

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED, OF WHYTE'S FOODS INC.**

Applicant

**AMENDED NOTICE OF MOTION  
(St. Louis Sale Approval and Stay Extension)  
(Returnable October 6, 2023)**

Whyte's Foods Inc. ("**Whyte's**" or the "**Applicant**" or the "**Company**") will make a motion to the Honorable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) on October 6, 2023 at 12:30 p.m. (Toronto time) by judicial videoconference via Zoom, or as soon after that time as the Motion can be heard. Zoom details for the motion can also be found at Schedule "A" to this Notice of Motion. If you intend to join the hearing of this motion, please advise Natasha Rambaran by email ([nrambaran@stikeman.com](mailto:nrambaran@stikeman.com)).

**PROPOSED METHOD OF HEARING:** The Motion is to be heard:

- ☐ In writing under subrule 37.12.1(1);
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location:

<https://ca01web.zoom.us/j/61804264297?pwd=MEpzRUtlUVB0UGc4eStsVGNtYmkxUT09%27>

**THE MOTION IS FOR:**

1. An order substantially in the form attached at Tab 3 of the Motion Record, *inter alia*:

- (a) abridging and validating the time for service of this Notice of Motion and Motion Record, and dispensing with further service thereof;
- (b) approving the sale transaction (the "**St. Louis Transaction**") contemplated by an Agreement of Purchase and Sale dated September 29, 2023 (the "**St. Louis Purchase Agreement**") between the Vendor and 9498-8995 Québec Inc. and 9498-8938 Québec Inc. (collectively, the "**Purchasers**") and vesting in the Purchasers, all of the Vendor's right, title and interest in and to the Purchased Assets, as defined in the St. Louis Purchase Agreement (the "**St. Louis Purchased Assets**");
- (c) extending the time for the Applicant to file a proposal, and the corresponding stay of proceedings, until and including October 13, 2023 (the "**Stay Period**"); and
- (d) sealing Confidential Appendix "1" of the Second Report;
- (e) on request of Wells Fargo Capital Financing Corporation Canada ("Wells Fargo"), a NOI Termination and Transition Order in the form attached as Schedule B; and
- (f) granting such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

2. On August 23, 2023, (the "**Filing Date**") the Company filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to Section 50.1(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as proposal trustee of the Company (the "**Proposal Trustee**");
3. On August 31, 2023, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted the Initial Order, which, among other things:
  - (a) authorized and empowered the Applicant to obtain and borrow the DIP Facility (as defined in the Initial Order) from Wells Fargo Capital Finance Corporation Canada ("**Wells Fargo**" or the "**DIP Lender**") in order to finance the Company's working capital requirements and other general corporate purposes and capital expenditures;

- (b) approved the engagement of Kroll Corporate Finance Canada Limited, in its capacity as Sell-Side M&A Advisor (“**Kroll**” or the “**Financial Advisor**”);
  - (c) approved a sale and investment solicitation process (“**SISP**”) for a sale or investment of the Applicant’s right, title and interest in and to all assets, undertakings and properties acquired or used for and otherwise related to its operations and business (the “**Business**”), or any portion thereof (collectively, the “**Property**”), and authorized and directed the Financial Advisor and the Proposal Trustee, in consultation and together with the Applicant, to conduct the SISP;
  - (d) granted the Charges (as defined in the Initial Order);
  - (e) extended the time for the Applicant to file a proposal, and the corresponding stay of proceedings, until and including October 10, 2023; and
  - (f) authorized the Applicant to pay certain pre-filing amounts owing to Critical Suppliers (as defined in the Initial Order) with the consent of the Proposal Trustee and in accordance with the cash flows and the DIP Facility;
4. Prior to initiating these NOI Proceedings, the Applicant invested significant time and effort, with the assistance of its advisors, to explore strategic transaction opportunities. These efforts included the engagement of Kroll in February 2023 to canvas the market for investors comprised of strategic buyers and financial sponsors that focus on food manufacturing and turnaround situations (the “**Prior Sale Process**”);
5. The Prior Sale Process canvassed the market for all of the Company’s assets and properties including the St. Louis Purchased Assets;
6. While the Prior Sale Process produced significant interest from multiple parties, the Company was not able to implement a transaction prior to the Filing Date. As a condition of the ongoing available liquidity in favour of the Company, it was necessary that the balance of the Prior Sale Process be completed within these NOI Proceedings;
7. Accordingly, the Company determined that the best path to maximize stakeholder value and preserve the Company as a going concern was to commence these NOI Proceedings and complete the SISP with the assistance of the Proposal Trustee and the Financial Advisor;

