

**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
(Re Comeback Hearing)
(Returnable November 13, 2020)**

November 12, 2020

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

Virginie Gauthier (LSO#: 41097D)
Tel: 416-844-5391
Email: virginie.gauthier@gowlingwlg.com

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

Lawyers for the Applicants

TO: SERVICE LIST

SERVICE LIST

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

Virginie Gauthier
Tel: (416) 844-5391
Email: virginie.gauthier@gowlingwlg.com

Thomas Gertner
Tel: (416) 369-4618
Fax: (416) 862-7661
Email: thomas.gertner@gowlingwlg.com

Counsel to The King Street Food Group

AND TO: **MNP Ltd.**
111 Richmond Street West
Toronto, Ontario
M5H 2G4

Sheldon Title
Tel: (416) 263-6945
Fax: (416) 323-5240
E-Mail: sheldon.title@mnp.ca

Proposed Monitor

AND TO: MILLER THOMSON LLP

40 King Street West
Suite 5800
Toronto, Ontario
M5H 4A9

Bobby Sachdeva

Tel: (905) 532-6670
E-Mail: bsachdeva@millerthomson.com

Craig Mills

Tel: (416) 595-8596
E-Mail: cmills@millerthomson.com

Counsel to the Proposed Monitor

AND TO: THIRD EYE CAPITAL CORPORATION

2830 – 181 Bay Street
Toronto, Ontario
M5J 2T3

Adrienne Love

Tel: (416) 601-2280
Fax: (416) 981-3393
E-Mail: adrienne@thirdeyecapital.com

Peter Neelands

Tel: (416) 601-9297
Fax: (416) 981-3393
E-Mail: peter@thirdeyecapital.com

AND TO: BENNETT JONES LLP

100 King Street West
Suite 3400
Toronto, Ontario
M5X 1A4

Sean Zweig

Tel: (416) 777-6254
E-Mail: zweigs@bennettjones.com

Jesse Mighton

Tel: (416) 777-6255
E-Mail: mightonj@bennettjones.com

Counsel to Third Eye Capital Corporation

AND TO: DEPARTMENT OF JUSTICE CANADA

Ontario Regional Office
Tax Law Services Division
The Exchange Tower
130 King St. West, Suite 3400, Box 36
Toronto, ON M5X 1K6

Diane Winters

Tel: (416) 973-3172
Email: diane.winters@justice.gc.ca

AND TO: MINISTRY OF FINANCE

Legal Services Branch
33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

Kevin O'Hara

Tel: (905) 433-6934
E-mail: kevin.ohara@fin.gov.on.ca

AND TO: INGENUITY LLP

366 Adelaide Street East, Suite 437
Toronto, ON M5A 3X9

Drew Allen

Tel: (416) 977-6724 ext. 112
E-mail: drew@ingenuitylegal.com

Counsel for Solo Cru Inc.

PPSA REGISTRANTS

AND TO: HIGHLAND CHEVROLET BUICK GMC CADILLAC LTD.
P.O. Box 71610
15783 Yonge Street
Aurora, Ontario
L4G 6S9

Franco Palladini
E-mail: francopalladini@hotmail.com

AND TO: CANADIAN DEALER LEASE SERVICES INC.
372 Bay Street, Suite 1800
Toronto, Ontario
M5H 2W9

Marveille M.
E-mail: clientrelations@cdlsi.com

AND TO: BANK OF NOVA SCOTIA – DLAC
44 King Street West, Scotia Plaza
Toronto, Ontario
M5H 1H1

AND TO: TRIMEN FOOD SERVICES EQUIPMENT LTD.
1240 Ormont Drive
Toronto, Ontario
M9L 2V4

Sonia Staffiere
E-mail: sonia.staffiere@trimen.com

AND TO: 7324375 CANADA INC O/A SANI-SERVICE
5-570 Alden Road
Markham, Ontario
L3R 8N5

K. Jackson
E-mail: kjackson@citronhygiene.com

AND TO: CHEF CHOICE EQUIPMENT RENTALS INC.
90C Centurian Drive, Suite 213
Markham, Ontario
L3R 8C5

Nicole Williams
E-mail: nicole.williams@econolease.com

AND TO: ROYAL BANK OF CANADA
36 York Mills Road, 4th Floor
Toronto, Ontario
M2P 0A4

LANDLORDS

AND TO: MINDEN GROSS LLP
145 King Street West, Suite 2200
Toronto, Ontario
M5H 4G2

Benjamin Radcliffe
Tel: (416) 369-4112
E-Mail: bradcliffe@mindengross.com

Lawyers for Madison Eglinton Limited

AND TO: THORNTON GROUT FINNIGAN LLP
Barristers and Solicitors
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON
M5K 1K7

D.J. Miller
Tel: (416) 304-1313
Email: DJMiller@tgf.ca

Alexander Soutter
Tel: (416) 304-0595
Email: asoutter@tgf.ca

Lawyers for Yorkdale Shopping Centre Holdings Inc., OMERS Realty Management Corporation and Square One Property Corporation, CT Tower Investments Inc. and 170 Bloor West Holdings Inc.

AND TO: AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON
M5J 2 T9

Christie McNeil
Tel: (416) 865-7772
Email: cmcneill@airdberlis.com

Lawyers for Paramita Enterprises Limited

AND TO: DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON
M5K 0A1

Michael Beeforth
Tel: (416) 367-6779
Email: michael.beeforth@dentons.com

Todd Davidson
Tel: (416) 862-4778
Email: todd.davidson@dentons.com

Lawyers for Slate Toronto Core Office GP Inc. as general partner for Slate Toronto Core Office L.P. and Incore Equities Inc.

AND TO: BORDEN LADNER GERVAIS LLP
East Tower, Bay Adelaide Centre
22 Adelaide Street West, Suite 3400
Toronto, ON
M5H 4E3

Adam Perzow
Tel: (416) 367-6737
Email: aperzow@blg.com

Lawyers for First Gulf KEC Development Ltd.

AND TO: DAOUST VUKOVICH LLP
20 Queen Street West, Suite 3000
Toronto, ON
M5H 3R3

Natalie Vukovich
Tel: (416) 597-8911
Email: nvukovich@dv-law.com

Lawyers for Mizrahi Development Group (The One) Inc.

AND TO: FREED DEVELOPMENTS
552 Wellington Street West, Suite 1500
Toronto, ON
M5V 2V5

Shael Weinreb
Email: shael@freeddevelopments.com

Brad Cumming
Email: brad@freeddevelopments.com

*Landlord to 2272224 Ontario Inc. (Bar Buca – Portland). at 75 Portland Street,
Toronto, ON*

AND TO: ANTONIO WONG AND JOSEFINA WONG
38 Kilbarry Road
Toronto, Ontario
M5P 1K5

Antonio Wong
Email: propertyintoronto@gmail.com

Andrew
Email: propertyintoronto@gmail.com

*Landlord to 1733667 Ontario Limited (Jacob's & Co. Steakhouse) at 12 Brant
Street, Toronto, ON*

AND TO: RA KING/PORTLAND NOMINEE INC.
c/o Allied Properties
134 Peter Street, Suite 1700
Toronto, Ontario
M5V 1L7

Tom Burns
Email: tburns@alliedreit.com

Laura Trujillo
Email: ltrujillo@Alliedreit.com

*Landlord to 2112047 Ontario Inc. (Buca – King) at 602 King Street West, Toronto,
ON*

AND TO: SALVATORE VALELA AND FILOMENA VALELA

c/o Valemont Group
4-201 Millway Avenue
Concord, Ontario
L4K 5K8

Vito Valela

Email: vito@valemontgroup.com

*Landlord to 1771669 Ontario Inc.(La Banane) at 227 Ossington Ave, First Floor
and Basement, Toronto, ON*

AND TO: MARIA DA SILVA

Rosemarie Da Silva

Email: globocheese3@gmail.com

*Landlord to Restaurant La Banane O/A CXBO (CXBO) at 193 Baldwin, Toronto,
ON*

AND TO: SALVATORE VALELA

100 Steeles Ave West, Unit 99
Thornhill, Ontario
L4J 7Y1

Vito Valela

Email: vito@valemontgroup.com

*Landlord to 2608765 Ontario Inc. (Man Ray) at 227 Ossington Ave, 2nd Floor,
Toronto, ON*

**AND TO: VMC RESIDENCES GP INC., as general partner of and on behalf of VMC
RESIDENCES LIMITED PARTNERSHIP**

134 Peter Street, Suite 200
Toronto, Ontario
M5V 2H2

Shamez Virani

Email: svirani@centrecourt.com

Michael Simone

Email: Msimone@smartcentres.com

Landlord to King Street Company Inc. (Buca – Vaughan) at Vaughan Transit City

AND TO: BAY PARK CENTRE LIMITED PARTNERSHIP
c/o **Ivanhoe Cambridge Inc.**
95 Wellington Street West,
Suite 300
Toronto, Ontario
M5J 2R2

Sunita Mahant

Email: Sunita.Mahant@ivanhoecambridge.com

Daniel Minuk

Email: Daniel.Minuk@ivanhoecambridge.com

*Landlord to King Street Company Inc. (Jacob's & Co. Steakhouse – CIBC Square)
at Unit 1A, 81 Bay Street Tower (CIBC Square), Toronto, ON*

INDEX

Tab

- (1) Notice of Motion dated November 12, 2020
- (2) Affidavit of Peter Tsebelis sworn November 12, 2020
 - (A) Affidavit of Peter Tsebelis sworn November 6, 2020
 - (B) Initial Order granted November 6, 2020
 - (C) First Amendment to the DIP Term Sheet dated as of November 5, 2020, and accepted as of November 6, 2020
- (3) Draft Amended and Restated Initial Order
- (4) Blackline of Amended and Restated Initial Order to Commercial List Form of Model Initial Order
- (5) Blackline of Amended and Restated Initial Order to Initial Order issued on November 6, 2020
- (6) Sale and Investment Solicitation Process 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.

KSF Group

**NOTICE OF MOTION
(Re Comeback Hearing)
(Returnable November 13, 2020)**

The Applicants (the “**KSF Group**”) will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on Friday, November 13, 2020 at 11:30 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 amended and restated initial order (the “**Amended and Restated Initial Order**”) substantially in the form of the draft order attached at Tab 3 of the KSF Group’ Motion Record, amending and restating the initial order granted by the Honourable Mr. Justice Hainey on November 6, 2020 (the “**Initial Order**”), 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 Period (as defined below) to February 19, 2021;

- (c) Approving the first amendment dated as of the date hereof (the “**First Amendment**”) to the DIP term sheet dated as of November 5, 2020 and accepted as of November 6, 2020, in respect of a credit facility (the “**DIP Facility**”) from Third Eye Capital Corporation (“**TECC**”) and certain funds managed or advised by TECC or affiliated with TECC, and authorizing borrowings by the KSF Group under the DIP Facility in the amount of one million four hundred thousand dollars (\$1,400,000); and
 - (d) Increasing the maximum amount of the Directors’ Charge (as defined below) from seventy thousand dollars (\$70,000) to one hundred thousand dollars (\$100,000).
- 2. An order (the “**Sale Process Approval Order**”) approving the sale and investment solicitation process (the “**Sale Process**”) substantially in the form attached at Tab 6 of the KSF Group’s Motion Record;
 - 3. Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE

Background

- 4. On November 6, 2020, the KSF Group applied for and obtained the Initial Order;
- 5. The Initial Order, among other things:
 - (a) Appointed MNP Ltd. as monitor of the KSF Group (in such capacity the “**Monitor**”);
 - (b) Granted an initial ten (10) day stay period up to and including November 16, 2020 (the “**Stay Period**”), staying all proceedings and remedies taken or that might be taken in respect of *inter alia* the KSF Group’s assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);
 - (c) Authorized the KSF Group to obtain and borrow up to one hundred thousand dollars (\$100,000) under the DIP Facility during the initial 10-day Stay Period; and
 - (d) Granted, among other things, a directors’ and officers’ charge against the Property in favour of the current and former directors and officers of the KSF Group to a maximum amount of seventy thousand dollars (\$70,000) (the “**Directors’ Charge**”);

6. Since the Initial Order was issued on November 6, 2020, the KSF Group has acted in good faith and with due diligence;

Extension of the Stay Period

7. The Stay Period expires on November 16, 2020. The KSF Group is seeking an extension of the Stay Period to and including February 19, 2021;
8. The extension being sought is necessary and appropriate in the circumstances;
9. No stakeholders of the KSF Group are expected to suffer material prejudice as a result of the proposed extension to the Stay Period;

Increase in Availability Under the DIP Facility

10. The KSF Group is seeking authorization to enter into the First Amendment and to borrow the maximum amount available under the DIP Facility in the amount of one million four hundred thousand dollars (\$1,400,000);
11. The authorizations being sought are necessary and appropriate in the circumstances;

Increase in the Amount of the Directors' Charge

12. Pursuant to the Initial Order, the KSF Group was granted the Directors' Charge;
13. The KSF Group is seeking an increase in the Directors' Charge to one hundred thousand dollars (\$100,000), in respect of liabilities that the KSF Group' current and former directors and officers may incur from time to time during the *Companies' Creditors Arrangement Act*, RSC, 1985, c C-36 (the "CCAA"), proceedings;
14. The increased quantum of the Directors' Charge has been reviewed and is supported by the Monitor and TECC;

Approval of the Sales Process

15. The KSF Group and TECC, in consultation with the Monitor, have developed the Sales Process;
16. The Sales Process is fair, reasonable and appropriate in the circumstances, and will be beneficial to the KSF Group and their stakeholders;

Other Grounds

17. The KSF Group also rely on:
- (a) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
 - (b) Section 106 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended;
 - (c) Rules 1.04, 1.05, 2.03, 3.02, 16, 37 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended; and
 - (d) Such further and other grounds as counsel for the KSF Group may advise and this Honourable Court may permit.
18. The following documentary evidence will be used at the hearing of the motion:
- (a) The Affidavit of Peter Tsebelis sworn November 6, 2020 and the exhibits thereto;
 - (b) The Affidavit of Peter Tsebelis sworn November 12, 2020 and the exhibits thereto;
 - (c) The First Report of the Monitor, MNP Ltd., dated November 12, 2020; and
 - (d) Such further and other materials as counsel for the KSF Group may advise and as this Honourable Court may permit.

Date: November 12, 2020

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

Virginie Gauthier (LSO#: 41097D)
Tel: 416-844-5391
Email: virginie.gauthier@gowlingwlg.com

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

Lawyers for the KSF Group

SCHEDULE "A"

Join Zoom Meeting

<https://gowlingwlgca.zoom.us/j/97293347665?pwd=T2g3dm90dS9kcGhieWZGR2NqcU5UZz09>

Password: 542161

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
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

KSF Group

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

(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF MOTION
(Re Comeback Hearing)**

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

Virginie Gauthier (LSO#: 41097D)
Tel: 416-844-5391
Email: virginie.gauthier@gowlingwlg.com

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

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 November 12, 2020)

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.

(i) Overview

2. As part of these proceedings, I previously swore an affidavit dated November 6, 2020 (the “**November 6 Affidavit**”) in connection with the KSF Group’s application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”). The affidavit I am swearing today is intended to be read with the November 6 Affidavit. Capitalized terms used herein but not otherwise defined herein have the meanings given to them in the November 6 Affidavit. Attached hereto and marked as **Exhibit “A”** is the November 6 Affidavit without exhibits.

3. On November 6, 2020, the Court granted the Initial Order. A copy of the Initial Order is attached hereto as **Exhibit “B”**. Pursuant to the Initial Order, MNP Ltd. was appointed as CCAA Monitor (in such capacity, the **“Monitor”**).

