



Estate / Court File No. 31-2978830

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

JUSTICE CAVANAGH

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THURSDAY, THE 31st DAY

OF AUGUST, 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**

**ORDER
(Approval of DIP Financing, Charges, SISP and Stay Extension)**

THIS MOTION, made by Whyte's Foods Inc. (the "**Applicant**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for an order, among other things:

(a) extending the time for the Applicant to file a proposal and granting a corresponding stay of proceedings until and including October 10, 2023 (the "**Stay Period**"); (b) approving, and authorizing the Applicant to access, the DIP Facility (as defined herein); (c) approving the Charges (as defined herein); (d) approving the engagement of Kroll Corporate Finance Canada Limited ("**Kroll**" or the "**Financial Advisor**") in its capacity as Sell-Side M&A Financial Advisor to the Applicant; (e) approving the SISP and authorizing and directing the Applicant, the Financial Advisor and Alvarez & Marsal Canada Inc., in its capacity as Proposal Trustee (the "**Proposal Trustee**") to conduct the SISP, was heard this day by judicial video conference via Zoom.

ON READING the affidavit of Elizabeth Kawaja sworn August 28, 2023 and the exhibits thereto (the "**Kawaja Affidavit**"), and on reading the first report of the Proposal Trustee dated August 30, 2023 (the "**First Report**"), and on hearing submissions of the Applicant, the Proposal Trustee, and such other counsel and parties listed on the Participant Information Form, with no

one else appearing although duly served as appears from the affidavit of service of Natasha Rambaran, filed,

SERVICE AND INTERPRETATION

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 herein and not otherwise defined shall have the meanings given to such terms in the Kawaja Affidavit.
3. **THIS COURT ORDERS** that all references to currency herein shall be in Canadian dollars.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its 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 shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is 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, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
5. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Kawaja Affidavit or replace it with another substantially similar 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 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 individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") other than the Applicant, 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 proposal with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicant except as otherwise provided to the contrary herein, is and shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the filing of the Notice of Intention to Make a Proposal ("**NOI**") and this Order all in accordance with the variance to the Approved Cash Flow (as defined in the DIP Facility Agreement, defined below) as set out in section 4.4 of the DIP Facility Agreement or with the approval of the DIP Lender. Without limiting the foregoing, the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after 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; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Proposal Trustee to pay amounts owing for goods or services supplied to the Applicant prior to the date of this Order and the filing by the Applicant of its notice of intention to make a proposal, if, in the opinion of the Applicant and the Proposal Trustee, the supplier is critical to the Applicant's business.

7. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is 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 to any of its creditors as of this date other than in accordance with the DIP Facility Agreement and the Approved Cash Flow; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

EXTENSION OF STAY OF PROCEEDINGS

8. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the applicant to file a proposal, and the corresponding Stay Period and stay of proceedings provided for in section 69 of the BIA, be and is hereby extended until and including October 10, 2023.

PROPOSAL TRUSTEE

9. **THIS COURT ORDERS** that the Proposal Trustee continues to be and is hereby authorized to take all steps required to fulfill its duties under the BIA or as an officer of the Court including, to perform such duties are required to give effect to the terms of this Order and such Other orders as may be made by this Court from time to time.

10. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in management or supervision of the management of the Applicant's business and shall not, in carrying out the SISP, or otherwise fulfilling its obligations hereunder or pursuant to the BIA, be deemed to have taken possession or control of the Applicant's business or the Property, or any part thereof.

11. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or any other Orders which may be made by this Court from time to time, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by the BIA or any applicable legislation.

APPOINTMENT OF FINANCIAL ADVISOR

12. **THIS COURT ORDERS** that the agreement dated as of August 22, 2023 pursuant to which the Applicant engaged Kroll to act as Financial Advisor, a copy of which is attached as Exhibit "P" to the Kawaja Affidavit, as may be amended by the parties thereto with the consent of the Proposal Trustee (the "**Financial Advisor Engagement Letter**"), and the appointment of the Financial Advisor pursuant to the terms thereof, and are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

SALE AND INVESTMENT SOLICITATION PROCESS

13. **THIS COURT ORDERS AND DECLARES** that the SISP (subject to any amendments thereto that may be made by the Proposal Trustee, in consultation with the Applicant, and in accordance with the terms of the SISP) attached hereto as Schedule "A" is hereby approved.

