

Court File No. CV-21-00669445-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

**MOTION RECORD
(Returnable November 26, 2021)**

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OF MCEWAN ENTERPRISES INC.**

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NOTICE OF MOTION
(returnable November 26, 2021)

McEwan Enterprises Inc. (“**MEI**”, the “**McEwan Group**” or the “**Applicant**”) will make a motion before Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on November 26, 2021, at 1:30 p.m. or as soon thereafter as the motion can be heard.

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 a Zoom link to be provided in advance of the hearing.

THE MOTION IS FOR:

1. An Order (the “**CCAA Amended Transaction Approval Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), substantially in the form attached at Tab 2 of the within Motion Record of the Applicant (the “**Motion Record**”), among other things:¹

- (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
- (b) approving the purchase agreement dated September 27, 2021 (the “**CCAA Purchase Agreement**”) between the Applicant and 2864785 Ontario Corp. (the “**Purchaser**”), a company owned by Mark McEwan and Fairfax Financial Holdings Limited (“**Fairfax**”), as amended pursuant to the amending agreement dated November 12, 2021 (the “**Amending Agreement**”, and together with the CCAA Purchase Agreement, the “**CCAA Amended Purchase Agreement**”), and the sale and transfer of substantially all of the assets and liabilities of the McEwan Group, with the exception of the Excluded Locations (as defined below), to the Purchaser (as amended, the “**CCAA Amended Transaction**”);
- (c) authorizing the Applicant to complete the CCAA Amended Transaction and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the CCAA Amended Transaction and

¹ Capitalized terms used but not otherwise defined herein have the meanings given to them in the Affidavit of Dennis Mark McEwan sworn October 1, 2021 (the “**October Affidavit**”) attached at Tab 4B of the within Motion Record or the Affidavit of Dennis Mark McEwan sworn November 12, 2021 (the “**November Affidavit**”) attached at Tab 4 of the within Motion Record.

for the conveyance of the Purchased Assets (as defined in the CCAA Amended Purchase Agreement) to the Purchaser;

- (d) upon delivery by Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as monitor of the Applicant in these CCAA proceedings (the “**Monitor**”), to the Purchaser of a certificate substantially in the form attached as Schedule “A” to the CCAA Amended Transaction Approval Order, vesting all of the Applicant’s right, title and interest in and to the Purchased Assets in the Purchaser, free and clear from any Claims and Encumbrances (as defined in the CCAA Amended Transaction Approval Order), which term shall not include the Permitted Encumbrances (as defined in the CCAA Amended Transaction Approval Order);
- (e) authorizing the Monitor to hold the Cash Reserve (as defined in the CCAA Amended Purchase Agreement) on behalf of the Applicant, to pay certain amounts from the Cash Reserve on behalf the Applicant following the completion of the CCAA Amended Transaction, and to deliver to the Purchaser any remaining funds in the Cash Reserve on the terms set out in the CCAA Amended Purchase Agreement;
- (f) from and after the closing of the CCAA Amended Transaction, waive any and all defaults and events of default of the Applicant under the Assumed Contracts (as defined in the CCAA Amended Purchase Agreement) committed by the Applicant, or caused by the Applicant, as a result of the insolvency of the McEwan Group, the commencement or continuation of these CCAA proceedings by the Applicant, by any of the provisions in the CCAA Amended Purchase

Agreement or steps or transactions contemplated in the CCAA Amended Purchase Agreement and/or any other Orders of this Court;

- (g) approving the transaction deposit under the CCAA Amended Purchase Agreement (the “**CCAA Transaction Deposit**”) up to the maximum amount of \$2.25 million, and authorizing the Applicant to obtain the CCAA Transaction Deposit from the Purchaser in order to finance the Applicant’s working capital requirements, other general corporate purposes and capital expenditures, and the costs of these CCAA proceedings, in accordance with the terms of the CCAA Amended Purchase Agreement;
- (h) granting to the Purchaser a Court-ordered charge on the Applicant’s Property (as defined in the Initial Order granted by this Court on September 28, 2021, as amended and restated on October 7, 2021 (the “**Amended and Restated Initial Order**”)) that will rank *pari passu* with the Interim Transaction Funding Lender’s Charge (as defined in the Stay Extension and Interim Transaction Funding Approval Order granted by this Court on November 1, 2021 (the “**November 1 Order**”));
- (i) extending the Stay Period (as defined in the Amended and Restated Initial Order) to and including January 28, 2022; and
- (j) such further and other relief as counsel may request and this Court may permit.

2. In the alternative, if the CCAA Amended Transaction Approval Order is not approved, an Order (the “**Receivership Transaction Approval Order**”), substantially in the form attached at Tab 3 of the within Motion Record, among other things:

- (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
- (b) amending the style of cause in these proceedings to include the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”);
- (c) pursuant to the CJA, approving the form of purchase agreement to be entered into between the Receiver (as defined below) and the Purchaser (the “**Receivership Purchase Agreement**”), and the sale and transfer of substantially all of the assets and liabilities of the McEwan Group, with the exception of the Excluded Locations, to the Purchaser (the “**Receivership Transaction**”), with such transaction being on substantially the same terms as the CCAA Amended Transaction, conditional upon:
 - (i) the appointment of a receiver (in such capacity, the “**Receiver**”) of all the assets, properties and undertakings of MEI pursuant to section 101 of the CJA, for the purpose of implementing the Transaction;
 - (ii) MEI making an assignment into bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”); and
 - (iii) the termination of MEI’s CCAA proceedings;

- (d) authorizing the Receiver to complete the Receivership Transaction and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Receivership Transaction and for the conveyance of the Purchased Assets to the Purchaser;
- (e) upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule "A" to the proposed Receivership Transaction Approval Order, vesting all of the Applicant's right, title and interest in and to the Purchased Assets in the Purchaser free and clear from any Claims and Encumbrances (as defined in the Receivership Transaction Approval Order), which term shall not include the Permitted Encumbrances (as defined in the Receivership Transaction Approval Order);
- (f) authorizing the Receiver to hold the Cash Reserve (as defined in the Receivership Purchase Agreement) on behalf of the Applicant, to pay certain amounts from the Cash Reserve on behalf the Applicant following the completion of the Receivership Transaction, and to deliver to the Purchaser any remaining funds in the Cash Reserve on the terms set out in the Receivership Purchase Agreement;
- (g) from and after the closing of the Receivership Transaction, waive any and all defaults and events of default of MEI under the Assumed Contracts (as defined in the Receivership Purchase Agreement) committed by MEI, or caused by MEI, as a result of the insolvency of the McEwan Group, the commencement, continuation or termination of MEI's CCAA proceedings, the appointment of the Receiver over the assets, properties and undertakings of MEI, MEI's assignment

into bankruptcy, by any of the provisions in the Receivership Purchase Agreement or steps or transactions contemplated in the Receivership Purchase Agreement and/or any other Orders of this Court;

- (h) approving additional interim funding up to the maximum amount of \$2.25 million (the “**Additional Interim Transaction Funding**”), and authorizing the Applicant to obtain the Additional Interim Transaction Funding from the Purchaser in order to finance the Applicant’s working capital requirements, other general corporate purposes and capital expenditures, and the costs of the Applicant’s CCAA proceedings and the receivership and BIA proceedings to be commenced by the Applicant in connection with the Receivership Transaction;
- (i) granting to the Purchaser a Court-ordered charge (the “**Additional Interim Transaction Funding Lender’s Charge**”) on the Applicant’s Property that will rank *pari passu* with the Interim Transaction Funding Lender’s Charge;
- (j) extending the Stay Period to and including January 28, 2022; and
- (k) such further and other relief as counsel may request and this Court may permit.

3. In the alternative, an Order extending the Stay Period to and including December 8, 2021, and increasing the maximum amount of the Interim Transaction Funding approved pursuant to the November 1 Order to a maximum amount of \$1.4 million (increased from the existing \$600,000) and authorizing the Applicant to amend the Debenture (as defined in the November 1 Order) to reflect such increased amount of Interim Transaction Funding.

THE GROUNDS FOR THE MOTION are as follows:

Background

4. The McEwan Group is recognized as one of Canada’s premier hospitality companies with a portfolio of innovative, high-end restaurants, gourmet grocery stores, gourmet food halls and catering services (the “**Business**”) operating primarily in the Greater Toronto Area. The Applicant operates six restaurants (collectively, the “**McEwan Restaurants**”), two food-hall locations and one gourmet grocery location (collectively with the McEwan Restaurants, the “**McEwan Locations**”).

5. On September 28, 2021, the Applicant commenced these proceedings under the CCAA, and A&M was appointed as the Monitor of the Applicant.

6. The principal objectives of the Applicant’s CCAA proceedings are to ensure the ongoing operations of the McEwan Group for the benefit of its many stakeholders and to effectuate a restructuring of the Applicant and its Business in order to provide for a right-sized, sustainable Business going forward. As part of its restructuring efforts, the Applicant is seeking to complete the proposed Transaction.

7. Many of the McEwan Locations have been historically successful and profitable; however, certain unprofitable and operationally expensive locations have been underperforming for a number of years, causing an overall significant strain on the Applicant’s profitability and liquidity. The McEwan Group as a whole has not been profitable since 2017.

8. The underperforming locations, even without taking into account the impacts of the COVID-19 pandemic, have proven to be unsustainable based on their negative financial results.

Changes to and/or closures of such locations are necessary to enable the Business to operate on a sustainable basis.

9. Commencing in March 2020, the significant and detrimental impacts of the COVID-19 pandemic greatly exacerbated the Applicant's pre-existing financial and liquidity challenges, and as a result, the Business has experienced significantly reduced revenues for 2020 and 2021.

10. The Applicant implemented extensive cost-saving and cash conservation measures to address the COVID-19 challenges, negotiated various rent concessions and obtained various government subsidies and support. Those efforts, together with the Applicant's existing credit facilities and shareholder equity financing provided in early 2020, were insufficient to address the Applicant's liquidity needs during the COVID-19 pandemic, and the Applicant required additional funding in order to be able to satisfy its operational needs, which it obtained from Fairfax by way of a number of unsecured loans provided in 2020 and 2021, further increasing the Applicant's overall debt obligations.

11. While the government-mandated restrictions on dining began to be eased most recently in June and July 2021, a number of the McEwan Locations continue to be negatively impacted by the impacts of the COVID-19 pandemic.

12. There remains much uncertainty with respect to the ongoing COVID-19 pandemic and its continued impact on the McEwan Group and the restaurant industry as a whole.

13. The Applicant expects that, even without taking into account the Excluded Locations which cause a significant drain on the Business, the McEwan Group will require additional

funding to continue operating until the COVID-19 related factors cease negatively impacting the Business and revenues improve more significantly.

14. In connection with granting the Applicant relief under the CCAA, this Court found that based on the evidence submitted, the Applicant is insolvent.

Strategic Review Efforts

15. Commencing in the summer of 2021, the McEwan Group engaged legal counsel to assist it in reviewing and assessing its various potential options and alternatives, in light of the financial difficulties facing the McEwan Group.

16. The McEwan Group reviewed and considered various potential alternatives with the assistance of its legal counsel, including, among other things, further negotiations with landlords, additional financing (debt or equity), reducing the size of the Business, a sale of the Business, and combinations thereof in light of the financial difficulties facing the McEwan Group, including impending liquidity issues and the ongoing challenges and impacts of the COVID-19 pandemic.

17. The McEwan Group made extensive efforts, with the assistance of its advisors, to seek consensual arrangements with its landlords in respect of its leases, to improve lease terms and reduce those lease obligations that are unsustainable and/or to exit certain locations, but has been unable to achieve a comprehensive out-of-court resolution that would result in the long term viability of the McEwan Group and its Business.

18. The McEwan Group has five leases with the Cadillac Fairview Entities and is working to finalize satisfactory arrangements on a consensual basis with the Cadillac Fairview Entities.

MEI and the Yonge & Bloor Landlord have not reached a consensual arrangement in respect of the McEwan Yonge & Bloor location. MEI does not expect to seek amendments to the lease for the Fabbria Thornbury location.

19. After extensive review and consideration of its circumstances and its options and alternatives, and following efforts to reach consensual arrangements with its landlords, the Applicant determined that the best available alternative that could be implemented in the circumstances that would preserve the value of the Business for the benefit of the McEwan Group's many stakeholders, would be a sale of substantially all of the assets of the Business to the Applicant's current shareholders pursuant to the transaction contemplated by the CCAA Purchase Agreement (the "**CCAA Transaction**"), and the continuation of the Business with a reduced number of McEwan Locations, to result in a right-sizing of the Business on a sustainable basis going forward.

20. The Applicant considered conducting a third party sale process as part of considering its various potential options and alternatives, and determined that a third party sale process would have a negative effect on the ongoing Business of the McEwan Group.

21. On September 27, 2021, the Applicant entered into the CCAA Purchase Agreement with the Purchaser, pursuant to which, subject to Court approval, the parties would complete the CCAA Transaction contemplated thereby. The Applicant reviewed and discussed the proposed CCAA Transaction and CCAA Purchase Agreement with A&M as part of determining to enter into the CCAA Purchase Agreement.

Approval of the Proposed Transaction pursuant to the CCAA

22. On October 15, 2021, the Applicant sought this Court's approval of the CCAA Transaction under section 36 of the CCAA. The Court issued its decision on November 1, 2021 (the "**November 1 Decision**"), finding that the Applicant had not satisfied the requirements of section 36(4) of the CCAA and the Court did not approve the CCAA Transaction.

