Initial Order**”), which, among other things, extended the stay of proceedings (the “**Stay**”) to February 19, 2021, and approved debtor-in-possession financing provided by the DIP Lenders (the “**DIP Loan**”) secured by a court-ordered charge (the “**DIP Lenders' Charge**”) on the KSF Group's Property (as defined in the Amended and Restated Initial Order); and

- (b) an order (the “**Sale Process Approval Order**”) approving a sales and investment solicitation process (the “**Sale Process**”) in connection with the marketing, and sale, refinancing or other investment in respect of all or part of the Property.

9. On February 12, 2021, the Court granted a further Order (the “**February 12 Order**”), among other things, extending the Stay until April 2, 2021, increasing the permitted borrowing under the DIP Loan, and approving the pre-filing report of the Monitor, the first report of the Monitor dated as of November 12, 2021, and the actions, conduct and activities of the Monitor described therein.

10. The affidavit I am swearing today is being filed in connection with a motion by the KSF Group for:

- (a) an Order substantially in the form of the draft order attached at tab 3 of the KSF Group’s motion record (the “**Approval and Vesting Order**”), among other things:
  - (i) Approving the transaction (the “**Transaction**”) contemplated by an asset purchase agreement dated as of March 23, 2021 (the “**Credit Bid APA**”), between certain of the Applicants (the “**Vendors**”) and the Purchasers (as defined therein) which I understand are entities controlled directly or indirectly by TECC;
  - (ii) Vesting in the Purchasers the Vendors’ rights, titles and interests in and to the assets being purchased by the Purchasers pursuant to the Credit Bid APA (the “**Purchased Assets**”) free and clear of all Claims (as defined in the Approval and Vesting Order);
  - (iii) Authorizing and directing the Monitor to hold the Cash Priority Payables Amount (as defined in the Credit Bid APA) in trust, and to administer the payment of Cash Priority Payables (as defined in the Credit Bid APA);
  - (iv) Terminating the DIP Lenders’ Charge upon a distribution (the “**Distribution**”) being made to the DIP Lenders (as defined below), with the remainder of financing for these

CCAA Proceedings to be provided by payment of the Wind Down Amount to the Monitor (as defined in the Credit Bid APA), in trust, in accordance with the Credit Bid APA;

- (v) Sealing Confidential Appendix A to the Third Report of the Monitor to be filed (the “**Third Report**”); and
  
- (b) an Order substantially in the form of the draft order attached at tab 4 of the KSF Group’s motion record (the “**Termination Order**”), among other things:
  - (i) Extending the Stay to May 31, 2021 (the “**Outside Date**”);
  
  - (ii) Authorizing and approving the KSF Group entering into and borrowing an additional \$775,000 (\$2,700,000 in the aggregate so far in these CCAA Proceedings) from the DIP Lenders under a third amendment to the DIP Loan Agreement (as defined below), to be executed (the “**Third DIP Amendment**”).
  
  - (iii) Terminating these CCAA Proceedings upon the filing by the Monitor of a Monitor’s certificate (the “**Monitor’s Discharge Certificate**”);
  
  - (iv) Terminating the Directors’ Charge and the Administration Charge (each as defined in the Amended and Restated Initial Order) upon the filing of the Monitor’s Discharge Certificate and subject to confirmation that the obligations secured thereby have been satisfied;
  
  - (v) Approving the fees and disbursements of the Monitor and its counsel;
  
  - (vi) Approving the second report of the Monitor dated February 9, 2021 (the “**Second Report**”), the Third Report and the actions, conduct and activities of the Monitor described therein;

- (vii) Upon termination of these CCAA Proceedings, discharging the Monitor and releasing the Monitor from any potential claims against it;
- (viii) Authorizing and directing the Monitor to hold the Wind Down Amount (as defined in the Credit Bid APA) in trust, and to administer payments to parties entitled to receive amounts pursuant to the Wind Down Budget (as defined in the Credit Bid APA), from time to time; and
- (ix) Authorizing the KSF Group to commence bankruptcy proceedings following the completion of these CCAA Proceedings, and directing that the estates of the KSF Group be procedurally consolidated.

### *Sale Process*

#### Background

11. The efforts undertaken by the KSF Group as part of the Sale Process are only briefly recited herein and are as more fully set out in in my February 5 Affidavit, which is attached hereto without appendices as **Exhibit A**.
12. Under the Sale Process Approval Order, the KSF Group was authorized to implement the Sale Process in order to solicit offers for a sale, refinancing or other investment transactions in respect of all or part of the Property, with the assistance of the Monitor and subject to certain consultation rights afforded to TECC in its capacity as administrative agent for the Lenders.
13. The Sale Process contemplated that the offer submission and evaluation stage of the Sale Process would be comprised of a maximum of two (2) phases. "**Phase 1**" being the submission of letters of intent ("**LOIs**") from qualified bidders by no later than December 18, 2020 (the "**Phase 1 Bid Deadline**"), and "**Phase 2**" being the submission of formal binding offers from those parties that submitted LOIs and that had been invited by the KSF Group, in consultation with the Monitor and TECC, to participate in Phase 2.



14. The Sale Process provided that in the event that no Qualified LOIs (as defined in the Sale Process) were submitted by the Phase 1 Bid Deadline, or if none of the Qualified LOIs received provided for consideration in an amount satisfactory to TECC, the KSF Group would terminate the Sale Process and not move on to Phase 2.

15. Ultimately, on or before the Phase 1 Bid Deadline, six (6) parties submitted non-binding LOIs that constituted Qualified LOIs (the “**Received Qualified LOIs**”). None of the Received Qualified LOIs provided for a purchase price sufficient to repay the Lenders and the DIP Lenders in full. I understand that a summary of the Received Qualified LOIs will be attached as Confidential Appendix A to the Third Report.

16. On or about December 22, 2020, following a review of the Received Qualified LOIs with the Monitor and TECC, TECC advised that it would not consent to continuing the Sale Process, and the Sale Process was terminated by the KSF Group on or about December 23, 2020. On the same date, TECC advised the KSF Group that it intended to submit a credit bid for a significant portion of the Property.

#### Credit Bid APA

17. Following the termination of the Sale Process, the KSF Group began negotiating with TECC on the scope, structure and terms of the Transaction. This has resulted in the parties agreeing to the Credit Bid APA, a copy of which is attached as **Exhibit B**.

18. I understand from the Purchasers that subsequent to closing the Transaction contemplated by the Credit Bid APA, they intend to, with the assistance of current management of the KSF Group and the Transferred Employees (as defined below), reopen a significant portion of the KSF Group's restaurant portfolio for indoor and outdoor dining when government restrictions are lifted, or the COVID-19 Pandemic has subsided, including both restaurants that operated prior to the COVID-19 Pandemic and certain of the Planned Restaurants (collectively, the “**Acquired Restaurants**”).

19. The material terms of the Transaction include, among others, the following:<sup>1</sup>

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<sup>1</sup> Capitalized terms used in this paragraph and not otherwise defined herein have the meanings ascribed to them in the Credit Bid APA.

TERM	DESCRIPTION
<b>The Vendors</b>	The Vendors are comprised of all of the entities that make up the KSF Group other than the King Street Hospitality Group Inc. (“ <b>KSHGI</b> ”) and Bonta Trading Co. Inc (“ <b>Bonta</b> ”).
<b>The Purchasers</b>	The Purchasers are a number of newly incorporated entities, which as noted above, I understand are controlled either directly or indirectly by TECC.
<b>The Purchased Assets</b>	The Purchased Assets include, among other things, all rights, titles and interests of the Vendors in, and to, all Authorizations, Government and Insurance Receivables, equipment, tangible property, inventory, supplies, furniture, fixtures, appliances, office equipment and intangible property, and certain contracts (the “ <b>Purchased Contracts</b> ”), of, or relating to, the Vendors or the following locations of the KSF Group: <sup>2</sup> (i) Jacob’s and Co Steakhouse; (ii) Buca King; (iii) Buca Yorkville; (iv) La Banane; (v) CXBO Kensington; (vi) Buca St Clair; (vii) Buca Vaughan; (viii) Man Ray Bar a Vin; (ix) Bar Buca Eglinton; (x) Bar Buca Portland; (xi) JI Yorkdale; and (xii) JI Square One, all as specifically identified in the schedules to the Credit Bid APA.
<b>Purchase Price</b>	The consideration for the Purchased Assets is: (i) the full and final release of eighty three percent (83%) of all amounts owing by the Applicants pursuant to the pre-filing senior secured credit facilities at the commencement of the Closing Date (collectively, the “ <b>TECC Debt</b> ”); <sup>3</sup> (ii) an amount payable in cash equal to the outstanding balance owing under the DIP Loan Agreement at the commencement of the Closing Date (the “ <b>TECC DIP Debt</b> ”); (iii) an amount, payable in cash on closing, sufficient to satisfy Cash Priority Payables; and (iv) an amount payable in cash equal to the estimated Wind Down Amount (being an amount sufficient to fund the costs to complete the CCAA Proceedings after the Closing Date and of any bankruptcy proceedings in respect of the KSF Group as will be set out in a Wind Down Budget to be provided upon Closing). The Credit Bid APA also contemplates the assumption of certain Assumed Priority Payables and other limited obligations.
<b>Cash Priority Payables</b>	The Cash Priority Payables under the Credit Bid APA are: (i) all payables owing by any Vendor for services rendered, goods provided, or otherwise related to the period, on or after the Filing Date; (ii) any portion of the Approved Supplier Payment Amount ranking <i>pari passu</i> with or in priority to the TECC Debt or TECC DIP Debt; (iii) all accrued and unpaid vacation pay payable to Employees who are not Transferred Employees (as defined below); and (iv) any amount required to be paid pursuant to Section 36(7) of the CCAA.
<b>Assignment of Contracts</b>	In the event that there are any Purchased Contracts which are not assignable in whole or in part without the consent, approval or waiver of another Person (each a “ <b>Consent Required Contract</b> ”), the Credit Bid APA requires the Vendors to use commercially reasonable efforts to obtain such consent, and if such consent is not obtained, the Credit Bid APA requires the

<sup>2</sup> Each as defined and further described in my affidavit sworn in the CCAA Proceedings on November 6, 2020.

<sup>3</sup> As of the date of this affidavit, the amount of the TECC Debt is approximately \$36,337,254, and the amount of the TECC DIP Debt is approximately \$1,669,098, each excluding interest, fees, and other chargeable costs continuing to accrue, including legal fees and disbursements.

TERM	DESCRIPTION
	<p>Vendors, at the Purchasers' election, to seek an Order pursuant to Section 11.3 of the CCAA to cause the assignment of such Consent Required Contract to the Purchasers.</p> <p>The Vendors retain the right to disclaim any Consent Required Contracts at any point during the CCAA Proceedings.</p>
<b>Employment Matters</b>	<p>At least five (5) days in advance of the Closing Date, the Purchasers may, in their discretion, make an offer of employment, to any employee who is then employed by a Vendor, including employees who are not in active employment due to temporary layoff or furlough (each such employee, a "<b>Transferred Employee</b>"). I understand that the Purchasers' current intention is to offer employment to all or substantially all of the employees currently actively employed by the Vendors (excluding, for greater certainty, those on temporary leave or furlough).</p>
<b>Assumed Obligations</b>	<p>The Purchasers will assume the following obligations and liabilities of the Vendors: (i) all debts, liabilities and obligations under the Purchased Contracts that are ultimately assigned to the Purchasers; (ii) the obligations and liabilities of the Vendors to pay Cure Costs (if any) in respect of any Consent Required Contracts; (iii) all debts, liabilities and obligations arising from and after the Closing Date with respect to Transferred Employees; (iv) pre-Closing vacation pay owing to any Transferred Employees; and (v) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time. The Credit Bid APA also contemplates the assumption of Assumed Priority Payables.</p> <p>The Assumed Priority Payables under the Credit Bid APA are: (a) all amounts owing (including all amounts accrued but not yet payable) by any of the Vendors for any period up to and including the Closing Date which rank <i>pari passu</i> or in priority to any of the TECC Debt; (b) any amounts secured by the Administration Charge; and (c) any amounts secured by the Directors' Charge.</p>
<b>“As Is, Where Is”</b>	<p>The Transaction is on an “as is, where is” basis with limited representations and warranties being provided by the Vendors. The proposed Transaction is not conditional on financing or due diligence.</p>
<b>Closing Date</b>	<p>The Credit Bid APA provides for a closing date of April 30, 2021 or such other date as may be agreed in writing by the parties, with an outside date of May 31, 2021.</p>
<b>Conditions Precedent</b>	<p>The parties' obligations to consummate the Transaction are subject to the fulfilment or waiver of various conditions precedent, including, among others, that the Court shall have issued the Approval and Vesting Order, which shall not have been stayed, varied, or vacated.</p>

20. I understand from Chris Eustace, a partner at Gowling WLG (Canada) LLP (“**Gowling WLG**”), counsel to the KSF Group, that the draft Approval and Vesting Order contemplates that all registrations under *the Personal*

*Property Security Act* (Ontario) against the Vendors will be vested out, including the registrations with the following file numbers:

- (a) 741107169, 733987908 and 730445544 which relate to equipment that has been or is in the process of being returned by the KSF Group;
- (b) 734735439, 757972017 and 750623013 which relate to motor vehicles that have been returned by the KSF Group or its employees;
- (c) 759628404, which relates to the KSF Group's liability in respect of Employer Health Tax pursuant to the *Employer Health Tax Act*, which I am advised by Mr. Eustace is registered after the security in respect of the TECC Debt; and
- (d) 758708451 and 758485476, which I understand relate to supplies and services to be addressed by the Approved Supplier Payment provisions of the Credit Bid APA.

The Credit Bid APA is in the Best Interests of the Stakeholders of the KSF Group

21. I believe that the Credit Bid APA is fair and reasonable in the circumstances and the Transaction is in the best interest of the KSF Group and its stakeholders. I believe that, among other things, the Transaction will have the following benefits:

- (a) The Transaction will result in the continued operation by the Purchasers of the Acquired Restaurants and the preservation of the KSF Group's brands, which will have a general benefit to numerous of the KSF Group's stakeholders;
- (b) The Transaction will preserve employment for the Transferred Employees, including certain employees employed at the Acquired Restaurants and in the KSF Group's back office on terms of compensation and group benefits similar to the Transferred Employees' compensation and group benefits in effect immediately prior to closing;

- (c) Ultimately, when the Acquired Restaurants re-open the business will provide employment to hundreds of workers in the hospitality industry;
- (d) The Transaction provides for consideration whether in cash or by assumption, sufficient to satisfy those creditors who have claims that rank in priority to any of the TECC Debt of the TECC DIP Debt; and
- (e) The Credit Bid APA provides that the Monitor will receive from the Purchasers, cash sufficient to satisfy the payments required to be made under Section 36(7) of the CCAA, if any.

22. As I was at the time of the swearing of the February 5 Affidavit, I remain optimistic that upon closing of the Transaction contemplated by the Credit Bid APA, the Acquired Restaurants will be re-opened when government restrictions are lifted or the COVID-19 Pandemic has subsided, and the Purchasers will be in a position to preserve and continue to grow the brands that the KSF Group and its employees worked tirelessly to develop, and which prior to the COVID-19 Pandemic thrived in the Greater Toronto Area.

***Extension of the Stay of Proceedings***

23. The KSF Group is seeking a formal extension of the Stay until the Outside Date (being May 31, 2021) in order to close the Transaction and resolve the Remaining Matters (as defined below). I believe this relief is appropriate in the circumstances.

24. Since the KSF Group last appeared before this Court, the KSF Group has acted in good faith and with due diligence. Among other things, during this period, the KSF Group has:

- (a) Continued to operate a limited takeout and delivery business, in accordance with the provincial and municipal COVID-19 regulations and restrictions applicable in the Greater Toronto Area from time to time;
- (b) With the assistance of the Monitor and the DIP Lenders, prepared weekly cash flow forecasts and reporting required by the DIP Lenders;

- (c) Administered payment to landlords and other suppliers for goods and services supplied during the post-filing period;
- (d) Administered applications for, and reporting under, applicable subsidy programs provided by the federal government in response to the COVID-19 Pandemic, including the Canada Emergency Wage Subsidy (CEWS) and the Canada Emergency Rent Subsidy (CERS);
- (e) Vacated the premises municipally known as 75 Portland, Toronto, Ontario (formerly the location of Bar Buca Portland) as a result of the expiration of the lease for this premises;
- (f) Disclaimed agreements that were no longer required;
- (g) With the assistance of counsel, responded to various due diligence requests from the Purchasers in order to complete the drafting of the Credit Bid APA;
- (h) Negotiated the Credit Bid APA with the Purchasers;
- (i) Entered into discussions with various stakeholders regarding the Credit Bid APA and the Transaction thereunder including with respect to leases that may be assigned to the Purchasers as part of the Credit Bid APA; and
- (j) Continued to work on and refine a go-forward plan for the reopening of certain of the KSF Group's restaurants for indoor and outdoor dining by the Purchasers post Closing of the Transaction.

25. As noted above, the KSF Group's efforts during this period have resulted in the Vendors and the Purchasers agreeing to the Transaction, which will provide significant benefit to a number of the KSF Group's stakeholders.

***The Third DIP Amendment***

26. Pursuant to the Amended and Restated Initial Order, as amended by the February 12 Order, the Court has previously authorized and empowered the KSF Group to borrow the maximum amount of \$1,925,000 from the DIP Lenders pursuant to a commitment letter dated as of November 5, 2020 as amended by a first amendment dated as

of November 12, 2020 and a second amendment dated as of February 12, 2021 (collectively, the “**DIP Loan Agreement**”).

27. In order to fund the KSF Group’s operations until the end of the Outside Date, the KSF Group will need additional funding. The KSF Group in consultation with the Monitor and TECC has prepared a revised cash flow forecast that reflects the KSF Group’s go-forward cash flow needs until the Outside Date taking into account the Wind Down Amount that will be available upon closing of the Transaction. I understand from the Monitor that this revised cash flow forecast will be attached to the Third Report.

28. TECC has agreed to advance an additional \$775,000 pursuant to the Third DIP Amendment, to be executed, substantially in the form attached as **Exhibit C**.

29. As with the Second Amendment approved by the Court as part of the February 12 Order, the Third DIP Amendment does not alter the terms of the DIP facility previously approved by the Court other than by (i) providing for an increase in the principal amount available for the KSF Group; (ii) providing an extension of the maturity date contemplated thereunder to coincide with the Outside Date; and (iii) increasing the amount of the “Closing Fee” payable to TECC to reflect the fact that the aggregate amount of the loan has increased.

30. It is my view that the Third DIP Amendment is in the best interests of the KSF Group’s stakeholders as it will provide the KSF Group with the funds necessary to close the Transaction.

***Termination of the CCAA Proceedings***

31. Upon the closing of the Transaction, the Vendors will have sold substantially all of their assets.

32. KSHGI and Bonta, the only members of the KSF Group that are not Vendors, do not currently have any assets of material value.

33. Immediately following closing, I do not expect that the KSF Group will have any day-to-day business activities.

34. Notwithstanding its lack of assets and ongoing business activities, there may be some remaining administrative issues that will need to be resolved in the CCAA Proceedings, including administering any post-Closing transition items in accordance with the terms of the Credit Bid APA (collectively, the “**Remaining Matters**”).

35. The KSF Group, the Monitor and their respective counsel have determined that the most efficient way to deal with the remaining issues in the CCAA Proceedings is to terminate the CCAA Proceedings following the completion of the Remaining Matters. Accordingly, the KSF Group is seeking an order terminating the CCAA Proceedings on completion of the Remaining Matters and authorizing MNP Ltd. (“**MNP**”) to, at such time, act as trustee in bankruptcy for the KSF Group (in such capacity, the “**Trustee**”).

36. Accordingly, the Termination Order provides that upon the filing of the Monitor’s Discharge Certificate:

- (a) The CCAA Proceedings, including the Stay, will be terminated;
- (b) MNP shall be discharged and released from its duties, obligations and responsibility as Monitor of the KSF Group; and
- (c) The Directors’ Charge and the Administration Charge, subject to confirmation that the obligations secured thereby have been satisfied, shall be terminated, discharged and released.

37. As noted above, the Approval and Vesting Order contemplates that the DIP Lenders’ Charge will be terminated, discharged and released upon the Distribution having been effected, with the Remaining Matters to be financed via the Wind Down Amount payable to the Monitor, in trust, by the Purchasers upon Closing, and subject to reconciliations as provided in the Credit Bid APA.