14. **THIS COURT ORDERS** that the Proposal Trustee and the Financial Advisor, in consultation with the Applicant and its advisors, are hereby authorized and directed to implement the SISP pursuant to the terms thereof and the Applicant, the Proposal Trustee and the Financial Advisor are authorized to take all steps and do all things reasonably necessary or incidental to implement the SISP.

15. **THIS COURT ORDERS** that the Proposal Trustee shall be authorized to maintain a single account for purposes of receiving any deposits submitted pursuant to the SISP.

16. **THIS COURT ORDERS** that in connection with the SISP and pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act (Canada)*, the Applicant, the Proposal Trustee and the Financial Advisor, as applicable, may disclose personal information of identifiable individuals to prospective bidders in the SISP and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (as defined in the SISP). Each prospective bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Property and if it does not complete a purchase of the Property, shall return all such information to the Applicant or in the alternative shall destroy all such information and certify such destruction to the Applicant and the Proposal Trustee. The purchaser of any Property shall be entitled to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant and shall return all other personal information to the Applicant or ensure that all other personal information is destroyed.

DIP FINANCING

17. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Wells Fargo Capital Finance Corporation (the "**DIP**

Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$2,700,000 unless permitted by further Order of this Court.

18. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the Third Amendment to the Credit Agreement and Forbearance between the Applicant and the DIP Lender dated as of August 22, 2023, which amends the credit agreement dated as of October 14, 2022, as amended January 6, 2023 and April 19, 2023 (as the same may be further amended from time to time, the "**DIP Facility Agreement**").

19. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such ancillary credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, (including fees and disbursements of the DIP Lender's counsel and financial advisors), liabilities and obligations to the DIP Lender under and pursuant to the DIP Facility Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

20. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on all of the present and future assets, property and undertaking of the Applicant (the "**DIP Property**"), which DIP Lender's Charge shall not secure an obligation that exists before the date of the filing of the NOI. The DIP Lender's Charge shall have the priority set out in paragraphs 29 and hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 days notice to the Applicant and the Proposal Trustee, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Facility Agreement, Definitive Documents and the DIP Lender'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 under the DIP Facility Agreement, the Definitive Documents or the DIP Lender's Charge, to 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
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

22. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by the Applicant under the BIA, with respect to any advances made under the DIP Facility Agreement.

23. **THIS COURT ORDERS AND DECLARES** that FCC shall be treated as unaffected in any proposal filed by the Applicant under the BIA.

24. **THIS COURT ORDERS** that the Applicant is hereby authorized to pay the DIP Lender, in accordance with the terms of the DIP Facility Agreement, amounts owing under the DIP Facility Agreement and any and all amounts owing by the Applicant on account of pre-filing obligations, from funds on hand or from funds generated by post-filing sales of inventory or otherwise, but not for certainty, from advances made by the DIP Lender following the filing of the NOI.

ADMINISTRATION CHARGE

25. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and the Applicant's counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and the Applicant's counsel (for work performed in connection with these proceedings) on a weekly basis or as such accounts are otherwise rendered.

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

27. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which Administration Charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the date of this Order in respect of these proceedings. The Administration Charge shall have the priority set out at paragraphs 29 and hereof.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

28. **THIS COURT ORDERS** that the Applicant shall indemnify its current and future directors and officers (the “**Directors and Officers**”) against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of these 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.

29. **THIS COURT ORDERS** that the Directors and Officers of the Applicant 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 \$700,000, as security for the indemnity provided in paragraph 29 of this Order. The Directors’ Charge shall have the priority set out in paragraph 29 and hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

30. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge and the DIP Lender’s Charge, as among them, shall be as follows:

First – the Administration Charge (to the maximum amount of \$250,000);

Second – the Directors’ Charge (to the maximum amount of \$350,000 as against the DIP Property);

Third – the DIP Lender’s Charge (to the maximum amount of \$2,700,000), as against the DIP Property; and

Fourth – for the balance of the Director’s Charge of \$350,000 as against the FCC Collateral (as defined herein).

31. **THIS COURT ORDERS** that that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the DIP Lender’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.

32. **THIS COURT ORDERS** that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property (in the case of the Directors' Charge and the Administration Charge) and the DIP Property (in the case of the DIP Lender's Charge), and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than any secured creditors who have not been served with this Motion, and provided that the DIP Lender's Charge shall not rank in priority to any of the security interests, liens, charges and encumbrances granted by the Applicant in favour of Farm Credit Canada over the Non-trade Personal Property (as defined in the Amended and Restated Intercreditor Agreement dated as of April 19, 2023 by and among, *inter alia*, the DIP Lender, Farm Credit Canada and the Applicant) (the "**FCC Collateral**").

33. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Proposal Trustee, and the beneficiaries of the Charges, or further Order of this Court.

34. **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's interest in such real property leases.

35. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Facility Agreement, the Definitive Documents and the DIP Lender's Charge 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 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, 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 Facility Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant 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 Applicant entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Facility 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.

SERVICE AND NOTICE

36. **THIS COURT ORDERS** that the Commercial List E-Service Guide (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/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.alvarezandmarsal.com/Whytes>.

37. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Proposal Trustee 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 transmission to the Applicant’s creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

38. **THIS COURT ORDERS** that the Applicant, the Proposal Trustee and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Applicant’s creditors or other interested parties and

their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/ DORS).

GENERAL

39. **THIS COURT ORDERS** that the Applicant or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

41. **THIS COURT ORDERS** that each of the Applicant and the Proposal Trustee 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.

42. **THIS COURT ORDERS** that any interested party (including the Applicant and the Proposal Trustee) 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.



Digitally signed by
Peter Cavanagh

SCHEDULE A

SALE AND INVESTMENT SOLICITATION PROCESS

1. On August 23, 2023, Whyte's Foods Inc. (the "**Company**") filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3 (the "**BIA**") and Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as Proposal Trustee of the Company (the "**Proposal Trustee**").
2. Prior to the initiation of the NOI, the Company with the assistance of Kroll Corporate Finance Canada Limited ("**Kroll**") in its capacity as Sell-Side M&A advisor to the Company, conducted a strategic sales and investment solicitation process (the "**Prior Sales Process**").
3. The Company, together with the assistance of Kroll and under the supervision of the Proposal Trustee, will conduct a further sale and investment solicitation process (the "**SISP**") as further described herein.
4. All steps taken by the Proposal Trustee and Kroll to conduct and implement the SISP shall be made in consultation with the Company. Where primary responsibility for a task herein is outlined to be undertaken by Kroll, such actions will be undertaken under the supervision and oversight of the Proposal Trustee.

Opportunity

5. The purpose of the SISP is to solicit interest in the opportunity (the "**Opportunity**") for a sale or investment of the Company'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**"), as a going concern or otherwise, and to complete one or more sale transactions as contemplated herein. The procedures governing the SISP, and any transaction(s) consummated thereunder, are described below.
6. Except to the extent otherwise set forth in a definitive sale or investment agreement with the Successful Bidder (as defined below), any sale of the Property or investment in the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Proposal Trustee, the Company, Kroll, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Company in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, financial and monetary claims charges, options and interests therein and thereon pursuant to Court order(s), to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court order(s).

Role of Proposal Trustee and Kroll

7. The Proposal Trustee and Kroll's responsibilities pursuant to the SISP include:
 - (a) administering the SISP;

- (b) consulting with the Company, and Wells Fargo Capital Finance Corporation Canada and Farm Credit Canada (collectively the “**Lenders**”) connection with the bidding procedures included in this SISP and the closing of the transaction(s) contemplated in the Successful Bid(s) (as defined below);
- (c) assisting the Company to facilitate information requests, including assisting the Company in preparing or modifying financial information to assist with the bidding procedures described in this SISP;
- (d) reporting to the Court in connection with the SISP, including the bidding process described in this SISP, and the closing of the transaction(s) contemplated in the Successful Bid(s);
- (e) assisting the Company with the closing of the transaction(s) contemplated in the Successful Bid(s).

Milestones

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

Milestone	Deadline
Company to obtain initial order (the “ Initial Order ”), including approval of (i) Kroll’s engagement; and (ii) SISP	August 31, 2023
Publish notice of SISP on the Proposal Trustee’s website	Two (2) business days following the date of the Initial Order
Deliver Teaser Letter and NDA to Known Potential Bidders, and set up the virtual data room (“ VDR ”)	Two (2) business days following date of the Initial Order
Template Purchase and Sale agreement to be posted in the VDR	Seven (7) calendar days following date of the Initial Order
Bid Deadline	5:00 p.m. (EST) on September 21, 2023
Company/Proposal Trustee/Kroll to (i) review submitted Bids; (ii) seek clarification of Bids; (iii) select Successful Bid(s); and (iv) negotiate final agreements	On or before 12:00 p.m. (noon) (EST) on September 25, 2023
Hearing of the Sale Approval Motion	October 2, 2023
Target closing date for sale and/or investment transactions	October 6, 2023

Outside closing date for sale and/or investment transactions (the “ Outside Date ”)	October 10, 2023
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Notice

