

**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 February 12, 2021)**

February 5, 2021

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INDEX

Tab

- (1)** Notice of Motion dated February 5, 2021
- (2)** Affidavit of Peter Tsebelis sworn February 5, 2021
 - (A)** Organization Chart of the KSF Group
 - (B)** Second Amendment to the DIP Term Sheet
- (3)** Draft Stay Extension and DIP Amendment 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.,
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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 February 12, 2021)**

The Applicants (the “**KSF Group**”) will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on Friday, February 12, 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.

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

THE MOTION IS FOR:

1. An order (the “**Stay Extension and DIP Amendment Order**”) substantially in the form of the draft order attached at Tab 3 of the KSF Group’s Motion Record, among other things:
 - (a) Abridging the time for service of this Motion and the Motion Record and dispensing with service on any other person other than those served;

- (b) Extending the Stay to April 2, 2021 (the “**Requested Stay Extension**”);
- (c) Authorizing and approving the KSF Group entering into and borrowing an additional amount of \$525,000 (in the aggregate \$1,925,000) (the “**Maximum DIP Amount**”) in respect of a credit facility from certain funds managed or advised by Third Eye Capital Corporation (“**TECC**”) or its affiliates under a second amendment, to be executed (the “**Second DIP Amendment**”), to the DIP term sheet dated as of November 5, 2020 and accepted as of November 6, 2020, and amended by a first amendment dated November 12, 2020 (as amended, from time to time, the “**DIP Facility**”);
- (d) Approving the first report of the Monitor dated November 12, 2020 (the “**First Report of the Monitor**”) and the actions, conduct and activities of the Monitor described therein; and
- (e) such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE

Background

2. 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**”);
3. 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 of proceedings (the “**Stay**”) to February 19, 2021;
4. Also on November 13, 2020, the KSF Group sought and obtained a sale process approval order (the “**Sales Process Approval Order**”), which, among other things approved the sales and investment solicitation process set out therein (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;

Extension of the Stay Period

5. During these CCAA proceedings, the KSF Group has acted in good faith and with due diligence;
6. The Stay expires on February 19, 2021. The KSF Group is seeking an extension of the Stay to and including the date of the Requested Stay Extension;
7. The Sale Process has been terminated in accordance with its terms. Following the termination of the Sale Process, the KSF Group immediately began working with TECC on the structure and terms of a credit bid sale transaction;
8. The KSF Group anticipates entering into an asset purchase agreement with TECC and or certain of its affiliates or subsidiaries (the “**Credit Bid APA**”) and returning to Court for approval of same once it has been finalized, and prior to the expiry of the Requested Stay Period;
9. 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;
10. The granting of the Requested Stay Extension is in the best interest of the KSF Group's stakeholders generally;

Increase in Availability Under the DIP Facility

11. The KSF Group is seeking authorization to enter into the Second DIP Amendment and to borrow up to the Maximum DIP Amount under the DIP Facility;
12. The authorization being sought is necessary and appropriate in the circumstances and supported by the KSF Group's projected cash flow forecast;

Approval of the First Report of the Monitor and the Monitor's Activities

13. The KSF Group is seeking the approval of the First Report of the Monitor and the actions, conduct and activities of the Monitor described therein;
14. The Monitor has carried out its activities in compliance with the Amended and Restated Initial Order, and the Sales Process Approval Order and in a manner consistent with the provisions of the CCAA;
15. Those other grounds set out in the Affidavit of Peter Tsebelis sworn February 5, 2021 and the exhibits thereto (the “**Tsebelis February 5 Affidavit**”);
16. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
17. Section 106 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended;
18. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended; and
19. Such further and other grounds as counsel for the KSF Group may advise and this Honourable Court may permit.

DOCUMENTARY EVIDENCE

20. The following documentary evidence will be used at the hearing of the motion:
 - (a) The Tsebelis February 5 Affidavit;
 - (b) The First Report of the Monitor, MNP Ltd., dated November 12, 2020;
 - (c) The Second 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.

Date: February 5, 2021

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SCHEDULE "A"

Join Zoom Meeting

<https://gowlingwlgca.zoom.us/j/92899833015?pwd=RVowUjJwdk90WEdWdDI3SlgyRTk3UT09>

Sync Access Link:

<https://ln2.sync.com/dl/cbda7cb30/bvbevbqr-39t53dmt-4a84i5rm-cw2hji7b>

Password

174344

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Dial by your location

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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 February 12, 2021)**

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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
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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.