***Procedural Consolidation of Bankruptcy Proceedings***

38. There will be no assets available to satisfy the claims of the KSF Group’s unsecured creditors once the bankruptcy proceedings are commenced. As such, the KSF Group, TECC and the Monitor are seeking to minimize



the cost of administering the various bankrupt estates to the extent possible. To that end, I have been advised by Thomas Gertner, an associate at Gowling WLG, that the Termination Order includes orders that:

- (a) A single court file number shall be assigned to the proceedings in the bankruptcy estates of the KSF Group;
- (b) MNP, upon its appointment as Trustee, is authorized to administer the bankrupt estates as a single bankrupt estate, including, issuing a combined notice of the first meeting of creditors, conducting the first meeting of creditors on a joint basis, utilizing a consolidated form of proof of claim and maintaining a consolidated bank account; and
- (c) The Wind Down Amount shall be used to fund the administration of the bankruptcy estates.

39. I have been further advised by Mr. Gertner that a procedural consolidation of the KSF Group's bankrupt estates will enable the Trustee to administer the estates as one and to take the actions described above on a consolidated basis, which will significantly reduce and streamline the costs of administration. Further, as there will be no assets available in the respective bankruptcy estates, I understand that a procedural consolidation will not result in any prejudice to KSF Group's creditors.

***Approval of Activities and Fees and Disbursements of the Monitor***

40. I have been further advised by Mr. Gertner that the Monitor and Monitor's counsel will be submitting affidavits for the approval of their fees and disbursements in this matter (the "**Fee Affidavits**") as well as their estimated fees and disbursements to assist in the completion of the administration of the CCAA Proceedings.

41. The KSF Group is further seeking approval of the Second Report and the Third Report and the activities of the Monitor described therein.

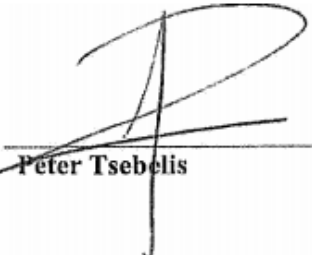
42. It is my belief that to date the Monitor has been of substantial assistance in helping the KSF Group navigate the CCAA Proceedings culminating in the Vendors and the Purchasers agreeing to the Credit Bid APA.

43. As the Fee Affidavits and the Third Report have not yet been completed, I have not been able to review these documents in final form. If once filed, I have any objections or issues with the Fee Affidavits or the Third Report (which I do not at this stage anticipate), I will advise the Court of any such objections.

***Conclusion***

44. I swear this affidavit in connection with the KSF Group's motion returnable March 29, 2021, for the Approval and Vesting Order and the Termination Order and for no other or improper purpose.

SWORN BEFORE ME over videoconference on this Tuesday of March 23, 2021. The affiant was located in the City of Toronto, in the Province of Ontario and the Commissioner was located in the city of Toronto, in the Province of Ontario. This affidavit was commissioned remotely as a result of the COVID-19 Pandemic.



Peter Tsebelis



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Commissioner for taking Affidavits

**TAB A**

**THIS IS EXHIBIT "A"  
REFERRED TO IN THE AFFIDAVIT  
OF PETER TSEBELIS SWORN  
REMOTELY BEFORE ME ON  
MARCH, 23 2021**

A handwritten signature in black ink, appearing to be the name of the Commissioner for Oaths and Notary Public.

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A Commissioner for Oaths and Notary Public in  
and for the Province of Ontario

*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  
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

**AFFIDAVIT OF PETER TSEBELIS**  
(Sworn February 5, 2021)

I, **Peter Tsebelis**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a director and senior officer of each of the Applicants (referred to in this affidavit, collectively, as the "**KSF Group**"). I have been involved in the financial and operational management of the KSF Group since its inception in 2007. As a result, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true. Where the information set out in this affidavit is based upon information that I have received from others, I have stated the source of that information and believe it to be true.

*Overview*

2. As set out in my prior affidavits filed in these proceedings (the "**CCAA Proceedings**"), the KSF Group, at a high level, is a hospitality group that owns, develops and operates high-end restaurants as

well as a gourmet chocolate business in the City of Toronto and the surrounding areas (the “**Greater Toronto Area**”).

3. The KSF Group has historically conducted business under the following brand names: (i) Jacobs and Co. Steakhouse; (ii) Buca; (iii) Bar Buca; (iv) La Banane; (v) Jamie's Italian; and (vi) CXBO.

4. Prior to the onset of the COVID-19 pandemic (the “**COVID-19 Pandemic**”), the KSF Group had eight (8) operating restaurants and one (1) chocolate retail store in the Greater Toronto Area. It had also entered into leases in anticipation of opening a further eight (8) restaurants over the next three (3) years (the “**Planned Restaurants**”). The Planned Restaurants are in various stages of development.

5. In March of 2020, following the issuance of public health restrictions on in-person dining in response to the COVID-19 Pandemic (which restrictions are ongoing), the KSF Group furloughed approximately four hundred and sixty two (462) of its employees.

6. On November 6, 2020, in light of, among other things, the economic strain placed on the KSF Group as a direct result of the COVID-19 Pandemic, the KSF Group sought and obtained an initial order under the *Companies’ Creditors Arrangement Act* (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).

7. The following week, on November 13, 2020, the Court granted:

(a) an order amending and restating the Initial Order (the “**Amended and Restated Initial Order**”), which, among other things, extended the stay of proceedings (the “**Stay**”) to February 19, 2021; and

(b) an order (the “**Sale Process Approval Order**” together with the Amended and Restated Initial Order, the “**November 13 Orders**”) approving a sales and investment solicitation process (the

“**Sale Process**”) in connection with the marketing, and sale, refinancing or other investment in respect of all or part of the assets, property and undertakings of the KSF Group (collectively, the “**Property**”).

8. The affidavit I am swearing today is being filed in connection with a motion by the KSF Group for an order substantially in the form of the draft order attached at tab 3 of the KSF Group’s motion record, among other things:

- (a) extending the Stay to April 2, 2021 (the “**Requested Stay Extension**”); and
- (b) authorizing and approving the KSF Group entering into and borrowing an additional \$525,000 (\$1,925,000 in the aggregate) from the DIP Lenders (as defined below) under a second amendment to the DIP Loan Agreement (as defined below), to be executed (the “**Second DIP Amendment**”).

***Update on the Activities of the KSF Group***

9. Since the November 13 Orders were issued by the Court, it is my belief that the KSF Group has acted in good faith and with due diligence. Among other things, the KSF Group has in this period:

- (a) continued to operate a limited takeout and delivery business, in accordance with the provincial and municipal COVID-19 restrictions applicable in the Greater Toronto Area from time to time;
- (b) with the assistance of the Monitor and the DIP Lenders, prepared weekly cash flow forecasts and reporting required by the DIP Lenders;
- (c) responded to inquiries from various stakeholders, including the KSF Group’s employees and landlords, regarding the CCAA Proceedings and the Sale Process;

- (d) with the consent of the Monitor, issued disclaimer notices in respect of leases for the following locations (i) 193 Baldwin Street, Toronto, Ontario (formerly the site of a CXBO branded retail store); (ii) 170 Bloor Street West, Toronto, Ontario (formerly the proposed site for a KSF Group branded Japanese restaurant); and (iii) 351 King East, Toronto, Ontario (formerly the proposed site for a KSF Group café and commissary);
- (e) communicated and provided documents and other information to the Canada Revenue Agency in respect of its ongoing audits of the KSF Group's business;
- (f) worked with the Monitor and Third Eye Capital Corporation ("TECC") in its capacity as administrative agent for and on behalf of the KSF Group's senior secured and DIP Lenders (collectively, the "**Lenders**"), as further described below, to implement the Sale Process, including responding to information and document enquiries from potential bidders;
- (g) with the Monitor and TECC, considered and reviewed all bids submitted by the Phase 1 Bid Deadline (as defined below) as part of the Sale Process;
- (h) continued to work on and refine a go-forward plan for the reopening of certain of the KSF Group's restaurants; and
- (i) assisted TECC in the development of a business plan relating to its credit bid purchase of the KSF Group's business, including ongoing discussions with key go-forward stakeholders and preparing and in certain cases submitting proposals to such stakeholders.



## *Sale Process*

### Background:

10. Under the Sale Process Approval Order, the KSF Group was authorized to implement the Sale Process in order to solicit offers for a sale, refinancing or other investment transactions in respect of all or part of the Property, with the assistance of the Monitor and subject to certain consultation rights afforded to TECC.

11. The Sale Process contemplated that the offer submission and evaluation stage of the Sale Process would be comprised of a maximum of two (2) phases. "**Phase 1**" being the submission of letters of intent ("**LOIs**") from qualified bidders by no later than December 18, 2020 (the "**Phase 1 Bid Deadline**"), and "**Phase 2**" being the submission of formal binding offers from those parties that submitted LOIs and that have been invited by KSF Group, in consultation with the Monitor and TECC, to participate in Phase 2.

12. The Sale Process provided that in the event that no Qualified LOIs (as defined in the Sale Process) were submitted by the Phase 1 Bid Deadline, or if none of the Qualified LOIs received provided for consideration in an amount satisfactory to TECC, the KSF Group was required to terminate the Sale Process. For the reasons set out below, the Sale Process did not proceed to Phase 2.

### Implementation of Sale Process:

13. Following the Court's issuance of the Sale Process Approval Order, the KSF Group and the Monitor implemented Phase 1 of the Sale Process in accordance with the Sale Process Approval Order. As part of the Sale Process, the KSF Group with the assistance of the Monitor in consultation with TECC:

- (a) developed a list of over ninety (90) parties with a potential interest in investing in or purchasing all or part of the Property;

- (b) prepared a teaser letter (the "**Teaser Letter**") describing the Sale Process and investment opportunity and inviting recipients of the Teaser Letter to participate in the Sale Process;
  - (c) distributed the Teaser Letter to approximately eighty-five (85) parties;
  - (d) advertised the Sale Process in the National Post newspaper and Insolvency Insider newsletter. An electronic version of the Teaser Letter was also sent to the subscriber base of Food Service and Hospitality magazine;
  - (e) established and populated a secure electronic data room (the "**Electronic Data Room**");
  - (f) prepared a form of non disclosure agreement ("**NDA**") and granted access to the Electronic Data Room to those parties willing to execute a NDA; and
  - (g) responded to requests for information from, and engaged in discussions with, various potential purchasers.
14. Between November 6, 2020 and December 18, 2020, approximately thirty (30) parties executed a NDA and received access to the Electronic Data Room.
15. Ultimately, on or before the Phase 1 Bid Deadline, six (6) parties submitted non-binding LOIs that constituted Qualified LOIs covering all aspects of the KSF Group's Property (the "**Received Qualified LOIs**"). I understand that a summary of the Received Qualified LOIs will be attached as a confidential appendix to a future report of the Monitor to be filed in these CCAA Proceedings.
16. None of the Received Qualified LOIs provided for a purchase price sufficient to repay the Lenders in full.

17. On or about December 22, 2020, following a review of the Received Qualified LOIs with the Monitor and TECC, the KSF Group terminated the Sale Process as TECC advised that it would not consent to its continuation. On the same date, TECC advised the KSF Group that it intended to submit a credit bid for a significant portion of the Property to be determined with the assistance of the KSF Group's management (the "**Credit Bid**").

18. On December 23, 2020, counsel to the KSF Group informed the parties who submitted the Received Qualified LOIs that the KSF Group would not be proceeding with Phase 2 of the Sale Process.

Credit Bid APA:

19. Following the termination of the Sale Process, the KSF Group immediately began working with TECC on the structure and terms of the Credit Bid sale transaction. The KSF Group is continuing to provide TECC with information TECC requires in order to finalize the documents required to evidence and implement the transaction, including an asset purchase agreement (the "**Credit Bid APA**").

20. TECC and the KSF Group's management team are actively involved in the development of the KSF Group's go-forward business model to be reflected in the Credit Bid APA. A copy of the KSF Group's organization chart is attached hereto as **Exhibit A**.

21. Although not yet finalized, I understand that the transactions contemplated by the Credit Bid APA are intended to result in the continued operation by the proposed purchasers of a significant portion of the KSF Group's restaurant portfolio (the "**Acquired Restaurants**") and continued employment for certain of the KSF Group's employees, including certain employees employed (whether furloughed or not) at the Acquired Restaurants and in the KSF Group's back office.

22. The Requested Stay Extension is being sought in order to provide TECC, its proposed purchasers and the KSF Group with time to complete the development of the go-forward business model and determination of the Acquired Restaurants, all of which is to be reflected in the drafting of the Credit Bid APA.

23. The Credit Bid APA development process also involves discussions with certain of the KSF Group's stakeholders, including its landlords, aimed at promoting the long-term viability of the Acquired Restaurants, for the benefit of the broader stakeholders in the KSF Group's business, including its employees. Many of these discussions, including with all of the KSF Group's landlords have already started to take place as of the date of this affidavit.

24. It is intended that the Credit Bid APA will be presented for approval by the Court prior to the expiry of the Requested Stay Extension.

25. I am optimistic that upon closing of the transactions contemplated by the Credit Bid APA, the Acquired Restaurants will be re-opened when government restrictions are lifted or the COVID-19 Pandemic has subsided, and the proposed purchasers will be in a position to preserve and continue to grow the brands that the KSF Group and its employees worked tirelessly to develop, and which prior to the COVID-19 Pandemic thrived in the Greater Toronto Area.

26. It is my view that the granting of the Requested Stay Extension is in the best interest of the KSF Group's stakeholders generally. I understand that the Monitor is supportive of the Requested Stay Extension.

***Second DIP Amendment***

27. Pursuant to the Amended and Restated Initial Order, the Court authorized and empowered the KSF Group to borrow the maximum amount of \$1,400,000 from certain funds managed or advised by TECC or its affiliates (the “**DIP Lenders**”) pursuant to a commitment letter dated as of November 5, 2020 as amended by a first amendment dated as of November 12, 2020 (collectively, the “**DIP Loan Agreement**”).

28. In order to fund the KSF Group’s operations until the end of the Requested Stay Extension, the KSF Group’s management, in consultation with the Monitor and TECC, has determined that the KSF Group will need additional funding. The KSF Group has prepared a revised cash flow forecast that reflects the KSF Group’s go-forward cash flow needs until the end of the Requested Stay Extension. I understand from the Monitor that this revised cash flow forecast will be attached to the Monitor’s second report to be filed.



29. As part of its ongoing support for the KSF Group and these CCAA Proceedings, TECC has agreed to advance an additional \$525,000 pursuant to the Second DIP Amendment, to be executed, substantially in the form attached as **Exhibit B**.

30. The Second DIP Amendment does not alter the terms of the DIP facility previously approved by the Court other than by (i) providing for an increase in the amount available to the KSF Group; (ii) providing an extension of the maturity date contemplated thereunder to coincide with the extended period contemplated by the revised cash flow forecast; and (iii) increasing the amount of the “Closing Fee” payable to TECC to reflect the fact that the aggregate amount of the loan has increased.

31. It is my view that the Second DIP Amendment is in the best interests of the KSF's stakeholders as it will provide the KSF Group with the funds necessary to continue its operations while finalizing the Credit Bid APA, which in and of itself will provide significant benefit to the KSF Group's stakeholders.

32. I swear this affidavit in connection with the KSF Group's motion returnable February 12, 2021, and for no other or improper purpose.

SWORN BEFORE ME over videoconference on this 5<sup>th</sup> day of February, 2021. The affiant was located in the City of Toronto, in the Province of Ontario and the Commissioner was located in the city of Toronto, in the Province of Ontario. This affidavit was commissioned remotely as a result of the COVID-19 Pandemic.

  
\_\_\_\_\_  
**Peter Tsebelis**  
\_\_\_\_\_  
**A Commissioner for taking Affidavits**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS Court File No.: CV-20-00650945-00CL  
AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF KING  
STREET COMPANY INC., ET AL.

Applicants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
  
(PROCEEDING COMMENCED AT TORONTO)

**AFFIDAVIT OF PETER TSEBELIS**  
(sworn February 5, 2021)

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*Lawyers for the KSF Group*

**TAB B**



**THIS IS EXHIBIT "B"  
REFERRED TO IN THE AFFIDAVIT  
OF PETER TSEBELIS SWORN  
REMOTELY BEFORE ME ON  
MARCH 23, 2021**



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A Commissioner for Oaths and Notary Public in  
and for the Province of Ontario

**KING STREET COMPANY INC., THE KING STREET HOSPITALITY GROUP INC., 2112047  
ONTARIO LTD., 1771669 ONTARIO INC. (o/a La Banane), CXBO INC., 2608765 ONTARIO  
INC., THE KING STREET FOOD COMPANY INC., THE KING STREET RESTAURANT  
COMPANY INC., 2272224 ONTARIO INC., 2327729 ONTARIO INC., 2577053 ONTARIO INC.,  
2584858 ONTARIO INC., 2621298 ONTARIO INC., 2641784 ONTARIO INC., 2656966  
ONTARIO INC., 2268218 ONTARIO INC., 1733667 ONTARIO LIMITED, JI YORKDALE INC.,  
and JI SQUARE ONE INC.**

collectively, as Vendors

and

**2817334 ONTARIO INC., 2817336 ONTARIO INC. , 2817337 ONTARIO INC., 2817340  
ONTARIO INC., 2817341 ONTARIO INC., 2817342 ONTARIO INC., 2817343 ONTARIO INC.,  
2817347 ONTARIO INC., 2817348 ONTARIO INC., 2825420 ONTARIO INC., and  
2825664 ONTARIO INC**

collectively, as Purchasers

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**ASSET PURCHASE AGREEMENT**

March 23, 2021

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## ASSET PURCHASE AGREEMENT

This asset purchase agreement is made as of March 23, 2021, between the Vendors and the Purchasers.

### RECITALS:

- (1) Pursuant to the Initial Order, among other things, the Vendors and certain affiliated entities obtained relief under the CCAA on November 6, 2020 (the "**Filing Date**") and MNP Ltd. was appointed as Monitor in the CCAA Proceedings;
- (2) Pursuant to the Sale Process Order, the Vendors, with the assistance and supervision of the Monitor, were empowered to carry out the Sale Process in accordance with its terms; and
- (3) The Vendors desire to sell, and the Purchasers have agreed to purchase, the Purchased Assets subject to the terms and conditions set forth in this Agreement, the Sale Process and the applicable provisions of the CCAA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendors and the Purchasers agree as follows:

### ARTICLE 1 INTERPRETATION

#### Section 1.1 Definitions

In this Agreement and the recitals above, the following terms have the following meanings:

"**Administration Charge**" means the charge granted by the Court pursuant to the Initial Order to secure the fees and expenses of the Administrative Professionals.

"**Administrative Professionals**" means the Vendors' legal counsel, the Monitor, and the Monitor's legal counsel.

"**Affiliate**" has the meaning given to the term "affiliate" in the *Canada Business Corporations Act*.

"**Agreement**" means this asset purchase agreement, as amended from time to time in accordance with the terms hereof.

"**Apple 4821 Storage Facility**" has the meaning set out in Schedule "E-9".

"**Apple G107 Storage Facility**" has the meaning set out in Schedule "E-9".

"**Applicable Law**" means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order, in each case, having the force of law, that applies in whole or in part to such Person, property, transaction or event.

"**Approval and Vesting Order**" means an order issued by the Court substantially in the form attached hereto as Schedule "B" authorizing the Transaction and vesting in the Purchasers all the right, title and interest of the Vendors in and to the Purchased Assets.

**"Approved Supplier Payment"** means such amount as may be agreed by TEC, in its sole discretion, to be paid to a supplier or service provider to the Vendors or any of them, pursuant to a written agreement in form and substance satisfactory to TEC.

**"Approved Supplier Payment Amount"** means an amount equal to the aggregate of all Approved Supplier Payments.

**"Assignment Order"** means an order or orders of the Court pursuant to section 11.3 of the CCAA and other applicable provisions of the CCAA, in form and substance satisfactory to the Purchasers and the Vendors, each acting reasonably, authorizing and approving (i) the assignment of any Consent Required Contract for which a consent, approval or waiver necessary for the assignment of such Consent Required Contract has not been obtained, (ii) the prevention of any counterparty to such Consent Required Contracts from exercising any right or remedy under such Consent Required Contracts by reason of any defaults arising from the CCAA Proceedings or the insolvency of the Vendors and (iii) the vesting in the Purchasers (or as they may direct) of all right, title and interest of the Vendors in such Consent Required Contracts.