23. Since the issuance of the November 1 Decision, the Applicant has reviewed and assessed its potential options and alternatives, has discussed and reviewed such matters with the Monitor, and engaged in discussions and consulted with various stakeholders.

24. Among other things, the Applicant has further discussed with the Monitor in connection with potential alternatives in respect of advancing the CCAA Transaction, which the Applicant continues to believe is in the best interests of stakeholders, and discussed with the Monitor in further detail on the negative impacts that the time, costs and uncertainty associated with a sale process would have on the Business and the significant associated risks.

25. The Applicant has reviewed and considered First Capital's proposed form of purchase agreement and financing and discussed with the Monitor in connection therewith. The Applicant has also engaged in discussions with respect to a potential consensual resolution of matters with First Capital.

26. The Applicant reviewed and considered potential changes to the CCAA Transaction and CCAA Purchase Agreement and determined to enter into an Amending Agreement with the Purchaser, amending the CCAA Purchase Agreement and the CCAA Transaction, to provide for, among other things, (i) an increased Base Purchase Price of \$2,200,00 (inclusive of all applicable HST) (increased from \$520,000), which cash would be paid to First Capital on closing of the

CCAA Amended Transaction, and (ii) the assignment of certain equipment located at the McEwan Yonge & Bloor location to First Capital.

27. The Applicant believes that, based on the Applicant's additional good faith efforts and increased consideration under the CCAA Amended Transaction, the CCAA Amended Transaction satisfies the requirements under section 36(4) of the CCAA and ought to be approved by the Court.

Approval of the Proposed Transaction pursuant to the CJA

28. As part of its motion on October 15, 2021, the Applicant advised that if approval of the proposed CCAA Transaction was not obtained pursuant to the CCAA, one of the Applicant's alternatives is to pursue a receivership and a concurrent or subsequent no asset bankruptcy process to complete the proposed CCAA Transaction. This alternative would provide the same recovery to creditors, and the bankruptcy proceeding statutorily limits an affected landlord's claim to a preferred landlord claim pursuant to the BIA.

29. The Applicant believes that it is critical to preserve stability for the Business for the benefit of all stakeholders, and that proceeding with the proposed CCAA Amended Transaction in the form of the Receivership Transaction pursuant to the proposed alternative receivership and bankruptcy process is in the best interests of the McEwan Group and its many stakeholders in the event the CCAA Amended Transaction pursuant to the CCAA Amended Purchase Agreement is not approved. Providing stability, certainty and funding to the Business is a key issue for many stakeholders of the McEwan Group.

30. The Applicant is of the view that proceeding with the Receivership Transaction under the CJA provides greater discretion for the Court to consider all matters related to the Receivership Transaction and is not limited by the mandatory requirements of section 36(4) of the CCAA.

Proposed Transaction

31. Each of the proposed CCAA Amended Transaction and Receivership Transaction (referred to generally as the “**Transaction**”) contemplates the transfer of substantially all of the assets and the assumption of substantially all of the liabilities of the Applicant, with the exception of the locations not being assumed by the Purchaser as part of the Transaction (the “**Excluded Locations**”), and an offer of employment to all of the Applicant’s current employees (including those employees at the Excluded Locations).

32. The Applicant believes there would be a significant benefit to the stakeholders of the Business from the completion of the Transaction as there is a significant risk that many parties could be negatively impacted both on a financial and overall business basis if the Transaction cannot be completed in a short period of time.

33. The implementation of the Transaction will result in a sustainable Business going forward for the benefit of the McEwan Group’s many stakeholders, including its 268 employees whose jobs will be preserved, its secured creditors whose obligations will be unaffected and assumed by the Purchaser, and its many suppliers and service providers whose contracts and obligations will also all be assumed.

34. The closing of the Excluded Locations is a necessary part of any successful restructuring or sale of the Business.

35. The proposed Transaction is the best executable transaction that is available to the Applicant in the circumstances, provides fair and reasonable consideration for the Purchased Assets, and will create a sustainable Business for the McEwan Group's many stakeholders, including its employees, suppliers, customers and other key stakeholders.

36. The Transaction is supported by RBC and the Cadillac Fairview Entities, MEI's main secured creditors. The Cadillac Fairview Entities are also a significant landlord of the McEwan Group in respect of five McEwan Locations.

Additional Funding and Court-ordered Charge

37. The McEwan Group will require additional funding to continue operating the Business during these proceedings.

38. The Purchaser has agreed to provide additional funding up to a maximum amount of \$2.25 million in connection with the approval of the CCAA Amended Transaction or the Receivership Transaction, for use by the McEwan Group, subject to Court approval of such funding and the granting of a Court-ordered charge over the Property of the Applicant to secure the repayment of such funding to the Purchaser in the event the CCAA Amended Purchase Agreement is terminated with respect to the CCAA Amended Transaction or the Applicant and the Purchaser, in consultation with the Monitor, determine not to proceed with the Receivership Transaction.

39. The proposed charge in favour of the Purchaser would rank behind the Administration Charge and Directors' Charge (each as defined in the Amended and Restated Initial Order) and would not secure any pre-filing obligations.

40. There would be no material prejudice to any of the Applicant's creditors as a result of the proposed funding from the Purchaser and related charge.

Extension of the Stay Period

41. The Stay Period (as defined in the Amended and Restated Initial Order) currently expires on November 26, 2021. As part of this motion, the Applicant is seeking an extension of the Stay Period to and including January 28, 2022 under the CCAA Amended Transaction Approval Order or the Receivership Transaction Approval Order, to provide the Applicant time to advance next steps in the interests of its stakeholders.

42. Taking into account the proposed additional funding discussed above, the Applicant is expected to have sufficient funding to operate the Business during the proposed extension of the Stay Period.

43. No creditor will suffer any material prejudice as a result of the extension of the Stay Period.

44. The Applicant has been and is continuing to act in good faith and with due diligence.

General

45. The provisions of the CCAA and this Court's equitable and statutory jurisdiction thereunder.

46. The provisions of the CJA.

47. Rules 1.04, 1.05, 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

48. Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media regarding Expanded Operations of Ontario Superior Court of Justice dated May 13, 2020, as amended.

49. Changes to Commercial List Operations in light of COVID-19 dated March 16, 2020.

50. 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:

51. the November Affidavit and the exhibits thereto, filed

52. the October Affidavit and the exhibits thereto, filed;

53. the Affidavit of Dennis Mark McEwan sworn September 27, 2021 (the “**Initial Affidavit**”) and the exhibits thereto, filed;

54. the transcripts of the cross-examinations of Dennis Mark McEwan in respect of the Initial Affidavit, the October Affidavit and, if applicable, the November Affidavit, and the subsequent responses delivered in connection therewith, if any;

55. the Second Report of the Monitor dated October 14, 2021, and the appendices attached and supplements thereto, filed;

56. the Third Report of the Monitor, and the appendices attached thereto, to be filed; and

57. such further and other materials as counsel may advise and this Court may permit.

Date: November 12, 2021

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable November 26, 2021)

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF)	FRIDAY, THE 26 TH
)	
JUSTICE MORAWETZ)	DAY OF NOVEMBER, 2021

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

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Applicant

APPROVAL AND VESTING ORDER

THIS MOTION, made by McEwan Enterprises Inc. (the “**Applicant**”) for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by a purchase agreement between the Applicant and 2864785 Ontario Corp. (the “**Purchaser**”) dated September 27, 2021 (the “**Purchase Agreement**”) and attached as Exhibit “C” to the affidavit of Dennis Mark McEwan sworn November 12, 2021 (the “**McEwan Affidavit**”), as amended by the Amending Agreement dated November 12, 2021 (the “**Amending Agreement**”) and attached as Exhibit “D” to the McEwan Affidavit, and vesting in the Purchaser the Applicant’s right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement, as amended by the Amending Agreement (the “**Amended Purchase Agreement**”))), was heard this day by video conference at Toronto, Ontario.

ON READING the McEwan Affidavit, the affidavit of Dennis Mark McEwan sworn October 1, 2021, the Second Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor of the Applicant (the “**Monitor**”) dated October 14, 2021, the Third Report of

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the Monitor dated November 10, 2021, and such other materials filed in respect of this Motion, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for First Capital Holdings (Ontario) Corporation, counsel for The Cadillac Fairview Corporation Limited, counsel for Royal Bank of Canada and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of 10 sworn November 10, 2021, filed:

SERVICE

1. THIS COURT ORDERS that the service of the Notice of Motion and the Motion Record is hereby validated and hereby dispenses with further service thereof.

CAPITALIZED TERMS

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

AMENDED PURCHASE AGREEMENT AND TRANSACTION

3. THIS COURT ORDERS AND DECLARES that the Amended Purchase Agreement, the Transaction and all associated steps and transactions in respect thereof contemplated by the Amended Purchase Agreement are hereby approved, and the execution of the Amended Purchase Agreement by the Applicant is hereby authorized and approved, with such amendments as the Applicant and the Purchaser may deem necessary, with the consent of the Monitor. The Applicant is hereby authorized to complete the Transaction, subject to the terms of the Amended Purchase Agreement, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. THIS COURT ORDERS that notwithstanding anything else contained in the Amended Purchase Agreement, this Order, any other Order made in these proceedings or the provisions of the CCAA, neither the Applicant nor the Purchaser shall be permitted to remove any of the Assumed Real Property Leases (in this paragraph, the “**Assumed CF Leases**”) with The Cadillac Fairview Corporation Limited or its subsidiaries or affiliates (collectively, “**CF**”) from any of

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Schedules (1.1)(zz), 2.1(a) or 2.1(c) of the Amended Purchase Agreement, or otherwise designate any Assumed CF Lease as an “Excluded Asset”, “Excluded Contract” or “Excluded Obligation”, without the prior written consent of CF, or further Order of this Court on notice to CF.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Applicant’s right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all right, title, interest, priorities, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, assignments, judgments, options, levies, charges, other financial or monetary claims or encumbrances, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, by or of any and all persons or entities of any kind whatsoever (collectively, the “**Claims and Encumbrances**”, which term shall not include the Permitted Encumbrances) including, without limiting the generality of the foregoing, any encumbrances or charges created by (i) the Order of the Honourable Chief Justice Morawetz dated September 28, 2021, as amended and restated by the Order of the Honourable Chief Justice Morawetz dated October 7, 2021 (as may be amended, the “**Amended and Restated Initial Order**”), (ii) the Order of the Honourable Chief Justice Morawetz dated November 1, 2021 (the “**November 1 Order**”), or (iii) this Order, and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

7. THIS COURT ORDERS that the Applicant shall deliver, or direct to be delivered, to the Purchaser any funds remaining in the Cash Reserve on the terms set out in the Amended Purchase Agreement. In addition, the Applicant shall deliver, or direct to be delivered, to the Purchaser any funds that constitute Purchased Assets, which may be deposited into any account of the Applicant from time to time after the completion of the Transaction (for certainty, other than the Base Purchase Price).

8. THIS COURT ORDERS that the Monitor shall be authorized to hold the Cash Reserve on behalf of the Applicant and the Monitor is authorized and directed to:

- (a) pay from the Cash Reserve all outstanding and future reasonable fees and disbursements of the Monitor and counsel to the Monitor, in the name of and on behalf of the Applicant;
- (b) pay from the Cash Reserve amounts as directed by the Applicant in connection with post-closing, wind-up and CCAA proceeding related matters, in the name of and on behalf of the Applicant; and
- (c) thereafter deliver to the Purchaser any funds remaining in the Cash Reserve, as directed by the Applicant pursuant to and in accordance with the Amended Purchase Agreement and paragraph 7 of this Order,

and, in addition to the rights and protections afforded to the Monitor under the CCAA, Orders of this Court granted in these proceedings or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of carrying out 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, any other applicable legislation or any other Order granted in these proceedings.

9. THIS COURT ORDERS that the Monitor may rely on written notice from the Applicant and the Purchaser regarding fulfillment of conditions to closing under the Amended Purchase Agreement and shall incur no liability with respect to the delivery of the Monitor's Certificate, save and except for any gross negligence or wilful misconduct on its part.

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

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

12. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Applicant and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicant; and
- (d) the provisions of any federal or provincial statute,

the entering into of the Amended Purchase Agreement and the vesting of the Purchased Assets in the Purchaser shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13. THIS COURT ORDERS that from and after the Closing Date, all Persons (as defined in the Amended and Restated Initial Order) shall be deemed to have waived any and all defaults and events of default of the Applicant under the Assumed Contracts then existing or previously committed by the Applicant, or caused by the Applicant, as a result of the insolvency of the

Applicant, the commencement or continuation of these proceedings by the Applicant, by any of the provisions in the Amended Purchase Agreement or steps or transactions contemplated in the Amended Purchase Agreement (including, without limitation, the sale and transfer by the Applicant and the purchase and assumption by the Purchaser of each such Assumed Contract pursuant to the Amended Purchase Agreement) and/or this Order or any other Orders of this Court, and any and all notices of default or any step or proceeding taken or commenced in connection therewith shall be deemed to have been rescinded and of no further force or effect.