9. As soon as reasonably practicable, but, in any event, by no later than two (2) business days after the date of the Initial Order:
 - (a) The Proposal Trustee and Kroll will prepare a list of potential bidders, including, (i) parties that have approached the Company, Proposal Trustee or Kroll indicating an interest in the Opportunity, or in one or more of the Company’s assets; (ii) parties that submitted an indication of interest or letter of intent in the Prior Sales Process; (iii) parties that did not submit any indication of interest, but actively participated in the Prior Sales Process, including conducting due diligence; and (iv) select competitors; (collectively, the “**Known Potential Bidders**”);
 - (b) the Proposal Trustee and Kroll 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 SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Proposal Trustee and the Company, and their respective counsel, which shall inure to the benefit of any purchaser of the Business or Property or any part thereof (an “**NDA**”).
10. The Proposal Trustee and Kroll will send the Teaser Letter and NDA to each Known Potential Bidder by no later than two (2) business days from the date of the Initial Order and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Proposal Trustee as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.
11. The Proposal Trustee / Kroll may accept an NDA executed by a Potential Bidder in the Prior Sales Process, in satisfaction of this requirement as set out herein in this SISP.

Potential Bidders and Due Diligence

12. Any party seeking to participate in the SISP (a “**Potential Bidder**”) must provide the Proposal Trustee and Kroll with, (i) an executed NDA; (ii) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder; and (iii) any other information that the Proposal Trustee or Kroll may reasonably request.
13. Kroll, subject to competitive and other business considerations, shall afford each Potential Bidder who has provided an NDA such access to due diligence material and information relating to the Company, the Property and the Business as the Proposal Trustee and Kroll deem appropriate. Due diligence may include access to a VDR

containing information about the Company, the Property and the Business, and may also include management presentations, site visits and other matters which a Potential Bidder may reasonably request and as to which the Proposal Trustee and Kroll may agree.

14. Kroll will designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Proposal Trustee, Kroll, nor the Company will be obligated to furnish any information relating to the Company, the Property or Business to any person other than as is expressly provided for in the SISP. Furthermore, selected due diligence materials may be withheld from certain Potential Bidders if the Proposal Trustee, Kroll or the Company, determine such information to represent proprietary or sensitive competitive information / disclosure could impair the Company or the Business or the integrity of the SISP.
15. Without limiting the generality of any term or condition of any NDA between the Company, on the one hand, and any Potential Bidder or Bidder (as defined below), on the other, unless otherwise agreed by the Proposal Trustee and the Company or ordered by the Court, no Potential Bidder or Bidder shall be permitted to have any discussions with, (a) any counterparty to any contract with the Company, any secured creditor of the Company, any director, manager, officer or employee of the Company, other than in the normal course of business and wholly unrelated to the Company, the potential transaction(s), the confidential information, the SISP or the NOI proceedings; and (b) any other Potential Bidder or Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto. Notwithstanding the foregoing, where any such communications are agreed to with the Proposal Trustee's consent, such discussions shall be made in the presence of the Proposal Trustee or Kroll.
16. Lenders: Discussions are permitted with the Lenders, in order for a Potential Bidder to assess potential support of the Lenders to a proposed Bid, and where the Lenders agree to participate in such discussions. The Proposal Trustee or Kroll shall participate in all discussions described in this paragraph. Information shared with the Lenders in respect of the SISP, generally and in respect of any discussions with potential bidders, shall remain confidential and not be shared by the Lenders.
17. Potential Bidders and Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction(s) they enter into with the Company.

Formal Binding Offers

18. Potential Bidders that wish to make a formal offer to purchase, or make an investment in, the Company or the Property or Business, or any part thereof (a "**Bidder**") shall submit a binding offer (a "**Bid**") that complies with all of the following requirements to the Proposal Trustee at the address specified in Schedule "1" hereto (including by e-mail), which Bid shall be delivered by such Bidder by no later than **5:00 p.m. (Toronto Time)**

on **September 21, 2023** or such later date as may be communicated by the Proposal Trustee to Potential Bidders via a Bid Deadline Letter (as defined below) (the “**Bid Deadline**”):