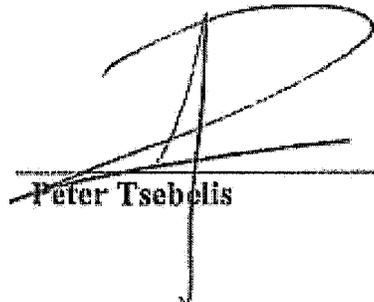
29. As part of its ongoing support for the KSF Group and these CCAA Proceedings, TECC has agreed to advance an additional \$525,000 pursuant to the Second DIP Amendment, to be executed, substantially in the form attached as **Exhibit B**.

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.

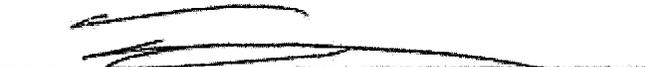
31. It is my view that the Second DIP Amendment is in the best interests of the KSF's stakeholders as it will provide the KSF Group with the funds necessary to continue its operations while finalizing the Credit Bid APA, which in and of itself will provide significant benefit to the KSF Group's stakeholders.

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 5th 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.



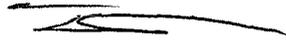
Peter Tsebelis



A Commissioner for taking Affidavits

TAB A

**THIS IS EXHIBIT "A"
REFERRED TO IN THE AFFIDAVIT
OF PETER TSEBELIS SWORN
REMOTELY BEFORE ME ON
FEBRUARY 5, 2021**

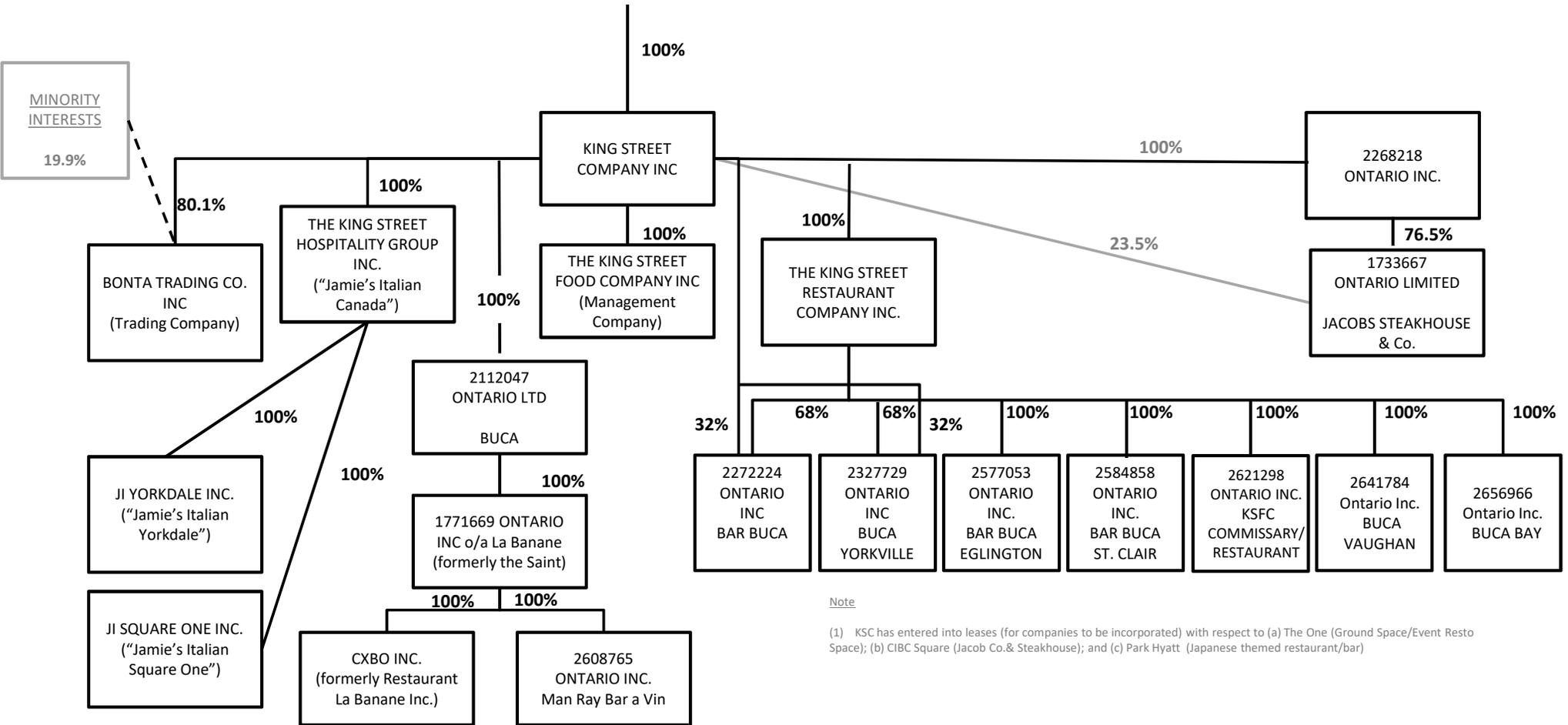


A Commissioner for Oaths and Notary Public in
and for the Province of Ontario

KING STREET FOOD GROUP OF COMPANIES

Current: November 2020

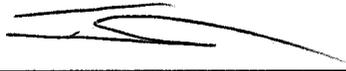
KSC FOUNDERS/PRIVATE INVESTORS



Note
 (1) KSC has entered into leases (for companies to be incorporated) with respect to (a) The One (Ground Space/Event Resto Space); (b) CIBC Square (Jacob Co.& Steakhouse); and (c) Park Hyatt (Japanese themed restaurant/bar)

TAB B

**THIS IS EXHIBIT "B"
REFERRED TO IN THE AFFIDAVIT
OF PETER TSEBELIS SWORN
REMOTELY BEFORE ME ON
FEBRUARY 5, 2021**

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized, somewhat abstract shape.

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

SECOND AMENDMENT TO THE DIP TERM SHEET

This SECOND AMENDMENT TO DIP TERM SHEET (this "**Amendment**") is made as of ●, 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 agreement dated as of November 12, 2020 (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 "\$1,400,000" and replacing it with "\$1,925,000". 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 "\$1,925,000".
- 1.1.2 Section 6 (*Maturity Date*) of the Loan Agreement is hereby amended by deleting "February 19, 2021" and replacing it with "April 2, 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 \$525,000 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 February 13, 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

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Authorized Signatory

2272224 ONTARIO INC.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

2327729 ONTARIO INC.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

2577053 ONTARIO INC.

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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 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)

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

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Email: virginie.gauthier@gowlingwlg.com

Thomas Gertner (LSO#: 67756S)
Tel: 416-369-4618
Email: thomas.gertner@gowlingwlg.com

Lawyers for the KSF Group

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) FRIDAY, THE 12TH
)
JUSTICE HAINEY) DAY OF FEBRUARY, 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

ORDER
(STAY EXTENSION)