14. THIS COURT ORDERS that: (i) on or after the Closing Date, the Applicant is hereby permitted to execute and file articles of amendment or such other documents or instruments as may be required to change its legal names in accordance with section 6.10 of the Amended Purchase Agreement, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the applicable Governmental Authority without the requirement (if any) of obtaining director or shareholder approval pursuant to any federal or provincial legislation; and (ii) upon the official change to the legal name of the Applicant that is to occur as soon as reasonably practicable after the Closing Date in accordance with section 6.10 of the Amended Purchase Agreement, the name of the Applicant in the within title of proceedings shall be deleted and replaced with the new legal name of the Applicant, and any document filed thereafter in these proceedings (other than the Monitor's Certificate) shall be filed using such revised title of proceedings.

TRANSACTION DEPOSIT

15. THIS COURT ORDERS that, without limiting the generality of paragraph 3 of this Order, the Transaction Deposit is hereby approved and the Applicant is hereby authorized and empowered to obtain the Transaction Deposit from the Purchaser in order to finance the Applicant's working capital requirements, other general corporate purposes and capital expenditures, and the costs of these proceedings, provided that the Transaction Deposit shall not exceed \$2.25 million unless permitted by further Order of this Court.

16. THIS COURT ORDERS that the Transaction Deposit shall be on the terms and subject to the conditions set forth in the Amended Purchase Agreement.

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17. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such definitive documents (collectively, the “**Definitive Documents**”) as are contemplated by the Amended Purchase Agreement or as may be reasonably required by the Purchaser in respect of the Transaction Deposit, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, liabilities and obligations in respect of the Transaction Deposit to the Purchaser under and pursuant to the Amended Purchase Agreement and the Definitive Documents (if any) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

18. THIS COURT ORDERS that the Purchaser shall be entitled to the benefit of and is hereby granted a charge (the “**Transaction Deposit Charge**”) on the Property (as defined in the Amended and Restated Initial Order) to secure the Applicant’s obligations in respect of the Transaction Deposit to the Purchaser under and pursuant to the Amended Purchase Agreement and the Definitive Documents (if any). The Transaction Deposit Charge shall rank in priority to all Encumbrances (as defined in the Amended and Restated Initial Order) in favour of any Person, notwithstanding the order of perfection or attachment, except for (a) any secured creditor of the Applicant who did not receive notice of the motion for this Order and (b) the Encumbrances in favour of Royal Bank of Canada, and shall rank *pari passu* with the Interim Transaction Funding Lender’s Charge (as defined in the November 1 Order).

19. THIS COURT ORDERS that the Purchaser shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the BIA, with respect to the Transaction Deposit.

20. THIS COURT ORDERS that the filing, registration or perfection of the Transaction Deposit Charge shall not be required, and that the Transaction Deposit Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Transaction Deposit Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

21. THIS COURT ORDERS that except as otherwise expressly provided for herein, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Transaction Deposit Charge, unless the Applicant also obtains the prior written consent of the Purchaser or further Order of this Court.

22. THIS COURT ORDERS that the Definitive Documents (if any) and the Transaction Deposit Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Purchaser 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, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Transaction Deposit Charge nor the execution, delivery, perfection, registration or performance of the Amended Purchase Agreement or the Definitive Documents (if any) shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Purchaser shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Amended Purchase Agreement, the creation of the Transaction Deposit Charge, or the execution, delivery or performance of the Definitive Documents (if any); and
- (c) the payments made by the Applicant pursuant to this Order, the Amended Purchase Agreement or the Definitive Documents (if any), and the granting of the Transaction Deposit 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.

23. THIS COURT ORDERS that the Transaction Deposit 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.

EXTENSION OF THE STAY PERIOD

24. THIS COURT ORDERS that the Stay Period (as defined in the Amended and Restated Initial Order) be and is hereby extended to and including 11:59 p.m. on January 28, 2022.

MISCELLANEOUS

25. 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 and 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 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

Schedule “A” – Form of Monitor’s Certificate

Court File No. CV-21-00669445-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Chief Justice Morawetz of the Ontario Superior Court of (Commercial List) (the “**Court**”) dated September 28, 2021, Alvarez & Marsal Canada Inc. was appointed as the monitor (the “**Monitor**”) of McEwan Enterprises Inc. (the “**Applicant**”).

B. Pursuant to an Order of the Court dated November 26, 2021, the Court approved the purchase agreement made as of September 27, 2021, between the Applicant and 2864785 Ontario Corp. (the “**Purchaser**”), as amended by the amending agreement dated November 12, 2021 (collectively, the “**Amended Purchase Agreement**”), and provided for the vesting in the Purchaser of the Applicant’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Base Purchase Price plus an amount equal to Cure Costs, if any, pursuant to Section 2.7 of the Amended Purchase Agreement; (ii) that the conditions to Closing as set out in sections 6.6, 6.7

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and 6.8 of the Amended Purchase Agreement have been satisfied or waived by the Applicant and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Amended Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant and the Monitor have received, as applicable, (a) the Base Purchase Price and (b) an amount equal to Cure Costs, if any, payable on the Closing Date pursuant to the Amended Purchase Agreement;
2. The conditions to Closing as set out in sections 6.6, 6.7 and 6.8 of the Amended Purchase Agreement have been satisfied or waived by the Applicant and the Purchaser, as applicable; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

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Alvarez & Marsal Canada Inc., solely in its capacity as the Court-appointed Monitor of McEwan Enterprises Inc., and not in its personal or corporate capacity

Per: _____

Name:

Title:

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

Court File No. CV-21-00669445-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MCEWAN ENTERPRISES INC.**

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

GOODMANS LLP

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Tel: (416) 979-2211

Fax: (416) 979-1234

Lawyers for the Applicant

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Court File No. CV-21-00669445-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF)	FRIDAY, THE 26 TH
)	
JUSTICE MORAWETZ)	DAY OF NOVEMBER, 2021

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

**AND IN THE MATTER OF THE *COURTS OF JUSTICE
ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

Applicant

APPROVAL AND VESTING ORDER

THIS MOTION, made by McEwan Enterprises Inc. (the “**Applicant**”) for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by the form of purchase agreement (the “**Purchase Agreement**”) to be entered into between the Receiver (as defined below) and 2864785 Ontario Corp. (the “**Purchaser**”) and attached as Exhibit “E” to the affidavit of Dennis Mark McEwan sworn November 12, 2021 (the “**McEwan Affidavit**”), and vesting in the Purchaser the Applicant’s right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement), pursuant to the *Court of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”), subject to the conditions set forth in this Order, was heard this day by video conference at Toronto, Ontario.

ON READING the McEwan Affidavit, the affidavit of Dennis Mark McEwan sworn October 1, 2021, the Second Report of Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity

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as Court-appointed monitor of the Applicant (the “**Monitor**”) dated October 14, 2021, the Third Report of the Monitor dated November ●, 2021, and such other materials filed in respect of this Motion, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for First Capital Holdings (Ontario) Corporation, counsel for The Cadillac Fairview Corporation Limited, counsel for Royal Bank of Canada and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of ● sworn November ●, 2021, filed:

SERVICE

1. THIS COURT ORDERS that the service of the Notice of Motion and the Motion Record is hereby validated and hereby dispenses with further service thereof.

CAPITALIZED TERMS

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

AMENDED TITLE OF PROCEEDINGS

3. THIS COURT ORDERS that the title of these proceedings is hereby amended as follows:

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 MCEWAN ENTERPRISES INC.

AND IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

and any document filed hereafter in these proceedings shall be filed using such revised title of proceedings.

PURCHASE AGREEMENT AND TRANSACTION

4. THIS COURT ORDERS AND DECLARES that subject to:

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- (a) the appointment of [A&M] as receiver (in such capacity, the “**Receiver**”) of all the assets, properties and undertakings of MEI pursuant to section 101 of the CJA, for the purpose of implementing the Transaction (and not for purposes of operating or managing the business of the Applicant);
- (b) the Applicant making an assignment into bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”); and
- (c) the termination of the Applicant’s CCAA proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) (with subparagraphs (a), (b) and (c) of this paragraph 4 collectively referred to herein as the “**Approval Conditions**”),

the Purchase Agreement, the Transaction and all associated steps and transactions in respect thereof contemplated by the Purchase Agreement are hereby approved, and, subject to the satisfaction of the Approval Conditions, the execution of the Purchase Agreement by the Receiver is hereby authorized and approved, with such amendments as the Receiver, the Applicant and the Purchaser may deem necessary. The Receiver is hereby authorized to complete the Transaction, subject to the terms of the Purchase Agreement, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

5. THIS COURT ORDERS that notwithstanding anything else contained in the Purchase Agreement, this Order, any other Order made in these proceedings or any other proceedings commenced by the Applicant, or the provisions of the CCAA, the CJA or the BIA, neither the Applicant, the Receiver nor the Purchaser shall be permitted to remove any of the Assumed Real Property Leases (in this paragraph, the “**Assumed CF Leases**”) with The Cadillac Fairview Corporation Limited or its subsidiaries or affiliates (collectively, “**CF**”) from any of Schedules (1.1)(vv), 2.1(a) or 2.1(c) of the Purchase Agreement, or otherwise designate any Assumed CF Lease as an “Excluded Asset”, “Excluded Contract” or “Excluded Obligation”, without the prior written consent of CF, or further Order of this Court on notice to CF.

6. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the

“Receiver’s Certificate”), all of the Applicant’s right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all right, title, interest, priorities, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, assignments, judgments, options, levies, charges, other financial or monetary claims or encumbrances, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, by or of any and all persons or entities of any kind whatsoever (collectively, the **“Claims and Encumbrances”**, which term shall not include the Permitted Encumbrances) including, without limiting the generality of the foregoing, any encumbrances or charges created by (i) the Order of the Honourable Chief Justice Morawetz dated September 28, 2021, as amended and restated by the Order of the Honourable Chief Justice Morawetz dated October 7, 2021 (as may be amended, the **“Amended and Restated Initial Order”**), (ii) the Order of the Honourable Chief Justice Morawetz dated November 1, 2021 (the **“November 1 Order”**), or (iii) this Order, and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

7. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. THIS COURT ORDERS that the Receiver shall deliver, or direct to be delivered, to the Purchaser any funds remaining in the Cash Reserve on the terms set out in the Purchase Agreement. In addition, the Applicant or the Receiver, as applicable, shall deliver, or direct to be delivered, to the Purchaser any funds that constitute Purchased Assets, which may be deposited into any account of the Applicant from time to time after the completion of the Transaction (for certainty, other than the Base Purchase Price).

9. THIS COURT ORDERS that the Receiver shall be authorized to hold the Cash Reserve on behalf of the Applicant and the Receiver is authorized and directed to:

- (a) pay from the Cash Reserve all outstanding and future reasonable fees and disbursements of the Receiver and counsel to the Receiver, in the name of and on behalf of the Applicant;
- (b) pay from the Cash Reserve amounts in connection with post-closing and wind-up related matters, in the name of and on behalf of the Applicant; and
- (c) thereafter deliver to the Purchaser any funds remaining in the Cash Reserve pursuant to and in accordance with the Purchase Agreement and paragraph 8 of this Order,

and, in addition to the rights and protections afforded to the Receiver under any and all Orders of this Court granted in any proceedings commenced by the Applicant or as an officer of this Court, the Receiver shall incur no liability or obligation as a result of carrying out 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 Receiver by the CJA, any other applicable legislation or any other Order granted in the Applicant's proceedings.

10. THIS COURT ORDERS that the Receiver may rely on written notice from the Purchaser regarding fulfillment of conditions to closing under the Purchase Agreement and shall incur no liability with respect to the delivery of the Receiver's Certificate, save and except for any gross negligence or wilful misconduct on its part.

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

12. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicant and the Receiver are each authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall

be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

13. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Applicant and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicant; and
- (d) the provisions of any federal or provincial statute,

the entering into of the Purchase Agreement and the vesting of the Purchased Assets in the Purchaser shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. THIS COURT ORDERS that from and after the Closing Date, all Persons (as defined in the Amended and Restated Initial Order) shall be deemed to have waived any and all defaults and events of default of the Applicant under the Assumed Contracts then existing or previously committed by the Applicant, or caused by the Applicant, as a result of the insolvency of the Applicant, the commencement, continuation or termination of the Applicant's CCAA proceedings, the appointment of the Receiver over the assets, properties and undertakings of the Applicant, the Applicant's assignment into bankruptcy, by any of the provisions in the Purchase Agreement or steps or transactions contemplated in the Purchase Agreement (including, without limitation, the sale and transfer by the Receiver and the purchase and assumption by the Purchaser of each such Assumed Contract pursuant to the Purchase Agreement) and/or this Order or any other Orders of this Court, and any and all notices of default or any step or

proceeding taken or commenced in connection therewith shall be deemed to have been rescinded and of no further force or effect.

15. THIS COURT ORDERS that on or after the Closing Date, the Receiver is hereby permitted to execute and file articles of amendment or such other documents or instruments on behalf of the Applicant as may be required to change the legal name of the Applicant in accordance with section 6.10 of the Purchase Agreement, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the applicable Governmental Authority without the requirement (if any) of obtaining director or shareholder approval pursuant to any federal or provincial legislation.

ADDITIONAL INTERIM TRANSACTION FUNDING

16. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain additional interim funding (the “**Additional Interim Transaction Funding**”) from the Purchaser in order to finance the Applicant’s working capital requirements, other general corporate purposes and capital expenditures, and the costs of these proceedings and the receivership and BIA proceedings to be commenced by the Applicant in connection with the Transaction, provided that the Additional Interim Transaction Funding shall not exceed \$2.25 million unless permitted by further Order of this Court, and such Additional Interim Transaction Funding is hereby approved.