**"Assumed Priority Payables"** means:

- (a) all amounts owing (including all amounts accrued but not yet payable) by any of the Vendors for any period up to and including the Closing Date which rank *pari passu* or in priority to any of the TEC Debt or TEC DIP Debt, including any amounts subject to a statutory deemed trust in favour of Her Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or, if applicable, in proceedings under the *Bankruptcy & Insolvency Act* (Canada) that may be required on the termination of the CCAA Proceedings, pursuant to the following legislative provisions:
  - (i) subsection 227(4) or (4.1) of the *Income Tax Act*;
  - (ii) subsection 222(1) or (3) of the *Excise Tax Act*;
  - (iii) Subsection 23(3) or (4) of the *Canada Pension Plan* (Canada); and
  - (iv) Subsection 86(2) or (2.1) of the *Employment Insurance Act* (Canada);
- (b) Any portion of the Approved Supplier Payment Amount ranking subordinate to the TEC Debt or TEC DIP Debt;
- (c) any amounts secured by the Administration Charge; and
- (d) any amounts secured by the Directors' Charge.

**"Assumed Obligations"** has the meaning set out in Section 2.4.

**"Authorization"** means with respect to any Vendor, any order, permit, approval, consent, waiver, license, registration, qualification, certification or similar authorization of any Governmental Authority having jurisdiction over such Vendor, to the extent assignable.

**"Bankruptcy Costs"** means the costs of any bankruptcy proceedings of the Vendors under the *Bankruptcy & Insolvency Act* (Canada) that may be required on the termination of the CCAA Proceedings.

**"Books and Records"** means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), used or intended for use by, and in the possession or under the control of any Vendor(s), in connection with the ownership, or operation of the Purchased Assets, including the Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating only to suppliers and other data, in each case, relating to the Purchased Assets, and, for greater certainty, excluding the minute books and corporate records of the Vendors.

**"Buca Cucina St. Clair Purchased Assets"** means all right, title and interest of Buca Cucina St. Clair VendorCo in and to all of the assets identified in Schedule "E-1" attached hereto.

**"Buca Cucina St. Clair PurchaserCo"** means 2817341 Ontario Inc., an Ontario corporation.

**"Buca Cucina St. Clair VendorCo"** means 2584858 Ontario Inc., an Ontario corporation.

**"Buca Eglinton Assets"** means all tangible assets of whatever kind or nature owned by 2577053 Ontario Inc., wherever situated, but excluding any undertakings, or contractual arrangements, obligations or liabilities.

**"Buca King Purchased Assets"** means all right, title and interest of Buca King VendorCo in and to all of the assets identified in Schedule "E-2" attached hereto.

**"Buca King PurchaserCo"** means 2817337 Ontario Inc., an Ontario corporation.

**"Buca King VendorCo"** means 2112047 Ontario Ltd, an Ontario corporation.

**"Buca Portland Assets"** means all tangible assets of whatever kind or nature owned by 2272224 Ontario Inc., wherever situated, but excluding any undertakings, or contractual arrangements, obligations or liabilities.

**"Buca Vaughan Purchased Assets"** means all right, title and interest of Buca Vaughan VendorCo in and to all of the assets identified in Schedule "E-3" attached hereto.

**"Buca Vaughan PurchaserCo"** means 2817342 Ontario Inc., an Ontario corporation.

**"Buca Vaughan VendorCo"** means 2641784 Ontario Inc., an Ontario corporation.

**"Buca Yorkville Purchased Assets"** means all right, title and interest of Buca Yorkville VendorCo in and to all of the assets identified in Schedule "E-4" attached hereto.

**"Buca Yorkville PurchaserCo"** means 2817340 Ontario Inc., an Ontario corporation.

**"Buca Yorkville VendorCo"** means 2327729 Ontario Inc., an Ontario corporation.

**"Business Day"** means a day on which banks are open for business in Toronto, Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

**"Cash Priority Payables Amount"** means the aggregate amount of Cash Priority Payables.

**"Cash Priority Payables"** means:

- (a) all payables owing by any Vendor for services rendered or goods provided during the period on or after the Filing Date;
- (b) any portion of the Approved Supplier Payment Amount ranking *pari passu* with or in priority to the TEC Debt or TEC DIP Debt;
- (c) any amount required to be paid pursuant to Section 36(7) of the CCAA.

**"CCAA"** means the *Companies' Creditors Arrangement Act* (Canada), RSC 1985, c C-36, version in force as at the Filing Date.

**"CCAA Proceedings"** means the proceedings commenced by the Vendors under the CCAA.

**"CIBC Square Purchased Assets"** means all right, title and interest of CIBC Square VendorCo in and to all of the assets identified in Schedule "E-10" attached hereto.

**"CIBC Square PurchaserCo"** means 2825664 Ontario Inc., an Ontario corporation.

**"CIBC Square VendorCo"** means King Street Company Inc., an Ontario corporation.

**"Claims"** means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person or the Court.

**"Closing"** means the completion of the Transaction on the Closing Date.

**"Closing Date"** means April 30, 2021, or such other date as may be agreed by the Parties in writing, acting reasonably, provided that the Closing Date shall not take place later than the Outside Date.

**"Closing Time"** means 10:00 a.m. (Toronto time) on the Closing Date.

**"Consent Required Contract"** has the meaning set out in Section 2.2(a).

**"Container Storage Facility"** has the meaning set out in Schedule "E-9".

**"Contract"** means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, lease, sublease, license, understanding instrument, undertaking or other agreement, arrangement or commitment, whether express or implied, other than any Authorization.

**"Court"** means the Ontario Superior Court of Justice (Commercial List).

**"Cure Costs"** means, in respect of any Consent Required Contract, all amounts, costs and expenses required to be paid by the Vendors or set-off against obligations owing by a counterparty at the Vendors as at the Filing Date to remedy all of the Vendors' monetary defaults as may be required pursuant to an Assignment Order or such lower amount as may be otherwise required to secure a counterparty's consent to the assignment of a Consent Required Contract, and includes any other fees and expenses required to be paid to a counterparty to effect an assignment of a Consent Required Contract.

"**CXBO Purchased Assets**" means all right, title and interest of CXBO VendorCo in and to all of the assets identified in Schedule "E-5" attached hereto.

"**CXBO PurchaserCo**" means 2817348 Ontario Inc., an Ontario corporation.

"**CXBO VendorCo**" means CXBO Inc., an Ontario corporation.

"**Directors' Charge**" means the charge granted by the Court pursuant to the Initial Order in favour of the Vendors' directors and officers securing the Vendors' indemnity obligations to those directors and officers.

"**Employee**" means an individual who is employed by a Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability or parental leave.

"**Encumbrances**" means any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a Person of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing (including any conditional sale or title retention agreement, or any capital or financing lease).

"**Excise Tax Act**" means the *Excise Tax Act* (Canada).

"**Excluded Contracts**" means every contract, whether written, oral or otherwise, to which any Vendor is a party, other than any Purchased Contract.

"**Filing Date**" has the meaning given to it in the recitals to this Agreement.

"**Government and Insurance Receivables**" means all right, title and interest, including any amounts receivable by a Vendor, in and from (a) a Governmental Authority, including, without limitation, amounts receivable in respect of the Canada Emergency Wage Subsidy (CEWS), the Canada Emergency Rent Subsidy (CERS), and any refunds in respect of HST or other amounts, or (b) an Insurer in respect of all insurance policies provided by such Insurer to such Vendor, including all claims made pursuant to such insurance policies from time to time, carriage and responsibility for the administration of all such claims, and the rights of such Vendor to receive amounts payable to such Vendor in connection with such claims, as applicable.

"**Governmental Authority**" means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

"**HST**" means the goods and services tax and harmonized sales tax levied under Part IX of the *Excise Tax Act* (Canada).

"**Income Tax Act**" means the *Income Tax Act* (Canada).

"**Initial Order**" means the order of the Court dated November 6, 2020 as amended and restated pursuant to the subsequent Court order dated November 13, 2020, and as may be further amended and/or restated from time to time.

**"Insurer"** means an insurance provider to the Vendors or any of them.

**"Intellectual Property"** means trade names, brand names, corporate names, business names, trademarks (including logos), trademark registrations and applications, service marks, service mark registrations and applications, copyrights, copyright registrations and applications, derivative works, moral rights, all rights to use any name or mark, and any related or associated name, internet domain names, URLs, social media accounts and any proprietary data owned by the Vendors derived therefrom, and other intellectual property, together with all rights under licenses, registered user agreements, or instruments relating to any of the foregoing, and goodwill associated with any of the foregoing, anywhere in the world.

**"Jacob's Purchased Assets"** means all right, title and interest of Jacob's VendorCo in and to all of the assets identified in Schedule "E-5" attached hereto.

**"Jacob's PurchaserCo"** means 2817336 Ontario Inc., an Ontario corporation.

**"Jacob's VendorCo"** means 1733667 Ontario Limited, an Ontario corporation.

**"Jamie's Italian Square One Assets"** means all tangible assets of whatever kind or nature owned by JI Square One Inc., wherever situated, but excluding any undertakings, or contractual arrangements, obligations or liabilities.

**"Jamie's Italian Yorkdale Assets"** means all tangible assets of whatever kind or nature owned by JI Yorkdale Inc., wherever situated, but excluding any undertakings, or contractual arrangements, obligations or liabilities.

**"KSF Entities"** means, collectively, 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.

**"La Banane Purchased Assets"** means all right, title and interest of La Banane VendorCo in and to all of the assets identified in Schedule "E-7" attached hereto.

**"La Banane PurchaserCo"** means 2817343 Ontario Inc., an Ontario corporation.

**"La Banane VendorCo"** means 1771669 Ontario Inc., an Ontario corporation.

**"Man Ray Purchased Assets"** means all right, title and interest of Man Ray VendorCo in and to all of the assets identified in Schedule "E-8" attached hereto.

**"Man Ray PurchaserCo"** means 2817347 Ontario Inc., an Ontario corporation.

**"Man Ray VendorCo"** means 2608765 Ontario Inc., an Ontario corporation.

**"Miscellaneous Intellectual Property, Equipment and Other Assets"** means those assets and equipment set out in Schedule "E-9".

**"Monitor"** means MNP Ltd., in its capacity as the monitor of the Vendor's CCAA Proceedings.



**"Monitor's Certificate"** means the certificate of the Monitor substantially in the form appended as Schedule "A" to the form of Approval and Vesting Order attached hereto as Schedule "B", certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Monitor has received the Purchase Price.

**"Outside Date"** means May 31, 2021.

**"Parties"** means each of the Purchasers and the Vendors collectively, and **"Party"** means any one of them.

**"Permitted Encumbrances"** means those Encumbrances set forth in Schedule "A".

**"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity or organization however designated or constituted.

**"Priority Payables"** means the Assumed Priority Payables and the Cash Priority Payables;

**"Proportionate Percentage"** has the meaning ascribed to it in Section 3.1.

**"Purchase Price"** has the meaning ascribed to it in Section 3.1.

**"Purchased Assets"** means, collectively, (i) the Buca Cucina St. Clair Purchased Assets, (ii) the Buca King Purchased Assets, (iii) the Buca Vaughan Purchased Assets, (iv) the Buca Yorkville Purchased Assets, (v) the CXBO Purchased Assets; (vi) the Jacob's Purchased Assets, (vii) the La Banane Purchased Assets, (viii) the Man Ray Purchased Assets; (ix) The One Purchased Assets; (x) the CIBC Square Purchased Assets; and (xi) the Miscellaneous Intellectual Property, Equipment and Other Assets.

**"Purchased Contracts"** means any contracts, agreements, accounts or similar arrangements specifically listed as a Purchased Asset.

**"Purchasers"** means, collectively, (i) Buca Cucina St. Clair PurchaserCo, (ii) Buca King PurchaserCo, (iii) Buca Vaughan PurchaserCo, (iv) Buca Yorkville PurchaserCo, (v) CXBO PurchaserCo, (vi) Jacob's PurchaserCo, (vii) La Banane PurchaserCo, (viii) Man Ray PurchaserCo, (ix) The One PurchaserCo; (x) CIBC Square PurchaserCo; and (xi) TEC Management PurchaserCo.

**"Representative"** means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party's Affiliates.

**"Sale Process"** means the Court-approved sale process attached as Schedule "A" to the Sale Process Order.

**"Sale Process Order"** means the order of the Court dated November 13, 2020, among other things, approving the Sale Process.

"**Symes Storage Facility**" has the meaning set out in Schedule "E-9".

"**TEC**" means Third Eye Capital Corporation.

"**TEC Credit Bid Debt**" means 83% of the aggregate outstanding balance owing under the TEC Credit Facility Agreements at the commencement of the Closing Date.

"**TEC Credit Facility Agreements**" means the TEC Main Credit Facility Agreement and the TEC Secondary Credit Facility Agreement.

"**TEC Debt**" means all indebtedness of the KSF Entities owing to TEC (or any nominee or Affiliate thereof), pursuant to the TEC Main Facility Credit Agreement and the TEC Secondary Facility Agreement, but excluding any indebtedness in connection with the TEC DIP Credit Agreement.

"**TEC DIP Credit Agreement**" means the super-priority debtor-in-possession credit facility dated November 5, 2020 between TEC, as agent, and the KSF Entities, as co-borrowers, as amended from time to time up to and including the Closing Date.

"**TEC DIP Debt**" means all indebtedness of the KSF Entities owing to TEC (or any nominee or affiliate thereof) pursuant to the TEC DIP Credit Agreement.

"**TEC DIP Debt Amount**" means the quantum of the TEC DIP Debt as at the commencement of the Closing Date.

"**TEC Main Facility Credit Agreement**" means the Credit Agreement dated as of November 30, 2015 between TEC, as administrative agent, the lenders party thereto, King Street Company Inc., as borrower, and the KSF Entities, each as guarantors, as amended by written agreements dated as of April 16, 2015, August 15, 2016, December 21, 2016, June 14, 2017, January 5, 2018, April 3, 2018, October 25, 2018, December 17, 2018, May 13, 2019, November 8, 2019, March 4, 2020, and April 21, 2020.

"**TEC Management PurchaserCo**" means 2817334 Ontario Inc., an Ontario corporation.

"**TEC Secondary Facility Credit Agreement**" means the Credit Agreement dated as of January 23, 2017 between TEC, as administrative agent, the lenders party thereto, and 1771669 Ontario Inc. and CXBO Inc., collectively as borrowers, as amended by written agreements dated December 20, 2017, November 29, 2018, May 13, 2019, November 2019, and April 21, 2020.

"**The One Purchased Assets**" means all right, title and interest of The One VendorCo in and to all of the assets identified in Schedule "E-11" attached hereto.

"**The One PurchaserCo**" means 2825420 Ontario Inc., an Ontario corporation.

"**The One VendorCo**" means King Street Company Inc., an Ontario corporation.

"**Transaction**" means the purchase and sale transactions contemplated by this Agreement.

"**Transfer Taxes**" means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including

HST but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation.

**"Transferred Employee"** has the meaning set out in Section 5.3(a).

**"Vendors"** means, collectively, (i) Buca Cucina St. Clair VendorCo, (ii) Buca King VendorCo, (iii) Buca Vaughan VendorCo, (iv) Buca Yorkville VendorCo, (v) Jacob's VendorCo, (vi) La Banane VendorCo, (vii) Man Ray VendorCo, (viii) CXBO VendorCo, (ix) The One VendorCo, and (x) CIBC Square VendorCo.

**"Wind Down Amount"** means the aggregate amount necessary to fund the Wind Down Budget.

**"Wind Down Budget"** means the budget for the activities necessary to wind down and complete the CCAA Proceedings after the Closing Date, including with respect to vacation pay entitlements payable to any Employees other than Transferred Employees, the professional fees and disbursements of the Administrative Processionals, and any Bankruptcy Costs, as prepared by the Monitor, in form and substance satisfactory to the Purchasers, the CCAA Applicants' counsel, and the Monitor, each acting reasonably.

## **Section 1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **Section 1.3 General Construction.**

The terms "this Agreement", "hereof", "herein", "hereunder", and similar expressions refer to this Agreement and not to any particular section hereof. The expression "Section" or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

## **Section 1.4 Extended Meanings**

Words importing the singular include the plural and vice versa, and words importing gender include all genders. The term "including" means "including, without limitation", and terms such as "includes" have similar meanings.

## **Section 1.5 Currency**

All references in this Agreement to dollars, monetary amounts or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

## **Section 1.6 Statutes**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

## **Section 1.7 Schedules**

The following Schedules are incorporated in, and form part of, this Agreement:

Schedule "A"	–	Permitted Encumbrances
Schedule "B"	–	Form of Approval and Vesting Order
Schedule "C"	–	Purchase Price Allocation
Schedule "E-1"	–	Buca Cucina St. Clair Purchased Assets
Schedule "E-2"	–	Buca King Purchased Assets
Schedule "E-3"	–	Buca Vaughan Purchased Assets
Schedule "E-4"	–	Buca Yorkville Purchased Assets
Schedule "E-5"	–	CXBO Purchased Assets
Schedule "E-6"	–	Jacob's Purchased Assets
Schedule "E-7"	–	La Banane Purchased Assets
Schedule "E-8"	–	Man Ray Purchased Assets
Schedule "E-9"	–	Miscellaneous Intellectual Property, Equipment and Other Assets
Schedule "E-10"	–	CIBC Square Purchased Assets
Schedule "E-11"	–	The One Purchased Assets

**ARTICLE 2**  
**SALE AND PURCHASE AND ASSIGNMENT**

**Section 2.1 Sale and Purchase of Assets**

Subject to the terms and conditions hereof, the Vendors hereby agree to sell, assign and transfer to the Purchasers, and the Purchasers agree to purchase from the Vendors, effective as of the Closing Time, the Purchased Assets, free and clear of all Encumbrances (other than Permitted Encumbrances), pursuant to the Approval and Vesting Order. Upon the Closing, the Purchased Assets shall be acquired by and will vest in the Purchasers as follows:

- (a) the Buca Cucina St. Clair Purchased Assets shall be acquired by and will vest in Buca Cucina St. Clair PurchaserCo;
- (b) the Buca King Purchased Assets shall be acquired by and will vest in Buca King PurchaserCo;
- (c) the Buca Vaughan Purchased Assets shall be acquired by and will vest in Buca Vaughan PurchaserCo;
- (d) the Buca Yorkville Purchased Assets shall be acquired by and will vest in Buca Yorkville PurchaserCo;
- (e) the Jacob's Purchased Assets shall be acquired by and will vest in Jacob's PurchaserCo;
- (f) the La Banane Purchased Assets shall be acquired by and will vest in La Banane PurchaserCo;
- (g) the Man Ray Purchased Assets shall be acquired by and will vest in Man Ray PurchaserCo;

- (h) the CXBO Purchased Assets shall be acquired by and will vest in CXBO PurchaserCo; and
- (i) the CIBC Square Purchased Assets shall be acquired by and will vest in CIBC Square PurchaserCo;
- (j) The One Purchased Assets shall be acquired by and will vest in The One PurchaserCo;
- (k) the Miscellaneous Intellectual Property, Equipment and Other Assets shall be acquired by and will vest in TEC Management PurchaserCo.

## **Section 2.2 Assignment of Contracts**

In the event that there are any Purchased Contracts which are not assignable in whole or in part without the consent, approval or waiver of another Person and such consents, approvals or waivers have not yet been obtained as of the Closing Date (each a "**Consent Required Contract**"), then:

- (a) nothing in this Agreement will be construed as an assignment of any Consent Required Contract and, without limiting the foregoing, the Purchasers do not assume and have no obligation to discharge any liability or obligation under or in respect of any such Consent Required Contract, until (i) an Assignment Order is obtained in accordance with Section 2.2(c) or (ii) such consent, approval or waiver is obtained in respect of such Consent Required Contract on terms satisfactory to the Purchasers, in either case following which the value of and rights of the applicable Vendor under such Consent Required Contract shall enure to the applicable Purchaser;
- (b) the Vendors shall use their commercially reasonable efforts to obtain any such consent, approval or waiver, and the Purchasers shall provide reasonable cooperation to assist the Vendors in obtaining any such consent, approval or waiver;
- (c) if any consent, approval or waiver is not obtained for any Consent Required Contract prior to Closing, the Purchasers may request that the Vendors bring a motion to the Court for issuance of an Assignment Order with respect to such Consent Required Contracts prior to Closing;
- (d) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained, or the assignment of such Contract has been ordered by the Court pursuant to an Assignment Order, such Consent Required Contract shall be deemed to be assigned to the applicable Purchaser on Closing;
- (e) the Vendors shall hold the Consent Required Contracts in trust for the benefit of the Purchasers; and
- (f) the Vendors, with the consent of the Purchasers, shall have the right to disclaim any Consent Required Contract in accordance with the CCAA, and in the event of disclaimer, such Consent Required Contract shall be considered an Excluded Contract for all purposes under this Agreement.

With respect to each Consent Required Contract, subject to Closing and to either (i) the consent, approval or waiver of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, approval or waiver, the obtaining of an Assignment Order, in addition to its other obligations under this

Agreement, the applicable Purchaser shall pay the applicable Cure Costs related to such Consent Required Contract on Closing or upon obtaining such consent, approval or waiver post-Closing.