4. I am swearing this affidavit in support of the KSF Group’s motion scheduled to be heard by the Court on November 13, 2020 (the **“Comeback Hearing”**) for, among other things:

- (a) the granting of an amended and restated initial order (the **“Amended and Restated Initial Order”**), which amends and restates the Initial Order to provide certain additional relief, including:
 - (A) extending the stay of proceedings (the **“Stay”**) to February 19, 2021 (the **“Extended Stay Period”**);
 - (B) approving the First DIP Amendment (as defined below) and increasing the maximum borrowings under the DIP Facility;
 - (C) increasing the amount of the Directors’ Charge; and
- (b) the granting of 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 assets, property and undertakings (collectively, the **“Property”**) of the KSF Group.

(ii) Update on the Activities of the KSF Group

5. I believe that, to date in the CCAA proceedings, the KSF Group has acted in good faith and with due diligence. Among other things, since the Initial Order was issued by the Court the KSF Group has:

- (a) developed and implemented a communications plan inclusive of issuing a general press release;
- (b) contacted the landlords for the KSF Group’s various restaurants (including the Planned Restaurants);

- (c) held a virtual town hall with the KSF Group's employees;
- (d) worked with the Monitor to respond to inquiries from stakeholders regarding the CCAA proceedings;
- (e) responded to media inquiries;
- (f) worked with the Monitor and Third Eye Capital Corporation ("TECC") in its capacity as administrative agent for and on behalf of the Lenders / DIP Lenders to develop the Sale Process;
- (g) met the conditions precedent to obtain (and did obtain) an advance under the DIP Facility in the amount of the Initial Maximum Amount;
- (h) continued to operate its existing takeout and delivery business; and
- (i) prepared materials in support of the relief sought in the Amended and Restated Initial Order and the Sale Process Approval Order.

6. Additionally, and as indicated in the November 6 Affidavit, during this period the KSF Group continued to explore a plan (the "**Reopening and Expansion Plan**") to (i) re-open certain restaurants for dining on a rolling basis; and (ii) expand the number of locations from which it currently offers takeout and delivery.

7. I note that on November 10, 2020, the City of Toronto announced that the current prohibition on indoor dining previously put in place by the Ontario Government would continue to be in effect in the Greater Toronto Area until at least December 12, 2020. This has put on pause any plans by the KSF Group to immediately re-open restaurants for dining in 2020 as part of the Reopening and Expansion Plan until more favorable market and regulatory conditions return. In the interim, the KSF Group remains committed to exploring the feasibility of increasing the number of locations from which it currently offers takeout and delivery.

(iii) Revised Cash Flow Forecast

8. As part of my November 6 Affidavit, I previously attached a 13-week cash flow forecast for the KSF Group.

9. Given certain developments that have occurred, including as it relates to the timing and availability of potential subsidies, as well as to reflect the KSF Group's ongoing plans to increase the locations from which it offers takeout and delivery, the KSF Group, with the assistance of the Monitor, has prepared a revised cash flow forecast that reflects the KSF Group's anticipated cash flow needs during the forecasted period (the "**Revised Cash Flow Forecast**"). I understand that TECC and the Monitor are supportive of the Revised Cash Flow Forecast and that it will be attached to the first report of the Monitor to be filed in these proceedings.

(iv) Extension of the Stay of Proceedings

10. The KSF Group is seeking an extension of the Stay until the end of the Extended Stay Period (being February 19, 2021).

11. The extension being sought is necessary and appropriate in the circumstances and will allow the KSF Group to:

- a) continue its existing limited takeout and delivery business, in order to, among other things, maintain brand awareness and stay connected to its loyal customer base;
- b) continue to explore and, to the extent feasible, implement the Reopening and Expansion Plan;
- c) negotiate with key stakeholders including the Landlords; and
- d) implement the Sale Process, in order to effect a restructuring of the KSF Group's business by way of a sale, refinancing, recapitalization or other investment in respect of the Property.

12. I note that under the Revised Cash Flow Forecast, the KSF Group is forecasted to have sufficient liquidity to fund its obligations and costs through to the end of the Extended Stay Period. As discussed below, the Extended Stay Period will also permit the Sale Process to run its course, with the expectation that the KSF Group's next motion will seek both approval of a transaction(s) in respect of the Property (if any) as well as a further stay extension (if necessary).

13. I believe no stakeholders of the KSF Group will be materially prejudiced by an extension of the Stay to the end of the Extended Stay Period.

(v) Increase in Availability Under the DIP Facility and Directors' Charge

DIP Facility

14. Pursuant to the Initial Order, the KSF Group obtained authorization from the Court to borrow up to the Initial Maximum Amount, being one hundred thousand dollars (\$100,000) under the DIP Facility. The Initial Maximum Amount was the amount reasonably necessary to allow the KSF Group to continue to operate in the ordinary course until the Comeback Hearing.

15. The DIP Term Sheet originally contemplated a maximum availability to the KSF Group through these proceedings of one million two hundred thousand dollars (\$1,200,000). Based on the Revised Cash Flow Forecast, the DIP Lenders have agreed to increase the amount of the DIP Facility to one million four hundred thousand dollars (\$1,400,000) (the "**Maximum DIP Amendment**") pursuant to a First Amendment to the DIP Term Sheet dated as of the date hereof (the "**First Amendment**"). The First Amendment is attached as **Exhibit "C"**.

16. As part of the Amended and Restated Initial Order, the KSF Group is seeking the authority to borrow the Maximum DIP Amount. This relief is necessary in order to enable the KSF Group to, among other things, meet its cash flow requirements during the Extended Stay Period, continue its restructuring efforts, including by way of implementing the Sale Process, and, in the interim, maintaining the value of its Property.

17. The KSF Group's need during these CCAA proceedings to borrow up to the Maximum DIP Amount under the DIP Facility is consistent with and supported by the Revised Cash Flow.

Directors' Charge

18. As part of the Amended and Restated Initial Order, the KSF Group is seeking an increase in the Directors' Charge from seventy thousand dollars (\$70,000) to one hundred thousand dollars (\$100,000), in respect of liabilities that the KSF Group's current and former directors and officers may incur from time to time during these CCAA proceedings.

19. As set out in the November 6 Affidavit, the KSF Group does not maintain any directors and officers insurance.

20. I believe that the increase in the amount of the Directors' Charge is appropriate in the circumstances. This increase is intended to reflect the maximum scope of liability that the beneficiaries of this charge could face during these CCAA proceedings.

21. I understand that the amount of the Directors' Charge has been reviewed and is supported by the Monitor and TECC.

22. As under the Initial Order, the priority of the various charges granted is intended to be as follows under the Amended and Restated Initial Order (i) the Administration Charge (up to the amount of \$100,000); (ii) the DIP Lenders' Charge; and (iii) the Directors' Charge (up to the amount of \$100,000).

(vi) Sale Process

23. The KSF Group with TECC, and in consultation with the Monitor, have developed the Sale Process, in order to market and sell, refinance or recapitalize all or part of the Property, including the KSF Group's existing and Planned Restaurants. The Sale Process is attached as Schedule "A" to the proposed Sale Process Approval

Order. Capitalized terms used in this section of my affidavit that are not otherwise defined have the meanings ascribed to them in the Sale Process.

24. Under the Sale Process, the KSF Group will be empowered to implement the process to solicit offers for a sale, refinancing or other investment transaction in respect of all or part of the Property, with the assistance of the Monitor and subject to certain consultation rights afforded to TECC.

25. Additionally, TECC has certain consent rights under the Sale Process over and above its consultation rights, including as to the selection of a Successful Bid (as further described below). I believe that the consent rights afforded to TECC, are reasonable and appropriate in the circumstances given the amount of pre-filing and post-filing secured debt owing to the Lenders / DIP Lenders.

26. Some of the key terms and timelines incorporated into the Sale Process include:

- (a) broad solicitation of potential interested parties;
- (b) publication of a notice of the Sale Process and delivery of teaser letters and NDAs to potential bidders by November 20, 2020;
- (c) a Phase 1 Bid Deadline of December 18, 2021;
- (d) a Phase 2 Bid Deadline of January 22, 2021;
- (e) selection of a Successful Bid, if any, by January 25, 2021;
- (f) Court approval of a Successful Bid, if any, by February 3, 2021; and
- (g) closing of a Successful Bid transaction as soon as reasonably possible following the obtaining of Court approval.

27. Under the Sale Process, the KSF Group, in consultation with the Monitor and TECC, has no obligation to select a Successful Bid. The determination of any Successful Bid by the KSF Group shall be subject to approval by the Court and the consent of TEC. For greater certainty, TECC shall not withhold its consent in respect of any transaction providing consideration sufficient to repay the secured debt owing to the Lenders / DIP Lenders.

28. I believe the Sale Process is fair and reasonable in the circumstances, and will be beneficial to the KSF Group's stakeholders.


(vi) Conclusion

29. Since the Initial Order was issued, the KSF Group has acted and continue to act in good faith and with due diligence. I swear this affidavit in support of the KSF Group's motion for the Amended and Restated Order and the Sale Process Approval Order.

SWORN BEFORE ME over videoconference on this 12th
day of November ~~7~~, 2020. 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
BEFORE ME ON NOVEMBER 12, 2020**

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

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

Court File No.

**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 November 6, 2020)**

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.
2. This affidavit is sworn in support of an application by the KSF Group pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") seeking an order (the "**Initial**

Order”) substantially in the form of the draft order included at Tab 3 of the Application Record, among other things, granting relief that is reasonably necessary for the continued operations of the KSF Group within an initial ten (10) day stay period. Should the Initial Order be granted, the Applicants intend to bring a motion, returnable during the initial ten (10) day stay period (the "**Comeback Hearing**"), seeking, among other things: (A) approval of a sales and investment solicitation process (as described in detail below, the "**SISP**"), (B) an extension of the stay of proceedings to, among other things, permit the KSF Group, in consultation with the Monitor to conduct the SISP in accordance with its terms, and (C) an increase to certain of the charges requested to be granted in the Initial Order. Although the relief to be sought in connection with the Comeback Hearing is not requested for consideration in connection with the Initial Order, these matters are mentioned herein in an effort to both provide advance notice to potentially affected stakeholders, as well as promote an orderly and efficient restructuring outcome for the KSF Group.

I. OVERVIEW AND INTRODUCTION

3. At a high level, and as further described below, the KSF Group is a hospitality group that owns, develops and operates high-end restaurants as well as a gourmet chocolate retail and wholesale business in the City of Toronto and the surrounding areas (the "**Greater Toronto Area**"). 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 (collectively, the “**Pre COVID Restaurants and Retail**”).

5. It had also entered into leases in anticipation of opening a further eight (8) restaurants (as well as a commissary and event space) over the next three (3) years (the “**Planned Restaurants**”). The Planned Restaurants are in various stages of development.

6. The KSF Group does not own any real property and all of its locations are leased from third party landlords (the “**Landlords**”). Including the Planned Restaurants, prior to the COVID-19 Pandemic, the KSF Group had a cumulative leasehold footprint of over approximately one hundred thirty thousand (130,000) square feet.

7. As with much of the hospitality industry in the Greater Toronto Area, the COVID-19 Pandemic has led to the KSF Group facing unexpected and staggering financial difficulties. Since the onset of the COVID-19 Pandemic, all of the KSF Group’s operating restaurants have been temporarily closed for dine-in service. As a result, during the COVID-19 Pandemic, the KSF Group has not been generating any revenue from its restaurant and retail operations other than through a limited takeout and delivery business.

8. The direct impact of the COVID-19 Pandemic has resulted in unprecedented liquidity issues for the KSF Group.

9. As a direct consequence of the COVID-19 Pandemic, from April to September 2020, the KSF Group’s revenues were approximately ninety five percent (95%) below projected revenues for that period and down ninety eight percent (98%) year over year for the same period.

10. Since Provincially-ordered restrictions on dining in the Greater Toronto Area were first implemented on March 17, 2020, the KSF Group, working closely and supported by its secured lenders, has taken a number of cash conservation measures, including furloughing approximately four hundred and sixty two (462) employees, and pivoting its business to support a scaled-back takeout and delivery model operating out of a limited number of locations. The KSF Group additionally applied for and received government wage support, rent relief, and other subsidies where possible.

11. During this period, the KSF Group has also attempted to obtain from the Landlords (and in some cases has obtained) temporary accommodations or permanent modifications to existing leases, including relief from certain construction payments contemplated in respect of the Planned Restaurants.

12. Notwithstanding progress made with certain Landlords in these negotiations, in light of the significant rental arrears that have accrued over the last year, certain landlords have terminated leases held by the KSF Group and the KSF Group is facing the immediate prospect that additional Landlords may attempt to terminate leases and exercise rights of distraint absent the KSF Group receiving a stay of proceedings under the Initial Order.

13. The KSF Group is additionally concerned that absent a stay of proceedings being issued, a number of its trade suppliers may seek to remove previously supplied goods or otherwise take legal action against the KSF Group should they not receive payment in the near term. To date, a number of the KSF Group's suppliers have already commenced small claims court actions against particular entities within the KSF Group.

14. During the COVID-19 Pandemic, Third Eye Capital Corporation (“**TECC**”), in its capacity as the administrative agent for and behalf of certain secured lenders (collectively, the “**Lenders**”) under the KSF Group’s senior secured credit facilities, has supported the KSF Group’s attempts to manage the unprecedented impacts facing its business. As of the date of this affidavit, the KSF Group currently owes the Lenders approximately \$34,943,688, together with interest, fees, and other chargeable costs which continue to accrue, including legal fees and disbursements (collectively, the “**TECC Indebtedness**”).

15. The Lenders have supported the KSF Group's growth since the General Credit Agreement (as defined below) was executed in 2015, and have extended financial support to fund the KSF Group's growth objectives for each of its brand verticals. However, given the unprecedented challenges and pressure facing the KSF Group at this time, the Lenders have made clear, and I agree, that the KSF Group's operations need to be restructured through an orderly process under the CCAA. A Court-supervised process will allow the KSF Group, with the assistance of the Monitor, and supported by the Lenders through the DIP Facility (as defined below), and subject to further order of this Court to be sought at the Comeback Hearing, to conduct the SISP, with a view for these brands to emerge stronger for the long-term when conditions that are more favourable return.

16. The Lenders’ continued support is essential to the KSF Group’s viability going forward.

17. It is the intention of the KSF Group that the commencement of these CCAA proceedings will allow it to (i) continue to operate its takeout and delivery business during the remainder of the COVID-19 Pandemic, (ii) provide the "breathing room" necessary to develop a strategy for the re-opening of locations (including certain of those Planned Restaurants that remain under

construction) when government restrictions are lifted or the COVID-19 Pandemic has subsided, and (iii) develop and oversee an orderly restructuring of its business that will allow its brands to continue to thrive by way of a right-sizing of its balance sheet and the implementation of the SISP.

18. Earlier this week, on November 3, 2020, the Government of Ontario announced a COVID-19 response strategy that would permit restaurants in the Greater Toronto Area to re-open for in-person dining as early as November 14, 2020. In light of this positive development, the KSF Group, supported by the Lenders, is assessing its options, including re-opening certain restaurants for dining and offering take out and delivery from additional locations, and intends to update the Court on such plans in advance of the Comeback Hearing.

II. BACKGROUND REGARDING THE APPLICANTS

(i) Corporate Structure and Description of the Applicants

19. Each of the members of the KSF Group was incorporated and is existing in Ontario under the *Business Corporations Act* (Ontario). True copies of corporate profile reports for the entities that make up the KSF Group issued by the provincial ministry for the province of Ontario are attached as **Exhibit “A”**.