17. THIS COURT ORDERS that the Additional Interim Transaction Funding shall be on the terms and subject to the conditions set forth in the form of debenture attached as Exhibit “F” to the McEwan Affidavit with such amendments as the Applicant and the Purchaser may agree, with the consent of the Monitor (the “**Additional Debenture**”), which Additional Debenture is hereby approved.

18. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver the Additional Debenture and, subject to the Monitor’s consent, such definitive documents (collectively, the “**Definitive Documents**”) as are contemplated by the Additional Debenture or as may be reasonably required by the Purchaser in respect of the Additional Interim Transaction Funding, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, liabilities and obligations in respect of the Additional

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Interim Transaction Funding to the Purchaser under and pursuant to the Additional Debenture and the Definitive Documents (if any) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

19. THIS COURT ORDERS that the Purchaser shall be entitled to the benefit of and is hereby granted a charge (the “**Additional Interim Transaction Funding Lender’s Charge**”) on the Property (as defined in the Amended and Restated Initial Order) to secure the Applicant’s obligations in respect of the Additional Interim Transaction Funding to the Purchaser under and pursuant to the Additional Debenture and the Definitive Documents (if any). The Additional Interim Transaction Funding Lender’s Charge shall rank in priority to all Encumbrances (as defined in the Amended and Restated Initial Order) in favour of any Person, notwithstanding the order of perfection or attachment, except for (a) any secured creditor of the Applicant who did not receive notice of the motion for this Order and (b) the Encumbrances in favour of Royal Bank of Canada, and shall rank *pari passu* with the Interim Transaction Funding Lender’s Charge (as defined in the November 1 Order).

20. THIS COURT ORDERS that the filing, registration or perfection of the Additional Interim Transaction Funding Lender’s Charge shall not be required, and that the Additional Interim Transaction Funding Lender’s Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Additional Interim Transaction Funding Lender’s Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

21. THIS COURT ORDERS that except as otherwise expressly provided for herein, neither the Applicant nor the Receiver shall grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Additional Interim Transaction Funding Lender’s Charge, unless the Applicant or the Receiver, as applicable, also obtains the prior written consent of the Purchaser or further Order of this Court.

22. THIS COURT ORDERS that the Additional Debenture, the Definitive Documents (if any) and the Additional Interim Transaction Funding Lender’s Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Purchaser 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, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Additional Interim Transaction Funding Lender’s Charge nor the execution, delivery, perfection, registration or performance of the Additional Debenture or the Definitive Documents (if any) shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Purchaser shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting the creation of the Additional Interim Transaction Funding Lender’s Charge, or the execution, delivery or performance of Additional Debenture or the Definitive Documents (if any); and
- (c) the payments made by or on behalf of the Applicant pursuant to this Order, the Additional Debenture or the Definitive Documents (if any), and the granting of the Additional Interim Transaction Funding Lenders’ Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

23. THIS COURT ORDERS that the Additional Interim Transaction Funding Lender’s 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.

EXTENSION OF THE STAY PERIOD

24. THIS COURT ORDERS that the Stay Period (as defined in the Amended and Restated Initial Order) be and is hereby extended to and including 11:59 p.m. on January 28, 2022.

DRAFT: 1

MISCELLANEOUS

25. 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 Monitor and the Receiver (subject to being appointed pursuant to an Order of the Court) 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, the Monitor, as an officer of this Court, and the Receiver, as an officer of the Court (subject to being appointed pursuant to an Order of the Court) as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Monitor and the Receiver (subject to being appointed pursuant to an Order of the Court) and their respective agents in carrying out the terms of this Order.

Schedule “A” – Form of Receiver’s Certificate

[TITLE OF PROCEEDINGS TO BE INSERTED]

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Chief Justice Morawetz of the Ontario Superior Court of (Commercial List) (the “**Court**”) dated ●, 2021, [Alvarez & Marsal Canada Inc.] was appointed as the receiver (the “**Receiver**”) of the assets, properties and undertakings of McEwan Enterprises Inc. pursuant to section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, for the purpose of implementing the Transaction.

B. Pursuant to an Order of the Court dated November 26, 2021 (the “**Approval and Vesting Order**”), the Court approved, subject to the satisfaction of the Approval Conditions, the form of Purchase Agreement, authorized the Receiver to execute the Purchase Agreement and complete the Transaction, and provided for the vesting in the Purchaser of the Applicant’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming that (i) the payment by the Purchaser of the Base Purchase Price plus an amount equal to Cure Costs, if any, pursuant to Section 2.6 of the Purchase Agreement; (ii) the conditions to Closing as set out in sections 6.6, 6.7 and 6.8 of the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement or the Approval and Vesting Order, as applicable.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received (a) the Base Purchase Price and (b) an amount equal to Cure Costs, if any, payable on the Closing Date pursuant to the Purchase Agreement;
2. The conditions to Closing as set out in sections 6.6, 6.7 and 6.8 of the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; and

DRAFT: 1

3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

[Alvarez & Marsal Canada Inc.,] solely in its capacity as the Court-appointed Receiver of the assets, properties and undertakings of McEwan Enterprises Inc., and not in its personal or corporate capacity

Per: _____

Name:

Title:

DRAFT: 1

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

Court File No. CV-21-00669445-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

AND IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

GOODMANS LLP

Barristers & Solicitors
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Lawyers for the Applicant

DRAFT: 1

4

Court File No. CV-21-00669445-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

**AFFIDAVIT OF DENNIS MARK MCEWAN
(sworn November 12, 2021)**

I, Dennis Mark McEwan, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

I. INTRODUCTION

1. I am the President and Secretary of McEwan Enterprises Inc. ("**MEI**", the "**McEwan Group**" or the "**Company**"), a high-end, full-service restaurant, catering, gourmet grocery and events company based in the Greater Toronto Area ("**GTA**"). I am also the sole director of the Company. I have been involved in the restaurant business as chef and restaurant operator since approximately 1982. I am the founder of the McEwan Group, have been a director and officer of the Company (including predecessor entities thereof) since 1987, and currently hold a 45% equity interest in the Company. My personal name is associated with the Company and I lead the development, preparation and delivery of the culinary aspects of the Company's business.

2. I have been actively engaged in discussions and negotiations surrounding the proposed restructuring of MEI. I have knowledge of the matters deposed to herein, and where I have

relied upon other sources of information, I have stated the source of that information and believe such information to be true. The Company does not waive or intend to waive any applicable privilege by any statement herein.

3. On September 28, 2021, MEI sought and obtained an Initial Order (as amended and restated pursuant to an order of the Court dated October 7, 2021, the “**Amended and Restated Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) granting, among other things, a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Company and appointing Alvarez & Marsal Canada Inc. as the monitor of the Company (the “**Monitor**”).

4. The principal objectives of these CCAA proceedings are to ensure the ongoing operations of the McEwan Group for the benefit of its many stakeholders and to effectuate a restructuring of the Company and its Business in order to provide for a right-sized, sustainable Business going forward.

5. As discussed in previous affidavits filed in these proceedings, the McEwan Group has been facing extensive financial challenges as a result of certain underperforming and unsustainable locations and the lengthy and ongoing impacts of the COVID-19 pandemic. The Company needed to take steps to protect the Business and its many stakeholders, to obtain additional liquidity and to implement a restructuring of the McEwan Group that will enable the Business to survive for the benefit of many stakeholders.

6. As part of its restructuring efforts, the Company is seeking to complete the sale and transfer of substantially all of the assets and liabilities of the McEwan Group, with the exception of the Excluded Locations (the “**Transaction**”) to the current owners of the McEwan Group,

being myself and Fairfax Financial Holdings Limited, which Transaction has been amended as discussed further below.

7. A detailed overview of the McEwan Group, the Business, the Company's financial challenges, the circumstances leading to the commencement of these CCAA proceedings and the proposed Transaction, and the terms of the proposed Transaction is set out in my affidavit sworn September 27, 2021 (the "**Initial Affidavit**") and my affidavit sworn October 1, 2021 (the "**October Affidavit**") and not repeated in detail herein. Copies of the Initial Affidavit and the October Affidavit, each without exhibits, are attached hereto as Exhibits "A" and "B", respectively.

8. Unless otherwise indicated, capitalized terms used in this affidavit that are not otherwise defined in this affidavit have the meanings given to such terms in the Initial Affidavit or the October Affidavit, as applicable.

II. MEI'S ONGOING RESTRUCTURING EFFORTS

9. On October 15, 2021, the Company sought the Court's approval of the Transaction under section 36 of the CCAA. The Court issued its decision on November 1, 2021 (the "**November 1 Decision**"), finding that the Company had not satisfied the requirements of section 36(4) of the CCAA and the Court did not approve the Transaction.

10. Following the issuance of the November 1 Decision, the Company has reviewed and assessed its potential options and alternatives, has discussed and reviewed such matters with the Monitor and engaged in discussions and consulted with various stakeholders.

11. Among other things, the Company has further discussed with the Monitor in connection with potential alternatives in respect of advancing the Transaction, which the Company continues to believe is in the best interests of stakeholders, and discussed with the Monitor in further detail and expressed its views on the negative impacts that the time, costs and uncertainty associated with a sale or other further process would have on the Business and the significant associated risks.

12. The Company reviewed and considered potential changes to the Transaction and Purchase Agreement and determined to enter into an Amending Agreement with the Purchaser (the “**Amending Agreement**”), amending the Purchase Agreement and the proposed Transaction (the “**Amended Transaction**”), to provide for, among other things, (i) an increased Base Purchase Price of \$2,200,000 (increased from \$520,000), which cash would be paid to the Yonge & Bloor Landlord on closing of the Amended Transaction, and (ii) the assignment of certain equipment located at the McEwan Yonge & Bloor location to the Yonge & Bloor Landlord (the “**Yonge & Bloor Equipment**”).

13. The increased Base Purchase Price of \$2,200,000 is equivalent to the cash payment of one year’s worth of rent payments under the Yonge & Bloor Lease, inclusive of HST, as calculated based on the Company’s books and records, in consultation with the Monitor.

14. Based on the Company’s records, the original cost of the Yonge & Bloor Equipment in August to December 2018 was approximately \$2.5 million. I believe that the Yonge & Bloor Equipment would have substantial value to a replacement tenant at the McEwan Yonge & Bloor location and will greatly assist the Yonge & Bloor Landlord in re-leasing the premises to another food or grocery store operator.

15. A copy of the Purchase Agreement and the Amending Agreement are attached hereto as Exhibits “C” and “D”, respectively.

16. The Company also further reviewed and considered the Yonge & Bloor Landlord’s proposed form of purchase agreement and financing that had been submitted to the Monitor on October 11, 2021 (the “**Y&B Offer**”) and further discussed with the Monitor in connection therewith. The Company considered all of the terms, conditions, risks and benefits of the Y&B Offer on the basis of a third party purchaser not related to the Company (and on the assumption of the satisfaction of the due diligence condition contained in the Y&B Offer). The Company considered such offer in good faith, and on the basis that it would have represented the highest offer that would be made by any third party in a sale process. The Company compared such offer directly against the consideration, terms and benefits of the Amended Transaction. Based on such factors and considerations, the Company believes that the Amended Transaction provides superior consideration than the Y&B Offer and is the better alternative for the Business and the McEwan Group’s stakeholders.

17. The Company engaged in discussions with respect to a potential consensual resolution of matters with the Yonge & Bloor Landlord, and entered into a non-disclosure agreement with the Yonge & Bloor Landlord. I am advised by counsel to the Company that they provided a form of non-disclosure agreement to the Yonge & Bloor Landlord on October 11, 2021. I am further advised by counsel to the Company that the Yonge & Bloor Landlord provided initial comments back on November 6, 2021, and the parties worked to negotiate and finalize the agreement. The Company and the Yonge & Bloor Landlord executed the non-disclosure agreement on November 11, 2021.

III. POTENTIAL ALTERNATIVES

18. After thorough review and consideration of the proposed Amended Transaction, the terms of the Y&B Offer and the harm that a further process would cause to the Business, the Company remains of the view that the proposed Amended Transaction is the best executable transaction in the circumstances, and will create a viable, sustainable Business for the benefit of the McEwan Group's many stakeholders, including its employees, suppliers, customers and other key stakeholders, while the Y&B Offer, a further process and the added time, costs and uncertainty resulting from continuing to operate the Business under the CCAA each pose significant risks to the Business, as discussed further below. I remain concerned that the Business cannot support additional debt and costs associated with an extended process and increased risks to the Business.

19. As discussed in prior affidavits, the McEwan Group's lease obligations are one of its primary operating expenses and uses of cash. Following the commencement of the COVID-19 pandemic, the Company entered into lease amending arrangements with the Cadillac Fairview Entities and with the Yonge & Bloor Landlord providing for various lease concessions, including rent abatements, rate deferrals and/or reduced minimum rent amounts.

20. Following the commencement of these CCAA proceedings by the Company, the Yonge & Bloor Landlord has taken the position that the Company should now be paying the full previous contractual rent amounts, notwithstanding the amending arrangements the Company believes remain in place among the parties. As reported by the Monitor in these proceedings, the Company has funded the disputed amounts to the Monitor to be held in trust. The Company has

at this time not closed the McEwan Yonge & Bloor location and continues to incur the ongoing cash losses at this location.