- (a) the Bid must be a binding offer to:
 - (i) acquire all, substantially all or a portion of the Property of the Company (a “**Sale Proposal**”); and/or
 - (ii) make an investment in, restructure, reorganize or refinance the Business or the Company (an “**Investment Proposal**”);
- (b) the Bid must include a duly authorized and executed definitive agreement of purchase and sale using the template agreement in the VDR, against which Bids will be compared;
- (c) the definitive transaction document in respect of a Sale Proposal or Investment Proposal shall include, among other things:
 - (i) that the Bid is not conditioned upon (A) the outcome of unperformed due diligence by the Bidder, or (B) obtaining financing. Where the Bid requires the support and approval of the Lenders, such support and approval shall have been confirmed prior to submitting the Bid;
 - (ii) any and all conditions and approvals required to complete the closing of the transaction; and
 - (iii) is accompanied by a non-refundable deposit representing 10% of the purchase price (including the value of any secured debt that is to be assumed).
- (d) the Bid (either individually or in combination with other bids that make up one Bid) shall be an offer to purchase or make an investment in some or all of the Company’s Property or Business and shall be consistent with the necessary terms and conditions established by the Proposal Trustee and Kroll and communicated to Bidders;
- (e) the Bid must include a letter stating that the Bidder’s offer is irrevocable until approval of the Successful Bid(s) by the Court, provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction contemplated by such Bid;
- (f) the Bid must include written evidence of a firm, irrevocable commitment for financing or other evidence of the Bidder’s ability to consummate the proposed transaction that will allow the Proposal Trustee/Kroll/Company to make a determination as to the Bidder’s financial and other capabilities to consummate the proposed transaction;

- (g) the Bid must include written evidence, in form and substance satisfactory to the Proposal Trustee/Kroll/Company, of authorization and approval from the Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of such Bid, and identification of any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated process and time frame and any anticipated impediments for obtaining such approvals;
- (h) the Bid must not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
- (i) without limiting the foregoing, a Sale Proposal Bid must include:
 - (i) the total consideration to be paid, including the purchase price in Canadian dollars, clarifying cash component, support confirmed with the Lenders; a description of any non-cash consideration and details of any liabilities to be assumed by the Bidder and assumptions supporting the Bid;
 - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - (iii) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
 - (iv) a description of the manner in which existing employees shall be addressed in the transactions;
- (j) without limiting the foregoing, an Investment Proposal Bid must include:
 - (i) a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Company in Canadian dollars;
 - (iii) a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;
 - (iv) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which liabilities and obligations it does not intend to assume; and
 - (v) a description of the manner in which existing employees shall be addressed in the transactions;

- (k) the Bid must include acknowledgements and representations of the Bidder that the Bidder:
 - (i) has, to its satisfaction, had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Company prior to making its Bid;
 - (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, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Company, or the completeness of any information provided in connection therewith, except as may be expressly stated in the definitive transaction agreement(s) signed by the Company;
- (l) the Bid must contain such other information as may be reasonably requested by the Proposal Trustee and Kroll;
- (m) the Bid must be received by the Bid Deadline;
- (n) the Bid must contemplate closing the transaction set out therein on or before the Outside Date.

Evaluation of Competing Bids

- 19. Following the Bid Deadline, the Proposal Trustee/Kroll/Company will assess the Bids received to determine the Bids comply with the requirements set out herein (“**Qualified Bids**”). The Proposal Trustee shall promptly provide the Lenders with copies of all Qualified Bids following the Bid Deadline.
- 20. The Proposal Trustee and Kroll, in consultation with the Lenders, may waive strict compliance with any one or more of the requirements set out herein and deem such non-compliant Bids to be a Qualified Bid.
- 21. The Proposal Trustee and Kroll, in consultation with the Lenders, may aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.
- 22. The Proposal Trustee/Kroll/Company, in consultation with the Lenders, shall be entitled to discuss and negotiate the Bid and form of any Sale Proposal or Investment Proposal prior to or after the Bid Deadline for purposes of amending or clarifying the terms and form thereof.
- 23. Bids shall be evaluated based upon several factors including, without limitation: (i) the purchase price and the net value of the total consideration provided by such Bid (with the value of any non-cash consideration being determined by the Company in its business judgment, in consultation with the Proposal Trustee and Kroll); (ii) the identity,

circumstances and ability of the Bidder to successfully complete such transactions; (iii) the proposed transaction documents; (iv) factors affecting the speed, certainty and value of the transaction; (v) the assets and liabilities included or excluded from the Bid; (vi) any related restructuring costs; and (vii) the likelihood and timing of consummating such transaction, each as determined by the Proposal Trustee/Kroll/Company in their business judgment.

24. The Proposal Trustee, in consultation with the Company and the Lenders, may ascribe monetary values to non-monetary terms in any Bid for the purposes of assessing and/or valuing such bids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed or not assumed.