20. The organizational chart for the KSF Group is attached hereto as **Exhibit “B”**.

21. Broadly speaking, the members of the KSF Group can be grouped into the following categories: (i) companies that were established to own and operate the Pre COVID Restaurants and Retail; (ii) companies that were established to operate the Planned Restaurants; (iii) companies that provide general services to other members of the KSF Group; and (iv) holding

companies that hold shares and licenses relevant to the remainder of the KSF Group.

22. The following chart includes a list of the entities that make up the KSF Group and a brief description of each. The restaurants and retail store mentioned in the chart below are further described starting on page 9 of this affidavit:

#	ENTITY:	GENERAL DESCRIPTION
A.	<u>PRE-COVID 19 OPERATING RESTAURANTS AND RETAIL COMPANIES</u>	
1.	1733667 Ontario Limited	<ul style="list-style-type: none"> Owner and operator of the <i>Jacobs & Co. Steakhouse</i> located at 12 Brant Street, Toronto, Ontario ("Jacobs & Co Steakhouse").
2.	2112047 Ontario Ltd. (" 211 ")	<ul style="list-style-type: none"> Owner and operator of <i>Buca Osteria & Enoteca</i> located at 604 King Street West, Toronto, Ontario ("Buca King").
3.	2272224 Ontario Inc. (" 227 ")	<ul style="list-style-type: none"> Owner and operator of <i>Bar Buca</i>, café and restaurant located at 75 Portland Street, Toronto, Ontario ("Bar Buca Portland").
4.	2327729 Ontario Inc.	<ul style="list-style-type: none"> Owner and operator of the <i>Buca Osteria & Bar</i> restaurant located at 53 Scollard Street, Toronto, Ontario ("Buca Yorkville").
5.	1771669 Ontario Inc.	<ul style="list-style-type: none"> Owner and operator of the <i>La Banane</i> restaurant located at 227 Ossington Avenue, Toronto, Ontario ("La Banane").
6.	CXBO Inc. (" ChocolateCo ")	<ul style="list-style-type: none"> Owner and operator of the <i>CXBO</i> retail and wholesale chocolate business, including the retail storefront located at 193 Baldwin Street, Toronto, Ontario ("CXBO Kensington").
7.	JI Yorkdale Inc.	<ul style="list-style-type: none"> Owner and operator of the <i>Jamie's Italian</i> restaurant located in the Yorkdale Shopping Centre, at 3401 Dufferin Street, North York, Ontario ("JI Yorkdale"). As further described below the lease for this restaurant has been terminated.
8.	JI Square One Inc.	<ul style="list-style-type: none"> Owner and operator of the <i>Jamie's Italian</i> restaurant located in the Square One Shopping Centre, at 100 City Centre Drive, Mississauga, Ontario ("JI Square One"). As with JI Yorkdale, the lease for this restaurant has been terminated.

#	ENTITY:	GENERAL DESCRIPTION
9.	2577053 Ontario Inc.	<ul style="list-style-type: none"> Owner and operator of the <i>Bar Buca</i> café and restaurant located at 101 Eglinton Avenue East, Toronto, Ontario (“Bar Buca Eglinton”). As further described below, the lease for this property has recently been terminated by the applicable Landlord.
B. <u>PLANNED RESTAURANT COMPANIES</u>		
10.	2584858 Ontario Inc.	<ul style="list-style-type: none"> Owner and planned operator of the <i>Cucina Buca</i> restaurant to be located at 2 St Clair Avenue West, Toronto, Ontario (“Buca St Clair”).
11.	2641784 Ontario Inc.	<ul style="list-style-type: none"> Owner and planned operator of a <i>Buca</i> restaurant and <i>Bar Buca</i> to be located in a 55-storey condominium tower known as Transit City in Vaughan, Ontario (“Buca Vaughan”).
12.	2608765 Ontario Inc.	<ul style="list-style-type: none"> Owner and planned operator of <i>Man Ray Bar a Vin</i> a private dining and event space and cocktail bar to be located above La Banane at 227 Ossington Avenue, Toronto, Ontario (“Man Ray Bar a Vin”).
13.	2621298 Ontario Inc. (“ ComissaryCo ”)	<ul style="list-style-type: none"> Owner and planned operator of an off-site commissary for the rest of the KSF Group as well as third party sales and a <i>Bar Buca</i> café and restaurant to be located in the Globe and Mail office complex at 347 King Street East, Toronto, Ontario (the “KSF Commissary”)
14.	2656966 Ontario Inc.	<ul style="list-style-type: none"> Owner and planned operator of a <i>Buca</i> restaurant to be located in the Brookfield Place office complex at 161 Bay Street, Toronto, Ontario (“Buca Bay”). The lease for Buca Bay has been terminated by its Landlord.
C. <u>INTERCOMPANY SERVICE ENTITIES</u>		
15.	King Street Food Company Inc. (“ KSF ManagementCo ”)	<ul style="list-style-type: none"> Management company that provides management and back-office services to the operating companies within the KSF Group in exchange for a fee based on revenue (other than ChocolateCo).

#	ENTITY:	GENERAL DESCRIPTION
16.	Bonta Trading Co. Inc. (“ Bonta Trading ”)	<ul style="list-style-type: none"> Trading company established to purchase and sell supplies and inventory including wine and spirits to members of the KSF Group as well as unrelated third party restaurants.
D. <u>HOLDING COMPANIES</u>		
17.	King Street Company Inc. (“ KSCI ”)	<ul style="list-style-type: none"> Holding company and ultimate indirect or direct sole shareholder of all entities within the KSF Group other than Bonta Trading (KSCI owns 80.1% of Bonta Trading). KSCI has also entered into leases on behalf of “companies to be incorporated” in respect of three (3) planned projects: (a) a KSF Group branded restaurant to be located in the CIBC Square office complex at 81 Bay Street, Toronto, Ontario (“KSF at the CIBC Square”); (b) a Japanese restaurant to be located in the renovated Park Hyatt Hotel at 4 Avenue Road, Toronto, Ontario (“KSF at the PH”); and (c) a restaurant, cafe and event space to be located in The One condominium, hotel and retail tower at 1 Bloor Street West, Toronto (“KSF at The One”).
18.	King Street Hospitality Group Inc. (“ KSHGI ”)	<ul style="list-style-type: none"> Holding company and direct shareholder in the two entities that previously operated the <i>Jamie’s Italian</i> brand.
19.	2268218 Ontario Inc.	<ul style="list-style-type: none"> Holding company that owns 76.5% of the shares of Jacobs & Co Steakhouse, with the balance being held by KSCI.
20.	King Street Restaurant Company Inc.	<ul style="list-style-type: none"> Holding company that owns shares in a number of different entities within the KSF Group, including the majority of the entities operating or proposed to operate under the <i>Buca</i> brand.

(ii) The Business of the KSF Group

A. Pre-COVID Restaurants and Retail:

23. Prior to the COVID-19 Pandemic, the KSF Group had eight (8) operating restaurants

and one (1) retail store in the Greater Toronto Area under the following brands: *Jacobs & Co Steakhouse*, *Buca*, *Bar Buca*, *La Banane*, *CXBO* and *Jamie's Italian*. Below is a short description of each of these businesses:

- (a) **Jacobs & Co Steakhouse.** Jacobs & Co Steakhouse is an approximately ten thousand (10,000) square foot and one hundred eighty (180) seat capacity steakhouse. It was designed to blend the traditional steakhouse experience with a modern aesthetic. Jacobs & Co Steakhouse is one of Toronto's most distinguished and prominent steakhouses. Among other things, the restaurant includes a piano bar and a climate controlled dry ageing room. In 2018, it was named the 5th best restaurant in Toronto by *Toronto Life* magazine and it was one of *Canada's 100 Best's* best Canadian restaurants in 2018 and 2020. To date, the Landlord for this property has been highly accommodating and supportive of the continuation of this restaurant notwithstanding the KSF Group's unexpected financial difficulties.
- (b) **Buca King.** Buca King is an approximately five thousand and seven hundred (5,700) square foot and one hundred twenty (120) seat capacity Italian restaurant, known for its locally sourced and innovative menu. Opened in 2009, it is the original restaurant established under the *Buca* brand. Buca King has been on *Canada's 100 Best's* best Canadian restaurants list every year from 2015 to 2020 and has previously been named one of Toronto's best Italian restaurants by *Toronto Life* magazine. To date, the Landlord for this property has been highly accommodating and supportive of the continuation of this restaurant notwithstanding the KSF Group's unexpected financial difficulties.

- (c) **Bar Buca Portland.** Bar Buca Portland is an approximately one thousand four hundred and fifty (1,450) square foot and forty (40) seat capacity casual café and restaurant in Toronto's King West neighborhood, that offers, among other things, pastries and coffee in the morning and shareable plates and a curated beverage menu later in the day.
- (d) **Buca Yorkville.** Buca Yorkville is an approximately three thousand and five hundred (3,500) square foot and eighty eight (88) seat capacity restaurant located in the heart of Toronto's Yorkville neighborhood at the base of a condominium tower attached to the *Four Seasons* hotel. It is the *Buca* brand's flagship restaurant. Buca Yorkville's menu is shaped around coastal Italian dining and focused on a broad selection of fresh seafood. As with Buca King, it has been on *Canada's 100 Best's* best Canadian restaurants list every year since 2015. In 2015 it was named Canada's best new restaurant by *Canada's 100 Best's* and Toronto's best new restaurant by *Toronto Life* magazine. In 2018, it was additionally named one of the city's best restaurants by *Toronto Life* magazine.
- (e) **La Banane.** La Banane is an approximately two thousand seven hundred (2,700) square foot and eighty (80) seat capacity modern French restaurant located in Toronto's Ossington neighborhood. Its defining traits include its sprawling marble raw bar and its "Ziggy Stardust Disco Egg" dessert. In 2018, it was named the 7th best restaurant in Toronto by *Toronto Life* magazine just behind Jacobs & Co Steakhouse and Buca Yorkville and has been on *Canada's 100 Best's* best Canadian restaurants list every year since 2018. To date, the Landlord

for this property has been highly supportive of the KSF Group's intention to continue operating this restaurant going forward.

- (f) **CXBO Kensington.** CXBO Kensington is an approximately two thousand and four hundred (2,400) square foot boutique in Toronto's Kensington Market that sells artisanal chocolates manufactured under the *CXBO* brand. In addition to this retail store, *CXBO* chocolates have been historically sold through a kiosk in the *Pusateri's* grocery store located at the Saks food hall at the Toronto Eaton Centre shopping mall, as well as through a number of independent retailers. CXBO Kensington also sells chocolates to various affiliated restaurants within the KSF Group.

- (g) **JI Yorkdale.** JI Yorkdale was an approximately eight thousand and six hundred (8,600) square foot and two hundred twenty five (225) seat capacity family-style Italian restaurant located in the Yorkdale Mall in the North York region. It was the first location in North America for celebrity chef Jamie Oliver's *Jamie's Italian* restaurants. Unlike the majority of the KSF Group's other brands, the KSF Group does not own the *Jamie's Italian* brand, which is licensed by KSHGI directly from a third party, Jamie's Italian International Limited ("**JII**"). The KSF Group initially planned to roll out up to ten (10) *Jamie's Italian* restaurants across Southern Ontario and British Columbia. Unfortunately, despite management's optimism for the *Jamie's Italian* brand, JI Yorkdale struggled to gain the critical mass of diners necessary to make this restaurant profitable in the face of high fixed operating and start-up costs. The lease for JI Yorkdale was terminated by its Landlords in May of this year.

- (h) **JI Square One.** JI Square One was an approximately six thousand and six hundred (6,600) square foot and one hundred forty five (145) seat capacity outpost of the *Jamie's Italian* brand located in the Square One shopping mall in Mississauga, Ontario. As with JI Yorkdale, and for similar reasons, the lease for JI Square One was terminated by its Landlords in May of this year.
- (i) **Bar Buca Eglinton.** Bar Buca Eglinton is an approximately two thousand and nine hundred square foot and eighty (80) seat capacity Italian-inspired neighbourhood café and restaurant located in the Yonge and Eglinton neighborhood. It is the second of the *Bar Buca* restaurants. The lease for this establishment was recently terminated by its Landlord.

B. Pre-COVID Restaurants Under Construction and Development

24. As part of its general expansion and growth plans, the KSF Group has entered into leases to open another eight (8) restaurants in the Greater Toronto Area. These restaurants, and in some cases the buildings they are intended to be located in, are in various stages of development and construction. Each of these restaurants and their status are generally described below:

- (a) **Buca St Clair.** Buca St Clair is an approximately six thousand and one hundred (6,100) square foot and one hundred twenty (120) seat capacity Italian family style restaurant under the *Buca* brand. Construction of this restaurant was substantially completed in March of 2020, shortly before the start of the COVID-19 Pandemic. Due to the COVID-19 Pandemic, this restaurant has not formally opened. Notwithstanding that this restaurant has not formally opened, the Landlord for this location has been highly supportive and has enabled the KSF

Group to operate from this space as the central takeout and delivery location for the *Buca* brand.

- (b) **Buca Vaughan.** Buca Vaughan is an approximately five thousand and six hundred (5,600) square foot *Buca* restaurant and *Bar Buca* planned to be opened in the Transit City Tower, a condominium that is being developed in Vaughan, Ontario as part of a broader mixed use planned community known as SmartCentres Place. It is scheduled to be the first *Buca* concept to be opened outside of downtown Toronto. Partial construction has advanced on this project to date, in anticipation of a 2021 opening date.
- (c) **Man Ray Bar a Vin.** Man Ray Bar a Vin is an approximately two thousand and seven hundred (2,700) square foot private dining and event space and cocktail bar originally planned to be opened above La Banane. The decision to open this location was driven in part to capitalize on La Banane's popularity and, among other things, cater to and service customer overflow from La Banane. This project is substantially complete and was weeks away from opening when the COVID-19 Pandemic hit. The Landlord for this property is the same Landlord as for La Banane.
- (d) **KSF Commissary:** KSF Commissary is an approximately ten thousand and four hundred (10,400) square foot commissary and restaurant planned to be opened in the Globe and Mail Centre in Toronto's King Street East neighborhood. The commissary is intended to serve as an offsite kitchen and baking facility for other restaurants within the KSF Group and third party restaurants, as well as to

support a general catering business. Construction on this project has only recently commenced.

- (e) **KSF at the CIBC Square:** KSF at the CIBC Square is an approximately thirteen thousand (13,000) square foot restaurant planned to be opened in a commercial office tower being constructed in the southern core of Toronto's Financial District. The lease for this property was signed in mid February of this year just before the commencement of the COVID-19 Pandemic. This project has not commenced construction in any material fashion.
- (f) **KSF at the PH:** KSF at the PH is an approximately twelve thousand (12,000) square foot Japanese restaurant planned to be opened in the Park Hyatt hotel currently under renovation at the corner of Bloor Street West and Avenue Road. This project has not commenced construction in any material fashion.
- (g) **KSF at The ONE:** KSF at The One is an approximately forty thousand and three hundred (40,300) square foot restaurant, cafe and event space planned to be opened as part of the One Bloor West condominium and hotel development at the corner of Yonge Street and Bloor Street West. KSF at The One is planned to be comprised of (i) multiple full service sit-down restaurants under brands to be determined; (ii) an upscale café and quick service eatery; and (iii) a first-class event space and venue for the hosting of weddings, conferences and other occasions. This project has not commenced construction in any material fashion as overall construction of The One is at an early stage.

- (h) **Buca Bay.** Buca Bay is an approximately six thousand and seven hundred (6,700) square foot restaurant originally planned to be opened under the *Buca* brand in Brookfield Place in Toronto's financial district. The lease for this property was terminated in May of 2020.