21. The Cadillac Fairview Entities have now advised the Company that the reduced rent arrangements between the parties will only be available to the Company upon completion of its proposed transaction with the Purchaser, and in the interim, the Company has agreed with the Cadillac Fairview Entities that it will pay full contractual rent for the period since the commencement of these CCAA proceeding.

22. All such rent payments increase the ongoing losses of the McEwan Group, and there is an urgency to complete a transaction that will reduce the Company's obligations and stabilize the Business for the benefit of all stakeholders. I believe that time and costs to complete a transaction is a key a material issue for the Company and its stakeholders.

23. Based on the current facts and circumstances facing the Company; the ongoing, significant losses being incurred by the Business; the imminent need for additional liquidity; the results of the November 1 Decision; discussions with key stakeholders, including RBC, the Cadillac Fairview Entities, and numerous suppliers, customers and employees; the terms of the Yonge & Bloor Landlord's offer; and discussions with the Monitor and its legal counsel, the Company believes that the two following alternatives provide the best potential chance to protect the Business and its stakeholders, each as discussed further below:

- a) seeking approval of the Amended Transaction pursuant to the CCAA (the **"CCAA Amended Transaction Alternative"**); and

- b) seeking approval of the Amended Transaction pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”), subject to (i) the appointment of a receiver over the property, assets and undertakings of the Company for purposes of implementing the Amended Transaction, (ii) the assignment of MEI into bankruptcy, and (iii) the termination of the CCAA proceedings (the “**Receivership Transaction Alternative**”).

24. The Company strongly believes that any additional process that takes additional time will result in additional costs and risks to the Business that the Company cannot bear. The upcoming holiday season is a key period for the Business to generate revenues to offset in part the significant ongoing losses the Company is incurring at this time. I believe that the uncertainty that a further process will create from the perspective of suppliers and customers will negatively impact the Business during this key time. A further process will also increase the professional fees and expenses being incurred by the Company, adding to the debt burden of the Company and impacting the potential viability of the Business.

(A) CCAA Amended Transaction Alternative

25. The Company believes that based on (a) its good faith efforts to, among other things, review and consider all matters, evaluate the proposed Y&B Offer, negotiate and enter into a non-disclosure agreement with the Yonge & Bloor Landlord, and advance discussions with the Yonge & Bloor Landlord, and (b) the significantly increased consideration under the Amended Transaction, the Company satisfies the requirements under sections 36(3) and 36(4) of the CCAA in respect of the Amended Transaction.

(B) **Receivership Transaction Alternative**

26. In the alternative, if the Court does not approve the Amended Transaction pursuant to the CCAA, the Company, on advice from legal counsel, believes there is broader discretion for the Court to consider all matters related to the Amended Transaction pursuant to the CJA.

27. A copy of the form of purchase agreement that the Company proposes would be entered into as part of implementing the Amended Transaction pursuant to the Receivership Transaction Alternative is attached hereto as Exhibit “E” (the “**Receivership Purchase Agreement**”). The Receivership Purchase Agreement is based on the Purchase Agreement, as amended by the Amending Agreement, subject to applicable changes in connection with implementing such transaction under the Receivership Transaction Alternative.

28. The Company believes that it is critical to preserve stability for the Business for the benefit of all stakeholders, and that proceeding with the Amended Transaction pursuant to the Receivership Transaction Alternative is in the best interests of the McEwan Group and its many stakeholders in the event the Amended Transaction is not approved pursuant to the CCAA.

29. The Amended Transaction implemented pursuant to the Receivership Transaction Alternative would guarantee the same consideration and recovery to creditors, and provide the much needed stability, certainty and funding to the Business that is a key issue for many stakeholders of the McEwan Group

IV. ADDITIONAL FUNDING

30. The McEwan Group will require additional funding to continue operating the Business during these proceedings.

31. The Purchaser has agreed to provide additional funding up to a maximum amount of \$2.25 million in connection with the approval of the Amended Transaction pursuant to the CCAA Amended Transaction Alternative or the Receivership Transaction Alternative, for use by the McEwan Group, subject to Court approval of such funding and the granting of a Court-ordered charge over the property, assets and undertaking of the McEwan Group to secure the repayment of such funding to the Purchaser should the Amended Transaction not be completed.

32. The terms of such additional funding would be subject to the terms of the Purchase Agreement in the event the Amended Transaction proceeds under the CCAA Amended Transaction Alternative, or subject to the terms of the form of debenture attached hereto as Exhibit “F” in the event the Amended Transaction proceeds under the Receivership Transaction Alternative.

33. The proposed charge in favour of the Purchaser would rank behind the Administration Charge and Directors’ Charge (each as defined in the Amended and Restated Initial Order) and would not secure any pre-filing obligations.

34. The Company believes there would be no material prejudice to any of its creditors as a result of the proposed funding from the Purchaser and related charge.

V. STAY EXTENSION

35. The Stay of Proceedings granted under the Amended and Restated Initial Order, as extended by further orders of the Court, expires on November 26, 2021 (the “**Stay Period**”).

36. As part of this motion, the Company is seeking a further extension of the Stay Period to and including January 28, 2022 under the CCAA Amended Transaction Alternative or the Receivership Transaction Alternative to provide the Applicant time to advance next steps in the interests of its stakeholders.

37. Taking into account the proposed additional funding discussed above, the Company is expected to have sufficient funding to operate the Business during the proposed extension of the Stay Period.

38. The extension of the Stay Period is necessary in order to maintain continued stability for the Company while it works diligently and in good faith to pursue its restructuring efforts.

39. I do not believe that any creditor will suffer any material prejudice as a result of the extension of the Stay Period.

VI. CONCLUSION

40. The Company is seeking to advance the best alternatives available to the McEwan Group that will first and foremost protect the Business and protect stakeholders.

41. The Company and the Business are relatively small, particularly compared to the ongoing costs being incurred as part of these proceedings and the ongoing operating losses that need to be funded to support the Business through a further period of COVID-19 related challenges.

42. I have personally been involved with this Business for over 30 years. I have worked with many of the Company's suppliers and employees for 10+, 15+ and even 20+ years in some cases. These are stakeholders who will be harmed if a reasonable solution that will protect the Business cannot be implemented in the near term.

43. I believe that proceeding with the Company's proposed Amended Transaction, whether pursuant to the CCAA or pursuant to the alternative receivership process, is in the best interests of all stakeholders, fairly balances all applicable considerations, and is fair and reasonable under the current circumstances and given the challenges facing the Company.

SWORN before me over
videoconference by Dennis Mark
McEwan stated as being located in the
Village of Thornbury in the Province of
Ontario, before me at the City of
Toronto in the Province of Ontario, on
November 12, 2021, in accordance with
O. Reg 431/20, Administering Oath or
Declaration Remotely

Caroline Descours

A Commissioner for taking affidavits

Caroline Descours LSO#: 58251A

Dennis Mark McEwan

Dennis Mark McEwan

A

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF DENNIS MARK MCEWAN
SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE
THIS 12th DAY OF NOVEMBER, 2021

Caroline Descours

Commissioner for Taking Affidavits

Court File No. CV-21-00669445-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

**AFFIDAVIT OF DENNIS MARK MCEWAN
(sworn September 27, 2021)**

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Court File No. CV-21-00669445-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

**AFFIDAVIT OF DENNIS MARK MCEWAN
(sworn September 27, 2021)**

I, Dennis Mark McEwan, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

I. INTRODUCTION

1. I am the President and Secretary of McEwan Enterprises Inc. (“**MEI**”, the “**McEwan Group**” or the “**Company**”), a high-end, full-service restaurant, catering, gourmet grocery and events company based in the Greater Toronto Area (“**GTA**”). I am also the sole director of the Company. I have been involved in the restaurant business as chef and restaurant operator since approximately 1982. I am the founder of the McEwan Group, have been a director and officer of the Company (including predecessor entities thereof) since 1987, and currently hold a 45% equity interest in the Company. My personal name is associated with the Company and I lead the development, preparation and delivery of the culinary aspects of the Company’s business.

2. I have been actively engaged in discussions and negotiations surrounding the proposed restructuring of MEI. I have knowledge of the matters deposed to herein, and where I have

relied upon other sources of information, I have stated the source of that information and believe such information to be true. The Company does not waive or intend to waive any applicable privilege by any statement herein.

3. This Affidavit is sworn in support of an application for an initial order (the “**Initial Order**”) in respect of the Company pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

4. The principal objectives of these CCAA proceedings are to ensure the ongoing operations of the McEwan Group for the benefit of its many stakeholders and to effectuate a restructuring of the Company and its Business (as defined below) in order to provide for a right-sized, sustainable Business going forward. As part of its restructuring efforts pursuant to these CCAA proceedings, the Company intends to seek to complete the sale and transfer of the restructured Business pursuant to the proposed Transaction (as defined and further described below). The proposed Transaction contemplates the transfer of substantially all of the assets and the assumption of substantially all of the liabilities of the Company, with the exception of certain excluded agreements and liabilities, to the current owners of MEI, being myself and Fairfax (as defined below).

5. The continuation of the McEwan Group under the ownership of its current shareholders is a critical aspect of any proposed restructuring. My continued involvement as chef and operator of the McEwan Locations (as defined below), which I believe to be fundamental to the value and success of the Business going forward, is premised on a continuation of my partnership with Fairfax as co-owners of the McEwan Group.

6. The Company has made extensive efforts, with the assistance of its advisors, to seek consensual arrangements with its landlords in respect of its leases, to improve lease terms and reduce those lease obligations that are unsustainable and/or to exit certain locations, but has been unable to achieve a comprehensive out-of-court resolution that would result in the long term viability of the McEwan Group and its Business.

7. The Company believes that the Transaction is the best executable transaction that would be available to the Company in the circumstances, and will create a sustainable Business for its key stakeholders, including its employees, suppliers, customers and other key stakeholders. The Company is not seeking Court-approval of the Transaction at this time. Should the initial CCAA relief be granted by the Court, MEI intends to bring a motion on a future date to be set by this Court to, among other things, seek Court approval of the Transaction (the “**Sale Approval Motion**”).

II. OVERVIEW

8. The McEwan Group is recognized as one of Canada’s premier hospitality companies with a portfolio of innovative, high-end restaurants, gourmet grocery stores, gourmet food-halls and catering services (the “**Business**”) operating primarily in the GTA. The McEwan Group currently operates six restaurants (collectively, the “**McEwan Restaurants**”), two food-hall locations and one gourmet grocery location (collectively, the “**McEwan Grocery Locations**”, and together with the McEwan Restaurants, the “**McEwan Locations**”).

9. Many of the McEwan Locations have been historically successful and profitable; however, as discussed further below, certain locations have been underperforming for a number of years, causing an overall significant strain on the Company’s profitability and liquidity. These

underperforming locations, even without taking into account the impacts of the COVID-19 pandemic (discussed below), have proven to not be sustainable based on their negative financial results. As a result of these financial challenges, in March 2020, the Company's shareholders provided approximately \$1.1 million of equity financing to support the operations of the Business, which funding was determined to be required even prior to the impacts of the COVID-19 pandemic.

10. Commencing in March 2020, the significant and detrimental impacts of the COVID-19 pandemic on the restaurant industry in the GTA as a whole greatly exacerbated the Company's pre-existing financial and liquidity challenges. Due to various governmental declarations of emergency, stay-at-home orders and mandated restaurant closures, the McEwan Restaurants have been closed for approximately 10 cumulative months of the last approximately 18 months, and have otherwise operated at limited capacity for dine-in service, or outdoor dining only, for an extended period of time. The McEwan Grocery Locations have also been impacted by the COVID-19 pandemic, with two of the three McEwan Grocery Locations in particular being negatively affected by greatly reduced foot-traffic at their locations and much lower sales. As a result, the Business has experienced significantly reduced revenues for 2020 and 2021.

11. The Company's extensive cost-saving and cash conservation measures implemented to address the COVID-19 challenges, landlord rent concessions, government subsidies and support programs (all discussed further below), the Company's existing Secured Credit Facilities (as defined below) and shareholder equity financing provided in early 2020 have been insufficient to address the Company's liquidity needs during the COVID-19 pandemic to date, and the Company has required additional funding in order to be able to satisfy its operational needs. As a result, the Company needed to obtain additional financing, which it was able to obtain from

one of its shareholders, Fairfax, by way of a number of unsecured loans provided in 2020 and 2021, further increasing the Company's overall debt obligations.

12. While the government-mandated restrictions on dining began to be eased most recently in June and July 2021, the McEwan Restaurants continue to operate at reduced capacity, and a number of the McEwan Locations continue to suffer from reduced foot-traffic and significantly lower sales compared to pre-pandemic levels. There remains much uncertainty with respect to the ongoing COVID-19 pandemic and its continued impact on the McEwan Group and the restaurant industry as a whole. The Company expects that it will require additional funding to continue operating until the COVID-19 related factors cease negatively impacting the Business and revenues improve more significantly.

13. Commencing in the summer of 2021, the Company engaged legal counsel to assist it in reviewing and assessing its various potential options and alternatives, in light of the financial difficulties facing the Company, including its liquidity issues and the ongoing challenges and impacts of the COVID-19 pandemic. The Company reviewed and considered various potential alternatives with the assistance of its legal counsel, including, among others, further negotiations with landlords, additional financing (debt or equity), reducing the size of the Business, a sale of the Business, and combinations thereof.