Selection of Successful Bid(s) and Sale Approval

25. The Proposal Trustee/Kroll/Company in consultation with the Lenders may: select one or more of such Qualified Bids as the successful bid (the “**Successful Bid(s)**”, subject to the approval of the Lenders, and the Qualified Bidder(s) making such bid, the “**Successful Bidder(s)**”), with or without negotiation of Qualified Bids with Qualified Bidders.
26. The Proposal Trustee/Kroll/Company shall be under no obligation to designate the highest and otherwise best Bid, or any Bid, as a Successful Bid.
27. The Successful Bidder(s) shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) was made within two (2) business days of the Successful Bid(s) being selected as such.
28. Thereafter, Kroll shall advise the other Bids that there were not selected as the Successful Bid.
29. The Company shall seek Court approval to consummate the Successful Bid(s) at the motion on or before October 2, 2023 (the “**Sale Approval Motion**”).

Deposits

30. Any deposits submitted by potential Bidders pursuant to this SISP shall be held by the Proposal Trustee in a single account designated solely for such purpose and such deposit shall be dealt with in accordance with the definitive documents for the transaction(s) contemplated by the Successful Bid(s).
31. The Proposal Trustee shall return any deposit submitted by another bidder that is not selected as a Successful Bid, following the Sale Approval Motion.

Confidentiality and Access to Information

32. Unless expressly provided for 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, Bidders, Qualified Bidders, or Successful Bidder(s), or the details of any bids submitted or the details of any confidential discussions or correspondence between the Company,

Kroll and /or the Proposal Trustee and such other Potential Bidders, Bidders, Qualified Bidders, or Successful Bidder(s) in connection with the SISP, except to the extent that the Proposal Trustee/Kroll/Company (and with the consent of the applicable bidders), are seeking to combine separate Bids to form a Qualified Bid.

33. All discussions regarding Bids should be directed through the Proposal Trustee/Kroll. Under no circumstances should the management of the Company be contacted directly without the prior consent of the Proposal Trustee.

Supervision of the SISP / General / Protections

34. The Proposal Trustee and Kroll shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Proposal Trustee and Kroll will participate in the SISP in the manner set out in this SISP, the Initial Order and further orders of the Court, and is entitled to receive all information in relation to the SISP. If there is disagreement as to the interpretation or application of the SISP, the Court will have the jurisdiction to hear and resolve such dispute.
35. This SISP does not and will not be interpreted to create any contractual or other legal relationship between the Company. Kroll or the Proposal Trustee, and any Potential Bidder, Bidder, Successful Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Company.
36. Without limiting the generality of preceding paragraph, the Proposal Trustee and Kroll shall not have any liability whatsoever to any person or party, including, without limitation, any Potential Bidder, Bidder, Successful Bidder, the Company, or any other creditor or other stakeholder of the Company, for any information obtained by any party or any act or omission related to the process contemplated by this SISP.
37. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
38. The Proposal Trustee, in consultation with the Company and the Lenders, shall have the right to modify the SISP (including, without limitation, dates and milestones described herein and pursuant to any Bid Deadline Letter) if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP, provided, however, that the Service List in these BIA Proceedings shall be advised of any substantive modification to the procedures set forth herein.
39. Notwithstanding anything to the contrary in this SISP, the Company, in consultation with, and with the approval of, the Proposal Trustee and Kroll, may attempt to negotiate a stalking horse bid (a "**Stalking Horse Bid**") prior to the Bid Deadline to provide certainty for the Company during the SISP. If the Company, in consultation with, and with the approval of, the Proposal Trustee/Kroll, and the Lenders, accept a Stalking Horse Bid, such Stalking Horse Bid shall be subject to approval by the Court and the Company shall bring a motion before the Court on notice to the Service List in these BIA Proceedings seeking the approval of the Stalking Horse Bid, together with approval of necessary amendments to the SISP. All Potential Bidders shall be promptly informed of any Court approval of a Stalking Horse Bid and any related amendments to the SISP.

40. Interested parties seeking further information about the SISP should contact the Proposal Trustee at the email address specified in Schedule "1" hereto.

Schedule "1"

Address of Proposal Trustee

To the Proposal Trustee:

Alvarez & Marsal Canada Inc.
200 Bay Street, Suite 2900 (South Tower)
Toronto, ON M5J 2J1

Attention: Stephen Ferguson / Esther Mann

Email: sferguson@alvarezandmarsal.com / esther.mann@alvarezandmarsal.com

Applicant

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

Proceeding commenced at TORONTO

ORDER

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