### **Section 2.3 "As is, Where is"**

The Purchasers acknowledge that the Vendors are selling the Purchased Assets on an "as is, where is" basis as they shall exist as at the Closing Time. The Purchasers further acknowledge that they have entered into this Agreement on the basis that the Vendors do not guarantee title to the Purchased Assets. No representation, warranty or condition is expressed or can be implied as to title, Encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendors to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchasers. Except as otherwise provided in Section 4.2, no representation, warranty or condition has or will be given by the Vendors concerning completeness or accuracy of such descriptions.

### **Section 2.4 Assumed Obligations**

In addition to the assumption of the Assumed Priority Payables in accordance with Section 3.2(c)(ii), and subject to Section 2.5, the Purchasers shall assume and perform, discharge and pay when due the following obligations and liabilities of the Vendors (the "**Assumed Obligations**"):

- (a) all debts, liabilities and obligations under the Purchased Contracts (to the extent assigned or transferred to a Purchaser on Closing and excluding, for certainty, any Consent Required Contract until it has been assigned to a Purchaser in accordance with Section 2.2) arising from and after the Closing Time, including any adjustments under such contracts that may be assessed post-Closing but relate to pre-Closing services or goods;
- (b) the obligations and liabilities of the Vendors to pay Cure Costs in respect of any Consent Required Contract in accordance with Section 2.2;
- (c) all debts, liabilities and obligations arising from and after the Closing Date with respect to Transferred Employees;
- (d) pre-Closing vacation pay entitlements owing to any Transferred Employee; and
- (e) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time.

For greater certainty, (i) each Purchaser shall only assume such Assumed Obligations as are specified in the assignment and assumption agreement to be executed by each Purchaser in accordance with Section 7.2(d), and (ii) the Parties hereto agree that the assumption by the Purchasers of the Assumed Obligations shall not constitute part of the Purchase Price payable for the Purchased Assets.

### **Section 2.5 Excluded Obligations**

Other than the assumption of the Assumed Obligations in accordance with Section 2.4 and the assumption of the Assumed Priority Payables in accordance with Section 3.2(c)(ii), the Purchasers shall not assume and shall not be liable, directly or indirectly, or otherwise responsible, for any debts, liabilities or other obligations of the Vendors, including, without limiting the generality of the foregoing:

- (a) all debts, liabilities, obligations or Claims related to any Excluded Contract;
- (b) subject to Section 2.2, all debts, liabilities and obligations related to any Purchased Assets or the business of the Vendors arising out of or related to the period prior to the Closing Time, including, for greater certainty, with respect to any Consent Required Contract for which counterparty consent has not been obtained in accordance with Section 2.2 at Closing;
- (c) all obligations and liabilities owing by the Vendors to any Affiliate;
- (d) all taxes imposed on or relating to the Purchased Assets that are attributable to any transaction, event or period prior to the Closing (regardless of whether any such tax period ends after the Closing Time), other than (i) any Transfer Taxes that may be imposed on the Vendors in accordance with Section 3.3 and (ii) any taxes included in the Cash Priority Payables and Assumed Priority Payables; and
- (e) all debts, liabilities and obligations of the Vendors arising under this Agreement.

### **ARTICLE 3 PURCHASE PRICE**

#### **Section 3.1 Purchase Price**

The aggregate purchase price for the Purchased Assets shall be equal to the sum of the following amounts (in aggregate, the "**Purchase Price**"), in each case exclusive of Transfer Taxes:

- (a) an amount equal to the TEC Credit Bid Debt;
- (b) an amount equal to the TEC DIP Debt Amount;
- (c) an amount equal to the amount of the Priority Payables; and
- (d) the estimated Wind Down Amount as contemplated by the Wind Down Budget at the time of Closing.

The Purchase Price shall be allocated amongst the Purchased Assets in proportion to the percentages (each, a "**Proportionate Percentage**") set out in Schedule "C", or as the parties may otherwise determine in writing. The Purchasers and Vendors agree that they will make all relevant tax and other filings in accordance with such Purchase Price allocation.

#### **Section 3.2 Satisfaction of Purchase Price**

Payment of the Purchase Price shall be satisfied by the Purchasers as follows, and the Vendors hereby direct the Purchasers to make payment of the Purchase Price in accordance with this Section 3.2 and this shall be the Purchasers' good and sufficient authority for so doing:

- (a) as to the amount referred to in Section 3.1(a), by way of set-off against that portion of the outstanding balance owing by the Vendors to the Purchasers under the TEC Credit Facility Agreements equal to the TEC Credit Bid Debt, which set-off shall be effected by each Purchaser delivering to the applicable Vendor evidence that that portion of the outstanding balance owing under the TEC Credit Facility Agreements as of the commencement of the

Closing Date equal to the product obtained when (i) the amount of the TEC Credit Bid Debt, is multiplied by (ii) the Proportionate Percentage applicable to the Purchased Assets being acquired by such Purchaser, has been indefeasibly paid;

- (b) as to the amount referred to in Section 3.1(b), by payment by Jacob's PurchaserCo by way of wire transfer of immediately available funds by to an account to be specified by the Vendors no less than two (2) days before Closing;
- (c) as to the amount referred to in Section 3.1(c):
  - (i) by each Purchaser paying, or causing to be paid, to the Monitor on Closing, by wire transfer of immediately available funds, an amount equal to (i) the aggregate amount of the Cash Priority Payables, multiplied by (ii) the Proportionate Percentage applicable to the Purchased Assets being acquired by such Purchaser, and the Monitor is authorized and directed to distribute the Cash Priority Payables to such parties and in such amounts as are set out in a direction to be provided to the Monitor by the Vendors upon Closing; and
  - (ii) by each Purchaser assuming, effective as of the Closing and in a priority position superior to any and all other indebtedness of the Purchaser, that portion of the applicable Vendor's obligations to pay the Assumed Priority Payables applicable to the particular business and operations of such Purchaser; and
- (d) as to the amount referred to in Section 3.1(d), by each Purchaser paying, or causing to be paid, to the Monitor, in trust, on Closing, by wire transfer of immediately available funds, an amount equal to (i) the aggregate estimated Wind Down Amount as contemplated by the Wind Down Budget at the time of Closing, multiplied by (ii) the Proportionate Percentage applicable to the Purchased Assets being acquired by such Purchaser, which payment shall be subject to adjustment in accordance with Section 3.4.

### **Section 3.3 Transfer Taxes**

- (1) The Parties agree that:
  - (a) the Purchase Price is exclusive of all Transfer Taxes, and the Purchasers shall be liable for and shall pay, either to the Monitor on behalf of the Vendors or directly to the appropriate Governmental Authority, any and all applicable Transfer Taxes pertaining to the Purchasers' acquisition of the Purchased Assets as required by Applicable Law;
  - (b) each Vendor shall, promptly upon request of the corresponding Purchaser, jointly elect with such Purchaser under section 167 of the Excise Tax Act that no HST will be payable with respect to the purchase and sale of the corresponding Purchased Assets under this Agreement, and each such Purchaser shall file such election no later than the due date for such Purchaser's HST return for the first reporting period in which HST would, in the absence of filing such election, become payable in connection with the purchase and sale of the Purchased Assets by such Purchaser under this Agreement. Notwithstanding any such election, in the event it is determined by a Governmental Authority that there is a liability of any Purchaser to pay, or of any Vendor to collect and remit, HST in respect of the purchase and sale of the Purchased Assets hereunder, such Purchaser shall forthwith pay such HST to the applicable Governmental Authority, or to the applicable Vendor for remittance to the appropriate Governmental Authority, as the case may be, and shall



indemnify and save harmless such Vendor from any penalties and interest which may be payable by or assessed against such Vendor (or its representatives, agents, employees, directors or officers) under the Excise Tax Act in respect thereof.

- (2) Each Vendor shall, promptly upon request of the corresponding Purchaser, make a joint election with such Purchaser to have the rules in subsection 20(24) of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of such Vendor in respect of undertakings which arise from the operation of the business to which the Purchased Assets related and to which paragraph 12(1)(a) of the Income Tax Act applies.

### **Section 3.4 Wind Down Amount**

- (1) The Monitor, in consultation with the Vendors and Purchasers, each acting reasonably, will deliver to the Purchasers the Wind Down Budget (i) prior to Closing and (ii) following Closing, updated Wind Down Budgets from time to time as the Purchasers may request, in their sole discretion.
- (2) On Closing, the Purchasers shall deliver the estimated Wind Down Amount as set out in the Wind Down Budget to the Monitor, to be held in trust for the benefit of the Administrative Professionals entitled to be paid costs pursuant to and in accordance with the Wind Down Budget.
- (3) Subsequent to Closing:
  - (a) should the Monitor, or the trustee in bankruptcy of the Vendors, as applicable, determine that the Wind Down Amount held in trust exceeds the requirements set forth in the then applicable Wind Down Budget, the Monitor, or the trustee in bankruptcy of the Vendors, as applicable, may and is hereby authorized to distribute such excess amount to the Purchasers, or as they may direct; or
  - (b) should the Monitor, or the trustee in bankruptcy of the Vendors, as applicable, determine that the Wind Down Amount held in trust is insufficient due to unanticipated expenses not contemplated by the then applicable Wind Down Budget, then the Monitor, or the trustee in bankruptcy of the Vendors, as applicable, in consultation with the Purchasers, shall prepare a revised Wind Down Budget, and the Purchasers shall pay to the Monitor, in trust, such additional amount as may be contemplated by such revised Wind Down Budget within seven (7) days of the finalization of such revised Wind Down Budget.
- (4) Prior to the completion of the CCAA Proceedings, the Monitor shall distribute the balance of the funds held in trust for the Wind Down Amount, if any, net of any Bankruptcy Costs, to the Purchasers or as they may direct.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

### **Section 4.1 Purchasers' Representations**

The Purchasers represent and warrant to the Vendors as of the date hereof and as of the Closing Time as follows, and acknowledge that the Vendors are relying on such representations and warranties in connection with entering into this Agreement and performing their respective obligations hereunder:

- (a) each Purchaser is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation;
- (b) each Purchaser has the requisite power and authority to enter into this Agreement and to complete the Transaction;
- (c) the execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchasers;
- (d) this Agreement is a valid and binding obligation of each of the Purchasers enforceable in accordance with its terms;
- (e) neither the execution of this Agreement nor the performance by the Purchasers of their obligations under this Agreement will violate the Purchasers' respective constating documents, any agreement to which any of the Purchasers are bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law;
- (f) the Purchasers are each registrants for purposes of the HST, and their registration numbers are as follows:

	<b><u>Purchaser</u></b>	<b><u>HST Registration Number</u></b>
i.	Buca Cucina St. Clair PurchaserCo	77849 7461 RT0001
ii.	Buca King PurchaserCo	77849 7867 RT0001
iii.	Buca Vaughan PurchaserCo	77916 2148 RT0001
iv.	Buca Yorkville PurchaserCo	77916 2346 RT0001
v.	CXBO PurchaserCo	77916 1546 RT0001
vi.	Jacob's PurchaserCo	77916 2742 RT0001
vii.	La Banane PurchaserCo	77849 7263 RT0001
viii.	Man Ray PurchaserCo	77849 6869 RT0001
ix.	CIBC Square PurchaserCo	To be provided prior to Closing
x.	The One PurchaserCo	To be provided prior to Closing
xi.	TEC Management PurchaserCo	77916 2940 RT0001

- (g) each of the Purchasers has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

#### **Section 4.2 Vendors' Representations**

Each of the Vendors represents and warrants to the Purchasers as of the date hereof and as of the Closing Time as follows, and acknowledges that the Purchasers are relying on such representations and warranties in connection with entering into this Agreement and performing their respective obligations hereunder:

- (a) each of the Vendors is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation;
- (b) subject to obtaining the Approval and Vesting Order and, if applicable, the Assignment Order, the Vendors each have the requisite power and authority to enter into this Agreement and to complete the Transaction contemplated hereunder;
- (c) each of the Vendors is not a non-resident of Canada for purposes of the Income Tax Act or the Excise Tax Act, as applicable; and
- (d) each of the Vendors is a registrant for purposes of the HST, and its HST registration number is as follows:

	<b><u>Vendor</u></b>	<b><u>HST Registration Number</u></b>
i.	Buca Cucina St. Clair VendorCo	707335493 RT0001
ii.	Buca King VendorCo	841428527 RT0001
iii.	Buca Vaughan VendorCo	74853 9889 RT0001
iv.	Buca Yorkville VendorCo	81268 3886 RT0001
v.	CXBO VendorCo	80902 5182 RT0001
vi.	Jacob's VendorCo	85320 9419 RT0001
vii.	La Banane VendorCo	85974 9020 RT0001
viii.	Man Ray VendorCo	78153 1512 RT0001
ix.	CIBC Square VendorCo	84325 7353 RC0001
x.	The One VendorCo	84325 7353 RC0001

### **Section 4.3 Limitations**

With the exception of the Vendors' representations and warranties in Section 4.2 and the Purchasers' representations and warranties in Section 4.1, none of the Vendors or the Purchasers, or their respective Representatives, nor any of their respective officers, directors or Employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendors, the Purchasers, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.

## **ARTICLE 5 COVENANTS**

### **Section 5.1 Conduct of Business in the Ordinary Course**

Subject only to any public health orders, guidelines or directives issued by any Governmental Authority in response to the COVID-19 pandemic from time to time, the Vendors shall use their commercially reasonable efforts to:

- (a) remain in possession of the Purchased Assets until Closing, use the Purchased Assets only in the ordinary course of business and maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the ordinary course of business;
- (b) not dispose of any of the Purchased Assets, other than in the ordinary course of business;
- (c) not disclaim any Contract that is applicable to the Purchased Assets without the prior written consent of the Purchasers; and
- (d) not enter into any material contract or other material written agreement in respect of any of the Purchased Assets other than in the ordinary course of business; except, in each case, with the prior written consent of the Purchasers, such consent not to be unreasonably withheld, or an order of the Court, and provided that such consent of the Purchasers shall be deemed to have been given with respect to any request for such a consent to which the Purchasers fail to respond within five (5) Business Days after such request is made.

### **Section 5.2 Actions to Satisfy Closing Conditions**

The Vendors agree to take all commercially reasonable actions so as to ensure compliance with all of the conditions set forth in Section 6.1 and Section 6.3.

### **Section 5.3 Employees**

- (a) At least five (5) days in advance of the Closing Date, the Purchasers may, in the Purchasers' sole discretion, make an offer of employment, in either written or oral form, at the Purchasers' discretion, to be effective on the Closing Date and conditional upon Closing, to any Employee who is then employed by a Vendor, (each such Employee who receives and accepts such offer and commences active or inactive employment, as applicable, on the Closing Date and conditional upon Closing, a "**Transferred Employee**"). The terms of compensation and group benefits being offered in any written offer of employment from

the Purchasers to any Employee pursuant to this Section 5.3(a) shall be similar to the Employee's compensation and group benefits in effect immediately prior to the Closing Date. The Purchasers also agree to recognize all accrued but unused vacation as of the Closing Date for each of the Transferred Employees and shall indemnify and save harmless the Vendors (or their representatives, agents, employees, directors or officers) from any claims against the Vendors by a Transferred Employee for any accrued vacation pay owing up to the Closing Date. For clarity, the offers of employment referred to herein shall explicitly state that all accrued but unused vacation owing as of the Closing Date will carry-over into the Transferred Employee's employment with the Purchasers and shall not be forfeited.

- (b) The Vendors shall provide reasonable support to facilitate the Purchasers' provision of the Purchasers' offers of employment, if any, made pursuant to Section 5.3(a), and shall not attempt in any way to discourage any Employee who receives an offer from accepting such offer. If any Employee who receives an offer of employment made by the Purchasers pursuant to Section 5.3(a) refuses such offer for any reason, then all liabilities associated with such Employee shall remain the responsibility of the Vendors.
- (c) By no later than April 16, 2021, the Vendors shall: (i) if applicable, file a Form 1 – Notice of Termination of Employment to the Director of Employment Standards, Ministry of Labour, if applicable, or multiple Form 1s, if applicable, and (ii) make commercially reasonable efforts to (y) comply with statutory posting requirements for such mass termination, and (z) deliver a written notice of termination effective no later than the day immediately preceding the Closing Date to each Employee other than Transferred Employees.
- (d) Nothing in this Section 5.3, express or implied, (i) is intended to or shall confer upon any Person, including any Employee, other than the Parties hereto and their respective successors and assigns, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, (ii) shall establish or constitute an amendment, termination or modification of, or an undertaking to establish, amend, terminate or modify, any benefit plan, program, agreement or arrangement, or (iii) shall create any obligation on the part of any of the Purchasers to employ any Employee or Transferred Employee for any period following the Closing Date.

#### **Section 5.4 Government and Insurance Receivables**

- (a) A Vendor shall give written notice to the applicable Purchaser and TEC Management PurchaserCo promptly (and, in any event, within 10 days) after receipt of any notice or communication, oral or written, from any Governmental Authority or Insurer in respect of any Government and Insurance Receivable payable or paid to the particular Vendor under the Income Tax Act or Excise Tax Act or applicable Vendor insurance policy, as the case may be, including any assessment or proposed assessment relating to such Government and Insurance Receivable. Upon receipt of any such Government and Insurance Receivable amount, the particular Vendor shall promptly (and, in any event, within 10 days of receipt of such Government and Insurance Receivable, provided that if such Government and Insurance Receivable is received prior to the Closing Date, then at the Closing) pay to the particular Purchaser, or otherwise as directed by TEC Management PurchaserCo, the amount of such Government and Insurance Receivable (including all interest received by the Vendor in respect of such Government and Insurance Receivable, if any).

- (b) The Vendors shall provide the Purchasers with such assistance as may be necessary to effect the transfer of any Government and Insurance Receivables, including with respect to the administration of carriage of any insurance claims, to the applicable Purchaser after Closing, including, without limitation, providing such information as may be reasonably requested by or on behalf of the Purchasers, and executing such documents as may be reasonably requested to effect such transfer.

## **ARTICLE 6 CONDITIONS PRECEDENT**

### **Section 6.1 Conditions Precedent in favour of the Purchasers**

- (1) The obligation of the Purchasers to complete the Transaction is subject to the following conditions being fulfilled or performed:
  - (a) all representations and warranties of each of the Vendors contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date; and
  - (b) the Vendors shall have performed in all material respects each of their obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 7.3.
- (2) The foregoing conditions are for the exclusive benefit of the Purchasers. Any condition in this Section 6.1 may be waived by the Purchasers in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchasers only if made in writing. If any condition set out in Section 6.1 is not satisfied or performed on or prior to the Outside Date, the Purchasers may elect on written notice to the Vendors to terminate this Agreement.

### **Section 6.2 Conditions Precedent in favour of the Vendors**

- (1) The obligation of the Vendors to complete the Transaction is subject to the following conditions being fulfilled or performed:
  - (a) all representations and warranties of the Purchasers contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date; and
  - (b) the Purchasers shall have performed in all material respects each of their respective obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 7.2.
- (2) The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in this Section 6.2 may be waived by the Vendors in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing.

**Section 6.3 Conditions Precedent in favour of both the Purchasers and the Vendors**

- (1) The obligations of the Vendors and the Purchasers to complete the Transaction are subject to the following conditions being fulfilled or performed:
  - (a) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated;
  - (b) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
  - (c) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (2) The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendors and the Purchasers. If the conditions set out in this Section 6.3 are not satisfied performed or mutually waived on or before the Outside Date, any Party shall have the option to terminate this Agreement upon written notice to the other Parties.

**ARTICLE 7  
CLOSING**

**Section 7.1 Closing**

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time by electronic means due to the COVID-19 pandemic, or as otherwise determined by mutual agreement of the Parties in writing and the Parties shall exercise commercially reasonable efforts to cause Closing to occur at the Closing Time, and, in any event, prior to the Outside Date.

**Section 7.2 Purchasers' Deliveries on Closing**

At or before the Closing Time, the Purchasers shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendors of the following, each of which shall be in form and substance satisfactory to the Vendors, acting reasonably:

- (a) payment of any portion of the Purchase Price payable upon Closing;
- (b) payment of all Cure Costs (if any), which for greater certainty, may be directed to such third-party entities as may be entitled to receive such amounts in full and final satisfaction of the Purchasers' obligations to such third-party;
- (c) payment of any Transfer Taxes required by Applicable Law to be collected by any Vendor, or alternatively, if applicable, delivery of the election(s) referred to in Section 3.3(1)(b) executed by the applicable Purchaser;
- (d) executed assignment and assumption agreements evidencing the assumption by each Purchaser of the Assumed Obligations assumed by such Purchaser;
- (e) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchasers contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time,

and that the Purchasers have performed in all respects the covenants to be performed by them prior to the Closing Time;

- (f) all offers of employment in respect of Transferred Employees, in accordance with Section 5.3(a); and
- (g) such further and other documentation as is referred to in this Agreement or as the Vendors may reasonably require to give effect to the Transaction contemplated by this Agreement.