14. After extensive review and consideration of its circumstances, and its options and alternatives, and following efforts to reach consensual arrangements with its landlords, the Company determined that the best available alternative that could be implemented in the circumstances that would preserve the value of the Business for the benefit of the Company's many stakeholders, would be a sale of substantially all of the assets of the Business to the

McEwan Group's current shareholders pursuant to the proposed Transaction, and the continuation of the Business with a reduced number of McEwan Locations, to result in a right-sizing of the Business on a sustainable basis going forward.

15. Having regard to its financial circumstances and ongoing challenges, the Company has determined that it is necessary to seek protection under the CCAA in order to provide stability for the Business, while the Company advances its efforts to restructure and right-size the Business, including pursuing the proposed Transaction. As noted above, MEI intends to bring the Sale Approval Motion on a future date to be set by this Court to seek approval of the proposed Transaction.

16. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency.

III. BACKGROUND

(A) The Business

(i) Overview of the Business

17. As discussed above, the McEwan Group operates the Business – a high-end, full-service restaurant, catering, gourmet grocery and events company, primarily in the GTA. The McEwan Group conducts the Business out of six McEwan Restaurants and three McEwan Grocery Locations under the following brand names: (i) *Bymark*, (ii) *One Restaurant*, (iii) *Fabbrica*, (iv) *Diwan*, (v) *McEwan Fine Foods*, and (vi) *McEwan Catering*.

18. The McEwan Group currently operates the following six McEwan Restaurants:

- a) ***Bymark:*** Bymark, opened in 2001, is a 299-seat capacity (including patio capacity), high-end gourmet restaurant located in the atrium of the TD Towers in Toronto's financial district.
- b) ***ONE Restaurant:*** ONE Restaurant, opened in 2007, is a 355-seat capacity (including patio capacity), contemporary restaurant located at the Hazelton Hotel, a luxury hotel in Yorkville. The McEwan Group, through a wholly-owned subsidiary, owns a 50% interest in the ONE Restaurant Partnership (as defined below) that owns the ONE Restaurant, as discussed further below, and I lead the operations of the ONE Restaurant. Profits from the ONE Restaurant are shared among MEI and its partners pursuant to the terms of the ONE Restaurant Partnership Agreements (as defined below).
- c) ***Fabbrica Don Mills:*** Fabbrica Don Mills, opened in 2010, is a 210-seat capacity (including patio capacity) Italian restaurant located at the Shops at Don Mills outdoor shopping mall. Fabbrica Don Mills was the first Fabbrica location.
- d) ***Fabbrica TD:*** Fabbrica TD, opened in 2018, is located in the concourse of the TD Towers in Toronto's financial district, offering a "grab & go" menu. It is the second Fabbrica location.
- e) ***Fabbrica Thornbury:*** Fabbrica Thornbury, opened in 2018, is a 136-seat capacity (including patio capacity) restaurant located in Thornbury, Ontario. It is the third Fabbrica location.

- f) **Diwan:** Diwan, is a 174-seat capacity (including patio capacity) restaurant located at the Aga Khan Museum, offering a wide-ranging menu including Middle Eastern, North African and South Asian cuisine. MEI began managing Diwan in 2015, which had previously been managed by another operator. MEI also operates a food kiosk and provides exclusive catering services for events held at the Aga Khan Museum. Profits from the Diwan restaurant and kiosk are divided between the McEwan Group and the Aga Khan Museum pursuant to the contractual arrangements between the parties, and the Company pays a commission to the Aga Khan Museum on catering sales.
19. The McEwan Group also operates the following three McEwan Grocery Locations:
- a) **McEwan Don Mills:** McEwan Don Mills, opened in 2009, is located at the Shops at Don Mills outdoor shopping mall and is the McEwan Group's flagship gourmet marketplace.
- b) **McEwan TD:** McEwan TD, opened in 2015, is located in the concourse of the TD Towers in Toronto's financial district.
- c) **McEwan Yonge & Bloor:** McEwan Yonge & Bloor is the newest addition to the McEwan Group, opening in 2019 and located in One Bloor. The store includes, among other things, an all-day café, on-site butcher, bakery, patisserie, deli, produce section, carving station, hot & cold tables, sandwich station and sushi bar.
20. The McEwan Group's catering business ("**McEwan Catering**"), provides catering services for special and corporate events, as well as virtual cooking demonstrations. The

McEwan Catering services are currently operated primarily out of McEwan Don Mills and McEwan Yonge & Bloor, and are a preferred or offered caterer in various locations in the GTA.

21. In addition, the McEwan Group also operates a gifts and floral business, including the sale of floral arrangements and gift baskets for special and corporate events.

22. Commencing in March 2020, the Company also launched its partnership with Goodfood Market Corp., one of the biggest Canadian subscription food-delivery services for the production of ready-to-eat meals, which partnership is ongoing.

23. Finally, the Company generates additional revenue from the “McEwan” brand, including my involvement with the Food Network (Top Chef Canada), media appearances, sponsorships and brand ambassador work.

(ii) Suppliers

24. The McEwan Group’s key suppliers are comprised primarily of various produce, meat, seafood and other food suppliers. The Company has strong relationships with its many suppliers. Suppliers typically require payment terms of 20-30 days, and as at August 31, 2021, there was approximately \$2.3 million of trade payables outstanding (for certainty, not taking into account the ONE Restaurant).

25. It is critical to the preservation of the Business that the McEwan Group is able to continue its relationships with key suppliers without disruption and on existing terms while the Company pursues its restructuring efforts pursuant to these proceedings, including the proposed Transaction. The proposed Initial Order authorizes the Company to pay pre-filing amounts to

suppliers, with the consent of the Monitor (as defined below), if such payments are necessary or desirable to prevent disruption to the operation of the Business.

(iii) Customers

26. Customers of the McEwan Group can pay for dining or catering services or purchase products using a number of payment methods, including payment by cash, credit card and gift cards. Customer credit card payments in respect of the Business are processed by Chase Paymentech, Fidelity Payment Services and Worldpay. The related credit card processing fees are charged to the Company monthly in arrears and are settled on the first business day of each month through the application of funds in the MEI bank accounts at RBC (as defined below). The proposed Initial Order authorizes the Company to make payments to providers of payment processing services (including credit card processing services) in respect of services supplied to the Company prior to the date of the Initial Order.

27. The McEwan Group uses the customer loyalty program “Five Stars” (the “**Customer Program**”) at the McEwan Grocery Locations to generate sales revenue and maximize customer loyalty. The Customer Program is a points based program that provides certain discounts to customers based on the level of points obtained. The proposed Initial Order provides that the Company is authorized to continue to honour and fulfill its obligations in respect of the Customer Program during the CCAA proceedings, including those relating to the pre-filing period.

28. The McEwan Group also operates a prepaid gift card program. The gift cards are sold by the Company at the McEwan Locations and online through the McEwan Group’s website. The gift cards are redeemable at the McEwan Locations. The proposed Initial Order provides that the

Company is authorized to honour its obligations in respect of gift cards issued prior to or after the granting of the Initial Order. The McEwan Group intends to continue selling gift cards following the commencement of these CCAA proceedings.

(iv) Employees

29. The McEwan Group currently employs approximately 268 employees across eight McEwan Locations (not including ONE Restaurant), with 213 on a full-time basis and 55 on a part-time basis. An additional 128 employees are employed at ONE Restaurant and are employees of the ONE Restaurant Partnership. A significant majority of the Company's employees are paid on an hourly basis, and the Company from time to time supplements its workforce with part-time and seasonal employees at peak times. None of the Company's employees are unionized.

30. During the COVID-19 pandemic, in aggregate approximately 200 employees, including 130 employees at ONE Restaurant and 70 employees at other McEwan Locations, were laid off as government mandated restaurant closures significantly reduced the operations of the Business over an extended period of time. To date, approximately 173 employees, including 118 employees at the ONE Restaurant and 55 employees at other McEwan Locations, have been re-hired as outdoor and dine-in services began to re-open in the GTA in June and July 2021, respectively.

31. The Company uses the services of Desjardins Employer Solutions, a payroll services provider, to manage payroll functions on behalf of the McEwan Group, including payroll processing and the collection and remittance of all related source deductions. The Company is current with respect to the remittance of employee source deductions.

32. The Company sponsors an employee benefit plan (including medical, dental and vision care and other benefits) for eligible employees. The benefit plan is administered by Manulife Financial. The McEwan Group does not maintain any pension plans.

33. The proposed Initial Order authorizes the Company to make all outstanding and future employee compensation and benefit payments in the ordinary course of business and consistent with existing compensation policies and arrangements.

(B) Corporate Structure

34. MEI is a private company incorporated under the laws of Ontario and is headquartered in Toronto with its registered and head office located at 38 Karl Fraser Road, Toronto, Ontario.

35. MEI is owned by Fairfax Financial Holdings Limited (“**Fairfax**”), through one of its subsidiaries, which holds a 55% equity interest in MEI, and by McEwan Holdco Inc. (“**McEwan Holdco**”), which owns a 45% equity interest in MEI. I am the sole shareholder of McEwan Holdco. Fairfax initially purchased a 45% equity interest in the McEwan Group in 2015, and has subsequently increased its ownership interest to 55%.

36. MEI was formed by the amalgamation of the following corporations on October 1, 2017 to continue as MEI: 2456570 Ontario Inc., 2004995 Ontario Limited, McEwan One Mark Inc., 2220223 Ontario Inc., 2416668 Ontario Inc.; 2481520 Ontario Inc., North 44 Inc. (which had previously amalgamated with 1285788 Ontario Limited on July 31, 2015, to continue as North 44 Inc.) and McEwan Enterprises Inc. (which had previously amalgamated with McEwan Restaurant Consultants Inc. on January 1, 2017, to continue as McEwan Enterprises Inc.).

37. MEI has one wholly-owned subsidiary, 2860117 Ontario Limited (the “**McEwan Subsidiary**”), whose sole assets are comprised of partnership interests in The Hazleton Food Services Partnership (the “**ONE Restaurant Partnership**”), a joint-venture established pursuant to a Partnership Agreement dated June 1, 2005 (the “**ONE Restaurant Partnership Agreement**”), for the purposes of providing food and beverage services at The Hazelton Hotel in Yorkville, and the McEwan Subsidiary’s sole obligations are those relating to the ONE Restaurant Partnership. The McEwan Subsidiary holds a 50% interest in the ONE Restaurant Partnership and the other 50% interest is owned by Dawsco (Food Services) Limited, Starwood (Food Services) Limited and Yorkset (Food Services) Limited carrying on business under the firm name of DSY Food Services Partnership (the “**ONE Restaurant Partner**”). The McEwan Subsidiary assumed its interest in the ONE Restaurant Partnership from MEI in August 2021 with the consent of the ONE Restaurant Partner.

38. The McEwan Subsidiary is not an applicant in these proceedings. The Company is requesting that this Court exercise its discretion to extend the requested stay of proceedings (discussed further below) in favour of the McEwan Subsidiary pursuant to the proposed Initial Order.

(C) **Financial Position of the Company**

39. Copies of the Company’s audited financial statements for the year ended December 31, 2020 (the “**2020 Year-End Financials**”) and unaudited financial statements for the six-month period ended June 30, 2021 (the “**2021 6-Month Financials**”) are attached hereto as Exhibits “A” and “B” respectively.

40. Based on the Company's 2020 Year-End Financials, its assets as at December 31, 2020, had a stated book value of approximately \$24.3 million, including (all amounts approximate): \$0.5 million cash; \$0.7 million of trade and other receivables; \$0.2 million of prepaid expenses; \$1.2 million of inventory; \$2.2 million of deferred tax assets; \$6.7 million of property and equipment; \$11.8 million of right-of-use assets; and \$1.0 million of investment in joint venture.

41. Based on the Company's 2020 Year-End Financials, as at December 31, 2020, the Company had total liabilities of approximately \$25.1 million, comprised of (all amounts approximate): (a) \$7.7 million of current liabilities, including: \$3.1 million of trade and other payables; \$0.5 million of deferred revenue; \$1.8 million of borrowings; and \$2.4 million of lease liabilities (including capital and real property lease obligations); and (b) \$17.4 million of long-term liabilities, including: \$1.1 million of borrowings and \$16.3 million of lease liabilities (including capital and real property lease obligations). The aggregate lease liabilities of \$18.7 million are comprised of \$1.9 million of capital lease liabilities and \$16.7 million of real property lease obligations.

42. The Company's 2020 Year-End Financials included a going concern note by the auditor, noting the "existence of material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern." The 2020 Year-End Financials note that:

In March 2020, the outbreak of the novel coronavirus, COVID-19, resulted in governments worldwide enacting emergency measures to combat the spread of the virus. These measures, which include the implementation of travel bans, self-imposed quarantine periods, lockdowns and social distancing, have caused material disruption to businesses globally, including the Company, resulting in an economic slowdown. Due to these recent developments, the Company temporary suspended operations for restaurants and catering services on March 18, 2020.

As a result of these developments, there are material uncertainties associated with the resolution of the liquidity challenges currently facing the Company that may cause significant doubt as to the ability of the Company to meet its obligations as they come due. Currently, the impact on the restaurant, food retail and food service industries if COVID-19 persists for an extend period is unknown. The Company's ability to continue as a going concern is dependent on its ability to return to normal operations, to generate positive cash flows from operations and to obtain financing...

The Company's audited financial statements for the year ended December 31, 2019, also included a similar note.