8. Pursuant to the SISP, the Proposal Trustee and Kroll, in consultation and with the participation of the Company, conducted the process in order to solicit interest for an “as is, where is” sale of the Property or investment in the Business;

9. The SISP has resulted in a number of bids being received, however negotiations continue, in consultation with the Proposal Trustee, Kroll, and the Company’s senior secured lenders, Wells Fargo and Farm Credit Canada (collectively, the “**Lenders**”);

### **Approval of St. Louis Purchase Agreement**

10. The Applicant, in consultation with the Proposal Trustee and the Lenders, has been able to complete the negotiations related to the St. Louis Purchase Agreement and now seeks this Court’s approval thereof;

11. The St. Louis Purchase Agreement represents a going concern sale transaction that will facilitate the ongoing operations at the St. Louis Facility;

12. The St. Louis Purchased Assets include the land, building and certain assets and equipment located at the St. Louis Facility, as well as certain assets and equipment located at the Ste. Thérèse Facility;

13. The Prior Sale Process leading up to the commencement of the NOI Proceedings canvassed the market for interest in the St. Louis Purchased Assets;

14. While the St. Louis Agreement was being negotiated during the course of the SISP, the St. Louis Purchased Assets formally remained in the SISP and available for potential Bidders to seek additional information and formulate a potential bid;

15. The St. Louis Purchase Agreement represents the only offer for the St. Louis Purchased Assets and provides reasonable recovery in respect of the St. Louis Facility and the St. Louis Purchased Assets;

16. The St. Louis Transaction is beneficial for the Company’s employees, as the Purchaser will offer employment to certain Designated Employees by way of written employment contracts on terms and conditions that are substantially similar to those existing immediately prior to the execution of the St. Louis Purchase Agreement, including any Employee Plans;

17. The Purchaser is also considering a second round of potential offers of new employment to approximately 15 additional employees once operations at the St. Louis Facility are restarted under the Putters ownership;

18. The Lenders have been consulted in respect of the St. Louis Transaction;

19. The Proposal Trustee has been involved with the negotiations of the St. Louis Transaction and is supportive of the Company's motion seeking approval thereof;

20. The St. Louis Purchase Agreement represents the best outcome for the Company and its stakeholders in the circumstances;

### **Stay Extension**

21. The Applicant requires a further extension until and including October 13, 2023 in order to implement the St. Louis Transaction, complete negotiations of remaining bids received as part of the SISP and take other ancillary steps;

22. It would be detrimental to the Company's ability to maintain operations if proceedings were commenced or rights or remedies executed against the Company in the short period available to maximize recoveries for all stakeholders;

23. No creditor will be materially prejudiced if the proposed extension is granted;

24. The Proposal Trustee, the Financial Advisor and the DIP Lender support the granting of the proposed extension of the Stay Period;

25. Following receipt of the Receivership Applications from Wells Fargo and Farm Credit Canada, the Secured Lenders, Company and Proposal Trustee have sought to implement various transition provisions through the terms of a NOI Transition and Termination Order to assist with the transition from the NOI Proceedings to the Receivership Proceedings as sought;

### **General**

26. The provisions of the BIA and the inherent and equitable jurisdiction of this Honourable Court;

27. The provisions of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368;

28. Section 97 and 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
29. Rules 1.04, 1.05, 2.01, 2.03, 3.01, 3.02, 14.05, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
30. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The Affidavit of Elizabeth Kawaja, sworn October 2, 2023, and the Exhibits attached thereto;
- (b) The Update to the First Report of the Proposal Trustee dated September 14, 2023;
- (c) The Second Report of the Proposal Trustee, to be filed; and
- (d) Such further and other documentary evidence as counsel may advise and this Court may permit.

October 2, 2023

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Lawyers for Whyte's Foods Inc.