C. **Employees**

25. Prior to the COVID-19 Pandemic, and as of around February of this year, entities in the KSF Group employed, in the aggregate, approximately five hundred and eleven (511) employees on a full or part time basis across its restaurant portfolio and corporate group. The majority of these employees were paid hourly with only approximately fifteen to twenty percent (15-20%) of employees operating on a salary. Of the approximately five hundred and eleven (511) employees employed by the KSF Group around this time, approximately four hundred and ninety five (495) were employed in restaurants and at CXBO Kensington. The remainder (approximately sixteen (16) employees), were employed directly by KSF ManagementCo as part of the group's general back office.

26. In March of this year and in the wake of the COVID-19 Pandemic, the KSF Group furloughed approximately four hundred and sixty two (462) of its employees.

27. The KSF Group currently maintains a small staff of approximately forty-four (44) employees, comprised largely of management, certain critical back office employees, and staff necessary for the operation of the KSF Group's limited takeout and delivery business (collectively, the "**COVID Period Employees**").

28. The KSF Group does not maintain any pension plans for its employees all of whom are non-unionized. Through Great West Life Insurance, the COVID Period Employees are receiving certain sponsored benefits, including basic medical coverage.

29. Payroll is managed internally by the KSF Group's accounting department.

D. Banking Arrangements

30. The KSF Group has historically banked with The Bank of Nova Scotia ("BNS"). The KSF Group has eighteen (18) existing bank accounts with BNS (the "**BNS Bank Accounts**"). The KSF Group additionally maintains one (1) dormant bank account (the "**RBC Bank Account**", together with the BNS Bank Accounts, the "**Bank Accounts**") with the Royal Bank of Canada ("**RBC**"). Most of the Bank Accounts are subject to a blocked account agreement in favour of the Lenders. The Lenders have not blocked any of these accounts to date.

31. The Bank Accounts are monitored and reconciled daily by the KSF Group's internal accounting department.

32. As part of the KSF Group's cash management system, inter-company loans are often advanced within the KSF Group. The KSF Group's accounting department maintains an internal ledger tracking all intercompany loans.

33. Most of the revenues of the KSF Group are generated through debit card and credit card payments. Moneris Solutions Corporation ("**Moneris**") processes these transactions on behalf of the KSF Group. Funds are generally transferred from Moneris to the KSF Group within three to four (3-4) days of a transaction being completed by a customer at the point of sale.

E. The KSF Group and the COVID-19 Pandemic

34. Prior to the COVID-19 Pandemic, the KSF Group's expansion and build-out costs, as well as unplanned losses experienced at JI Yorkdale and JI Square One, placed a significant strain on the KSF Group's working capital and liquidity.

35. The COVID-19 Pandemic has exacerbated the KSF Group's liquidity situation, and made it all but impossible for the KSF Group to restructure its business absent obtaining protection under the CCAA.

36. Through my conversations with other industry participants as well as what I have witnessed first-hand as a principal of the KSF Group, I understand and observe that the hospitality industry in the Greater Toronto Area has been profoundly affected by the COVID-19 Pandemic and the restrictions mandated by, among others, the Government of Ontario.

37. On or around March 17, 2020, the provincial government declared a provincial state of emergency under the *Emergency Management and Civil Protection Act*. On March 18, 2020, all restaurants were ordered to close for an undetermined period, with a limited carve-out to allow restaurants to provide takeout and delivery services (the "**March Shutdown Order**").

38. Just prior to, and in anticipation of the, March Shutdown Order being issued, all of the KSF Group's restaurants were immediately closed.

39. Since this time, the KSF Group's operations have been restricted to a limited takeout and delivery business operated out of three (3) of its locations: (i) Jacobs & Co Steakhouse; (ii) Buca St Clair; and (iii) until mid June of this year, La Banane.

40. The KSF Group's takeout and delivery business does not generate sufficient revenue to cover the group's expenses and has been largely kept in place to maintain brand awareness during the COVID-19 Pandemic, stay connected to its customer base, and continue to provide employment to the extent possible in the circumstances.

41. The KSF Group's takeout and delivery business is managed in-house by ComissaryCo, predominately through a branded website and platform. ComissaryCo additionally offers limited takeout and delivery through certain third party takeout and delivery platforms.

42. On or around May 1, 2020, the Government of Ontario announced that certain businesses and workplaces would be able to re-open on May 4, 2020 under strict public health guidelines as a part of stage one (1) of phase two (2) of the government's framework for reopening ("**Stage One**"). The Government of Ontario's prohibition on indoor and outdoor dining was not lifted as part of Stage One.

43. On or around June 24, 2020, the Government of Ontario implemented stage two (2) of phase 2 (two) of the government's reopening plan ("**Stage Two**") in the Greater Toronto Area. As part of Stage Two, restaurants were allowed to open for outdoor dining on patios and in parking lots or adjacent premises.

44. On July 31, 2020 the Government of Ontario moved the Greater Toronto Area into stage three (3) of phase 2 (two) of the government's reopening plan ("**Stage Three**"). In accordance

with regulations established by the provincial government, restaurants were permitted to open for indoor dining, subject to strict public safety measures including the maintenance of physical distancing, limitations on capacity, and restrictions on certain types of services that could be offered.

45. When Stage Two and Stage Three were announced, the KSF Group decided to temporarily delay the reopening of its restaurants.

46. This decision was due in part to the fact that, (i) the KSF Group's restaurants have either no or very limited outdoor space, which raised concerns from management that these locations could not be operated in a manner that was safe for the KSF Group's employees and customers; and (ii) as a result of the significant capacity restrictions on indoor and outdoor dining imposed by the Government of Ontario, locations would be operating at significant and unsustainable losses.

47. Additionally, the KSF Group believed that capital required to start-up its restaurants would be at risk if a "second wave" of the COVID-19 Pandemic occurred within months of reopening and restrictions were re-instituted.

48. On October 10, 2020, due to a surge in COVID-19 cases, the Government of Ontario re-implemented a general ban on indoor dining in the Greater Toronto Area.

49. As of the date hereof, restaurants in the Greater Toronto Area are limited to takeout and delivery services as well as outdoor dining, provided such activities are in compliance with certain restrictions. Based on the Government of Ontario's November 3, 2020 announcement, the current prohibitions on indoor dining in the Greater Toronto Area will be in place until at

least November 14, 2020. The KSF Group is in the process of assessing its in-person dining re-opening options in light of these recent developments.

F. Cash Conservation Efforts and Government Subsidies

50. In order to minimize the devastating effects caused by the COVID-19 Pandemic, the KSF Group has been forced to take certain measures designed to conserve cash and limit overhead and operating expenses. Among other things, with the support of TECC, the KSF Group has:

- (a) as set out above, placed on furlough four hundred and sixty two (462) of its employees,
- (b) reduced the salaries and shifted the roles and responsibilities of those employees who were not placed on furlough;
- (c) sought to negotiate, where possible, rental deferrals and other accommodations to existing lease arrangements and worked with the Landlords to obtain rental assistance under CECRA (as defined below);
- (d) pivoted its operations to a takeout and delivery model in order to preserve capital and employment where possible, while maintaining brand contact with its loyal customer base during the COVID-19 Pandemic period; and
- (e) developed a delivery model to mitigate the significant impact of the high fees imposed by third-party food delivery provider platforms.

51. During the COVID-19 Pandemic, the KSF Group has received the benefit of certain government subsidies and support programs. Namely, the KSF Group has received benefits under the following federal support programs:

- (a) **The Canada Emergency Wage Subsidy Program (“CEWS”)**: To date, the KSF Group has received approximately seven hundred and fifty thousand dollars (\$750,000) in subsidies under CEWS;
- (b) **Canada Emergency Business Account Program (“CEBA”)**: Five (five) entities within the KSF Group have received forty thousand dollar (\$40,000) small business loans as part of the CEBA Program; and
- (c) **The Canada Emergency Commercial Rent Assistance Program (“CECRA”)**: The KSF Group has worked with certain of its existing Landlords to obtain rent reductions as part of CECRA. The KSF Group is closely monitoring its eligibility for the Canadian Emergency Rent Subsidy Program that has been announced by the Canadian Federal government to replace CECRA but has not yet been formally implemented.

52. In order to meet certain urgent cash flow needs, including payroll, the KSF Group also obtained emergency loans from the Lenders under the Credit Agreements.

53. Despite the KSF Group’s pivot to a takeout and delivery sales model, cash conservation efforts, additional loans extended on an emergency basis by the Lenders under the Credit Agreements, and the government subsidies and loans received, the COVID-19 Pandemic has

had an irreversible adverse impact on the KSF Group's ability to operate its business as it existed prior to the pandemic.

54. As a direct consequence of the COVID-19 Pandemic, from the period between March to October 2020, the KSF Group's projected revenues were approximately ninety-five percent (95%) below projected revenues for that period and down ninety-eight percent (98%) year over year for the same period.

55. The KSF Group's EBITDA (earnings before interest, taxes, depreciation & amortization) for the eight (8) month period ending September 13, 2020, is negative one million dollars (\$1,000,000).

(i) Financial Position of the Company.

A. Financial Statements

56. In advance of these proceedings, the KSF Group prepared (i) consolidated annual financial statements for the fiscal year ending January 31, 2020 (the "**FY 2019 Financial Statements**"); and (ii) draft consolidated interim financial statements as at September 13, 2020 (the "**2020 Interim Financial Statements**").

57. Each of the FY 2019 Financial Statements and the 2020 Interim Financial Statements have been prepared on an unaudited basis. The 2020 Interim Financial Statements (which as noted above are only in draft form) have been prepared strictly to assist the Court in light of the pronounced effect the pandemic has had on the KSF Group's business during 2020 and are not intended to be used or relied for any purpose outside of this Application. Copies of the FY 2019 Financial Statements and the 2020 Interim Financial Statements are attached hereto as **Exhibits**

“C” and “D” respectively.

Consolidated Assets

58. As set out in the 2020 Interim Financial Statements, as at September 13, 2020 the KSF Group had total consolidated assets with a net book value of approximately \$24,353,968. This includes consolidated current assets of \$4,894,243, consolidated capital assets of \$9,683,783 and other assets of \$9,775,942.

59. As of September 13, 2020, the book value of the KSF Group’s principal current and non-current assets in the 2020 Interim Financial Statements are as follows:

CATEGORY	AMOUNT
<u>Current Assets</u>	
Cash	\$293,805 ¹
Inventory	\$1,747,159 ²
Prepays and Deposits	\$2,778,647 ³
<u>Capital Assets</u>	
Fixed Assets	\$9,683,783 ⁴

¹ This amount was approximately \$125,000 as at November 5, 2020.

² This amount is largely attributable to perishable goods, wine, and spirits.

³ This amount is primarily comprised of pre-paid construction costs with the balance being deposits on rent and prepayments with suppliers.

⁴ This number is comprised mostly of leasehold improvements and is net of accumulated depreciation and tenant inducements (which in turn are net of depreciation).

Consolidated Liabilities

60. As of September 13, 2020, the KSF Group had total consolidated liabilities with a net book value of approximately \$45,130,125. This includes consolidated current liabilities of \$8,613,533 and consolidated non-current liabilities of \$36,516,592.

61. The book value of the KSF Group's principal current and non-current liabilities as set out in the 2020 Interim Financial Statements are set out in the chart below:

CATEGORY	AMOUNT
<u>Current Liabilities</u>	
Trade Payables	\$7,492,469
Payroll Liabilities	\$704,030
Accrued Liabilities	\$417,035
<u>Non Current Liabilities</u>	
Loans from Related Parties	\$1,470,531
Loans from Third Parties	\$33,859,693
Deferred Revenue	\$948,355
Taxes Payable	\$624,147

B. Senior Secured Indebtedness

General Credit Agreement

62. On November 30, 2015, certain Lenders (the “**General Lenders**”) established a non-revolving term loan facility in favour of KSCI (the “**General Term Facility**”) in the original principal amount of \$14,200,000 pursuant to a credit agreement between among others, TECC, as administrative agent, the General Lenders, as lenders, and KSCI, as borrower (the “**Original General Credit Agreement**”). A copy of the Original General Credit Agreement is attached as **Exhibit “E”** of this affidavit.

63. The General Lenders have supported the KSF Group’s expansion plans over time and helped fund the KSF Group’s other immediate cash flow needs by increasing the principal amount of the General Term Facility, through various amendments to the Original General Credit Agreement.

64. In this respect, through a series of twelve (12) subsequent amendments to the Original General Credit Agreement, the total obligations under the General Term Facility have increased to \$33,384,667,11 (collectively, the “**General Amendments**”, and together with the Original General Credit Agreement, the “**General Credit Agreement**”). Copies of the General Amendments are attached as **Exhibit “F”** of this affidavit.

65. Among other things, the increases to the principal amount of the General Term Facility, have helped facilitate the KSF Group securing new leases and funded construction and build-out costs associated with JI Yorkdale, JI Square One, Buca St Clair, Bar Buca Eglinton and the KSF Commissary.

66. The 12th and most recent amendment to the credit agreement (the “**Twelfth Amendment**”) operates as a forbearance agreement, under which the General Lenders agreed to forbear on certain defaults existing under the General Credit Agreement until the expiration of the forbearance period set out in the Twelfth Amendment (the “**Forbearance Period**”). As of the date hereof, the Forbearance Period has expired and the General Lenders have not agreed to formally extend the Forbearance Period. As of the time of the swearing of this affidavit, the KSF Group remains in default under the General Credit Agreement.

67. The General Credit Agreement has a maturity date of November 30, 2020 (the “**General Maturity Date**”). The KSF Group does not currently have, nor does it expect to have, the means to repay the outstanding amounts under the General Credit Agreement.

68. TECC has advised me that the General Lenders are not willing to provide further accommodations to the KSF Group outside a Court-supervised restructuring process.

La Banane Credit Agreement

69. In order to fund the development of *La Banane* and *CXBO*, in 2017, certain Lenders (the “**LB Lenders**”) agreed to establish a further non-revolving term loan facility in favour of KSCI (the “**LB Facility**” together with the “**General Term Facility**”, the “**Credit Facilities**”) in the original principal amount of \$1,100,000 pursuant to a credit agreement between among others, TECC, as administrative agent, the LB Lenders, as lenders, and KSCI, as borrower (the “**Original LB Credit Agreement**”). A copy of the Original LB Credit Agreement is attached as **Exhibit “G”** of this my affidavit.

70. The Original LB Credit Agreement was subsequently amended pursuant to five (5)

separate amending agreements under which the total obligations under the LB Facility have increased to \$1,559,011.45 (the “**LB Amendments**” together with the Original LB Credit Agreement, the “**LB Credit Agreement**” and the LB Credit Agreement collectively with the General Credit Agreement, the “**Credit Agreements**”). Copies of the LB Amendments are attached as **Exhibit “H”** of this affidavit.

71. The 5th and most recent amendment to the credit agreement (the “**Fifth Amendment**”) operates as a forbearance agreement, under which the LB Lenders agreed to forbear on certain defaults existing under the LB Credit Agreement until the expiration of the forbearance period set out in the Fifth Amendment (the “**LB Forbearance Period**”). As of the date hereof, the LB Forbearance Period has expired and the LB Lenders have not agreed to formally extend the LB Forbearance Period. As of the time of the swearing of this affidavit, the KSF Group is in default under the LB Credit Agreement.

72. The LB Credit Agreement has a maturity date of November 30, 2020 (the “**LB Maturity Date**”). The KSF Group does not currently have, nor does it expect to have, the means to repay all amounts owing under the LB Credit Agreement by the LB Maturity Date.

73. TECC has advised me that the LB Lenders are not willing to provide further accommodations to the KSF Group outside a Court-supervised restructuring process.

Security and Guarantees held by the Lenders

74. TECC and the Lenders hold unlimited guarantees from all entities within the KSF Group guaranteeing either amounts due and owing under the General Credit Agreement or the LB Credit Agreement (other than KSCI, which is directly liable as borrower under both of the

Credit Agreements).