43. Based on the Company's 2021 6-Month Financials, its assets as at June 30, 2021, had a stated book value of approximately \$22.5 million, including (all amounts approximate): \$0.3 million of cash; \$0.4 million of trade and other receivables; \$0.1 million of prepaid expenses; \$1.2 million of inventory; \$2.4 million of deferred tax assets; \$6.1 million of property and equipment; \$10.9 million of right-of-use assets; and \$1.0 million of investment in joint venture.

44. Based on the Company's 2021 6-Month Financials, as at June 30, 2021, the Company had total liabilities of approximately \$25.4 million, comprised of (all amounts approximate): \$8.3 million of current liabilities, including \$3.6 million of trade and other payables; \$0.5 million of deferred revenue; \$2.5 million of borrowings and \$1.7 million of lease liabilities (including capital and real property lease obligations); and (b) \$17.1 million of long-term liabilities, including: \$1.3 million of borrowings and \$15.9 million of lease liabilities (including capital and real property lease obligations). The aggregate lease liabilities of \$17.6 million are comprised of \$1.7 million of capital lease liabilities and \$15.9 million of real property lease obligations.

(D) Liabilities and Obligations

45. The Company's principal liabilities and obligations are summarized and described in the section below.

46. As at December 31, 2020, based on the Company's audited 2020 Year-End Financials, MEI had (all amounts approximate) \$4.7 million of total borrowings on the balance sheet categorized as either current or long-term liabilities, which included: (a) the RBC Mortgages (as defined below) of \$1.0 million, comprised of the current liability portion of \$0.1 million and the long-term liability portion of \$0.9 million; (b) Fairfax Loans (as defined below) of \$1.6 million; (c) the Don Mills Fixtures Loan (as defined below) of \$0.24 million, comprised of the current liability portion of \$0.06 million and the long-term liability portion of \$0.19 million; (d) the CEBA Loan (as defined below) of \$0.04 million; and (e) \$1.9 million of lease liabilities related to the RBC Equipment Leases (as defined below), which were included in total borrowings (as set forth in Note 12 of the 2020 Year-End Financials). The balance of the Company's aggregate short and long-term lease liabilities were comprised of rental lease liabilities, excluded from total borrowings.

47. In aggregate, as at August 31, 2021, the Company had the following liabilities outstanding (all amounts approximate) as discussed in further detail below:

Type of Liabilities	Approximate Amount Outstanding as date hereof	Paragraph reference below
<u>Secured Loans:</u>		
Secured Credit Facilities (including the revolving facilities and credit cards, but excluding undrawn letter of credit) (with RBC)	\$239,000	Paragraph 53
Secured Capital Lease Obligations (with RBC)	\$1,726,000	Paragraph 64
Don Mills Fixtures Loan	\$198,000	Paragraph 61
HASCAP Loan (with RBC)	\$250,000	Paragraph 73
<u>Unsecured Loans:</u>		
RBC Mortgages	\$899,000	Paragraph 55
Fairfax Loans	\$2,314,000	Paragraph 71
CEBA Loan	\$60,000	Paragraph 72
<u>Operating/Other Liabilities:</u>		
Overdue and/or Deferred Rent	\$539,000	Paragraph 67
Trade Accounts	\$2,330,000	Paragraph 76
Customer Gift Cards	\$488,000	Paragraph 76
Accruals and vacation payable	\$1,207,000	Paragraph 77

48. As discussed herein, the proposed Transaction provides for the assumption of substantially all of the liabilities and obligations of the Company, with the exception of certain

liabilities or agreements excluded pursuant to the Purchase Agreement (as defined below), as discussed further below. It is currently estimated that approximately \$11 million of outstanding liabilities would be assumed pursuant to the proposed Transaction (calculated based on amounts outstanding as at August 31, 2021, and taking into account additional amounts expected to be incurred and additional funding requirements anticipated until the closing of the Transaction, based on a closing date of October 31, 2021).

(i) Secured Credit Facility

49. The Company has obtained financing from Royal Bank of Canada (“**RBC**”) under certain senior secured revolving credit facilities (collectively, the “**Secured Credit Facilities**”) for the working capital and general corporate requirements of the Business. The Secured Credit Facilities are provided pursuant to a Loan Agreement dated August 28, 2018 and entered into on October 2, 2018 among RBC, as lender (in such capacity, the “**Secured Lender**”), and MEI, as borrower, as amended pursuant to an amending agreement dated December 24, 2018 and entered into on February 26, 2019, between the Secured Lender and MEI, and an amending agreement dated August 27, 2020 and entered into on September 1, 2020, between the Secured Lender and MEI (as may be further amended from time to time, the “**Secured Loan Agreement**”).

50. The outstanding Secured Credit Facilities are currently comprised of: (a) eight revolving demand facilities with cumulative maximum availability of \$850,000; (b) a \$90,000 letter of credit; and (c) credit cards with cumulative maximum availability of \$360,000. As at the date hereof, the Company is not in compliance with certain covenants under the Secured Loan Agreement, which may impact its ability to access the Secured Credit Facilities.

51. Pursuant to the terms of the Secured Loan Agreement, the Company maintains a general bank account at RBC in respect of each Secured Credit Facility that is a revolving demand facility.

52. The Company's obligations under the Secured Credit Facilities are secured by a security interest granted in favour of the Secured Lender over all of the present and after-acquired personal property of the Company.

53. The total outstanding obligations under the Secured Credit Facilities, not including accrued and unpaid interest, are currently approximately \$239,000 (not including the \$90,000 undrawn letter of credit). RBC has advised the Company that the Secured Credit Facilities would remain available to the Company notwithstanding the commencement of these CCAA proceedings.

54. In addition to the Secured Credit Facilities, the Company also obtained from RBC the \$250,000 secured HASCAP Loan (as defined below) as part of the government programs made available during the COVID-19 pandemic, as well as the RBC Equipment Leases (as defined below), each discussed further below.

55. Furthermore, in 2012, certain previously outstanding equipment loans of the Company were refinanced with RBC. In order to obtain such refinancing, I mortgaged certain real property I personally own pursuant to three separate mortgage agreements (the "**RBC Mortgages**"). Currently, there is approximately \$0.9 million in principal amount outstanding under the RBC Mortgages, one of which bears an interest rate of 2.94% per annum and matures in August 2022, and two which bear an interest of 1.84% per annum and mature in September

2023. While secured against my property, these obligations are those of the Company, and payments due under the RBC Mortgages are made by the Company.

56. It is my understanding that pursuant to priority agreements entered into from time to time by RBC and the applicable Cadillac Fairview Entities (as defined below), the parties agreed that the security granted by the Company and me in favour of RBC would rank in priority to any security granted in favour of the applicable Cadillac Fairview Entities.

57. The Company intends to continue making its scheduled payments to RBC during the course of the CCAA proceedings, as contemplated pursuant to the proposed Initial Order, and for its obligations to RBC to be generally unaffected as part of these CCAA proceedings. As discussed further below, it is proposed that the Company's obligations to RBC would be assumed in full pursuant to the proposed Transaction.

(ii) Don Mills Fixtures Loan

58. The Company obtained a loan (the **"Don Mills Fixtures Loan"**) from its landlord (one of the Cadillac Fairview Entities) in respect of the McEwan Grocery Location at Don Mills pursuant to a loan agreement dated August 6, 2008, as amended pursuant to an amending agreement entered into as of December 15, 2008 (as may be further amended from time to time, the **"Don Mills Fixtures Loan Agreement"**), to finance the leasehold improvements and fixtures at such location. The Don Mills Fixtures Loan has an interest rate of prime plus 2% and matures upon the end of the term of the lease for McEwan Don Mills, currently July 31, 2023.

59. MEI's obligations pursuant to the Don Mills Fixtures Loan are secured over the assets of the Company pursuant to general security agreements, subject to the prior ranking security granted in favour of the Secured Lender.

60. Pursuant to an indemnity agreement dated as of June 28, 2007, and the Don Mills Fixtures Loan Agreement, I also agreed to be personally liable for the Don Mills Fixtures Loan until such loan is fully repaid. My indemnity obligations in respect of the Don Mills Fixtures Loan are secured over my property pursuant to a general security agreement.

61. Currently, there is approximately \$198,000 of principal outstanding under the Don Mills Fixtures Loan.

(iii) Secured Equipment Lease Obligations

62. The other secured creditors of the Company include lessors of various restaurant and catering equipment, office equipment and motor vehicles.

63. The Company's restaurant and catering equipment leasing arrangements are with RBC, governed pursuant to a commitment letter dated November 28, 2018, under which the following lease agreements have been entered into by the Company and RBC:

- a) lease agreement between the Company and RBC dated October 18, 2017, as amended by an amending agreement dated April 21, 2021 (the "**Bymark Equipment Lease**"). The equipment leased pursuant to the Bymark Equipment Lease has a carrying value of approximately \$206,000 as at June 30, 2021, and the Company has the option to acquire the leased equipment for \$1.00 on the day prior to expiry of the lease, being October 24, 2022. The Company's obligations

under the Bymark Equipment Lease are secured obligations and bear interest at approximately 4.5% per annum;

- b) lease agreement between the Company and RBC dated as of June 1, 2018, as amended by an amending agreement dated April 21, 2021 (the “**Fabbrica Equipment Lease**”). The equipment leased pursuant to the Fabbrica Equipment Lease has a carrying value of approximately \$159,000 as at June 30, 2021, and the Company has the option to acquire the leased equipment for \$1.00 on the day prior to expiry of the lease, being May 31, 2023. The Company’s obligations under the Fabbrica Equipment Lease are secured obligations and bear interest at approximately 4.0% per annum; and
- c) a lease agreement between the Company and RBC dated January 28, 2019, as amended by an amending agreement dated April 21, 2021 (the “**McEwan Yonge & Bloor Equipment Lease**”, and collectively with the Bymark Equipment Lease and the Fabbrica Equipment Lease, the “**RBC Equipment Leases**”). The equipment leased pursuant to the McEwan Yonge & Bloor Equipment Lease has a carrying value of approximately \$1.35 million as at June 30, 2021, and the Company has the option to acquire the leased equipment for \$1.00 on the day prior to expiry of the lease, being January 27, 2024. The Company’s obligations under the McEwan Yonge & Bloor Equipment Lease are secured obligations and bear interest at approximately 4.61% per annum.

64. In aggregate, there is currently approximately \$1.7 million of secured obligations outstanding under the RBC Equipment Leases, and the Company’s equipment lease payment

obligations are approximately \$52,000 per month. As at the date hereof, the Company is current on all such obligations, subject to agreements entered into with RBC to defer the payment of the principal portions of such obligations for the six-month period between May and October 2021.

65. The Company also has certain limited lease obligations with respect to photocopiers and certain motor vehicles used in connection with the Business.

(iv) Real Property Lease Obligations

66. MEI does not own any real property and all of its locations are leased. MEI is currently party to seven leases in respect of its McEwan Locations, including: (i) five leases with certain related landlord parties (the “**Cadillac Fairview Entities**”) in respect of Bymark, Fabbrica TD, McEwan TD, Fabbrica Don Mills and McEwan Don Mills (collectively, the “**Cadillac Fairview Leases**”); (ii) one lease with one landlord party in respect of Fabbrica Thornbury (the “**Fabbrica Thornbury Lease**”); and (iii) one lease with one landlord party in respect of the McEwan Yonge & Bloor (the “**Yonge & Bloor Lease**”). The lease agreement in respect of the ONE Restaurant is entered into by the ONE Restaurant Partnership, as tenant, and there is no lease arrangement or rent charged by the Aga Khan Museum in respect of Diwan.

67. The Company’s real property lease obligations form a substantial part of the operating costs of the Business. As discussed in further below, the Company obtained certain concessions to the payment terms under its leases during the COVID-19 pandemic. As at August 31, 2021, the Company’s aggregate arrears and deferrals under its leases are estimated at approximately \$0.5 million, based on the Company’s financial statements and taking into account certain amended terms (discussed further below), which amount may vary based on discussions and arrangements with the applicable landlords.

68. The Company has entered into general security agreements in respect of certain of the Cadillac Fairview Leases. The obligations under the Fabbica Thornbury Lease and the Yonge & Bloor Lease are unsecured.

(v) Fairfax Loans

69. The Company obtained a \$400,000 unsecured loan from a subsidiary of Fairfax pursuant to a debenture issued on October 31, 2018 (as amended, the “**2018 Fairfax Loan**”). The 2018 Fairfax Loan has an interest rate of 5% per annum and matures on the earlier of December 31, 2021, on demand by the holder or the occurrence of an event of default pursuant to the terms of the debenture.

70. During the COVID-19 pandemic, as a result of the requirement for additional funding for its operations, the Company obtained additional loans of approximately \$1.72 million from the Fairfax subsidiary pursuant to debentures dated March 18, 2020, August 5, 2020, and March 22, 2021 (collectively, the “**Additional Fairfax Loans**”, in each case as may have been amended, and together with the 2018 Fairfax Loan, the “**Fairfax Loans**”). The Additional Fairfax Loans have an interest rate of either 5% or 9% per annum, with interest accrued and compounded on an annual basis. The first Additional Fairfax Loan matures on the earlier of March 18, 2022, on demand by the holder or the occurrence of an event of default pursuant to the terms of the debenture; the second Additional Fairfax Loan matures on the earlier of December 31, 2021, on demand by the holder or the occurrence of an event of default pursuant to the terms of the debenture; and the third Additional Fairfax Loan matures on the earlier of March 22, 2022, on demand by the holder or the occurrence of an event of default pursuant to the terms of the debenture.