### **Section 7.3 Vendors' Deliveries on Closing**

At or before the Closing Time, the Vendors shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchasers of the following, each of which shall be in form and substance satisfactory to the Purchasers, acting reasonably:

- (a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- (b) the Approval and Vesting Order;
- (c) assignment and assumption agreement(s) evidencing the assignment by the Vendors of the Purchased Contracts to the Purchasers, as applicable;
- (d) bill of sale / general conveyancing agreement(s) evidencing the assignment by the Vendors of the Purchased Assets to the Purchasers, as applicable;
- (e) trademark assignment agreements in respect of any trademarks (whether registered or unregistered) or similar Intellectual Property included in the Purchased Assets;
- (f) all consents, approvals, and waivers required to assign any Purchased Contracts;
- (g) all Assignment Orders, if any, entered by the Court prior to Closing;
- (h) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Vendors contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendors have performed in all material respects the covenants to be performed by them prior to the Closing Time;
- (i) the direction to the Monitor regarding the disbursement of the Cash Priority Payables Amount, as referred to in Section 3.2(c)(i);
- (j) if applicable, the election(s) referred to in Section 3.3(1)(b) and Section 3.3(2) executed by the applicable Vendor(s);
- (k) all written agreements in respect of Approved Supplier Payments;
- (l) the executed Monitor's Certificate; and
- (m) such further and other documentation, instruments, agreement or materials as are referred to in this Agreement or as the Purchasers may reasonably require to give effect to the Transaction contemplated by this Agreement.



#### **Section 7.4 Monitor's Certificate**

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchasers, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from the each Party (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no liability to the Parties in connection therewith. The Parties further acknowledge and agree that (i) upon written confirmation from each Party that all conditions of Closing in favour of such Party have been satisfied or waived and (ii) the delivery of the executed Monitor's Certificate, the Monitor may deliver the executed Monitor's Certificate to the Purchasers' counsel in escrow (with the sole condition of its release from escrow being the Monitor's written confirmation that all such funds have been received), and that upon such confirmation the Monitor's Certificate will be released from escrow to the Purchaser and the Closing shall be deemed to have occurred.

#### **Section 7.5 Possession of Assets**

- (1) On Closing, the Purchasers shall take possession and control of the Purchased Assets where situated at Closing. The Purchasers acknowledge that the Vendors have no obligation to deliver physical possession of the Purchased Assets to the Purchasers. In no event shall the Purchased Assets be sold, assigned, transferred or sent over to the Purchasers until the conditions set out in this Agreement and the Approval and Vesting Order have been satisfied or waived by the Purchasers or Vendors, as applicable, and the Purchasers have satisfied all delivery requirements outlined in Section 7.2.
- (2) The Purchased Assets shall be and remain until Closing at the risk of the Vendors. In the event of material damage by fire or other hazard to the Purchased Assets or any part thereof occurring before the Closing Date, the Vendors shall immediately advise the Purchasers thereof by notice in writing. Where such damage is of such a nature that the Purchasers determine that they no longer wish to complete the Transaction, acting in their sole and unfettered discretion, then the Purchasers, at their sole option, may within ten (10) Business Days of receiving such written notice, terminate this Agreement without liability or obligation to the Vendors, provided that if the Purchasers do not elect to terminate this Agreement, then they shall be entitled to the proceeds of any insurance payments made in respect of such damages or destroyed Purchased Assets.

#### **Section 7.6 Dispute Resolution**

If any dispute arises with respect to any matter related to the Transaction or the interpretation or enforcement of this Agreement such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct.

#### **Section 7.7 Termination**

- (1) This Agreement shall automatically terminate at any time prior to the Closing Time by mutual written agreement of the Vendors and the Purchasers and on consent of the Monitor.
- (2) This Agreement may be terminated at any time prior to the Closing Time should Closing not have occurred on or prior to the Outside Date in accordance with Section 6.3 and any of the Parties shall have delivered written notice of termination to the other Parties terminating this Agreement as a result thereof (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement).

- (3) This Agreement may be terminated by the Vendors, if there has been a material violation or breach by the Purchasers of any agreement, covenant, representation or warranty of the Purchasers in this Agreement which would prevent the satisfaction of, or compliance with, any condition set forth in Section 6.2 or Section 6.3 and such violation or breach has not been waived by the Vendors or cured within five Business Days of the Vendors providing notice to the Purchasers of such breach, unless the Vendors are in material breach of its obligations under this Agreement.
- (4) This Agreement may be terminated by the Purchaser, if there has been a material violation or breach by the Vendors of any agreement, covenant, representation or warranty of the Vendors in this Agreement which would prevent the satisfaction of, or compliance with, any condition set forth in Section 6.1 or Section 6.3 and such violation or breach has not been waived by the Purchasers or cured within the earlier of (i) five Business Days of the Purchasers providing notice to the Vendors of such breach or (ii) two Business Days prior to the Closing Date, unless the Purchasers are in material breach of its obligations under this Agreement.

### **Section 7.8 Effects of Termination and Closing**

- (1) If this Agreement is terminated pursuant to Section 7.7, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of this Section 7.8 (Effects of Termination and Closing), each of which will survive termination.
- (2) Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

## **ARTICLE 8 GENERAL**

### **Section 8.1 Access to Books and Records**

For a period of six (6) years from the Closing Date, or for such longer period as may be reasonably requested in writing by the Vendors if required for the Vendors (or any trustee in bankruptcy of the estate(s) or other legal representative(s) of the Vendors) to comply with Applicable Law, the Purchasers will retain all original Books and Records that are transferred to the Purchasers under this Agreement, if any. So long as any such Books and Records are retained by the Purchasers pursuant to this Agreement, the Vendors (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendor, including the Monitor) have the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper and reasonable purpose and without undue interference to the business operations of the Purchasers.

### **Section 8.2 Notice**

- (1) Any notice or other communication under this Agreement shall be in writing and may be delivered by email, addressed:
  - (a) in the case of the Purchasers, as follows:

**Third Eye Capital Corporation**

Attention: Arif Bhalwani  
Email: arif@thirdeyecapital.com

With a copy to:

**Bennett Jones LLP**

3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

Attention: Curtis Cusinato  
Email: cusinatoc@bennettjones.com

(b) in the case of the Vendors, as follows:

**King Street Group**

Attention: Peter Tsebelis and Konstantinos Giazitzidis  
Email: peter@kingstreetfood.com / gus@kingstreetfood.com

With a copy to:

**Gowling WLG**

100 King Street West, Unit 1600  
Toronto, Ontario  
M5X 1G5

Attention: Virginie Gauthier/Thomas Gertner  
Email: virginie.gauthier@gowlingwlg.com /  
thomas.gertner@gowlingwlg.com

(c) in each case, with a further copy to the Monitor, as follows:

**MNP Ltd.**

111 Richmond Street West, Suite 300  
Toronto, Ontario  
M5H 3K6

Attention: Sheldon Title  
Email: sheldon.title@mnp.ca

With a copy to:

**Miller Thomson LLP**

40 King Street West, Unit 5800  
P.O. Box 1011  
Toronto, Ontario  
M5H 3S1

Attention: Craig Mills  
Email: cmills@millerthomson.com

- (2) Any such notice or other communication, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.
- (3) Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

### **Section 8.3 Time**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendors and the Purchaser.

### **Section 8.4 Survival**

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

### **Section 8.5 Personal Information**

The Purchasers hereby acknowledges that it is aware, and that it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchasers and their Representatives pursuant to this Agreement and/or the Transaction. The Purchasers agree to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them.

### **Section 8.6 Benefit of Agreement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Except as otherwise provided in this Agreement, the Parties intend that this Agreement shall not benefit or create any right or cause of action in, or on behalf of, any Person other than the Parties to this Agreement and no Person, other than the Parties to this Agreement shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.

### **Section 8.7 Entire Agreement**

This Agreement, the attached Schedules hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the Parties.

**Section 8.8 Assignment**

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any Party without the prior written consent of the other Party; provided, however, that the Purchasers may assign the right to purchase certain Purchased Assets to one or more of its wholly-owned subsidiaries. Any purported assignment without such consent shall be void and unenforceable.

**Section 8.9 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with the Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

**Section 8.10 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court.

**Section 8.11 Further Assurances**

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

**Section 8.12 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

**Section 8.13 Severability**

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein, is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

**Section 8.14 Monitor's Capacity**

The Vendors and the Purchasers acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Vendors, will have no liability, in its personal capacity or otherwise, in connection with this Agreement whatsoever as Monitor.

The Parties agree that the Monitor is entitled to rely upon and, if necessary, seek direction from the Court in respect to Section 3.2(c)(i); Section 3.3, and Section 3.4 of this Agreement, and such other provisions as are applicable to the Monitor's administrative activities hereunder.

*[The remainder of this page has been left intentionally blank]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement.

VENDORS:

**KING STREET COMPANY INC.**

By: \_\_\_\_\_  
Name:  
Title:

**THE KING STREET HOSPITALITY  
GROUP INC.**

By: \_\_\_\_\_  
Name:  
Title:

**2112047 ONTARIO LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**1771669 ONTARIO INC. (o/a La Banane)**

By: \_\_\_\_\_  
Name:  
Title:

**CXBO INC.**

By: \_\_\_\_\_  
Name:  
Title:

**2608765 ONTARIO INC.**

By: \_\_\_\_\_  
Name:  
Title:

**THE KING STREET FOOD COMPANY  
INC.**

By: \_\_\_\_\_  
Name:  
Title:

**THE KING STREET RESTAURANT  
COMPANY INC.**

By: \_\_\_\_\_  
Name:  
Title:

**2272224 ONTARIO INC.**

By: \_\_\_\_\_  
Name:  
Title:

**2327729 ONTARIO INC.**

By: \_\_\_\_\_  
Name:  
Title:

**2577053 ONTARIO INC. (BUCA  
EGLINTON)**

By: \_\_\_\_\_  
Name:  
Title:

**2584858 ONTARIO INC.**

By: \_\_\_\_\_  
Name:  
Title:

**2621298 ONTARIO INC.**

By: \_\_\_\_\_  
Name:  
Title:

**2641784 ONTARIO INC.**

By: \_\_\_\_\_  
Name:  
Title:

**2656966 ONTARIO INC.**

By: \_\_\_\_\_  
Name:  
Title:

**2268218 ONTARIO INC.**

By: \_\_\_\_\_  
Name:  
Title:

**1733667 ONTARIO LIMITED**

By: \_\_\_\_\_  
Name:  
Title:



**JI YORKDALE INC.**

By: \_\_\_\_\_  
Name:  
Title:

**JI SQUARE ONE INC.**

By: \_\_\_\_\_  
Name:  
Title:

PURCHASERS:

**2817334 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Mark Horrox  
Authorized Signatory

**2817336 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Mark Horrox  
Authorized Signatory

**2817337 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Mark Horrox  
Authorized Signatory

**2817340 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Mark Horrox  
Authorized Signatory

**2817341 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Mark Horrox  
Authorized Signatory

**2817342 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Mark Horrox  
Authorized Signatory

**2817343 ONTARIO INC.**

By: \_\_\_\_\_

Name: Mark Horrox  
Authorized Signatory

**2817347 ONTARIO INC.**

By: \_\_\_\_\_

Name: Mark Horrox  
Authorized Signatory

**2817348 ONTARIO INC.**

By: \_\_\_\_\_

Name: Mark Horrox  
Authorized Signatory

**2825420 ONTARIO INC.**

By: \_\_\_\_\_

Name: Mark Horrox  
Authorized Signatory

**2825664 ONTARIO INC.**

By: \_\_\_\_\_

Name: Mark Horrox  
Authorized Signatory

**SCHEDULE "A"**  
**PERMITTED ENCUMBRANCES**

Any amounts subject to a statutory deemed trust in favour of Her Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or, if applicable, in proceedings under the *Bankruptcy & Insolvency Act* (Canada) that may be required on the termination of the CCAA Proceedings, pursuant to the following legislative provisions:

- (i) Subsection 227(4) or (4.1) of the *Income Tax Act*;
- (ii) Subsection 222(1) or (3) of the *Excise Tax Act*;
- (iii) Subsection 23(3) or (4) of the *Canada Pension Plan* (Canada); and
- (iv) Subsection 86(2) or (2.1) of the *Employment Insurance Act* (Canada).

**SCHEDULE "B"**  
**FORM OF APPROVAL AND VESTING ORDER**

**SCHEDULE "C"**  
**PURCHASE PRICE ALLOCATION**

	<u>Purchased Assets</u>	<u>Proportionate Percentage</u>
i.	Buca Cucina St. Clair Purchased Assets	13.32%
ii.	Buca King Purchased Assets	13.19%
iii.	Buca Vaughan Purchased Assets	13.49%
iv.	Buca Yorkville Purchased Assets	15.61%
v.	CXBO Purchased Assets	1.06%
vi.	Jacob's Purchased Assets	32.26%
vii.	La Banane Purchased Assets	8.93%
viii.	Man Ray Purchased Assets	1.16%
ix.	The One Purchased Assets	0.01%
x.	CIBC Square Purchased Assets	0.01%
xi.	Miscellaneous Intellectual Property, Equipment and Other Assets	0.96%
	<b>TOTAL</b>	<b>100%</b>

**SCHEDULE "E-1"**  
**BUCA CUCINA ST. CLAIR PURCHASED ASSETS**

**I. TANGIBLE ASSETS**

All equipment, inventory, supplies, furniture, fixtures, appliances, office equipment and any other tangible property of or belonging to Buca Cucina St. Clair VendorCo.

**II. AUTHORIZATIONS**

All Authorizations of or belonging to Buca Cucina St. Clair VendorCo.

**III. PURCHASED CONTRACTS**

- (1) Green Retail Space Lease Toronto Core dated February 8, 2018 between Slate Toronto Core Office GP inc. as general partner for Slate Toronto Core Office L.P. and Incore Equities Inc. (collectively as landlord) and 2584858 Ontario Inc. o/a Buca Cucina St. Clair (as tenant), as amended from time to time and as may be further amended after the date of this Agreement
- (2) Architectural Agreement with Alex Rebanks Architects Inc., as amended from time to time and as may be further amended after the date of this Agreement

**IV. INTELLECTUAL PROPERTY**

**a) Domain Names**

None.

**b) Trademarks**

None.

**c) Facebook Venue Pages**

Page Name	Administrators	Page Owner	Page Status
Cucina Buca	Julia Clabassi (admin)	King Street Food Company (Julia as business administrator)	Published / Active

**d) Instagram Venue Pages**

Page & User Name	Password Holders	Page Status
Cucina Buca @cucinabuca	Julia Clabassi / Gus Giazitzidis	Published / Active

**e) Twitter Venue Pages**

None.

**f) Google My Business Listings**

Claimed Page: Cucina

Affiliated email: kingstreetfoodtoronto@gmail.com

**V. GOVERNMENT AND INSURANCE RECEIVABLES**

The proceeds of any Government and Insurance Receivables received by Buca Cucina St. Clair VendorCo on or after the date of this Agreement.

**VI. CASH AND OTHER WORKING CAPITAL**

All cash, cash equivalents and other similar working capital held by or on behalf of Buca Cucina St. Clair VendorCo.



**SCHEDULE "E-2"**  
**BUCA KING PURCHASED ASSETS**

**I. TANGIBLE ASSETS**

All equipment, inventory, supplies, furniture, fixtures, appliances, office equipment and any other tangible property of or belonging to Buca King VendorCo.

**II. AUTHORIZATIONS**

All Authorizations of or belonging to Buca King VendorCo.

**III. PURCHASED CONTRACTS**

- (1) Offer to Amend and Expand dated April 3, 2017 between RA King/Portland Nominee Inc. (as landlord) and 2112047 Ontario Inc. (as tenant), as amended from time to time and as may be further amended after the date of this Agreement
- (2) Beanfield Technologies Account #BF01000659 (internet)
- (3) Data Access Technologies Inc. Account #957 (internet)

**IV. INTELLECTUAL PROPERTY**

**a) Domain Names**

ID	Domain	Registrar	Registration Date	Next Due Date	Expiry Date	Status
377	buca.ca	Opensrs	05/16/2008	04/16/2022	05/16/2022	Active

**b) Trademarks**

Our Ref.	Trademark	Registration No.	Application No.	Owner
T677926 6OPP	BUCA		1,674,269	King Street Company Inc.
T677926 6CA	BUCA		1,674,269	King Street Company Inc.
T678169 0OPP	BUCA TRATTORIA		1,711,088	King Street Company Inc.
T678169 0CA	BUCA TRATTORIA		1,711,088	King Street Company Inc.
T678860 5CA	BUCA OSTERIA		1,814,154	King Street Company Inc.

**c) Facebook Venue Pages**

<b>Page Name</b>	<b>Administrators</b>	<b>Page Owner</b>	<b>Page Status</b>
Bar Buca	Julia Clabassi (admin)	King Street Food Company (Julia as business administrator)	Published / Active

**d) Instagram Venue Pages**

<b>Page &amp; User Name</b>	<b>Password Holders</b>	<b>Page Status</b>
Buca (both king & Yorkville content) @bucatoronto	Julia Clabassi / Gus Giazitzidis	Published / Active

**e) Twitter Venue Pages**

<b>Page &amp; User Name</b>	<b>Password Holders</b>	<b>Page Status</b>
Buca Toronto @bucatoronto	Julia Clabassi / Gus Giazitzidis	Published / Active

**f) Google My Business Listings**

Claimed Page: Buca

Affiliated email: kingstreetfoodtoronto@gmail.com

**V. GOVERNMENT AND INSURANCE RECEIVABLES**

The proceeds of any Government and Insurance Receivables received by Buca King VendorCo on or after the date of this Agreement.

**VI. CASH AND OTHER WORKING CAPITAL**

All cash, cash equivalents and other similar working capital held by or on behalf of Buca King VendorCo.

**SCHEDULE "E-3"**  
**BUCA VAUGHAN PURCHASED ASSETS**

**I. TANGIBLE ASSETS**

All equipment, inventory, supplies, furniture, fixtures, appliances, office equipment and any other tangible property of or belonging to Buca Vaughan VendorCo.

**II. AUTHORIZATIONS**

All Authorizations of or belonging to Buca Vaughan VendorCo.

**III. PURCHASED CONTRACTS**

- (1) Lease dated May 9, 2019 between VMC Residences GP Inc., as general partner of and on behalf of VMC Residences Limited Partnership (as landlord) and 2641784 Ontario Inc. (as tenant) and King Street Company Inc. (as indemnifier) (Restaurant Area), as amended from time to time and as may be further amended after the date of this Agreement
- (2) Lease dated May 9, 2019 between VMC Residences GP Inc., as general partner of and on behalf of VMC Residences Limited Partnership (as landlord) and 2641784 Ontario Inc. (as tenant) and King Street Company Inc. (as indemnifier) (Lobby Area) , as amended from time to time and as may be further amended after the date of this Agreement

**IV. INTELLECTUAL PROPERTY**

**a) Domain Names**

None.

**b) Trademarks**

None.

**c) Facebook Venue Pages**

None.

**d) Instagram Venue Pages**

None.

**e) Twitter Venue Pages**

None.

**f) Google My Business Listings**

None.

**V. GOVERNMENT AND INSURANCE RECEIVABLES**

The proceeds of any Government and Insurance Receivables received by Buca Vaughan VendorCo on or after the date of this Agreement.

**VI. CASH AND OTHER WORKING CAPITAL**

All cash, cash equivalents and other similar working capital held by or on behalf of Buca Vaughan VendorCo.

**SCHEDULE "E-4"**  
**BUCA YORKVILLE PURCHASED ASSETS**

**I. TANGIBLE ASSETS**

All equipment, inventory, supplies, furniture, fixtures, appliances, office equipment and any other tangible property of or belonging to Buca Yorkville VendorCo.

**II. AUTHORIZATIONS**

All Authorizations of or belonging to Buca Yorkville VendorCo.