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, RSC, 1985 c C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicants, the affidavit of Peter Tsebelis sworn February 5, 2021 and the Exhibits attached thereto, the Second Report of MNP Ltd., in its capacity as Court-appointed Monitor of the Applicants (in such capacity the "**Monitor**") dated February ●, 2021 (the "**Second Report**"), and on being advised that the secured creditors of the Applicants who are likely to be affected by the increase to the DIP Lenders' Charge herein were given notice, and on hearing the submissions of counsel for the Applicants, the Monitor, 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 February ●, 2021, filed:

AND UPON BEING SATISFIED that the Applicants have acted, and continue to act in good faith and due diligence in accordance with the CCAA.

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated and this Motion is properly returnable today and hereby dispenses with further service or notice thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that all terms not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order of this Court dated November 13, 2020 issued in these proceedings (the "**Amended and Restated Initial Order**").

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period under the Amended and Restated Initial Order be and is hereby extended until and including April 2, 2021 or such later date as this Court may order.

DIP AMENDMENT

4. **THIS COURT ORDERS** that the execution by the Applicants of the Second Amendment to DIP Loan Agreement dated February ●, 2021 (the "**Second DIP Amendment**") is hereby authorized and approved, and the Applicants are hereby authorized and empowered to borrow up to an additional \$525,000 (\$1,925,000 in the aggregate) pursuant to the DIP Loan Agreement as amended by the Second DIP Amendment.

5. **THIS COURT ORDERS** that:

- (a) paragraphs 31 to 39 of the Amended and Restated Initial Order shall apply to the DIP Loan Agreement as amended by the Second DIP Amendment and all references to the DIP Loan Agreement contained in the Amended and Restated Initial Order shall be deemed to be references to the DIP Loan Agreement as amended by the Second 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 Second DIP Amendment; and
- (c) for greater certainty, paragraph 31 of the Amended and Restated Initial Order is hereby amended to replace the references to "\$1,400,000" with "\$1,925,000".

APPROVAL OF THE MONITOR'S REPORT AND ACTIVITIES

6. **THIS COURT ORDERS** that the first report of the Monitor dated November 12, 2020, filed in the within CCAA Proceedings and the actions, conduct and activities of the Monitor described therein be and are hereby approved.

GENERAL

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

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

ORDER
(STAY EXTENSION)
(Returnable February 12, 2021)

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

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Lawyers for the Applicants

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

MOTION RECORD
(Returnable February 12, 2021)

GOWLING WLG (CANADA) LLP

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

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Lawyers for the Applicants