75. TECC and the Lenders have additionally been granted various security pursuant to the Credit Agreements including general security agreements granted by each entity within the KSF Group, in connection with all of their respective assets, undertakings and property. Certain individual shareholders of the KSF Group have also provided guarantees to TECC.

C. Other Secured Creditors

76. The KSF Group has a limited number of other creditors with registered financing statements under the PPSA that appear to relate to the leasing or financing of motor vehicles and other equipment. These creditors are as follows:

- (a) 7324375 Canada Inc. o/a Sani-Service;
- (b) Chef Choice Equipment Rentals Inc.;
- (c) Trimen Food Services Equipment Ltd.;
- (d) Canadian Dealer Lease Services Inc.;
- (e) Bank Of Nova Scotia – DLAC; and
- (f) Highland Chevrolet Buick GMC Cadillac Ltd.

77. RBC has also registered a financing statement against Bonta Trading in connection with certain credit cards provided to Bonta Trading by RBC and as further described below the Canada Revenue Agency (the “**CRA**”) also maintains registrations against certain entities.

78. A summary of PPSA searches recently obtained against the KSF Group and current as

of October 10, 2020, are attached hereto as **Exhibit “I”** (the “**PPSA Summary**”).

D. Canada Revenue Agency

79. Certain entities within the KSF Group have liabilities owing to the CRA (the “**CRA**”), in respect of outstanding and past due harmonized sales tax (“**HST**”) remittances and other source deductions. In the aggregate, and on a consolidated basis, the KSF Group owes the CRA over one million eight hundred thousand dollars (\$1,800,000) in respect of HST and over eight hundred thousand dollars (\$800,000) in respect of other deductions at the source.

80. A number of these entities have entered into payment plans with the CRA to address their outstanding and past due liabilities through a series of scheduled payments over a defined period (“**CRA Payment Plans**”). Each of these entities are currently behind on their CRA Payment Plans.

81. As noted above, the CRA has registered PPSA financing statements against specific entities within the KSF Group.

E. WSIB Claims

82. Certain entities within the KSF Group are not current on employer health tax (“**EHT**”) and Workplace Safety and Insurance Board (“**WSIB**”) remittances. In the aggregate, the KSF Group owes approximately four hundred and twenty five thousand and four hundred fifty four dollars (\$425,454) in respect of EHT and WSIB.

F. Gift Cards

83. Jacobs & Co Steakhouse, the *Buca* restaurants, the *Bar Bucas*, the *Jamie's Italian* restaurants, and La Banane have historically sold gift cards, "in store", online through their respective websites, and through a limited channel of third parties. The gift cards do not expire. As of the date of this affidavit, in excess of nine hundred thousand dollars (\$900,000) in gift cards have been issued and are outstanding by members of the KSF Group.

G. Landlords

General Background Information

84. The KSF Group does not own any real property, and has entered into leases in respect of its existing and planned restaurants, retail, and event space. KSFC also directly leases office space (the "**Head Office**") and two (2) storage spaces used more broadly by the KSF Group.

85. Under many of its leases, the KSF Group is currently required to remit rent to the applicable Landlord on a monthly basis. Under the terms of certain leases for the Planned Restaurants, the KSF Group is in a negotiated rent free period, during which the KSF Group only has the obligation to make periodic payments for certain construction and design related costs (collectively, "**Construction Obligations**").

86. As a direct result of the COVID-19 Pandemic, the KSF Group has not been in a position to pay rent on any of its leases, where applicable, since March of 2020 other than the leases for

the Head Office and CXBO Kensington.⁵ The KSF Group is also in arrears of certain of its Construction Obligations and has ceased all construction related activities during the pandemic.

87. The KSF Group has received notices of default in respect of a number of its leases.

88. The KSF Group has, where possible, entered into both formal and informal negotiations with Landlords in respect of temporary accommodations and in some cases, permanent modifications to its existing leases. In many instances, such negotiations remain ongoing.

89. Although some Landlords have been supportive of the KSF Group's accommodation requests during the COVID-19 Pandemic, many Landlords have resisted providing requested accommodations to the group and there is not certainty that those accommodations that have been granted will continue.

Notice of Terminations / Distraint Notices

90. At or around May of 2020, the leases for JI Yorkdale and JI Square One were formally terminated by the Landlords for these restaurants. The lease for Buca Bay, which was with a related Landlord has also been terminated.

91. As further described under the heading "Litigation" below, the Landlords for JI Yorkdale, JI Square One and Buca Bay have issued statements of claim against certain entities within the KSF Group in respect of amounts claimed to be owing under the leases for these properties.

⁵ Certain Landlords are additionally owed arrears for February of 2020.

92. On October 1, 2020, the Landlord for Bar Buca Eglinton issued a notice of distraint in respect of the lease for that restaurant and posted it on the door of the restaurant. This notice of distraint was subsequently re-posted on a number of prominent Toronto blogs. I believe the publication of this notice of distraint has had a negative effect on the *Buca* and *Bar Buca* brands, and on the group generally.

93. On October 23, 2020, the Landlord for Bar Buca Eglinton issued a letter claiming to formally terminate the lease for this property.

94. I am concerned that, absent a stay of proceedings being issued, other Landlords may seek to distraint and terminate leases in the immediate future.

95. Landlords exercising rights of distraint in particular, could result in the KSF Group losing access to valuable assets, including kitchen equipment and supplies, as well as extensive collections of fine wines and spirits, which would impede the re-opening plans of the KSF Group.

H. Litigation

96. Since the COVID-19 Pandemic began, certain parties have commenced litigation against entities within the KSF Group. This litigation (excluding small claims court matters) is summarized at a high level in the below chart. All figures included in the chart are approximate numbers and exclude any legal costs or pre or post judgement interest that may be applicable:

PARTIES TO LITIGATION	GENERAL BACKGROUND / AMOUNT
<i>Plaintiff(s):</i> Omers Realty Management Corporation, Square One Property	<ul style="list-style-type: none"> Claim in respect of amounts purported to be owing in connection with the leases for JI Yorkdale

PARTIES TO LITIGATION	GENERAL BACKGROUND / AMOUNT
Corporation, and Yorkdale Shopping Centre Holdings Inc. <i>Defendant(s):</i> JI Square One Inc., JI Yorkdale Inc., KSHGI, and 1733667 Ontario Ltd.	(approximately \$4,488,392.38) and JI Square One (approximately \$4,462,740.83).
<i>Plaintiff(s):</i> CT Tower Investments Inc. <i>Defendant(s):</i> 2656966 Ontario Inc. and KSCI	<ul style="list-style-type: none"> Claim in respect of amounts purported to be owing in connection with the lease for Buca Bay (approximately \$7,594,393.81).
<i>Plaintiff(s):</i> JIL <i>Defendant(s):</i> KSHGI and 211	<ul style="list-style-type: none"> Claim seeking among other things, judgement in the amount of £168,925.55 in respect of amounts purported to be owing under a licensing agreement.

I. Trade Payables

97. As of the date hereof, the KSF Group has approximately \$8,357,469 outstanding in respect of various trade payables owing to its general suppliers, including its food and beverage providers. A number of these suppliers have threatened to cease supplying goods and services to the KSF Group, commenced small claims court actions against the KSF Group and / or threatened to forcibly remove previously supplied goods should they not receive payment in the near term.

III. CCAA PROCEEDINGS

(i) Stay of Proceedings

98. At this time, the KSF Group believes that a broad stay of proceedings will provide the KSF Group with the “breathing room” necessary to continue its limited current operations, preserve brand equity during the remainder of the COVID-19 Pandemic, create a plan for the re-opening of its locations when government restrictions are lifted, and develop and oversee an orderly restructuring of its business, whether by way of a right-sizing of its balance sheet or a sale *en bloc* of all or part of its business.

99. Absent the granting of an immediate stay of proceedings, the KSF Group faces the possibility of additional lease terminations, rights of distraint being exercised against its assets, and potential lawsuits and enforcements actions being commenced by its trade creditors.

100. Any such actions, both on their own and collectively, could have the potential to irreparably damage the KSF Group’s brands and reputation, which would likely limit the ability of the KSF Group to emerge from, and survive, the COVID-19 Pandemic. The collapse of the KSF Group would have wide scale implications for many of the KSF Group’s stakeholders, including the Lenders, Landlords, trade creditors, and both the KSF Group’s current and furloughed employees.

101. By stabilizing and preserving the value of the KSF Group’s business, I believe that a stay of proceedings is in the best interests of the KSF Group’s stakeholders.

(ii) *Payment of Critical Suppliers*

102. As part of the Initial Order, the KSF Group is seeking the Court’s authority to make limited pre-filing payments to suppliers servicing the KSF Group’s takeout and delivery business in the amount of approximately ten thousand four hundred and twenty five dollars

(\$10,425) (the “**TD Suppliers**”).

103. The TD Suppliers have to date been requiring (i) payment on delivery; or (ii) payment within a week of delivery. If this Court grants the Initial Order being sought, certain TD Suppliers who fall into the latter camp will be owed amounts as of the date of the Initial Order (the “**Stub Period TD Suppliers**”).

104. There is the potential that the Stub Period TD Suppliers may cease to supply the KSF Group going forward on the basis of pre-filing amounts owing.

105. The failure by the KSF Group to obtain essential supplies would be highly disruptive to the KSF Group’s immediate plans during these CCAA proceedings, particularly as re-opening options are being assessed.

106. Allowing the KSF Group to pay the Stub Period TD Suppliers pre-filing amounts, will prevent this from happening and maintain necessary goodwill from its suppliers going forward.

107. In my view, the KSF Group’s takeout and delivery business is essential to maintaining brand value, and any disruption to this aspect of the KSF Group’s business will have a negative effect on the KSF Group’s restructuring efforts.

(iii) Appointment of Monitor

108. The KSF Group is seeking the appointment of MNP Ltd. (“**MNP**”) to serve as the proposed CCAA Monitor in these proceedings (in such capacity, the “**Proposed Monitor**”). A copy of the consent of MNP to act as Monitor is attached as **Exhibit “J”** of this my affidavit.

109. I have been advised by Sheldon Title (“**Mr. Title**”), a senior vice-president at MNP with

carriage of this matter, that MNP is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* and is not subject to any of the restrictions set out in Section 11.7(2) of the CCAA.

110. I understand that MNP's pre-filing report in these proceedings will set out in detail certain past engagements that MNP and certain related entities have performed for the KSF Group and the Lenders.

111. I believe that MNP's familiarity with the KSF Group's financial records and general business model, including as gained through its prior involvement with the KSF Group, will create cost efficiencies during the course of the proposed CCAA proceedings that will be beneficial to all of the KSF Group's stakeholders.

112. The Lenders are in support of the appointment of MNP as the Proposed Monitor.

(iv) DIP Facility

113. In light of the KSF Group's liquidity issues, the KSF Group requires interim financing to sustain its operations, including the payment of professional fees, during these CCAA proceedings.

114. Under a DIP term sheet dated November 6, 2020 (the "**DIP Term Sheet**"), TECC and certain funds managed or advised by TECC or affiliates of TECC (collectively, the "**DIP Lenders**") have agreed to establish an interim financing facility (the "**DIP Facility**") in the maximum principal amount of one million two hundred thousand dollars (\$1,200,000) for use during these CCAA proceedings. A copy of the DIP Term Sheet is attached hereto as **Exhibit "K"**.

115. During the initial ten (10) day stay period, availability under the DIP Facility will be limited to the principal amount of one hundred thousand dollars (\$100,000), which is the amount reasonably necessary for the continued operations of the KSF Group until the Comeback Hearing.

116. The DIP Term Sheet contains among other things, the following terms:

- (a) Borrowers: each of the Applicants.
- (b) Principal Amount of DIP: one hundred thousand dollars (\$100,000) of initial availability (the "**Initial Maximum Amount**"), and, subject to the satisfaction of certain conditions precedent, an aggregate maximum amount of one million two hundred thousand dollars (\$1,200,000) (the "**Maximum Amount**").
- (c) Closing Fees: three percent (3%) of the Maximum Amount.
- (d) Use of Proceeds: (i) to fund the Borrowers' operating expenses and general corporate and working capital requirements during the CCAA proceedings, (ii) to fund the administrative expenses of the CCAA proceedings; (iii) to make payments expressly permitted under the DIP Term Sheet; and (iv) to pay costs, expenses, interest and other obligations owing under the DIP Facility; each in accordance with an approved cash flow forecast from time to time in effect.
- (e) Interest: an annual rate equal to twelve percent (12%).

- (f) DIP Charge: the DIP Facility requires a super-priority ranking charge (the “**DIP Lenders’ Charge**”) against all of the current and future assets, undertakings and property of the KSF Group.
- (g) Milestones: the KSF Group will obtain approval from the Court of the SISP on terms acceptable to TECC on or before November 16, 2020.

(v) Cash Flow Forecast

117. The KSF Group, with the assistance of the Proposed Monitor, has prepared a 13-week cash flow forecast (the “**Cash Flow Forecast**”).

118. The Cash Flow Forecast assumes that the KSF Group will not operate any indoor or outdoor dining during the applicable period and will continue to operate strictly as a takeout and delivery business with a limited staff.

119. Based on pronouncements made earlier this week by the Ontario Government that appear to indicate that the current prohibition on indoor dining in the Greater Toronto Area may end around November 14, 2020, the KSF Group is, with the support of the Lenders, in the process of assessing options to re-open certain restaurants for dining in the immediate future, as well as to expand the number of locations from which it currently offers takeout and delivery.

120. As these plans remain under development, they are not currently reflected in the Cash Flow Forecast. The KSF Group is aiming to have such plans in place by the Comeback Hearing, together with an updated Cash Flow Forecast if required.

(vi) Charges

A. Administration Charge

121. It is contemplated under the form of Initial Order being sought by the KSF Group that the Proposed Monitor, along with its counsel, and counsel to the KSF Group will be granted a Court-ordered charge in the amount of one hundred thousand dollars (\$100,000) (the “**Administration Charge**”) during the initial ten (10) day stay period, as security for their fees and disbursements incurred at their standard rates and charges.

122. I believe that the amount of the proposed Administration Charge is the amount reasonably necessary for the initial ten (10) day stay period to ensure the continued participation of the proposed beneficiaries of the Administration Charge, whose expertise, knowledge and assistance will be critical to the success of these CCAA proceedings.

123. The KSF Group has worked with the Monitor and the Lenders to develop the proposed amount of the Administration Charge, which I believe is fair and reasonable in the circumstances.

124. I do not believe that there is any unwarranted duplication of roles between the proposed beneficiaries of the Administration Charge.

125. The KSF Group intends to seek an increase in the maximum amount of the Administration Charge at the Comeback Hearing.

B. DIP Lenders' Charge

126. The DIP Facility is conditional upon an order of this Court, among other things,

approving the amount and priority of the DIP Lenders' Charge.

127. As outlined above, during the initial ten (10) day stay period availability under the DIP Facility will be limited to the Initial Maximum Amount. The form of Initial Order being sought by the Applicants contemplates a DIP Charge in this amount.

128. I am of the belief that the amount of the proposed DIP Lenders' Charge is reasonably necessary for the initial ten (10) day stay period and is supported by the Cash Flow Forecast prepared with the assistance and review of the Proposed Monitor.

129. At the Comeback Hearing, the KSF Group intend to seek an increase in the amount of the DIP Lenders' Charge.

C. Directors' Charge

130. Konstantinos Giazitzidis (“**Mr. Giazitzidis**”) and I, are the sole directors and officers of each of the Applicants.

131. In our capacity as directors and officers of the KSF Group, we have specialized expertise and relationships with the KSF Group's business and operations, suppliers, Landlords, employees, and other stakeholders, as well as knowledge gained through the past operation of the KSF Group that cannot be replicated or easily replaced.