**III. PURCHASED CONTRACTS**

- (1) Lease dated August 1, 2012 between Paramita Enterprises Limited (as successor to Bay-Yorkville Developments Ltd.) (as landlord) and 2327729 Ontario Inc. (as tenant) and 21122047 Ontario Ltd. and 171669 Ontario Inc. (collectively as indemnifiers), as amended from time to time and as may be further amended after the date of this Agreement
- (2) Bell Canada Account #535811149 (internet)

**IV. INTELLECTUAL PROPERTY**

**a) Domain Names**

ID	Domain	Registrar	Registration Date	Next Due Date	Expiry Date	Status
1556	bucayorkville.ca	Opensrs	07/15/2013	07/15/2021	07/15/2021	Active
1555	bucayorkville.com	Opensrs	07/15/2013	07/15/2021	07/15/2021	Active

**b) Trademarks**

Our Ref.	Trademark	Registration No.	Application No.	Owner
T678168 8OPP	BUCA YORKVILLE		1,711,090	King Street Company Inc.
T678168 8CA	BUCA YORKVILLE		1,711,090	King Street Company Inc.

**c) Facebook Venue Pages**

<b>Page Name</b>	<b>Administrators</b>	<b>Page Owner</b>	<b>Page Status</b>
Buca Osteria & Enoteca	Julia Clabassi (admin)	King Street Food Company (Julia as business administrator)	Published / Active
Buca Osteria & Bar	Julia Clabassi (admin)	King Street Food Company (Julia as business administrator)	Published / Active

**d) Instagram Venue Pages**

<b>Page &amp; User Name</b>	<b>Password Holders</b>	<b>Page Status</b>
Bar Buca @barbuca	Julia Clabassi / Gus Giazitzidis	Published / Active
Bar Buca @barbucatoronto	Julia Clabassi / Gus Giazitzidis	Published / Active

**e) Twitter Venue Pages**

<b>Page &amp; User Name</b>	<b>Password Holders</b>	<b>Page Status</b>
Bar Buca @barbucatoronto	Julia Clabassi / Gus Giazitzidis	Published / Active

**f) Google My Business Listings**

Claimed Page: Bar Buca

Affiliated email: kingstreetfoodtoronto@gmail.com

**V. GOVERNMENT AND INSURANCE RECEIVABLES**

The proceeds of any Government and Insurance Receivables received by Buca Yorkville VendorCo on or after the date of this Agreement.

**VI. CASH AND OTHER WORKING CAPITAL**

All cash, cash equivalents and other similar working capital held by or on behalf of Buca Yorkville VendorCo.

**SCHEDULE "E-5"  
CXBO PURCHASED ASSETS**

**I. TANGIBLE ASSETS**

All equipment, inventory, supplies, furniture, fixtures, appliances, office equipment and any other tangible property of or belonging to CXBO VendorCo.

**II. AUTHORIZATIONS**

All Authorizations of or belonging to CXBO VendorCo.

**III. PURCHASED CONTRACTS**

None.

**IV. INTELLECTUAL PROPERTY**

**a) Domain Names**

None.

**b) Trademarks**

Our Ref.	Trademark	Registration No.	Application No.	Owner
T678889 2CA	CXBO	965,643	1,772,167	CXBO INC.

**c) Facebook Venue Pages**

Page Name	Administrators	Page Owner	Page Status
CXBO Chocolates	Julia Clabassi (editor) CXBO Chocolates (admin)	CXBO Chocolates (Julia C. editor)	Published / Active

**d) Instagram Venue Pages**

Page & User Name	Password Holders	Page Status
CXBO @cxbo_chocolates	Julia Clabassi / Gus Giazitzidis	Published / Active

**e) Twitter Venue Pages**

None.

**f) Google My Business Listings**

None.

**V. GOVERNMENT AND INSURANCE RECEIVABLES**

The proceeds of any Government and Insurance Receivables received by CXBO VendorCo on or after the date of this Agreement.

**VI. CASH AND OTHER WORKING CAPITAL**

All cash, cash equivalents and other similar working capital held by or on behalf of CXBO VendorCo.



**SCHEDULE "E-6"**  
**JACOB'S PURCHASED ASSETS**

**I. TANGIBLE ASSETS**

All equipment, inventory, supplies, furniture, fixtures, appliances, office equipment and any other tangible property of or belonging to Jacob's VendorCo.

**II. AUTHORIZATIONS**

All Authorizations of or belonging to Jacob's VendorCo.

**III. PURCHASED CONTRACTS**

- (1) Tenant Commercial Lease dated May 2017 between Antonio Wong and Josefina Wong (collectively, as landlord) and 1733667 Ontario Limited (as tenant), as amended from time to time and as may be further amended after the date of this Agreement
- (2) Security Agreement dated May 2017 between Antonio Wong and Josefina Wong (collectively, as landlord) and 1733667 Ontario Limited (as tenant), as amended from time to time and as may be further amended after the date of this Agreement
- (3) Bell Canada Account #4163660200 (315) (phone line)
- (4) Bell Canada Account #509258452 (internet)
- (5) Rogers Account #230-236330900 (internet, cable TV)
- (6) Rogers Account #230-338096701 (internet)

**IV. INTELLECTUAL PROPERTY**

**a) Domain Names**

<b>ID</b>	<b>Domain</b>	<b>Registrar</b>	<b>Registration Date</b>	<b>Next Due Date</b>	<b>Expiry Date</b>	<b>Status</b>
1894	jacobsandcompanysteakhouse.com	Opensrs	01/23/2019	01/22/2022	01/23/2022	Active
1893	jacobsandco.ca	Opensrs	12/31/2018	12/31/2021	12/31/2021	Active
1892	jacobssteakhouse.ca	Opensrs	01/23/2019	01/22/2022	01/23/2022	Active
1858	jacobsgrillsteakhouse.com	Opensrs	08/01/2017	08/01/2021	08/01/2021	Active
28	jacobssteakhouse.com	Opensrs	08/30/2007	07/31/2021	08/30/2021	Active

**b) Trademarks**

Our Ref.	Trademark	Registration No.	Application No.	Owner
T678164 5CA	JACOBS & CO.	1,029,158	1,711,616	King Street Company Inc.
T678164 4CA	JACOBS & CO. STEAKHOUSE	1,029,185	1,711,617	King Street Company Inc.

**c) Facebook Venue Pages**

Page Name	Administrators	Page Owner	Page Status
Jacobs & Co. Steakhouse	Julia Clabassi (admin)	King Street Food Company (Julia as business administrator)	Published / Active

**d) Instagram Venue Pages**

Page & User Name	Password Holders	Page Status
Jacobs & Co. Steakhouse @jacobssteakhouse	Julia Clabassi / Gus Giazitzidis	Published / Active

**e) Twitter Venue Pages**

Page & User Name	Password Holders	Page Status
Jacobs & Co. Steakhouse @jacobsandco	Julia Clabassi / Gus Giazitzidis	Published / Active

**f) Google My Business Listings**

Claimed Page: Jacob's

Affiliated email: kingstreetfoodtoronto@gmail.com

**V. GOVERNMENT AND INSURANCE RECEIVABLES**

The proceeds of any Government and Insurance Receivables received by Jacob's VendorCo on or after the date of this Agreement.

**VI. CASH AND OTHER WORKING CAPITAL**

All cash, cash equivalents and other similar working capital held by or on behalf of Jacob's VendorCo.

**SCHEDULE "E-7"**  
**LA BANANE PURCHASED ASSETS**

**I. TANGIBLE ASSETS**

All equipment, inventory, supplies, furniture, fixtures, appliances, office equipment and any other tangible property of or belonging to La Banane VendorCo.

**II. AUTHORIZATIONS**

All Authorizations of or belonging to La Banane VendorCo.

**III. PURCHASED CONTRACTS**

- (1) Lease dated August 1, 2010 between Salvatore Valela and Filomena Valela (collectively as landlord) and 1771669 Ontario Inc. (as tenant), as amended by a Term Sheet dated November 30, 2017 between 1771669 Ontario Limited o/a La Banana, for a company to be incorporated and Salvatore Valela (power of attorney), and as amended from time to time and as may be further amended after the date of this Agreement
- (2) Rogers Account #7-6116-9598 (phone, cable, internet)

**IV. INTELLECTUAL PROPERTY**

**a) Domain Names**

ID	Domain	Registrar	Registration Date	Next Due Date	Expiry Date	Status
1857	petitebanane.com	Opensrs	08/01/2017	08/01/2021	08/01/2021	Active
1818	petitebanane.com	Opensrs	10/31/2016	01/01/2022	07/24/2022	Active
1817	la-banane.com	Opensrs	10/31/2016	01/01/2022	02/25/2022	Active

**b) Trademarks**

Our Ref.	Trademark	Registration No.	Application No.	Owner
T678964 ICA	LA BANANE	1,050,486	1,831,611	1771669 Ontario Inc. doing business as La Banane

**c) Facebook Venue Pages**

Page Name	Administrators	Page Owner	Page Status
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Restaurant La Banane	Julia Clabassi / Kris Collins / Tock (reservation system) *all admins	BOSK (Julia as business administrator)	Published / Active
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**d) Instagram Venue Pages**

Page & User Name	Password Holders	Page Status
Restaurant La Banane  @labananeresto	Julia Clabassi / Kris Collins / Chris Wickens / Gus Giazitzidis	Published / Active

**e) Twitter Venue Pages**

None.

**f) Google My Business Listings**

None.

**V. GOVERNMENT AND INSURANCE RECEIVABLES**

The proceeds of any Government and Insurance Receivables received by La Banane VendorCo on or after the date of this Agreement.

**VI. CASH AND OTHER WORKING CAPITAL**

All cash, cash equivalents and other similar working capital held by or on behalf of La Banane VendorCo.

**SCHEDULE "E-8"**  
**MAN RAY PURCHASED ASSETS**

**I. TANGIBLE ASSETS**

All equipment, inventory, supplies, furniture, fixtures, appliances, office equipment and any other tangible property of or belonging to Man Ray VendorCo.

**II. AUTHORIZATIONS**

All Authorizations of or belonging to Man Ray VendorCo.

**III. PURCHASED CONTRACTS**

- (1) Term Sheet dated November 30, 2017 between 1771669 Ontario Limited o/a La Banane, for a company to be incorporated (as tenant) and Salvatore Valela (power of attorney) (as landlord), as amended from time to time and as may be further amended after the date of this Agreement

**IV. INTELLECTUAL PROPERTY**

**a) Domain Names**

None.

**b) Trademarks**

None.

**c) Facebook Venue Pages**

Page Name	Administrators	Page Owner	Page Status
Man ray bar a vin	Julia Clabassi (admin) BOSK	BOSK (Julia as business administrator)	Published / Active

**d) Instagram Venue Pages**

Page & User Name	Password Holders	Page Status
Man ray bar a vin @manraybar	Info to follow	Published / Active

**e) Twitter Venue Pages**

None.

**f) Google My Business Listings**

None.

**V. GOVERNMENT AND INSURANCE RECEIVABLES**

The proceeds of any Government and Insurance Receivables received by Man Ray VendorCo on or after the date of this Agreement.

**VI. CASH AND OTHER WORKING CAPITAL**

All cash, cash equivalents and other similar working capital held by or on behalf of Man Ray VendorCo.

**SCHEDULE "E-9"**  
**MISCELLANEOUS INTELLECTUAL PROPERTY, EQUIPMENT AND OTHER ASSETS**

**I. Real Property and Storage Leases**

- (1) Head office lease between Allied and The King Street Food Company Inc. in respect of the head office premises located at 469B King Street West, Toronto, as amended from time to time and as may be further amended after the date of this Agreement
- (2) Lease Agreement dated September 1, 2020 between King Street Food Company (as tenant) and Symes Studios Inc. (as landlord) in respect of 2,255 square feet of leasable area on the ground floor of the building municipally know as 100 Symes Avenue, Toronto, Suite 111 (the "**Symes Storage Facility**")
- (3) Lease between King Street Foods (as tenant) and 2482085 Ontario Limited (as landlord) in respect of Containers 3 and 33 located at 100 Union Street, Toronto, ON (the "**Container Storage Facility**")
- (4) Rental Use Agreement #L009-4821 with Apple Self Storage (the "**Apple 4821 Storage Facility**")
- (5) Rental Use Agreement #L009-G107 with Apple Self Storage (the "**Apple G107 Storage Facility**")

**II. Physical Assets**

- All furniture, fixtures, equipment and other physical assets situated in the Symes Storage Facility, the Container Storage Facility, the Apple 4821 Storage Facility and the Apple G107 Storage Facility, including without limitation the Jamie's Italian Yorkdale Assets, the Jamie's Italian Square One Assets, the Buca Eglinton Assets, and the Buca Portland Assets, wherever situated.
- All office furniture, equipment, fixtures and other physical assets at the KSF Entities' corporate head offices located at 469B King Street West, Toronto.

**III. Service Agreements**

- (1) Bell Canada Account #4165068805 (450) (fax services)
- (2) Bell Canada Account #533082442 (internet)
- (3) Bell Mobility Account #533141619 (cell phones)
- (4) GTT Accelerated Communications Inc. Account #A0173997 (phone lines including Buca King (416-865-1600), Buca Yorkville (416-962-2882))
- (5) Adobe Shared Account
- (6) SilverWare Shared Account
- (7) DOT Inc. Shared Account
- (8) Counterforce Shared Account
- (9) Cintas Shared Account



#### IV. INTELLECTUAL PROPERTY

##### a) Domain Names

ID	Domain	Registrar	Registration Date	Next Due Date	Expiry Date	Status
1861	bucagelato.com	Opensrs	08/01/2017	01/01/2021	01/01/2021	Active
1860	bucagelateria.com	Opensrs	08/01/2017	01/01/2021	01/01/2021	Active
1859	bucatrattoria.com	Opensrs	08/01/2017	01/01/2021	01/01/2021	Active
1834	menu-ksfc.com	Opensrs	01/20/2017	01/20/2021	01/20/2021	Active
541	kingstreetfood.ca	Opensrs	01/24/2008	01/01/2022	01/24/2022	Active
348	kingstreetfood.com	Opensrs	01/21/2008	01/01/2022	01/21/2022	Active
1101	barbuca.ca	Opensrs	08/0/2011	08/01/2021	08/02/2021	Active
1100	barbuca.com	Opensrs	08/0/2011	08/01/2021	08/02/2021	Active
1752	bucatoronto.com	Opensrs	07/08/2015	07/08/2021	07/08/2021	Active

##### b) Trademarks

Our Ref.	Trademark	Registration No.	Application No.	Owner
T678624 8USE	BUCA DI BEPPPO	843,560	1,425,611	
T678171 8CA	KING STREET FOOD COMPANY & K Design	1,029,167	1,711,620	King Street Company Inc.
T678171 7CA	THE KING STREET FOOD COMPANY	1,029,168	1,711,619	King Street Company Inc.
T678168 9OPP	BUCA PIZZERIA		1,711,089	King Street Company Inc.
T678168 9CA	BUCA PIZZERIA		1,711,089	King Street Company Inc.
T678168 7OPP	BAR BUCA		1,711,087	King Street Company Inc.

Our Ref.	Trademark	Registration No.	Application No.	Owner
T678168 7CA	BAR BUCA		1,711,087	King Street Company Inc.
T678164 8CA	THE SAINT TAVERN		1,711,618	King Street Company Inc.
T678164 7CA	KING STREET FOOD COMPANY & K Design	1,029,174	1,711,092	King Street Company Inc.
T678164 6CA	THE KING STREET FOOD COMPANY	1,025,607	1,711,091	King Street Company Inc.

**c) Facebook Venue Pages**

Page Name	Administrators	Page Owner	Page Status
King Street Food Company	Julia Clabassi (admin)	King Street Food Company (Julia as business administrator)	Published / Active

**d) Instagram Venue Pages**

Page & User Name	Password Holders	Page Status
King Street Food Company @kingstreetfoodcompany	Julia Clabassi / Gus Giazitzidis	Published / Active

**e) Twitter Venue Pages**

Page & User Name	Password Holders	Page Status
King Street Food Company @kingstreetfood	Julia Clabassi / Gus Giazitzidis	Published / Active

**f) Google My Business: Free Listings**

Affiliated email: kingstreetfoodtoronto@gmail.com

**g) Mailchimp Integrated Marketing Platform for Newsletters**

Affiliated email: julia@kingstreetfood.com

Name of the account: The King Street Food Company

**SCHEDULE "E-10"**  
**CIBC SQUARE PURCHASED ASSETS**

**[TO BE DETERMINED]**

**SCHEDULE "E-11"**  
**THE ONE PURCHASED ASSETS**

**[TO BE DETERMINED]**

**TAB C**

**THIS IS EXHIBIT "C"  
REFERRED TO IN THE AFFIDAVIT  
OF PETER TSEBELIS SWORN  
REMOTELY BEFORE ME ON  
MARCH 23, 2021**

A handwritten signature in black ink, appearing to be "T. G.", is positioned above a horizontal line.

---

A Commissioner for Oaths and Notary Public in  
and for the Province of Ontario

## THIRD AMENDMENT TO THE DIP TERM SHEET

This THIRD AMENDMENT TO DIP TERM SHEET (this "**Amendment**") is made as of March 22, 2021 between King Street Company Inc., The King Street Hospitality Group Inc., Bonta Trading Co. Inc., The King Street Food Company Inc., The King Street Restaurant Company Inc., 2268218 Ontario Inc., 1733667 Ontario Limited, 2112047 Ontario Ltd., 1771669 Ontario Inc., CXBO Inc., 2608765 Ontario Inc., JI Yorkdale Inc., JI Square One Inc., 2272224 Ontario Inc., 2327729 Ontario Inc., 2577053 Ontario Inc., 2584858 Ontario Inc., 2621298 Ontario Inc., 2641784 Ontario Inc., 2656966 Ontario Inc., (collectively, the "**Borrowers**" and each a "**Borrower**") and Third Eye Capital Corporation, its affiliates, or designated assigns ("**TEC**" or the "**Agent**", and together with the Borrowers, the "**Parties**").

### RECITALS:

- A. The Borrowers and Agent entered into that certain DIP Term Sheet dated as of November 5, 2020 and accepted as of November 6, 2020 (the "**Original Loan Agreement**"), which Loan Agreement was approved by order of the CCAA Court dated as of November 6, 2020.
- B. The Original Loan Agreement was amended by written agreements dated as of November 12, 2020 and February 12, 2021(as amended, the "**Loan Agreement**").
- C. The Borrowers have requested and the Agent has agreed to further amend the Loan Agreement upon and subject to the terms and conditions set out herein.

### ARTICLE 1

#### AMENDMENTS TO THE LOAN AGREEMENT

**Section 1.1 Amendment.** Subject to the satisfaction of each of the conditions to effectiveness set forth in this Amendment, the Parties agree that the Loan Agreement is hereby amended as follows:

- 1.1.1 Section 4 (*DIP Facility and Maximum Amount*) of the Loan Agreement is hereby amended by deleting "\$1,925,000" and replacing it with "\$2,700,000". All references to the "Maximum Amount" in the Loan Agreement (as amended pursuant to this Amendment) shall be construed as references to the amount of "\$2,700,000".
- 1.1.2 Section 6 (*Maturity Date*) of the Loan Agreement is hereby amended by deleting "February 19, 2021" and replacing it with "May 31, 2021".
- 1.1.3 Section 12 (*Fees*) of the Loan agreement is hereby amended by adding the following at the end of that section, included within the definition of "Closing Fee":  
  
"and (iii) an amount equal to 3% of \$775,000 payable upon the completion of the CCAA Proceedings."

**ARTICLE 2**  
**REPRESENTATIONS AND WARRANTIES**

**Section 2.1 Representations.** Each Borrower represents and warrants to the Lender that, as of the date hereof (after giving effect to this Amendment):

- (a) this Amendment has been duly authorized, executed and delivered by each Borrower;
- (b) this Amendment constitutes a legal, valid and binding obligation of each Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other applicable laws affecting creditors' rights generally and to general principles of equity, regardless of whether considered in a proceeding in equity or at law;
- (c) the representations and warranties set forth in the Loan Agreement and the other Loan Documents are true and correct in all respects on and as of the date hereof as though made on and as of such date, unless stated to be made as of a specified date; and
- (d) no Default or Event of Default has occurred and is continuing.

**ARTICLE 3**  
**CONDITIONS**

**Section 3.1 Conditions Precedent.** This Amendment shall become effective on the date upon which there has been receipt by the Agent of the following (which conditions precedent are for the sole and exclusive benefit of the Agent and may be waived by the Agent):

- (a) a counterpart of this Amendment executed by each party hereto; and
- (b) the CCAA Court shall have issued an order, in a form acceptable to the Agent and the Borrowers, by no later than March 29, 2021, (i) approving this Amendment, and (ii) approving the DIP Lenders' Charge as contemplated by the Loan Agreement.

**ARTICLE 4**  
**MISCELLANEOUS**

**Section 4.1 Definitions.** Capitalized terms not defined in this Amendment have the meanings given to them in the Loan Agreement.

**Section 4.2 Headings, etc.** The inclusion of headings in this Amendment is for convenience of reference only and does not affect the construction or interpretation hereof.