## **SCHEDULE “A”**

### **Zoom Particulars**

Join Zoom Meeting

<https://ca01web.zoom.us/j/61804264297?pwd=MEpzRUtIUVB0UGc4eStsVGNtYmkxUT09%27>

Meeting ID: 618 0426 4297

Passcode: 057603

Dial by your location

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

+1 646 876 9923 US (New York)

Meeting ID: 618 0426 4297

Find your local number: <https://zoom.us/u/anEFDJOri>

## **SCHEDULE "B"**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

THE HONOURABLE

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FRIDAY, THE 6<sup>TH</sup>

)

MR. JUSTICE CAVANAGH

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DAY OF OCTOBER, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
UNDER THE *BANKRUPTCY AND INSOLVENCY* ACT, R.S.C. 1985, c. B-3, AS  
AMENDED, OF WHYTE'S FOODS INC.**

Applicant

**NOI TERMINATION AND TRANSITION ORDER**

THIS MOTION, made by Wells Fargo Capital Financing Corporation Canada (“**Wells Fargo**”) for an Order, among other things, substituting the trustee in bankruptcy of Whyte’s Foods Inc., granting certain releases and other ancillary relief, was heard this day at, by judicial video conference via Zoom.

ON READING the Motion Record of the Debtor, the second report dated October 4, 2023 (the “**Second Report**”) of Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposal trustee (the “**Proposal Trustee**”), and on hearing the submissions of the lawyer(s) for the Debtor, the Proposal Trustee, Wells Fargo, Farm Credit Canada and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Natasha Rambaran, filed,

**SERVICE**

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

## **BANKRUPTCY TRUSTEE**

2. THIS COURT ORDERS that, effective upon the filing with the Court of the Proposal Trustee's Certificate (as defined in the St. Louis Sale Approval and Extension Order issued in these proceedings on October 6, 2023, the "**St. Louis AVO**"), (a) the period in which a proposal is to be filed with the Official Receiver shall terminate pursuant to section 50.4(11) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"); and (b) Ernst & Young Inc. shall be hereby appointed as trustee in these proceedings in *lieu* of Alvarez & Marsal Canada Inc. pursuant to section 57.1 of the BIA.

## **RELEASES**

3. THIS COURT ORDERS that effective upon the filing of the Proposal Trustee's Certificate, the Proposal Trustee and its legal counsel (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Proposal Trustee's Certificate (a) undertaken or completed pursuant to the terms of this Order, (b) arising in connection with or relating to these NOI Proceedings, or (d) related to the management, operations or administration of the Debtor (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, save and except for any gross negligence or wilful misconduct.

## **TRANSITION MATTERS**

4. THIS COURT ORDERS AND DIRECTS that upon the filing of the Proposal Trustee's Certificate the gross proceeds from the sale of the Purchased Assets (as defined in the St. Louis

AVO) (the “**Proceeds**”) shall be transferred to FTI Consulting Canada Inc., in its capacity as receiver (the “**FCC Receiver**”) of certain assets, property and undertaking of the Debtor as specifically set out in Court File No. CV-23-00707205-00CL, and, for greater certainty, the Proceeds are not vested in the trustee in bankruptcy and shall not form any part of the Whyte’s bankruptcy estate.

5. THIS COURT ORDERS that from and after the filing of the Proposal Trustee’s Certificate, the FCC Receiver shall be deemed to have assumed and shall perform any post-closing obligations of the Vendor under the St. Louis Purchase Agreement (as defined in the Second Report).

6. THIS COURT ORDERS nothing in this Order, the termination of the NOI Proceedings or the bankruptcy of the Debtor shall prevent the payment of certain post-filing amounts to be funded and paid for within the receivership proceedings bearing Court File No. CV-23-00707052-00CL or the receivership proceedings bearing Court File No. CV-23-00707205-00CL.

#### **MISCELLANEOUS**

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

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
UNDER THE *BANKRUPTCY AND INSOLVENCY* ACT, R.S.C. 1985, c. B-3, AS AMENDED,  
OF WHYTE'S FOODS INC.**

***ONTARIO*  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**NOI TERMINATION AND TRANSITION  
ORDER**

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,  
AS AMENDED, OF WHYTE'S FOODS INC.**

Court File No. 23-02978830-0031  
Estate File No. 31-2978830

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

PROCEEDINGS COMMENCED AT TORONTO

**AMENDED NOTICE OF MOTION  
(ST. LOUIS SALE APPROVAL  
AND STAY EXTENSION)  
(RETURNABLE OCTOBER 6, 2023)**

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