132. I expect that we will be actively involved in overseeing and directing, among other things, the operation of the KSF Group's business during the CCAA proceedings, implementing a go-forward plan for the KSF Group, considering options for a staged reopening of the KSF's dining operations, as well as participating in ongoing negotiations with Landlords and other key

stakeholders.

133. I am advised by Virginie Gauthier, a partner at Gowling WLG (Canada) LLP counsel to the KSF Group, and believe that, in certain circumstances, directors can be held liable for specific obligations of a company owing to employees and government entities, including unpaid accrued wages, unpaid accrued vacation pay, as well as unremitted excise, sales, goods and services tax, and HST.

134. The KSF Group does not maintain any directors and officers insurance. Although the KSF Group previously explored obtaining directors and insurance, the cost proved to be prohibitive.

135. The proposed Initial Order provides for a \$70,000 Court-ordered charge over the assets, property and undertaking of the KSF Group (the “**Directors’ Charge**” together with the Administration Charge and the DIP Lenders' Charge, the “**Charges**”) to indemnify the directors and officers of the KSF Group in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers.

136. The amount of the proposed Directors' Charge has been determined by the KSF Group, with the assistance of the Proposed Monitor, and is supported by the Lenders, and reflects the quantum of directors' and officers' potential statutory liabilities for a ten (10) day period. The KSF Group intends to seek an increase in the maximum amount of the Directors' Charge at the Comeback Hearing.

D. Priorities of Charges

137. It is contemplated by the KSF Group that the Charges will be against all of the KSF's group current and future assets, undertakings and property, and will have the following priorities as between them:

- (a) First – the Administration Charge;
- (b) Second – the DIP Lenders' Charge; and
- (c) Third – the Directors' Charge.

IV. CONCLUSION

138. The KSF Group is not able to meet its liabilities as they generally become due. Additionally, the aggregate of the KSF Group's property is not, at a fair valuation, sufficient, to enable payment of all of its obligations, due and accruing due.

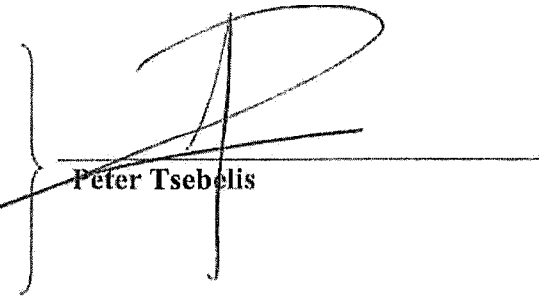
139. I am of the belief that granting the Initial Order sought by the KSF Group, is in the best interests of the KSF Group and its stakeholders. The KSF Group requires the Initial Order, to among other things, provide it with the necessary “breathing room” to continue to operate its takeout and delivery business, maintain brand value, and develop and implement a strategy for the re-opening of its locations, including by way of a potential sale of certain brands through the SISF. The Lenders, in their capacity as the senior secured creditors of the KSF Group, support this application and the granting of an Initial Order in these CCAA proceedings.

140. In the absence of an immediate stay of proceedings and the opportunity to effect a restructuring, the KSF Group faces the prospect of being locked out of leased premises, a likely


complete shutdown of its remaining operations, and the permanent loss of employment of its over five hundred (500) employees.

141. The relief requested in the proposed Initial Order is limited to relief that is reasonably necessary for the continued operations of the KSF Group in the ordinary course of business during the initial 10-day stay period.

SWORN BEFORE ME over videoconference on this 6th day of November, 2020. 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 amended
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF KING STREET
COMPANY INC., ET AL.

Court File No:

Applicants

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

AFFIDAVIT OF PETER TSEBELIS
(Sworn November 6, 2020)

GOWLING WLG (CANADA) LLP

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

Virginie Gauthier (LSO#: 41097D)

Tel: 416-844-5391

Email: virginie.gauthier@gowlingwlg.com

Thomas Gertner (LSO#: 67756S)

Tel: 416-369-4618

Email: thomas.gertner@gowlingwlg.com

Lawyers for the Applicants

TAB B

**THIS IS EXHIBIT "B"
REFERRED TO IN THE AFFIDAVIT
OF PETER TSEBELIS SWORN
BEFORE ME ON NOVEMBER 12, 2020**

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

FRIDAY, THE 6th

MR. JUSTICE HAINEY

DAY OF NOVEMBER, 2020



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF KING STREET COMPANY INC., THE KING STREET HOSPITALITY GROUP INC., BONTA TRADING CO. INC., 2268218 ONTARIO INC., 1733667 ONTARIO LIMITED, THE KING STREET FOOD COMPANY INC., THE KING STREET RESTAURANT COMPANY INC., 2112047 ONTARIO LTD., JI YORKDALE INC., JI SQUARE ONE INC., 1771669 ONTARIO INC., CXBO INC., 2608765 ONTARIO INC., 2272224 ONTARIO INC., 2327729 ONTARIO INC., 2577053 ONTARIO INC., 2584858 ONTARIO INC., 2621298 ONTARIO INC., 2641784 ONTARIO INC., and 2656966 ONTARIO INC.

Applicants

INITIAL ORDER

THIS APPLICATION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 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 affidavit of Peter Tsebelis sworn November 6, 2020 and the Exhibits thereto, the consent of MNP Ltd. ("MNP") to act as the Monitor (in such capacity, the "**Monitor**"), and the pre-filing report of MNP in its capacity as the proposed Monitor dated November 6, 2020, and on hearing the submissions of counsel for the Applicants, the DIP Lenders (as defined below) and the Monitor, and those other parties listed on the counsel slip,

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor and the DIP Lenders, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation

applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise filed by the Applicants with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants, in respect of these proceedings, at their agreed to rates and charges;
- (c) with the consent of the Monitor, amounts owing to SNAP Premium Finance Corp. ("SNAP") for insurance premiums actually financed by SNAP; and
- (d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the KSF Group in respect of its takeout and delivery business prior to the date of this Order.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (e) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from outstanding and future employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan (iii) Quebec Pension Plan, and (iv) income taxes;
- (f) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (g) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.
- (h) **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

8. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

9. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of any Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, and such landlord and Applicant, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

10. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the applicable Applicant(s) in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including November 16, 2020 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or

services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

18. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$70,000 unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 35-37 herein.

19. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPOINTMENT OF MONITOR

20. **THIS COURT ORDERS** that MNP is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

21. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lenders and their counsel of financial and other information as agreed to between the Applicant and the DIP Lenders which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lenders;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements, which information shall be reviewed with the Monitor;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

22. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a

pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

24. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants (each a "**Beneficiary**") shall be paid their reasonable fees and disbursements by the Applicants as part of the costs of these proceedings, in each case at their agreed to rates and

charges. The Applicants are hereby authorized and directed to pay the accounts of each Beneficiary on a weekly basis.

27. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000 unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their agreed to rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 35-37 hereof.

DIP FINANCING

29. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Third Eye Capital Corporation (the "**Agent**") and certain funds managed or advised by the Agent or affiliated with the Agent (the "**DIP Lenders**") for the purposes set out in the DIP Loan Agreement, provided that borrowings under such credit facility shall not exceed \$100,000 unless permitted by further Order of this Court.

30. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lenders dated as of November 6 , 2020 (the "**DIP Loan Agreement**"), filed.

31. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Loan Agreement or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Loan Agreement and the Definitive Documents as

and when the same become due and are to be performed, notwithstanding any other provision of this Order.

32. THIS COURT ORDERS that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Lenders' Charge**") on the Property, which DIP Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Lenders' Charge shall have the priority set out in paragraphs 35-37 hereof.

33. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lenders' Charge, the Agent, on behalf of the DIP Lenders, (i) upon three (3) days' notice to the Applicants and the Monitor, may exercise any and all of their rights and remedies against the Applicants or the Property under or pursuant to the DIP Loan Agreement, Definitive Documents and the DIP Lenders' Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and (ii) immediately upon providing written notice of the occurrence of an Event of Default (as defined in the DIP Loan Agreement) to the Applicants and the Monitor, may cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP Lenders under the DIP Loan Agreement and the Definitive Documents, and make demand, accelerate payment and give other notices; and
- (c) the foregoing rights and remedies of the Agent on behalf of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

34. **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

35. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lenders' Charge, as among them, shall be as follows:

First — Administration Charge (to the maximum initial amount of \$100,000);

Second — DIP Lenders' Charge; and

Third — Directors' Charge (to the maximum initial amount of \$70,000).

36. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lenders' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

37. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

38. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lenders and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

39. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the

"Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Loan Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the DIP Loan Agreement or the Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

40. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

41. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the National Post, a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the

CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail address as last shown on the records of the Applicants, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

42. THIS COURT ORDERS that the Guide Concerning Commercial List E-Service (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following url: www.mnpdebt.ca/kingstreetrestaurantgroup

43. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties and their advisers at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on day of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

44. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

45. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

46. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory body 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 to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

47. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any other jurisdiction outside Canada.

48. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

NOV 09 2020

PER / PAR:



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 THE KING STREET COMPANY INC., ET AL.

CV-20-00650945-00CL

Court File No:

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

Proceeding commenced at Toronto

INITIAL ORDER

Gowling WLG (Canada) LLP

Suite 1600, 1 First Canadian
Place, 100 King Street West
Toronto ON M5X 1G5
Tel: 416-862-7525

Virginie Gauthier LSO#: 41097D

Tel: 416-844-5391

Email: Virginie.gauthier@gowlingwlg.com

Thomas Gertner LSO#: 67756S

Tel: 416-369-4618

Email: Thomas.gertner@gowlingwlg.com

TAB C

**THIS IS EXHIBIT "C"
REFERRED TO IN THE AFFIDAVIT
OF PETER TSEBELIS SWORN
BEFORE ME ON NOVEMBER 12, 2020**

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

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

FIRST AMENDMENT TO THE DIP TERM SHEET

This FIRST AMENDMENT TO DIP TERM SHEET (this “**Amendment**”) is made as of November 12, 2020 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 “**Loan Agreement**”), which Loan Agreement was approved by order of the CCAA Court dated as of November 6, 2020.
- B. The Borrowers have requested and the Agent has agreed to 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 Section 4 (*DIP Facility and Maximum Amount*) of the Loan Agreement is hereby amended by deleting “\$1,200,000” and replacing it with “\$1,400,000”. 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 “\$1,400,000”.

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 November 13, 2020, (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
(Re Comeback Hearing)
(Sworn November 12, 2020)

GOWLING WLG (CANADA) LLP

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

Virginie Gauthier (LSO#: 41097D)
Tel: 416-844-5391
Email: virginie.gauthier@gowlingwlg.com

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

Lawyers for the Applicants

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

FRIDAY, THE 13th

MR. JUSTICE HAINEY

DAY OF NOVEMBER, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF KING STREET COMPANY INC., THE KING STREET HOSPITALITY GROUP INC., BONTA TRADING CO. INC., 2268218 ONTARIO INC., 1733667 ONTARIO LIMITED, THE KING STREET FOOD COMPANY INC., THE KING STREET RESTAURANT COMPANY INC., 2112047 ONTARIO LTD., JI YORKDALE INC., JI SQUARE ONE INC., 1771669 ONTARIO INC., CXBO INC., 2608765 ONTARIO INC., 2272224 ONTARIO INC., 2327729 ONTARIO INC., 2577053 ONTARIO INC., 2584858 ONTARIO INC., 2621298 ONTARIO INC., 2641784 ONTARIO INC., and 2656966 ONTARIO INC.

Applicants

AMENDED AND RESTATED INITIAL 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 amending and restating the Initial Order (the "**Initial Order**") originally issued on November 6, 2020 (the "**Initial Filing Date**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavits of Peter Tsebelis sworn November 6, 2020 and November 12, 2020 and the Exhibits thereto, the consent of MNP Ltd. ("**MNP**") to act as the Monitor (in such capacity, the "**Monitor**"), the pre-filing report of MNP in its capacity as the proposed Monitor dated November 6, 2020, and the first report of the Monitor dated November 12, 2020, and on hearing the submissions of counsel for the Applicants, the DIP Lenders (as defined below) and the Monitor, and those other parties listed on the counsel slip, no one else appearing for any other

party although duly served as appears from the affidavit of service of Katherine Yurkovich sworn November 12, 2020.

AMENDMENT AND RESTATEMENT

1. **THIS COURT ORDERS** that the Initial Order shall be amended and restated with this Amended and Restated Initial Order.

SERVICE

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

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably

necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor and the DIP Lenders, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any Plan filed by the Applicants with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the Initial Filing Date:

- a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- b) the fees and disbursements of any Assistants retained or employed by the Applicants, in respect of these proceedings, at their agreed to rates and charges;
- c) with the consent of the Monitor, amounts owing to SNAP Premium Finance Corp. ("**SNAP**") for insurance premiums actually financed by SNAP; and

- d) with the consent of the Monitor, amounts owing for good or services actually supplied to the KSF Group in respect of its takeout and delivery business prior to the Initial Filing Date.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services; and
- b) payment for goods or services actually supplied to the Applicants following the Initial Filing Date.

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from outstanding and future employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan (iii) Quebec Pension Plan, and (iv) income taxes;
- b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; and
- c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are

entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$150,000 in the aggregate;
- b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

- c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of any Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, and such landlord and Applicant, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the applicable Applicant(s) in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. **THIS COURT ORDERS** that until and including February 19, 2021 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or

services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers

against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000 unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37-39 herein.

21. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

APPOINTMENT OF MONITOR

22. **THIS COURT ORDERS** that MNP is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a) monitor the Applicants' receipts and disbursements;

- b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lenders and their counsel of financial and other information as agreed to between the Applicant and the DIP Lenders which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lenders;
- d) advise the Applicants in the preparation of the Applicants' cash flow statements, which information shall be reviewed with the Monitor;
- e) advise the Applicants in its development of the Plan and any amendments to the Plan;
- f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- i) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants (each a “**Beneficiary**”) shall be paid their reasonable fees and disbursements by the Applicants as part of the costs of these proceedings, in each case at their agreed to rates and charges. The Applicants are hereby authorized and directed to pay the accounts of each Beneficiary on a weekly basis.

29. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000 unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their agreed to rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37-39 hereof.

DIP FINANCING

31. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Third Eye Capital Corporation (the “**Agent**”) and certain funds managed or advised by the Agent or affiliated with the Agent (collectively, the "**DIP Lenders**”) for the purposes set out in the DIP Loan Agreement, provided that borrowings under such credit facility shall not exceed \$1,400,000 unless permitted by further Order of this Court.

32. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lenders dated as of November 5, 2020 and accepted as of November 6, 2020, as amended by a first amendment dated as of November 12, 2020 (collectively, the "**DIP Loan Agreement**"), filed.

33. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Loan Agreement or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Loan Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Lenders' Charge**") on the Property, which DIP Lenders' Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lenders' Charge shall have the priority set out in paragraphs 37-39 hereof.

35. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- a) the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charge or any of the Definitive Documents;
- b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lenders' Charge, the Agent, on behalf of the DIP Lenders: (i) upon three (3) days' notice to the Applicants and the Monitor, may exercise any and all of their rights and remedies against the Applicants or the Property under or pursuant to the DIP Loan Agreement, Definitive Documents and the DIP Lenders' Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and (ii) immediately upon providing written notice of the occurrence of an Event of Default (as defined in the DIP Loan Agreement) to the Applicants and the Monitor, may cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP

Lenders under the DIP Loan Agreement and the Definitive Documents, and make demand, accelerate payment and give other notices; and

- c) the foregoing rights and remedies of the Agent on behalf of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lenders' Charge, as among them, shall be as follows:

First — Administration Charge (to the maximum amount of \$100,000);

Second — DIP Lenders' Charge; and

Third — Directors' Charge (to the maximum amount of \$100,000).

38. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lenders' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

40. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, *or pari passu* with, any of the Charges, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lenders and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

41. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Loan Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- c) the payments made by the Applicants pursuant to this Order, the DIP Loan Agreement or the Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

43. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the National Post, a notice containing the information prescribed under the CCAA, (ii) within five days after the Initial Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail address as last shown on the records of the Applicants, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

44. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following url: www.mnpdebt.ca/kingstreetrestaurantgroup

45. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties and their advisers at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or

other electronic transmission shall be deemed to be received on day of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

46. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

47. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

48. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory body 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 to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

49. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any other jurisdiction outside Canada.

50. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the time indicated in paragraph 51 whether or not this Order is formally entered.

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

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

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

Proceeding commenced at Toronto

**AMENDED AND
RESTATED INITIAL
ORDER**

Gowling WLG (Canada) LLP

Suite 1600, 1 First Canadian
Place, 100 King Street West
Toronto ON M5X 1G5
Tel: 416-862-7525

Virginie Gauthier LSO#: 41097D

Tel: 416-844-5391

[Email: Virginie.gauthier@gowlingwlg.com](mailto:Virginie.gauthier@gowlingwlg.com)

Thomas Gertner LSO#: 67756S

Tel: 416-369-4618

[Email: Thomas.gertner@gowlingwlg.com](mailto:Thomas.gertner@gowlingwlg.com)

TAB 4

Court File No.

~~CV-20-00650945-00CL~~

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

FRIDAY, THE 13th

MR. JUSTICE HAINEY

DAY OF NOVEMBER, 2020

~~THE HONOURABLE~~

)

~~WEEKDAY, THE #~~

~~JUSTICE~~

)

~~DAY OF MONTH, 20YR~~

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
~~[APPLICANT'S NAME]~~ (the ~~"Applicant"~~)
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

AMENDED AND RESTATED INITIAL ORDER

THIS ~~APPLICATION~~MOTION, made by the ~~Applicant~~Applicants pursuant to the
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an
Order amending and restating the Initial Order (the "Initial Order") originally issued on

November 6, 2020 (the “Initial Filing Date”), 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 ~~affidavit~~affidavits of ~~[NAME]~~Peter Tsebelis sworn ~~[DATE]~~November 6, 2020 and November 12, 2020 and the Exhibits thereto, ~~and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice~~the consent of MNP Ltd. (“MNP”) to act as the Monitor (in such capacity, the “Monitor”), the pre-filing report of MNP in its capacity as the proposed Monitor dated November 6, 2020, and the first report of the Monitor dated November 12, 2020, and on hearing the submissions of counsel for [NAMES]the Applicants, the DIP Lenders (as defined below) and the Monitor, and those other parties listed on the counsel slip, no one else appearing for [NAME]¹any other party although duly served as appears from the affidavit of service of ~~[NAME]~~Katherine Yurkovich sworn ~~[DATE]~~and on reading the consent of [MONITOR’S NAME] to act as the MonitorNovember 12, 2020.

AMENDMENT AND RESTATEMENT

1. THIS COURT ORDERS that the Initial Order shall be amended and restated with this Amended and Restated Initial Order.

SERVICE

2. ~~1.~~THIS COURT ORDERS that the time for service and filing of the Notice of Application~~Motion~~ and the Application~~Motion~~ Record is hereby abridged and validated² so that this Application~~Motion~~ is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

¹~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

²~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that the ~~Applicant is a company~~ Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

4. ~~3.~~ **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall remain in possession and control of ~~its~~ their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the ~~Applicant~~ Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its business~~ their businesses (the "**Business**") and Property. The ~~Applicant is~~ Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by ~~it~~ them, with liberty to retain such further Assistants as ~~it deems~~ they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~5.~~ **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall be entitled to continue to utilize the central cash management system³ currently in place ~~as described in or, with the Affidavit~~ consent of [NAME] sworn [DATE] or the Monitor and the DIP Lenders, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~ Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash

³ ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the ~~Applicant~~Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~the any~~ Plan filed by the Applicants with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.~~†~~

7. ~~6.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after ~~this Order~~the Initial Filing Date:

- a) ~~(a)~~ all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the ~~date of this Order~~Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~
- b) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~Applicants, in respect of these proceedings, at their ~~standard~~agreed to rates and charges~~;~~
- c) with the consent of the Monitor, amounts owing to SNAP Premium Finance Corp. (“SNAP”) for insurance premiums actually financed by SNAP; and
- d) with the consent of the Monitor, amounts owing for good or services actually supplied to the KSF Group in respect of its takeout and delivery business prior to the Initial Filing Date.

8. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the ~~Applicant~~Applicants shall be entitled but not required to pay all reasonable expenses incurred by the ~~Applicant~~Applicants in carrying on the Business in the ordinary course after ~~this Order~~the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a) ~~(a)~~ all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance ~~(including directors and officers insurance)~~, maintenance and security services; and
- b) ~~(b)~~ payment for goods or services actually supplied to the ~~Applicant~~Applicants following the ~~date of this Order~~Initial Filing Date.

~~8.7.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall remit, in accordance with legal requirements, or pay:

- a) ~~(a)~~ any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from outstanding and future employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- b) ~~(b)~~ all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the ~~Applicant~~Applicants in connection with the sale of goods and services by the ~~Applicant~~Applicants, but only where such Sales Taxes are accrued or collected after the ~~date of this Order~~Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~Initial Filing Date but not required to be remitted until on or after the ~~date of this Order~~Initial Filing Date; and
- c) ~~(c)~~ any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~Applicants.

~~8.~~ **9.—THIS COURT ORDERS** that until a real property lease is disclaimed ~~for~~resiliated⁴ in accordance with the CCAA, the ~~Applicant~~Applicants shall pay all amounts

⁴~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the ~~Applicant~~Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the ~~date of this Order~~Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the ~~date of this Order~~Initial Filing Date shall also be paid.

9. ~~10.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, the ~~Applicant is~~Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~Applicants to any of ~~its~~their creditors as of ~~this date~~the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. ~~11.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- a) ~~(a)~~ permanently or temporarily cease, downsize or shut down any of its business or operations, ~~and~~ to dispose of redundant or non-material assets not exceeding \$~~100,000~~150,000 in any one transaction or \$~~100,000~~150,000 in the aggregate~~;~~⁵;
- b) ~~(b)~~ terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate~~;~~ and

⁵~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

c) ~~(e)~~ pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the ~~Applicant~~Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. ~~12.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall provide each of the relevant landlords with notice of ~~the~~any Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, and such landlord and ~~the~~ Applicant, or by further Order of this Court upon application by the ~~Applicant~~Applicants on at least two (2) days notice to such landlord and any such secured creditors. If ~~the~~an Applicant disclaims ~~{or resiliates}~~ the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~{or resiliation}~~ of the lease shall be without prejudice to the ~~Applicant~~Applicants's claim to the fixtures in dispute.

12. ~~13.~~ **THIS COURT ORDERS** that if a notice of disclaimer ~~{or resiliation}~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~{or resiliation}~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~{or resiliation}~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the applicable Applicant(s) in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE ~~APPLICANT~~APPLICANTS OR THE PROPERTY

13. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~February 19, 2021 or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the ~~Applicant~~Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the ~~Applicant~~Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the ~~Applicant~~Applicants to carry on any business which the ~~Applicant is~~Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

15. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the ~~Applicant~~Applicants, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the ~~Applicant~~Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the ~~Applicant~~Applicants, and that the ~~Applicant~~Applicants shall be entitled to the continued use of ~~its~~their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~date of this Order~~Initial Filing Date are paid by the ~~Applicant~~Applicants in accordance with normal payment practices of the ~~Applicant~~Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~leased or licensed property or other valuable consideration provided on or after the ~~date of this Order~~Initial Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the ~~Applicant~~Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any

⁶~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

obligations of the ~~Applicant~~Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the ~~Applicant~~Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. ~~20.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall indemnify ~~its~~their directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~Applicants after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the ~~Applicant~~Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")⁸ on the Property, which charge shall not exceed an aggregate amount of \$~~100,000 unless permitted by further Order of this Court~~, as security for the indemnity provided in paragraph ~~{20}~~19 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38} and {40}~~37-39 herein.

21. ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the ~~Applicant~~Applicants's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~{20}~~19 of this Order.

APPOINTMENT OF MONITOR

⁷~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

⁸~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

22. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~MNP is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~Applicants and ~~its~~their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. ~~24.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a) ~~(a)~~ monitor the ~~Applicant~~Applicants's receipts and disbursements;
- b) ~~(b)~~ report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- c) ~~(c)~~ assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP ~~Lender~~Lenders and ~~its~~their counsel ~~on a [TIME INTERVAL] basis~~ of financial and other information as agreed to between the Applicant and the DIP ~~Lender~~Lenders which may be used in these proceedings including reporting on a basis to be agreed with the DIP ~~Lender~~Lenders;
- d) ~~(d)~~ advise the ~~Applicant~~Applicants in ~~its~~the preparation of the ~~Applicant's~~Applicants' cash flow statements ~~and reporting required by the DIP Lender~~, which information shall be reviewed with the Monitor ~~and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender~~;
- e) ~~(e)~~ advise the ~~Applicant~~Applicants in its development of the Plan and any amendments to the Plan;

- f) ~~(f)~~ assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant~~Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- g) ~~(g)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Applicants, to the extent that is necessary to adequately assess the ~~Applicant~~Applicants's business and financial affairs or to perform its duties arising under this Order;
- h) ~~(h)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- i) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

24. ~~25.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by

applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. ~~27.~~ **THIS COURT ORDERS** that ~~that~~ the Monitor shall provide any creditor of the ~~Applicant~~Applicants and the DIP ~~Lender~~Lenders with information provided by the ~~Applicant~~Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~Applicants may agree.

27. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

28. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~Applicants (each a “**Beneficiary**”) shall be paid their reasonable fees and disbursements, ~~in each case at their standard rates and charges,~~ by the ~~Applicant~~Applicants as part of the costs of these proceedings, in each case at their agreed to rates and charges. The ~~Applicant is~~Applicants are hereby authorized and directed to pay the accounts of ~~the Monitor, counsel for the Monitor and counsel for the Applicant~~each Beneficiary on a ~~{TIME-INTERVAL}~~weekly basis ~~and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$●, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.~~

29. ~~30.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and ~~the Applicant's~~ counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$~~100,000~~ unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at ~~the standard~~ their agreed to rates and charges ~~of the Monitor and such counsel~~, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~{38}~~ and ~~{40}~~ 37-39 hereof.

DIP FINANCING

31. ~~32.~~ **THIS COURT ORDERS** that the ~~Applicant is~~ Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from ~~{DIP LENDER'S NAME}~~ Third Eye Capital Corporation (the "~~DIP Lender~~") ~~in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures~~ "Agent" and certain funds managed or advised by the Agent or affiliated with the Agent (collectively, the "DIP Lenders") for the purposes set out in the DIP Loan Agreement, provided that borrowings under such credit facility shall not exceed \$~~1~~ 400,000 unless permitted by further Order of this Court.

32. ~~33.~~ **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the ~~Applicant~~ Applicants and the ~~DIP Lender~~ Lenders dated as of ~~{DATE}~~ November 5, 2020 and accepted as of November 6, 2020, as amended by a first amendment dated as of November 12, 2020 (collectively, the "DIP Loan Agreement"), filed.

33. ~~34.~~ **THIS COURT ORDERS** that the ~~Applicant is~~ Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the ~~Commitment Letter~~ DIP Loan Agreement or as may be

reasonably required by the DIP ~~Lender~~Lenders pursuant to the terms thereof, and the ~~Applicant~~is Applicants are hereby authorized and directed to pay and perform all of ~~its~~their indebtedness, interest, fees, liabilities and obligations to the DIP ~~Lender~~Lenders under and pursuant to the ~~Commitment Letter~~DIP Loan Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. ~~35.~~ **THIS COURT ORDERS** that the DIP ~~Lender~~Lenders shall be entitled to the benefit of and ~~is~~are hereby granted a charge (the "~~DIP Lender~~DIP Lenders's Charge") on the Property, which ~~DIP Lender's~~DIP Lenders' Charge shall not secure an obligation that exists before ~~this Order is made~~the Initial Filing Date. The DIP ~~Lender~~Lenders's Charge shall have the priority set out in paragraphs ~~[38] and [40]~~37-39 hereof.

35. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- a) ~~(a)~~ the DIP ~~Lender~~Lenders may take such steps from time to time as ~~it~~they may deem necessary or appropriate to file, register, record or perfect the ~~DIP Lender~~DIP Lenders's Charge or any of the Definitive Documents;
- b) ~~(b)~~ upon the occurrence of an event of default under the Definitive Documents or the ~~DIP Lender~~DIP Lenders's Charge, the Agent, on behalf of the ~~DIP Lender~~Lenders:
 - (i) upon ~~three (3)~~ days' notice to the ApplicantApplicants and the Monitor, may exercise any and all of ~~its~~their rights and remedies against the ~~Applicant~~Applicants or the Property under or pursuant to the ~~Commitment Letter~~DIP Loan Agreement, Definitive Documents and the ~~DIP Lender~~DIP Lenders's Charge, including without limitation, to ~~cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender~~apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and
 - (ii) immediately upon providing written notice of the occurrence of an Event of Default (as defined in the DIP Loan Agreement) to the Applicants and the Monitor, may cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the

Applicants to the DIP Lenders under the ~~Commitment Letter, DIP Loan Agreement~~ and the Definitive Documents ~~or the DIP Lender's Charge, to, and~~ make demand, accelerate payment and give other notices, ~~or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant;~~ and

- c) ~~(e)~~ the foregoing rights and remedies of the Agent on behalf of the DIP ~~Lender~~Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the ~~Applicant~~Applicants or the Property.

36. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP ~~Lender~~Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the ~~Applicant~~Applicants under the CCAA, or any proposal filed by the ~~Applicant~~Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. ~~38.~~ **THIS COURT ORDERS** that the priorities of the Directors'⁹ Charge, the Administration Charge and the DIP ~~Lender~~Lenders's Charge, as among them, shall be as follows⁹ :

First ~~—~~ Administration Charge (to the maximum amount of \$~~100,000~~);

Second ~~—~~ DIP ~~Lender~~Lenders's Charge; and

Third ~~—~~ Directors'⁹ Charge (to the maximum amount of \$~~100,000~~).

⁹~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

38. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP LenderLenders's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge~~Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges ~~and~~, encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

40. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the ApplicantApplicants shall not grant any Encumbrances over any Property that rank in priority to, *or pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~Charges, unless the ApplicantApplicants also obtains the prior written consent of the Monitor, the DIP LenderLenders and the beneficiaries of the Directors'Administration Charge and the AdministrationDirectors' Charge, or further Order of this Court.

41. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") ~~and/or the DIP Lender thereunder~~ shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an

"Agreement") which binds the ~~Applicant~~Applicants, and notwithstanding any provision to the contrary in any Agreement:

- a) ~~(a)~~ neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter~~DIP Loan Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the ~~Applicant~~Applicants of any Agreement to which it is a party;
- b) ~~(b)~~ none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant~~Applicants entering into the ~~Commitment Letter~~DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- c) ~~(c)~~ the payments made by the ~~Applicant~~Applicants pursuant to this Order, the ~~Commitment Letter~~DIP Loan Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant~~Applicants's interest in such real property leases.