**Section 4.3 Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.



**Section 4.4 Benefits.** This Amendment is binding upon and will inure to the benefit of the Parties and their respective permitted successors and assigns.

**Section 4.5 Conflicts.** If, after the date of this Amendment, any provision of this Amendment is inconsistent with any provision of the Loan Agreement, the relevant provision of this Amendment shall prevail.

**Section 4.6 Loan Documentation.** This Amendment constitutes Loan Documentation for all purposes under the Loan Agreement.

**Section 4.7 Counterparts.** This Amendment may be executed in any number of counterparts and delivered by facsimile or PDF via email, each of which will be deemed to be an original, and all such separate counterparts shall together constitute one and the same instrument.

*- signature page follows -*

**ALL OF WHICH** is agreed as of the date first written above by:

**AGENT:**

**THIRD EYE CAPITAL  
CORPORATION**

Per:

\_\_\_\_\_  
Managing Director

**BORROWERS:**

**KING STREET COMPANY INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**THE KING STREET HOSPITALITY  
GROUP INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**BONTA TRADING CO. INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2268218 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**1733667 ONTARIO LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**THE KING STREET FOOD COMPANY  
INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**THE KING STREET RESTAURANT  
COMPANY INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2112047 ONTARIO LTD.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**JI YORKDALE INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**JI SQUARE ONE INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**1771669 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**CXBO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2608765 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2272224 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2327729 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2577053 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2584858 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2621298 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2641784 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**2656966 ONTARIO INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory



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., ET AL.

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

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
  
(PROCEEDING COMMENCED AT TORONTO)

**AFFIDAVIT OF PETER TSEBELIS  
(sworn March 23, 2021)**

**GOWLING WLG (CANADA) LLP**  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

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**Thomas Gertner** (LSO#: 67756S)  
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Email: [thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)

*Lawyers for the KSF Group*

# TAB 3

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

THE HONOURABLE MR.	)	MONDAY, THE 29 <sup>TH</sup>
	)	
JUSTICE HAINEY	)	DAY OF MARCH, 2021

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**

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by the Applicants, for an Order, *inter alia*: (i) approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Sale Agreement**") among the Applicants listed in Schedule A (collectively and in such capacity, the "**Vendors**") and 2817334 Ontario Inc., 2817336 Ontario Inc., 2817337 Ontario Inc., 2817340 Ontario Inc., 2817341 Ontario Inc., 2817342 Ontario Inc., 2817343 Ontario Inc., 2817347 Ontario Inc., 2817348 Ontario Inc., 2825420 Ontario Inc., and 2825664 Ontario Inc. (collectively, the "**Purchasers**") dated March 23, 2021 and appended to the Affidavit of Peter Tsebelis sworn March 23, 2021 (the "**Tsebelis March 23 Affidavit**"), and (ii) vesting in the Purchasers the Vendors' rights, titles and interests in and to the Purchased Assets (as defined in

the Sale Agreement), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicants, the Tsebelis March 23 Affidavit and the Exhibits attached thereto, the Third Report of MNP Ltd., in its capacity as Monitor of the Applicants (the “**Monitor**”) dated March ●, 2021 (the “**Third Report**”), and on being advised that those parties disclosed on the Service List attached to the Motion Record were given notice, and on hearing the submissions of counsel for the Applicants, the Monitor, and Third Eye Capital Corporation and those other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [Katherine Yurkovich] sworn March ●, 2021, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record in support of this motion be and are hereby abridged and validated, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Sale Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Vendors is hereby authorized and approved, with such minor amendments as the Vendors and the Purchasers, with the approval of the Monitor may deem necessary. The Vendors are hereby authorized and directed, and the Monitor is authorized and empowered, to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor’s certificate to the Purchasers substantially in the form attached as Schedule B hereto (the “**Monitor's Certificate**”), all of the Vendors’ rights, titles and interests in and to the Purchased Assets, as broken down by type of Purchased Asset in Schedule C hereto, shall vest absolutely in the applicable Purchaser listed in Schedule C hereto for each such type of Purchased Asset, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise),

liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated November 6, 2020, as amended and restated by an Order dated November 13, 2020, and as further amended by an Order dated February 12, 2021 (collectively, the "**Initial Order**"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule D hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances listed on Schedule E hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the Cash Priority Payables Amount shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the Cash Priority Payables Amount with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that the Monitor is authorized and directed to hold the Cash Priority Payables Amount pursuant to the terms of the Sale Agreement and to make payments from that amount to discharge Cash Priority Payables in accordance with the direction contemplated by section 3.2(c)(ii) of the Sale Agreement.

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

8. **THIS COURT ORDERS** that the Vendors, be and are hereby authorized and directed to, upon delivery of the Monitor's Certificate by the Monitor to the Vendors, distribute the TEC DIP Debt Amount to Third Eye Capital Corporation in its capacity as agent for and on behalf of the DIP Lenders in full and final satisfaction of the TEC DIP Debt (the "**Distribution**").

9. **THIS COURT ORDERS** that, effective as at the time of the Distribution, the DIP Lenders' Charge (as defined in the Initial Order) shall be deemed to have been terminated, released and discharged.

10. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Vendors and the Purchasers regarding fulfillment of conditions to closing under the Sale Agreement, and shall incur no liability with respect to the delivery of the Monitor's Certificate.

11. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Vendors and the Monitor are authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Vendors' records pertaining to the Vendors' past and current employees, The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors.

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

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

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

constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13. **THIS COURT ORDERS** that Confidential Appendix A to the Third Report is hereby sealed and shall not form part of the public record until such time as the Monitor's Certificate has been filed with the Court, or further order of this Court.

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendors and Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Vendors and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendors and the Monitor and their respective agents in carrying out the terms of this Order.

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## **SCHEDULE A**

### **The Vendors**

1. King Street Company Inc.
2. 2268218 Ontario Inc.
3. 1733667 Ontario Limited
4. The King Street Food Company Inc.
5. The King Street Restaurant Company Inc.
6. 2112047 Ontario Ltd.
7. Ji Yorkdale Inc.
8. Ji Square One Inc.
9. 1771669 Ontario Inc.
10. CXBO Inc.
11. 2608765 Ontario Inc.
12. 2272224 Ontario Inc.
13. 2327729 Ontario Inc.
14. 2577053 Ontario Inc.
15. 2584858 Ontario Inc.
16. 2621298 Ontario Inc.
17. 2641784 Ontario Inc.
18. 2656966 Ontario Inc.



**Schedule B – Form of Monitor’s Certificate**

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
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**

**MONITOR’S CERTIFICATE**

**RECITALS**

- A.** Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated November 6, 2020, MNP Ltd. was appointed as the monitor (the "**Monitor**") of the Applicants in respect of these CCAA Proceedings.
- B.** Pursuant to an Order of the Court dated March 29, 2021 (the "**Approval and Vesting Order**"), the Court approved the sale transaction contemplated by an asset purchase agreement dated as of March 23, 2021 (the "**Sale Agreement**") between the Applicants listed in Schedule A to the Approval and Vesting Order and 2817334 Ontario Inc., 2817336 Ontario Inc., 2817337 Ontario Inc., 2817340 Ontario Inc., 2817341 Ontario Inc., 2817342 Ontario Inc., 2817343 Ontario Inc., 2817347 Ontario Inc., 2817348 Ontario Inc., 2825420 Ontario Inc., and 2825664 Ontario Inc. (collectively, the "**Purchasers**") and provided for the vesting in the Purchasers of the Vendors’ rights,

titles and interests in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 6.1, 6.2 and 6.3 of the Sale Agreement have been satisfied or waived by the Vendors and the Purchasers (as applicable); and (iii) the Transaction has been completed to the satisfaction of the Monitor.

- C. Pursuant to the Approval and Vesting Order, the Monitor may rely on written notice from the Vendors and the Purchasers regarding fulfillment of conditions to closing under the Sale Agreement.
- D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE MONITOR CERTIFIES the following:**

1. The Purchasers have paid and the Monitor and the Vendors, as applicable, have received the Purchase Price payable on the Closing Date pursuant to the Sale Agreement;
2. The Monitor has received the direction contemplated by section 3.2(c)(ii) of the Sale Agreement;
3. The conditions to Closing as set out in sections 6.1, 6.2 and 6.3 of the Sale Agreement have been satisfied or waived by the Vendors and the Purchasers, as applicable; and
4. The Transaction has been completed to the satisfaction of the Monitor.
5. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_, 2021.

**MNP LTD., in its capacity as Monitor of the  
Vendors, and not in its personal or corporate  
capacity**

Per: \_\_\_\_\_

Name:

Title:

### Schedule C – Purchased Assets Vesting in Each Purchaser

#	[Type of Purchased Assets	Purchaser in Whom Such Purchased Assets Shall Vest in Accordance With Paragraph 4 of the Approval and Vesting Order
1.	Buca Cucina St. Clair Purchased Assets	2817241 Ontario Inc.
2.	Buca King Purchased Assets	2817337 Ontario Inc.
3.	Buca Vaughan Purchased Assets	2817342 Ontario Inc.
4.	Buca Yorkville Purchased Assets	2817340 Ontario Inc.
5.	CXBO Purchased Assets	2817348 Ontario Inc.
6.	Jacob's Purchased Assets	2817336 Ontario Inc.
7.	La Banane Purchased Assets	2817343 Ontario Inc.
8.	Man Ray Purchased Assets	2817347 Ontario Inc.
9.	CIBC Square Purchased Assets	2825664 Ontario Inc.
10.	The One Purchased Assets	2825420 Ontario Inc.
11.	Miscellaneous Intellectual Property, Equipment and Other Assets	2817334 Ontario Inc.

**Schedule D – Claims to released, discharged and expunged from Purchased Assets upon delivery of the Monitor’s Certificate**

#	Secured Party	Debtor(s)	File No.
1.	7324375 CANADA INC O/A SANI-SERVICE	1733667 ONTARIO LIMITED O/A JACOBS & CO. STEAKHOUSE  JACOBS & CO. STEAKHOUSE	717603588 <b>PPSA</b>
2.	CHEF CHOICE EQUIPMENT RENTALS INC.	1733667 ONTARIO CXBO INC. SARAH KEENLYSIDE (DOB: 08NOV1974)	741107169 <b>PPSA</b>
3.	CHEF CHOICE EQUIPMENT RENTALS INC.	CXBO INC.  SARAH L KEENLYSIDE (DOB: 08NOV1974)	733987908 <b>PPSA</b>
4.	HER MAJESTY IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE	THE KING STREET FOOD COMPANY INC	759628404 <b>PPSA</b>
5.	TRIMEN FOOD SERVICES EQUIPMENT LTD.	THE KING STREET FOOD COMPANY INC.	758708451 <b>PPSA</b>

#	Secured Party	Debtor(s)	File No.
6.	TRIMEN FOOD SERVICES EQUIPMENT LTD.	THE KING STREET FOOD COMPANY INC.	758485476 <b>PPSA</b>
7.	CANADIAN DEALER LEASE SERVICES INC.  BANK OF NOVA SCOTIA - DLAC	THE KING STREET FOOD COMPANY INC.  ROBERT A GENTILE (DOB: 29FEB1980)	757972017 <b>PPSA</b>
8.	HIGHLAND CHEVROLET BUICK GMC CADILLAC LTD.	THE KING STREET FOOD COMPANY INC (Corp. No.: 1760204)	750623013 <b>PPSA</b>
9.	HIGHLAND CHEVROLET BUICK GMC CADILLAC LTD.	THE KING STREET FOOD COMPANY INC (Corp. No.: 1760204)	734735439 <b>PPSA</b>

## **Schedule E – Permitted Encumbrances**

### **(unaffected by the Vesting Order)**

Any amounts subject to a statutory deemed trust in favour of Her Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or, if applicable, in proceedings under the Bankruptcy & Insolvency Act (Canada) that may be required on the termination of the CCAA Proceedings, pursuant to the following legislative provisions:

- (i) subsection 227(4) or (4.1) of the *Income Tax Act*;
- (ii) subsection 222(1) or (3) of the *Excise Tax Act*;
- (iii) subsection 23(3) or (4) of the *Canada Pension Plan* (Canada); and
- (iv) subsection 86(2) or (2.1) of the *Employment Insurance Act* (Canada).

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., ET AL.

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

Applicants

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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at: TORONTO

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**APPROVAL AND VESTING ORDER**  
**(Returnable March 29, 2021)**

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**GOWLING WLG (CANADA) LLP**

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*Lawyers for the Applicants*



# TAB 4

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

THE HONOURABLE MR. ) MONDAY, THE 29<sup>TH</sup>  
 )  
JUSTICE HAINEY ) DAY OF MARCH, 2021

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**

**TERMINATION ORDER**

**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, among other things, terminating the within proceedings upon the filing of the Monitor's Certificate (as defined below) by MNP Ltd. ("MNP") in its capacity as Monitor of the Applicants (the "**Monitor**") and granting the other relief set out herein, was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the Motion Record of the Applicants filed in respect of this motion, including the Affidavit of Peter Tsebelis sworn March 23, 2021 (the "**Tsebelis March 23 Affidavit**") and the Exhibits attached thereto, the Third Report of the Monitor dated March 23, 2021 (the "**Third Report**"), the fee affidavit of [redacted] sworn March 23, 2021 (the "**Miller Thomson Affidavit**") and the fee affidavit of [redacted] sworn March 23, 2021 (the "**MNP Affidavit**"), and on being advised that those parties disclosed on the Service List attached to the Motion Record were given notice, and on hearing the submissions of counsel for the

Applicants, counsel for the Monitor and the other parties appearing on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [Katherine Yurkovich] sworn March 1, 2021, filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record in support of this motion be and are hereby abridged and validated, such that this motion is properly returnable today and hereby dispenses with further service thereof.

### **DEFINED TERMS**

2. **THIS COURT ORDERS** that capitalized terms used and not defined herein shall have the meanings given to them in the Initial Order dated November 6, 2020, as amended and restated by the Order of the Court dated November 13, 2020, and as further amended by the Order of the Court dated February 12, 2021 in the these proceedings (collectively, the "**Initial Order**").

### **TERMINATION OF CCAA PROCEEDINGS AND RELATED PROVISIONS**

3. **THIS COURT ORDERS** that effective at the date and time (the "**CCAA Termination Time**") on which the Monitor files the certificate, substantially in the form attached hereto as Schedule "A" (the "**Monitor's Certificate**"), certifying that it has been advised in writing by the Applicants that all matters to be attended to in connection with these proceedings have been completed, the within proceedings shall be automatically terminated without any further act or formality and, except as otherwise expressly set out herein, the Initial Order shall have no further force or effect.

4. **THIS COURT ORDERS** that the Stay Period shall expire on the earlier of the CCAA Termination Time and May 31, 2021 (the "**Extended Stay Period**").

5. **THIS COURT ORDERS** that, effective as at the CCAA Termination Time, subject to the payment in full of all amounts owing to the beneficiaries thereunder, the Directors' Charge and, the Administration Charge, shall be terminated, released and discharged.

### **THIRD DIP AMENDMENT**

6. **THIS COURT ORDERS** that the execution by the Applicants of the Third Amendment to DIP Loan Agreement substantially in the form attached to the Tsebelis March 23 Affidavit (the "**Third DIP Amendment**") is hereby authorized and approved, and the Applicants are hereby authorized and

empowered to borrow up to an additional \$775,000 (\$2,700,000 in the aggregate) pursuant to the DIP Loan Agreement as amended by the Third DIP Amendment.

7. **THIS COURT ORDERS** that:

- (a) paragraphs 31 to 39 of the Initial Order shall apply to the DIP Loan Agreement as amended by the Third DIP Amendment and all references to the DIP Loan Agreement contained in the Initial Order shall be deemed to be references to the DIP Loan Agreement as amended by the Third DIP Amendment;
- (b) the DIP Lenders' Charge shall secure all amounts owing by the Applicants to the DIP Lenders under the DIP Loan Agreement and the Definitive Documents as amended by the Third DIP Amendment; and
- (c) for greater certainty, paragraph 31 of the Initial Order is hereby amended to replace the references to "\$1,925,000" with "\$2,700,000".

#### **APPROVAL OF MONITOR'S FEES AND DISBURSEMENTS**

8. **THIS COURT ORDERS** that the fees and disbursements of the Monitor up to and including ●, 2021, all as set out in the Third Report and the MNP Affidavit, are hereby approved.

9. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's counsel up to and including ●, 2021, all as set out in the Miller Thomson Affidavit, are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and the Monitor's counsel in connection with the completion by the Monitor of its remaining duties and the administration of these proceedings shall be paid in accordance with the revised cash flow forecast attached to the Third Report or such other amounts as approved by the DIP Lenders and the Applicants or the Court, if necessary.

#### **APPROVAL OF MONITOR'S ACTIVITIES**

11. **THIS COURT ORDERS** that the second report of the Monitor dated February 9, 2021 and the Third Report are each hereby approved and the activities and conduct of the Monitor referred to therein are each hereby ratified and approved; provided, however, that only the Monitor in its personal and/or corporate capacity and only with respect to its personal and/or corporate liability, shall be entitled to rely upon or utilize in any way such approvals.

12. **THIS COURT ORDERS AND DECLARES** that the Monitor has duly and properly satisfied, discharged and performed all of its obligations, liabilities, responsibilities and duties in respect of the Applicants in compliance and in accordance with the CCAA, the Initial Order and any other Orders of this Court made in the within proceedings.

#### **DISCHARGE OF MONITOR**

13. **THIS COURT ORDERS AND DECLARES** that, effective as at the CCAA Termination Time, MNP shall be discharged as Monitor of the Applicants and shall have no further duties, obligations or responsibilities as Monitor in these proceedings.

14. **THIS COURT ORDERS** that, notwithstanding any provision of this Order and the termination of these proceedings, nothing herein shall affect, vary, derogate from, limit or amend any of the protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order or any other Order of this Court in these proceedings, all of which are expressly continued and confirmed.

#### **BANKRUPTCY**

15. **THIS COURT ORDERS** that: (i) the Applicants are authorized to make assignments in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) on or after the CCAA Termination Time; (ii) MNP is authorized to act as trustee in bankruptcy of each of the Applicants.

16. **THIS COURT ORDERS** that, upon MNP’s appointment as licensed insolvency trustee for each of the Applicants (“**Trustee**”), the Trustee may administer the bankruptcy estates of the Applicants as follows:

- (a) a single court file number and title of proceeding of “In the Matter of the Bankruptcy 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.” shall be assigned to the proceedings in the bankrupt estates of the Applicants;
- (b) the Trustee is authorized to administer the bankrupt estates of the Applicants as if such estates were a single bankrupt estate for the purpose of carrying out its administrative duties

and responsibilities as trustee under the BIA with respect to the administration of bankrupt estates generally, including without limitation as follows:

- (i) the Trustee is authorized to send notice of the first meeting of creditors (the "**Notice**") in the manner prescribed by section 102 of the BIA by sending the Notice together with directions to download documents to accompany the notice set out in section 102(2) of the BIA (the "**Forms**");
- (ii) meetings of creditors and inspectors in the bankrupt estates of the Applicants may be convened through one combined advertisement and conducted jointly provided that the results of any creditors' vote shall be separately tabulated for each such bankrupt estate;
- (iii) the Trustee is authorized to use a consolidated form of proof of claim that directs creditors to identify the bankrupt estate in which a claim is made for voting and for distribution purposes;
- (iv) the Trustee is authorized to maintain a consolidated bank account with respect to the Applicants' respective bankruptcy estates;
- (v) the Trustee is authorized to issue consolidated reports in respect of the bankruptcy estates of the Applicants;
- (vi) the Trustee is authorized to perform a consolidated making, filing, advertising and distribution of all filings and notices in the bankrupt estates of the Applicants required under the BIA; and
- (vii) a single group of inspectors shall be the inspectors for the consolidated bankruptcy estates of the Applicants.

17. **THIS COURT ORDERS** that this procedural consolidation is not intended to be a substantive consolidation of the bankruptcy estates of the Applicants and will automatically terminate if the Trustee is replaced as trustee of any, but not all, of the estates.

#### **WIND DOWN AMOUNT**

18. **THIS COURT ORDERS** that the Monitor is authorized and directed to hold the Wind Down Amount, to be held in trust for the benefit of the Administrative Professionals entitled to be paid costs

pursuant to and in accordance with the Wind Down Budget, to be paid to the Monitor pursuant to the terms of the Sale Agreement (as those terms are defined in the Approval and Vesting Order) approved pursuant to the Order of Mr. Justice Hainey dated March 29, 2021 (the "**Approval and Vesting Order**"), and to make payments from that amount to discharge obligations secured by the Administration Charge or the Directors' Charge, and for the purposes of undertaking and completing an orderly wind-down of the Applicants and the CCAA Proceedings and all ancillary activities in connection therewith, including any assignments in bankruptcy in respect of the Applicants and the administration of the bankruptcy estates of the Applicants pursuant to the BIA.

19. **THIS COURT ORDERS** that the Monitor is authorized and directed to distribute any excess funds from the Wind Down Amount to the Purchasers pursuant to the terms of the Sale Agreement (as those terms are defined in the Approval and Vesting Order).

#### **RELEASES**

20. **THIS COURT ORDERS** that the Monitor and its counsel and each of their respective affiliates, officers, directors, partners, employees and agents (collectively, the "**Released Persons**") shall be and are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Persons, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of the within proceedings or with respect to their conduct in the within proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred, and the Released Persons shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Persons.

21. **THIS COURT ORDERS** that, at the CCAA Termination Time, and subject to paragraph 22 hereof, the Released Persons shall be released and discharged from any and all claims that any person may have or be entitled to assert against the Released Persons, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or thereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place following the date of this Order in any way relating to, arising out of or in respect of the within proceedings or with respect to their respective conduct in the within proceedings (collectively, the "**Subsequent Released Claims**"), and any such Subsequent Released Claims shall be released, stayed, extinguished and forever barred and the Released Persons shall have no liability in respect thereof, provided that the Subsequent Released Claims shall not

include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Persons.

22. **THIS COURT ORDERS** that in the event that any person objects to the release and discharge of the Subsequent Released Claims, that person must send a written notice of objection (each a "**Notice of Objection**") and the grounds therefor to the Monitor such that the Notice of Objection is received by the Monitor prior to the proposed CCAA Termination Time. If no Notice of Objection is received by the Monitor prior to the CCAA Termination Time, the release and discharge of Subsequent Released Claims pursuant to paragraph 20 hereof shall be automatically deemed effective upon the CCAA Termination Time, without further Order of the Court.

23. **THIS COURT ORDERS** that if Notice of Objection is received by the Monitor pursuant to paragraph 21 hereof, the release and discharge of the Subsequent Released Claims pursuant to paragraph 20 hereof shall not become effective pending further Order of the Court. For greater certainty, no Notice of Objection received in accordance with paragraph 21 hereof shall affect the release and discharge of the Released Claims pursuant to paragraph 20 hereof, which shall be effective as of the date of this Order.

24. **THIS COURT ORDERS** that from and after the CCAA Termination Time no action or other proceeding shall be commenced against any of the Released Persons in any way arising from or related to the within proceedings, except with prior leave of this Court on at least seven (7) days' prior written notice to the applicable Released Person, and provided that any such Order granting leave includes a term granting the applicable Released Person security for its costs and the costs of its counsel in connection with any proposed action or proceeding, such security to be on terms this Court deems just and appropriate.

#### **GENERAL**

25. **THIS COURT ORDERS** that notwithstanding the discharge of the Monitor and the termination of the within proceedings, this Court shall remain seized of any matter arising from these proceedings, and each of the Applicants, the Monitor and any other interested party shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to these proceedings notwithstanding the termination thereof. The Monitor is authorized to take such steps and actions as the Monitor determines are necessary to give effect to this Order following the date of this Order until the CCAA Termination Time.

26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All



courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

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**SCHEDULE A  
FORM OF MONITOR'S CERTIFICATE**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
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

**MONITOR'S CERTIFICATE**

**RECITALS**

- A.** The Applicants obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 6, 2020, as amended and restated by the Order of the Court dated November 13, 2020, and as further amended by the Order of the Court dated February 12, 2021 (collectively, the "**Initial Order**").
- B.** MNP Ltd. (in such capacity, the "**Monitor**") was appointed as the Monitor of the Applicants in the within CCAA proceedings pursuant to the Initial Order.
- C.** Pursuant to the CCAA Termination Order granted March 29, 2021, the Court approved, among other things, the termination of the within CCAA proceedings effective at the date and time (the "**CCAA Termination Time**") on which the Monitor files this Monitor's certificate with the Court.

**THE MONITOR CONFIRMS** the following:

- 1. The Monitor has been informed by the Applicants that all matters to be attended to in connection with these proceedings have been completed.
- 2. Accordingly, the CCAA Termination Time has occurred at the date and time set forth below.

DATED at Toronto, Ontario this \_\_\_\_ day of \_\_\_\_\_, 2021.

**MNP LTD., solely in its capacity as Monitor of the  
Applicants and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF KING STREET COMPANY  
INC., ET AL.

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

Applicants

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at: TORONTO

**TERMINATION ORDER**  
**(Returnable March 29, 2021)**

**GOWLING WLG (CANADA) LLP**

1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**Virginie Gauthier** (LSO#: 41097D)  
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*Lawyers for the Applicants*

# TAB 5

Court File No. ~~—~~ CV-20-00650945-00CL

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

THE HONOURABLE ~~—~~ MR. ) ~~WEEKDAY~~ MONDAY, THE # 29<sup>TH</sup>  
 )  
JUSTICE ~~—~~ HAINES ) DAY OF ~~MONTH~~ MARCH,  
 ) 20YR 2021

**B E T W E E N:**

**~~PLAINTIFF~~**

~~Plaintiff~~

~~—and—~~

**~~DEFENDANT~~**

~~Defendant~~

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

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by ~~[RECEIVER'S NAME] in its capacity as the Court appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor")~~ the Applicants, for an ~~order~~ Order, *inter alia*: (i) approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement ~~of purchase and sale~~ (the "**Sale Agreement**") ~~between~~ among the ~~Receiver and [NAME OF PURCHASER]~~ (Applicants listed in Schedule A (collectively and in such capacity, the "Vendors") and 2817334 Ontario Inc., 2817336 Ontario Inc., 2817337 Ontario Inc., 2817340 Ontario Inc., 2817341 Ontario Inc., 2817342 Ontario Inc., 2817343 Ontario Inc., 2817347 Ontario Inc., 2817348 Ontario Inc., 2825420 Ontario Inc., and 2825664 Ontario Inc. (collectively, the "PurchaserPurchasers") dated ~~[DATE]~~ March 23, 2021 and appended to the ~~Report~~ Affidavit of ~~the Receiver dated [DATE]~~ Peter Tsebelis sworn March 23, 2021 (the "**ReportTsebelis March 23 Affidavit**"), and (ii) vesting in the ~~PurchaserPurchasers~~ the DebtorVendors's right, title rights, titles and interestinterests in and to the ~~assets described~~ Purchased Assets (as defined in the Sale Agreement (the "Purchased Assets")), was heard this day ~~at 330 University Avenue,~~ by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the ~~Report~~ Motion Record of the Applicants, the Tsebelis March 23 Affidavit and the Exhibits attached thereto, the Third Report of MNP Ltd., in its capacity as Monitor of the Applicants (the "Monitor") dated March ●, 2021 (the "Third Report"), and on being advised that those parties disclosed on the Service List attached to the Motion Record were given notice, and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING] Applicants, the Monitor, and Third Eye Capital Corporation and those other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ Katherine Yurkovich sworn ~~[DATE]~~ March ●, 2021, filed<sup>†</sup>:

<sup>†</sup> ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record in support of this motion be and are hereby abridged and validated, such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Sale Agreement.

3. ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the ~~Receiver~~<sup>3</sup>Vendors is hereby authorized and approved, with such minor amendments as the ~~Receiver~~Vendors and the Purchasers, with the approval of the Monitor may deem necessary. The ~~Receiver is~~Vendors are hereby authorized and directed, and the Monitor is authorized and empowered, to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the ~~Purchaser~~Purchasers.

4. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a ~~Receiver~~Monitor's certificate to the ~~Purchaser~~Purchasers substantially in the form attached as Schedule ~~AB~~ hereto (the "~~Receiver~~Monitor's Certificate"), all of the ~~Debtor's right, title~~Vendors' rights, titles and ~~interest~~interests in and to the Purchased Assets ~~described in the Sale Agreement [and listed on,~~ as broken down by type of Purchased Asset in Schedule ~~BC~~ hereto]<sup>4</sup>, shall vest absolutely in the applicable Purchaser listed in Schedule C hereto for each such type of Purchased Asset, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and

<sup>2</sup> In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup> In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

<sup>4</sup> To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~the Honourable Justice [NAME] dated [DATE]~~this Court dated November 6, 2020, as amended and restated by an Order dated November 13, 2020, and as further amended by an Order dated February 12, 2021 (collectively, the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule ~~ED~~ hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the ~~permitted encumbrances, easements and restrictive covenants~~Permitted Encumbrances listed on Schedule ~~DE hereto~~) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. — THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act~~<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

~~5.~~ **4. THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the ~~net proceeds<sup>7</sup> from the sale of the Purchased Assets~~Cash Priority Payables Amount shall stand in the place and stead of the Purchased Assets, and that from and after the

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

<sup>7</sup> The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".



delivery of the ~~Receiver~~Monitor's Certificate all Claims and Encumbrances shall attach to the ~~net proceeds from the sale of the Purchased Assets~~Cash Priority Payables Amount with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS that the Monitor is authorized and directed to hold the Cash Priority Payables Amount pursuant to the terms of the Sale Agreement and to make payments from that amount to discharge Cash Priority Payables in accordance with the direction contemplated by section 3.2(c)(ii) of the Sale Agreement.

7. ~~5.~~ THIS COURT ORDERS AND DIRECTS the ~~Receiver~~Monitor to file with the Court a copy of the ~~Receiver~~Monitor's Certificate, forthwith after delivery thereof.

8. THIS COURT ORDERS that the Vendors, be and are hereby authorized and directed to, upon delivery of the Monitor's Certificate by the Monitor to the Vendors, distribute the TEC DIP Debt Amount to Third Eye Capital Corporation in its capacity as agent for and on behalf of the DIP Lenders in full and final satisfaction of the TEC DIP Debt (the "**Distribution**").

9. THIS COURT ORDERS that, effective as at the time of the Distribution, the DIP Lenders' Charge (as defined in the Initial Order) shall be deemed to have been terminated, released and discharged.

10. THIS COURT ORDERS that the Monitor may rely on written notice from the Vendors and the Purchasers regarding fulfillment of conditions to closing under the Sale Agreement, and shall incur no liability with respect to the delivery of the Monitor's Certificate.

11. ~~6.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the ~~Receiver is~~Vendors and the Monitor

<sup>8</sup>~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

are authorized and permitted to disclose and transfer to the ~~Purchaser~~Purchasers all human resources and payroll information in the ~~Company~~Vendors's records pertaining to the ~~Debtor's~~Vendors' past and current employees, ~~including personal information of those employees listed on Schedule "●" to the Sale Agreement.~~—The ~~Purchaser~~Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Vendors.

12. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

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

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

~~8.~~—

13. **THIS COURT ORDERS AND DECLARES** ~~that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario)~~Confidential Appendix A to the Third Report is

hereby sealed and shall not form part of the public record until such time as the Monitor's Certificate has been filed with the Court, or further order of this Court.

14. ~~9.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the ~~Receiver~~Vendors and ~~its~~Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Receiver~~Vendors 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 ~~Receiver~~Vendors and ~~its~~the Monitor and their respective agents in carrying out the terms of this Order.

---

**SCHEDULE A**

**The Vendors**

1. King Street Company Inc.
2. 2268218 Ontario Inc.
3. 1733667 Ontario Limited
4. The King Street Food Company Inc.
5. The King Street Restaurant Company Inc.
6. 2112047 Ontario Ltd.
7. Ji Yorkdale Inc.
8. Ji Square One Inc.
9. 1771669 Ontario Inc.
10. CXBO Inc.
11. 2608765 Ontario Inc.
12. 2272224 Ontario Inc.
13. 2327729 Ontario Inc.
14. 2577053 Ontario Inc.
15. 2584858 Ontario Inc.
16. 2621298 Ontario Inc.
17. 2641784 Ontario Inc.
18. 2656966 Ontario Inc.

Schedule **AB** – Form of **Receiver**Monitor's Certificate

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

~~BETWEEN:~~

**PLAINTIFF**

**Plaintiff**

~~—and—~~

**DEFENDANT**

**Defendant**

**RECEIVER**

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**

**MONITOR'S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~November 6, 2020, MNP Ltd. was appointed as the ~~receiver~~monitor (the "~~Receiver~~Monitor") of the ~~undertaking, property and assets of [DEBTOR]~~ (the "~~Debtor~~")Applicants in respect of these CCAA Proceedings.
- B. Pursuant to an Order of the Court dated ~~[DATE]~~March 29, 2021 (the "Approval and Vesting Order"), the Court approved the sale transaction contemplated by an asset purchase agreement ~~of purchase and sale made~~dated as of ~~[DATE OF AGREEMENT]~~March 23, 2021 (the "Sale Agreement") between the ~~Receiver [Debtor] and [NAME OF PURCHASER]~~(Applicants listed in Schedule A to the Approval and Vesting Order and 2817334 Ontario Inc., 2817336 Ontario Inc., 2817337 Ontario Inc., 2817340 Ontario Inc., 2817341 Ontario Inc., 2817342 Ontario Inc., 2817343 Ontario Inc., 2817347 Ontario Inc., 2817348 Ontario Inc., 2825420 Ontario Inc., and 2825664 Ontario Inc. (collectively, the "PurchaserPurchasers") and provided for the vesting in the ~~Purchaser~~Purchasers of the ~~Debtor~~Vendors's ~~right, title~~ rights, titles and ~~interest~~interests in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~Monitor to the ~~Purchaser~~Purchasers of a certificate confirming (i) the payment by the ~~Purchaser~~Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ sections 6.1, 6.2 and 6.3 of the Sale Agreement have been satisfied or waived by the ~~Receiver~~Vendors and the ~~Purchaser~~Purchasers (as applicable); and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~Monitor.
- €
- C. Pursuant to the Approval and Vesting Order, the Monitor may rely on written notice from the Vendors and the Purchasers regarding fulfillment of conditions to closing under the Sale Agreement.
- D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE ~~RECEIVER~~MONITOR CERTIFIES the following:

1. The ~~Purchaser has~~Purchasers have paid and the ~~Receiver has~~Monitor and the Vendors, as applicable, have received the Purchase Price ~~for the Purchased Assets~~ payable on the Closing Date pursuant to the Sale Agreement;
2. The Monitor has received the direction contemplated by section 3.2(c)(ii) of the Sale Agreement;
3. The conditions to Closing as set out in ~~section~~sections 6.1, 6.2 and 6.3 of the Sale Agreement have been satisfied or waived by the ~~Receiver~~Vendors and the ~~Purchaser~~Purchasers, as applicable; and
- ~~3.4.~~ The Transaction has been completed to the satisfaction of the ~~Receiver~~Monitor.
- ~~4.5.~~ This Certificate was delivered by the ~~Receiver~~Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ ~~[DATE], 2021.~~

~~{NAME OF RECEIVER}~~MNP LTD., in its capacity as ~~Receiver~~Monitor of the ~~undertaking, property and assets of~~ ~~{DEBTOR}~~Vendors, and not in its personal or corporate capacity

Per: \_\_\_\_\_

Name:

Title:

**Schedule B—Purchased Assets**



**Schedule C – Purchased Assets Vesting in Each Purchaser**

<u>#</u>	<u>Type of Purchased Assets</u>	<u>Purchaser in Whom Such Purchased Assets Shall Vest in Accordance With Paragraph 4 of the Approval and Vesting Order</u>
<u>1.</u>	<u>Buca Cucina St. Clair Purchased Assets</u>	<u>2817241 Ontario Inc.</u>
<u>2.</u>	<u>Buca King Purchased Assets</u>	<u>2817337 Ontario Inc.</u>
<u>3.</u>	<u>Buca Vaughan Purchased Assets</u>	<u>2817342 Ontario Inc.</u>
<u>4.</u>	<u>Buca Yorkville Purchased Assets</u>	<u>2817340 Ontario Inc.</u>
<u>5.</u>	<u>CXBO Purchased Assets</u>	<u>2817348 Ontario Inc.</u>
<u>6.</u>	<u>Jacob's Purchased Assets</u>	<u>2817336 Ontario Inc.</u>
<u>7.</u>	<u>La Banane Purchased Assets</u>	<u>2817343 Ontario Inc.</u>
<u>8.</u>	<u>Man Ray Purchased Assets</u>	<u>2817347 Ontario Inc.</u>
<u>9.</u>	<u>CIBC Square Purchased Assets</u>	<u>2825664 Ontario Inc.</u>
<u>10.</u>	<u>The One Purchased Assets</u>	<u>2825420 Ontario Inc.</u>
<u>11.</u>	<u>Miscellaneous Intellectual Property, Equipment and Other Assets</u>	<u>2817334 Ontario Inc.</u>

**Schedule D – Claims to ~~be deleted~~ released, discharged and expunged from title to Real Property Purchased Assets upon delivery of the Monitor’s Certificate**

<u>#</u>	<u>Secured Party</u>	<u>Debtor(s)</u>	<u>File No.</u>
<u>1.</u>	<u>7324375 CANADA INC O/A SANI-SERVICE</u>	<u>1733667 ONTARIO LIMITED O/A JACOBS &amp; CO. STEAKHOUSE</u>  <u>JACOBS &amp; CO. STEAKHOUSE</u>  <u>1733667 ONTARIO LIMITED</u>	<u>717603588</u> <u>PPSA</u>
<u>2.</u>	<u>CHEF CHOICE EQUIPMENT RENTALS INC.</u>	<u>CXBO INC. SARAH KEENLYSIDE (DOB: 08NOV1974)</u>	<u>741107169</u> <u>PPSA</u>
<u>3.</u>	<u>CHEF CHOICE EQUIPMENT RENTALS INC.</u>	<u>CXBO INC. SARAH L KEENLYSIDE (DOB: 08NOV1974)</u>	<u>733987908</u> <u>PPSA</u>
<u>4.</u>	<u>HER MAJESTY IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE</u>	<u>THE KING STREET FOOD COMPANY INC</u>	<u>759628404</u> <u>PPSA</u>
<u>5.</u>	<u>TRIMEN FOOD SERVICES EQUIPMENT LTD.</u>	<u>THE KING STREET FOOD COMPANY INC.</u>	<u>758708451</u> <u>PPSA</u>

<u>#</u>	<u>Secured Party</u>	<u>Debtor(s)</u>	<u>File No.</u>
<u>6.</u>	<u>TRIMEN FOOD SERVICES EQUIPMENT LTD.</u>	<u>THE KING STREET FOOD COMPANY INC.</u>	<u>758485476</u> <b><u>PPSA</u></b>
<u>7.</u>	<u>CANADIAN DEALER LEASE SERVICES INC.</u> <u>BANK OF NOVA SCOTIA - DLAC</u>	<u>THE KING STREET FOOD COMPANY INC.</u> <u>ROBERT A GENTILE</u> <u>(DOB: 29FEB1980)</u>	<u>757972017</u> <b><u>PPSA</u></b>
<u>8.</u>	<u>HIGHLAND CHEVROLET BUICK GMC CADILLAC LTD.</u>	<u>THE KING STREET FOOD COMPANY INC</u> <u>(Corp. No.: 1760204)</u>	<u>750623013</u> <b><u>PPSA</u></b>
<u>9.</u>	<u>HIGHLAND CHEVROLET BUICK GMC CADILLAC LTD.</u>	<u>THE KING STREET FOOD COMPANY INC</u> <u>(Corp. No.: 1760204)</u>	<u>734735439</u> <b><u>PPSA</u></b>

**Schedule DE – Permitted Encumbrances, ~~Easements and Restrictive Covenants~~  
~~related to the Real Property~~**

**(unaffected by the Vesting Order)**

Any amounts subject to a statutory deemed trust in favour of Her Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or, if applicable, in proceedings under the Bankruptcy & Insolvency Act (Canada) that may be required on the termination of the CCAA Proceedings, pursuant to the following legislative provisions:

- (i) subsection 227(4) or (4.1) of the *Income Tax Act*;
- (ii) subsection 222(1) or (3) of the *Excise Tax Act*;
- (iii) subsection 23(3) or (4) of the *Canada Pension Plan (Canada)*; and  
subsection 86(2) or (2.1) of the *Employment Insurance Act (Canada)*.

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., ET AL.

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

Applicants

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at: TORONTO

**APPROVAL AND VESTING ORDER**  
**(Returnable March 29, 2021)**

**GOWLING WLG (CANADA) LLP**

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Lawyers for the Applicants

Document comparison by Workshare Compare on March 23, 2021 1:29:40 PM

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Moved to	0
Style changes	0
Format changes	0
Total changes	499

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., ET AL.

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Applicants

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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at: TORONTO

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**MOTION RECORD**  
**(Returnable March 29, 2021)**

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**GOWLING WLG (CANADA) LLP**

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