SERVICE AND NOTICE

43. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~the National Post, a notice containing the information prescribed under the CCAA, (ii) within five days after the ~~date of this Order~~Initial Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail address as last shown on the records of the Applicants, a notice to every known creditor who has a claim against the ~~Applicant~~Applicants of more than \$~~1000~~1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly

available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

44. ~~45.~~ **THIS COURT ORDERS** that the ~~E-Service Protocol of the~~ Guide Concerning Commercial List E-Service (the "~~Protocol~~"Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph ~~21~~13 of the ~~Protocol~~Guide, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following ~~URL~~
~~@~~url: www.mnpdebt.ca/kingstreetrestaurantgroup

45. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the ~~Applicant~~Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery ~~or~~, facsimile or other electronic transmission to the ~~Applicant~~Applicants's creditors or other interested parties and their advisers at their respective addresses as last shown on the records of the ~~Applicant~~Applicants and that any such service or distribution by courier, personal delivery ~~or~~, facsimile or other electronic transmission shall be deemed to be received on ~~the next business day following the date~~day of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

46. ~~47.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of ~~its~~their powers and duties hereunder.

47. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the ~~Applicant~~Applicants, the Business or the Property.

48. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory body or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~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 ~~Applicant~~Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

49. ~~50.~~ **THIS COURT ORDERS** that each of the ~~Applicant~~Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in ~~any other~~ any other jurisdiction outside Canada.

50. ~~51.~~ **THIS COURT ORDERS** that any interested party (including the ~~Applicant~~Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. **THIS COURT ORDERS that this Order and all of its provisions are effective as of the time indicated in paragraph 51 whether or not this Order is formally entered.**

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

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

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

Proceeding commenced at Toronto

**AMENDED AND
RESTATED INITIAL
ORDER**

Gowling WLG (Canada) LLP

Suite 1600, 1 First Canadian
Place, 100 King Street West
Toronto ON M5X 1G5
Tel: 416-862-7525

Virginie Gauthier LSO#: 41097D

Tel: 416-844-5391
Email: Virginie.gauthier@gowlingwlg.com

Thomas Gertner LSO#: 67756S

Tel: 416-369-4618
Email: Thomas.gertner@gowlingwlg.com

Document comparison by Workshare Compare on November 12, 2020 7:29:02 AM

Input:	
Document 1 ID	file://\gowlings.corp\PersonalDrives\TOR\yurkovik\Desktop\intial-order-CCAA-EN (4).doc
Description	intial-order-CCAA-EN (4)
Document 2 ID	PowerDocs://TOR_LAW/10495160/12
Description	TOR_LAW-#10495160-v12-KSF_-_CCAA_-_CCAA_Initial_Order
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	383
Deletions	396
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	789

TAB 5

ONTARIO
SUPERIOR COURT OF
JUSTICE
COMMERCIAL LIST

THE HONOURABLE

FRIDAY, THE 6¹³th

MR. JUSTICE HAINEY

DAY OF NOVEMBER, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF KING STREET COMPANY INC., THE KING STREET HOSPITALITY GROUP INC., BONTA TRADING CO. INC., 2268218 ONTARIO INC., 1733667 ONTARIO LIMITED, THE KING STREET FOOD COMPANY INC., THE KING STREET RESTAURANT COMPANY INC., 2112047 ONTARIO LTD., JI YORKDALE INC., JI SQUARE ONE INC., 1771669 ONTARIO INC., CXBO INC., 2608765 ONTARIO INC., 2272224 ONTARIO INC., 2327729 ONTARIO INC., 2577053 ONTARIO INC., 2584858 ONTARIO INC., 2621298 ONTARIO INC., 2641784 ONTARIO INC., and 2656966 ONTARIO INC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS ~~APPLICATION~~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 amending and restating the Initial Order (the "Initial Order") originally issued on November 6, 2020 (the "Initial Filing Date"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the ~~affidavit~~affidavits of Peter Tsebelis sworn November 6, 2020 and November 12, 2020 and the Exhibits thereto, the consent of MNP Ltd. ("MNP") to act as the Monitor (in such capacity, the "Monitor"), ~~and~~ the pre-filing report of MNP in its capacity as the proposed Monitor dated November 6, 2020, and the first report of the Monitor dated November 12, 2020, and on hearing the submissions of counsel for the Applicants, the DIP Lenders (as defined below) and the Monitor, and those other parties listed on the counsel slip, no one else appearing for any other party although duly served as appears from the affidavit of service of Katherine Yurkovich sworn November 12, 2020.

AMENDMENT AND RESTATEMENT

1. THIS COURT ORDERS that the Initial Order shall be amended and restated with this Amended and Restated Initial Order.

SERVICE

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

APPLICATION

3. ~~2.~~ THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. ~~3.~~ THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~4.~~ THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize

the central cash management system currently in place or, with the consent of the Monitor and the DIP Lenders, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any ~~plan of arrangement or compromise~~Plan filed by the Applicants with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. ~~5.~~ **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the ~~date of this Order~~Initial Filing Date:

- a) ~~(a)~~ all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the ~~date of this Order~~Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- b) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the Applicants, in respect of these proceedings, at their agreed to rates and charges;
- c) ~~(c)~~ with the consent of the Monitor, amounts owing to SNAP Premium Finance Corp. ("SNAP") for insurance premiums actually financed by SNAP; and
- d) ~~(d)~~ with the consent of the Monitor, amounts owing for good or services actually supplied to the KSF Group in respect of its takeout and delivery business prior to the ~~date of this Order~~Initial Filing Date.

8. ~~6.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after ~~this Order~~the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without

limitation:

- a) ~~(e)~~ all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services; and
- b) ~~(f)~~ payment for goods or services actually supplied to the Applicants following the ~~date of this Order~~ Initial Filing Date.

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- a) ~~(e)~~ any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from outstanding and future employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan (iii) Quebec Pension Plan, and (iv) income taxes;
- b) ~~(f)~~ all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the ~~date of this Order~~ Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~ Initial Filing Date but not required to be remitted until on or after the ~~date of this Order~~ Initial Filing Date; and
- c) ~~(g)~~ any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. ~~(h)~~ **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the ~~date of this Order~~ Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance

(but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the ~~date of this Order~~Initial Filing Date shall also be paid.

9. ~~8.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of ~~this date~~the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$150,000 in the aggregate;
- b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

11. 9. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of any Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, and such landlord and Applicant, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such

leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. ~~10.~~ **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the applicable Applicant(s) in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. ~~11.~~ **THIS COURT ORDERS** that until and including ~~November 16~~ February 19, 2020~~2021~~ or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. ~~12.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent ofⁿ the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA,

(iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

15. ~~13.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. ~~14.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or

services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~date of this Order~~ Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. ~~15.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the ~~date of this Order~~ Initial Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~ Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. ~~17.~~ **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. ~~18.~~ **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$~~70,000~~100,000 unless permitted by further Order of this Court, as security for the indemnity provided in paragraph ~~17~~19 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~35-37~~39 herein.

21. ~~19.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with ~~paragraph 17~~paragraph 19 of this Order.

APPOINTMENT OF MONITOR

22. ~~20.~~ **THIS COURT ORDERS** that MNP is hereby appointed pursuant to the CCAA as the

Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. ~~21.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a) ~~(a)~~ monitor the Applicants' receipts and disbursements;
- b) ~~(b)~~ report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- c) ~~(c)~~ assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lenders and their counsel of financial and other information as agreed to between the Applicant and the DIP Lenders which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lenders;
- d) ~~(d)~~ advise the Applicants in the preparation of the Applicants' cash flow statements, which information shall be reviewed with the Monitor;
- e) advise the Applicants in its development of the Plan and any amendments to the Plan;
- f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- g) ~~(e)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- h) ~~(f)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- i) ~~(g)~~ perform such other duties as are required by this Order or by this Court from time

to time.

24. ~~22.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. ~~23.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. ~~24.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. ~~25.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

28. ~~26.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants (each a “**Beneficiary**”) shall be paid their reasonable fees and disbursements by the Applicants as part of the costs of these proceedings, in each case at their agreed to rates and charges. The Applicants are hereby authorized and directed to pay the accounts of each Beneficiary on a weekly basis.

29. ~~27.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. ~~28.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$100,000 unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their agreed to rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~35-37-~~39 hereof.

DIP FINANCING

31. ~~29.~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Third Eye Capital Corporation (the “**Agent**”) and certain funds managed or advised by the Agent or affiliated with the Agent (collectively, the “**DIP Lenders**”) for the purposes set out in the DIP Loan Agreement, provided that borrowings under such credit facility shall not exceed ~~\$100,000~~ 1,400,000 unless permitted by further Order of this Court.

32. ~~30.~~ **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lenders dated as of November ~~6-5,~~ 2020 and accepted as of November 6, 2020, as amended by a first amendment dated as of November 12, 2020 (collectively, the “**DIP Loan Agreement**”), filed.

33. ~~31.~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive**

Documents"), as are contemplated by the DIP Loan Agreement or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Loan Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. ~~32.~~ **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Lenders' Charge**") on the Property, which DIP Lenders' Charge shall not secure an obligation that exists before ~~this Order is made~~ the Initial Filing Date. The DIP Lenders' Charge shall have the priority set out in paragraphs ~~35-37~~-39 hereof.

35. ~~33.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- a) ~~(a)~~ the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charge or any of the Definitive Documents;
- b) ~~(b)~~ upon the occurrence of an event of default under the Definitive Documents or the DIP Lenders' Charge, the Agent, on behalf of the DIP Lenders; (i) upon three (3) days' notice to the Applicants and the Monitor, may exercise any and all of their rights and remedies against the Applicants or the Property under or pursuant to the DIP Loan Agreement, Definitive Documents and the DIP Lenders' Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and (ii) immediately upon providing written notice of the occurrence of an Event of Default (as defined in the DIP Loan Agreement) to the Applicants and the Monitor, may cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP Lenders under the DIP Loan Agreement and the Definitive Documents, and make demand, accelerate payment and give other notices; and
- c) ~~(c)~~ the foregoing rights and remedies of the Agent on behalf of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or

receiver and manager of the Applicants or the Property.

36. ~~34.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. ~~35.~~ **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lenders' Charge, as among them, shall be as follows:

First — Administration Charge (to the maximum ~~initial~~ amount of \$100,000); Second — DIP Lenders' Charge; and Third — Directors' Charge (to the maximum ~~initial~~ amount of \$~~70,000~~100,000).

38. ~~36.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lenders' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. ~~37.~~ **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

40. ~~38.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, *or pari passu* with, any of the Charges, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lenders and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

41. ~~39.~~ **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges

(collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

a) ~~(a)~~ neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Loan Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

b) ~~(b)~~ none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

c) ~~(c)~~ the payments made by the Applicants pursuant to this Order, the DIP Loan Agreement or the Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. ~~40.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

43. ~~41.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the National Post, a notice containing the information prescribed under the CCAA, (ii) within five days after the ~~date of this Order~~ Initial Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e- mail address as last shown on the records of the Applicants, a notice

to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

44. ~~42.~~ **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following url: www.mnpdebt.ca/kingstreetrestaurantgroup

45. ~~43.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties and their advisers at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on day of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

46. ~~44.~~ **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

47. ~~45.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

48. ~~46.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory body 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 to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

49. ~~47.~~ **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any other jurisdiction outside Canada.

50. ~~48.~~ **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the time indicated in paragraph 51 whether or not this Order is formally entered.

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 THE KING STREET COMPANY INC., ET AL.~~

Court File No: [CV-20-00650945-00CL](#)

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

Proceeding commenced at Toronto

**AMENDED AND
RESTATED INITIAL
ORDER**

Gowling WLG (Canada) LLP

Suite 1600, 1 First Canadian
Place, 100 King Street West
Toronto ON M5X 1G5 Tel:
416-862-7525

Virginie Gauthier LSO#:

41097D Tel: 416-844-5391

[Email: Virginie.gauthier@gowlingwlg.com](mailto:Virginie.gauthier@gowlingwlg.com)

Thomas Gertner LSO#: 67756S

Tel: 416-369-4618

[Email: Thomas.gertner@gowlingwlg.com](mailto:Thomas.gertner@gowlingwlg.com)

Document comparison by Workshare Compare on November 12, 2020 7:33:05 AM

Input:	
Document 1 ID	file://\gowlings.corp\PersonalDrives\TOR\yurkovik\Desktop\Initial Order as granted November 6. 2020.pdf
Description	Initial Order as granted November 6. 2020
Document 2 ID	file://\gowlings.corp\PersonalDrives\TOR\yurkovik\Desktop\Amended and Restated Initial Order (Nov 13 2020).pdf
Description	Amended and Restated Initial Order (Nov 13 2020)
Rendering set	Standard

Legend:	
	<u>Insertion</u>
	Deletion
	Moved from
	<u>Moved to</u>
	Style change
	Format change
	Moved deletion
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	140
Deletions	110
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	250

TAB 6

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 13th
)
JUSTICE HAINEY) DAY OF NOVEMBER, 2020
)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF KING STREET COMPANY INC., THE KING STREET HOSPITALITY GROUP INC., BONTA TRADING CO. INC., 2268218 ONTARIO INC., 1733667 ONTARIO LIMITED, THE KING STREET FOOD COMPANY INC., THE KING STREET RESTAURANT COMPANY INC., 2112047 ONTARIO LTD., JI YORKDALE INC., JI SQUARE ONE INC., 1771669 ONTARIO INC., CXBO INC., 2608765 ONTARIO INC., 2272224 ONTARIO INC., 2327729 ONTARIO INC., 2577053 ONTARIO INC., 2584858 ONTARIO INC., 2621298 ONTARIO INC., 2641784 ONTARIO INC., and 2656966 ONTARIO INC.

Applicants

**ORDER
(SALE PROCESS APPROVAL)**

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

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

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

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them under the Sale and Investment Solicitation Process attached hereto as Schedule "A" (the "**Sale Process**") or the Amended and Restated Initial Order dated November 13, 2020 (the "**Amended and Restated Initial Order**"), as applicable.

APPROVAL OF THE SALE PROCESS

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

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

PIPEDA

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

GENERAL

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

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

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

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

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

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

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

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

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

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

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

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

OPPORTUNITY AND SISP SUMMARY

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

TIMELINE

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

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

PRE-MARKETING STAGE

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

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

MARKETING STAGE

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

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

Attention: Sheldon Title, Senior Vice-President
 Email: sheldon.title@mnp.ca

With a copy to Craig Mills (cmills@millerthomson.com)

And to:

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

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

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

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

OFFER SUBMISSION AND EVALUATION STAGE

Phase 1

Due Diligence

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

LOI Submission

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

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

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

Preliminary Assessment of Phase 1 Bids and Subsequent Process

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

Phase 2

Formal Binding Offers

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

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

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

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

Evaluation of Competing Bids

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

Selection of Successful Bid

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

Sale Approval Hearing

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

Confidentiality and Access to Information

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

Supervision of the SISP

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

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

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF THE KING STREET HOSPITALITY GROUP INC., ET AL.

Court File No: 20-00650945-00CL

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

Proceeding commenced at Toronto

**ORDER
(SALE PROCESS APPROVAL)**

Gowling WLG (Canada) LLP

Suite 1600, 1 First Canadian
Place, 100 King Street West
Toronto ON M5X 1G5
Tel: 416-862-7525

Virginie Gauthier LSO#: 41097D

Tel: 416-601-7539

[Email: Virginie.gauthier@gowlingwlg.com](mailto:Virginie.gauthier@gowlingwlg.com)

Thomas Gertner LSO#: 67756S

Tel: 416-601-8342

[Email: Thomas.gertner@gowlingwlg.com](mailto:Thomas.gertner@gowlingwlg.com)

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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
(Re Comeback Hearing)
(Returnable November 13, 2020)

GOWLING WLG (CANADA) LLP

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

Virginie Gauthier (LSO#: 41097D)

Tel: 416-844-5391

Email: virginie.gauthier@gowlingwlg.com

Thomas Gertner (LSO#: 67756S)

Tel: 416-369-4618

Email: thomas.gertner@gowlingwlg.com

Lawyers for the Applicants