71. As at August 31, 2021, the aggregate amount outstanding under the Fairfax Loans, including accrued interest, is approximately \$2.3 million.

(vi) **Government / Government-Assisted Loans**

(a) CEBA Loan

72. On April 24, 2020, the Company received a \$40,000 unsecured loan (the “**CEBA Loan**”) from the Canada Emergency Benefit Account (“**CEBA**”) program funded by the Government of Canada. The CEBA Loan is interest-free until January 2023, and thereafter has an interest rate of 5% per annum. On January 4, 2021, the Company received an additional \$20,000 under its CEBA Loan. The CEBA Loan matures on December 31, 2025, provided that repaying the balance of the CEBA Loan on or before December 31, 2022, will result in a loan forgiveness of 33% (up to \$20,000).

(b) HASCAP Loan

73. Pursuant to a loan agreement entered into on March 30, 2021, by the Company and the Secured Lender, the Company obtained a \$250,000 non-revolving term loan (the “**HASCAP Loan**”) from the Secured Lender under the Business Development Bank of Canada’s (“**BDC**”) Highly Affected Sectors Credit Availability Program (“**HASCAP**”). The HASCAP Loan has an interest rate of 4% per annum, and has a five-year term expiring on or about March 31, 2026.

74. The Company’s obligations under the HASCAP Loan are secured by the security interest granted in favour of the Secured Lender over all personal property of the Company, and a specific security interest granted in favour of the Secured Lender in the equipment financed.

(vii) Employee, Trade and Customer Obligations

75. As at the date hereof, the Company remains current on its employee wage and salary obligations, as well as all related source deductions.

76. As at August 31, 2021, the Company had approximately \$2.3 million of trade obligations outstanding with respect to its various suppliers and service providers, and approximately \$488,000 of issued and outstanding customer gift cards. The Company also has nominal obligations in respect of its Customer Program of approximately \$9,500.

77. In addition, the Company has approximately \$1.2 million of accruals and vacation payable accrued on its balance sheet.

78. To the extent permitted under the proposed Initial Order, the Company intends to honour its obligations in respect of its employees, suppliers and service providers, as well as in respect of its customer gift cards and the Customer Program. Pursuant to the proposed Transaction, any and all outstanding amounts owing in respect of the Company's employee, trade or customer obligations will be assumed by the Purchaser (as defined below) upon implementation of the Transaction, if approved.

(viii) Litigation

79. The Company is aware of one litigation action commenced against it in December 2016, alleging wrongful termination, which the Company believes is without merit and in respect of which the Company served its Statement of Defence in 2017. No steps have been taken or communication exchanged by the parties in respect of this matter since 2017.

IV. INDUSTRY, BUSINESS AND FINANCIAL CHALLENGES

(A) Challenges Prior to the COVID-19 Pandemic

80. Prior to the COVID-19 pandemic, a number of the McEwan Locations were successful and generated positive financial results for an extended period of time. However, as a result of certain unprofitable and operationally expensive McEwan Locations, the McEwan Group as a whole has not been profitable since 2017 (prior to taking into account the recent additional challenges caused by the COVID-19 pandemic).

81. Specifically, Fabbrica Don Mills and McEwan Don Mills have been significantly underperforming over an extended period of time, and even prior to the COVID-19 pandemic were not generating a positive EBITDA. While during the COVID-19 pandemic, McEwan Don Mills has seen some improved performance from pre-pandemic levels, this location has not been generating an annual profit without the benefit of government subsidies.

82. More recently, following the opening of the McEwan Grocery Location at Yonge and Bloor in 2019, this location has created significant strain on the Company's liquidity. With an extensive footprint and significant lease and operational costs, combined with disappointing sales results, McEwan Yonge & Bloor has had the most detrimental impact on the Company's overall financial performance. With the benefit of hindsight, the Company would not have entered into operations at this location based on the existing lease terms. McEwan Yonge & Bloor has been a significant challenge since its opening and currently remains a material issue for the Company.

83. As a result of these underperforming locations, even prior to taking into account the impacts of the COVID-19 pandemic, the McEwan Group was facing financial challenges and a need to improve its financial performance and liquidity position.

(B) Additional Challenges Due to the COVID-19 Pandemic

84. The implementation of COVID-19-related lockdown measures commencing in March 2020 in the GTA resulted in immediate and significant negative impacts on the financial performance of the Business, and resulted in significant losses throughout 2020 and 2021.

85. On or about March 17, 2020, the Government of Ontario declared a provincial state of emergency under the *Emergency Management and Civil Protection Act*, and all restaurants were ordered to close for an undetermined period of time, with a limited carve-out to allow restaurants to provide takeout and delivery services (the “**March Shutdown Order**”).

86. Pursuant to the March Shutdown Order, MEI closed all six McEwan Restaurants on March 17, 2020. The McEwan Grocery Locations (other than McEwan TD which temporarily closed from March to the end of May 2020) remained open as grocery stores were deemed an essential service pursuant to the March Shutdown Order and were permitted to remain open. Notwithstanding remaining open, the McEwan Grocery Locations nonetheless experienced a significant reduction in revenues at the outset of the pandemic given the government-mandated closure of all non-essential businesses and encouragement of individuals to stay home, resulting in a significant reduction of in-store shopping, particularly in high-traffic areas such as the Shops at Don Mills, Yonge and Bloor, and Toronto’s financial district. In addition, the McEwan Catering sales were effectively entirely eliminated since the commencement of the pandemic.

87. From March 2020 to late June 2020, MEI's restaurant operations were restricted to a limited takeout and delivery business operated out of two of the six McEwan Restaurants (namely ONE Restaurant commencing in March and Fabbrica Thornbury commencing in April). The McEwan Group's takeout and delivery business did not generate significant revenue.

88. As part of Ontario's first reopening plan that commenced in June 2020, restaurants were permitted to open for outdoor dining on patios in late June 2020, and for limited dine-in service, subject to limitations on capacity, at the end of July 2020. With these reduced restrictions, the McEwan Group was able to open five of the six McEwan Restaurants for outdoor and/or dine-in service. Fabbrica Don Mills has remained closed during this time as a result of the poor financial performance of the restaurant even prior to the COVID-19 pandemic.

89. On or about October 10, 2020, due to a surge in COVID-19 pandemic cases, the Government of Ontario re-implemented a general ban on dine-in service in the GTA.

90. On November 3, 2021, the Government of Ontario announced a new response framework (the "**Response Framework**"), a five-tier system of public health measures designed to adjust and tighten or loosen public health measures depending on the status of public health indicators. By November 23, 2020, the Government of Ontario placed the GTA under lockdown, the highest level of the Response Framework (the "**Lockdown**"). Pursuant to the Lockdown, all restaurants and bars in the GTA were forced to cease outdoor dining service. During the Lockdown, the ONE Restaurant and Fabbrica Thornbury continued their takeout services, and Bymark began offering takeout services in February 2021.

91. The Lockdown continued in the GTA until Ontario entered Step 1 in the Province's Roadmap to Reopen on June 11, 2021, which allowed for the resumption of outdoor dining with

limited capacity. On June 30, 2021, Ontario entered Step 2 in the Roadmap to Reopen, allowing for slightly increased capacity for outdoor dining, and on July 16, 2021, Ontario entered Step 3 in the Roadmap to Reopen, permitting restaurants and bars to offer dine-in service at a limited capacity.

92. As at the date hereof, five of the McEwan Restaurants are open for outdoor and/or indoor dining. As noted above, Fabbrica Don Mills has remained closed due to the poor financial performance of the restaurant. Unfortunately, the ongoing COVID-19 pandemic continues to negatively impact the McEwan Group given that, among other things, the McEwan Restaurants that have re-opened continue to operate at limited capacity, the McEwan Grocery Locations (with the exception of the Don Mills location) continue to have significantly reduced sales compared to the pre-pandemic period due to lessened foot-traffic in the previously high-traffic areas, and the McEwan Restaurants located in the financial district continue to suffer from the slow rollout of back-to-office plans and limited occupancy in the office towers of the financial district. In addition, McEwan Catering has not yet rebounded with limited sales at this time.

93. As noted above, there remains much uncertainty with respect to the ongoing COVID-19 pandemic and its continued impact on the McEwan Group and the restaurant industry as a whole. The Company expects that the Business will continue to face negative impacts of the COVID-19 pandemic for an extended period of time, and will require additional funding to continue operating until the COVID-19 related factors cease negatively impacting the Business and revenues improve more significantly.

(C) **Cash Conservation Efforts and Additional Sources of Funding**

94. To minimize the detrimental effects caused by the COVID-19 pandemic on the Business, including the severe impact of the government mandated measures on the Business' ability to generate revenue, the McEwan Group undertook a number of measures to conserve cash and limit overhead and operating expenses. Among other things, the McEwan Group:

- a) temporarily laid off 200 employees, including 130 employees at the ONE Restaurant and 70 employees at other McEwan Locations (173 of whom have since been re-hired to date, including 118 employees at the ONE Restaurant and 55 employees at other McEwan Locations);
- b) negotiated, where possible, rent abatements, deferrals and other accommodations from landlords in respect of certain of the Company's existing lease arrangements;
- c) negotiated deferrals of principal payments under its equipment lease obligations in 2020 and 2021;
- d) pivoted certain of its restaurant and food-hall operations to a takeout and delivery model, preserving employment where possible and creating some new revenue streams in an effort to partially offset otherwise drastically reduced revenues; and
- e) increased its efforts to promote its e-commerce sites for catering and grocery, and launched grocery delivery in July 2020, in further efforts to mitigate lost revenues and create some additional revenue streams.

95. The McEwan Group also obtained the benefit of certain government subsidies and support programs during the COVID-19 pandemic to subsidize rent and wage costs and provide the Business with some additional liquidity, including:

- a) Canada Emergency Rent Subsidy (“**CERS**”): The Company has received approximately \$300,000 in subsidies under CERS (for certainty, not taking into account subsidies received in respect of the ONE Restaurant), used to subsidize its rent obligations.
- b) Canada Emergency Wage Subsidy (“**CEWS**”): The Company has received approximately \$3.3 million in subsidies under CEWS (for certainty, not taking into account subsidies received in respect of the ONE Restaurant), used to subsidize employee wages and salaries.
- c) CEBA: As discussed above, MEI received a small business loan as part of CEBA program in the amount of \$60,000.
- d) HASCAP: As discussed above, MEI received a HASCAP Loan in the amount of \$250,000.

96. Unfortunately, the cost saving measures instituted by the Company, the landlord concessions, the government support, the Company’s existing Secured Credit Facilities and the equity financing provided by the Company’s shareholders in early 2020 remained insufficient to address the Company’s financial challenges and to fund its cash requirements during the pandemic. As such, in order to meet the Company’s urgent cash needs during the ongoing pandemic, the McEwan Group also obtained debt financing from Fairfax in the aggregate

amount of \$1.72 million pursuant to the Fairfax Loans (discussed above). The additional debt incurred pursuant to the Fairfax Loans, while necessary to address the Company's liquidity needs, has resulted in an increase of borrowings by approximately 87% over the course of the COVID-19 pandemic. The Company also believes that it will need further funding in order to continue operations while the negative effects of the COVID-19 pandemic on the Business persist.

(D) Discussions with Landlords

97. As discussed above, at the outset of the COVID-19 pandemic, the McEwan Group was required to close all of its McEwan Restaurants in late March 2020, pursuant to applicable local government lock-down measures for an extended period of time, resulting in a cessation or significant reduction of revenues during the shut-down period at such leased locations, and was facing dramatically reduced sales at its McEwan Grocery Locations. As noted above, the Company's lease obligations are one of its primary operating expenses and uses of cash. Accordingly, the Company engaged in discussions with its landlords in the early stages of the COVID-19 pandemic in connection with its significant lease obligations.

98. Pursuant to consensual written lease amending agreements entered into with its landlords, the Company obtained various lease concessions, including rent abatements, rate deferrals and/or reduced minimum rent amounts. The Company has continued to honour its lease payment obligations, on the amended terms, pursuant to such lease amendments. Certain of such written lease amending agreements have expired pursuant to their terms, and the Company has continued to make payments in respect of such leases pursuant to the amended terms. As at August 31, 2021, the Company had approximately \$0.5 million of estimated rent arrears and deferrals

outstanding (based on the Company's current financial statements, which amount may vary based on discussions and arrangements with the applicable landlords, as noted above).

99. Throughout the COVID-19 pandemic period, the Company has continued to engage with its landlords to seek arrangements on a consensual basis that would allow the Business to continue until the effects of the COVID-19 pandemic pass and the Company can seek to return the Business to pre-pandemic performance. In addition, recognizing that certain of the McEwan Locations are not sustainable, without taking into account the negative impacts of the COVID-19 pandemic, the Company has also engaged in discussions with its landlords in respect of such locations to seek amended terms or to otherwise seek to exit such locations on a consensual, mutually agreeable basis. Over a period of several months, the Company engaged in discussions with its landlords and presented proposed amendments and revised terms to certain lease arrangements.

100. Following such efforts and discussions with its landlords over an extended period of time, the Company has not been able to reach satisfactory agreements with its landlords that would allow the Business to continue on a sustainable basis going forward. At this time, the Company is continuing ongoing discussions with the Cadillac Fairview Entities with respect to amended terms for the Cadillac Fairview Leases and the parties are working to finalize satisfactory arrangements on a consensual basis.

(E) Strategic Review Efforts and the Transaction

101. In the summer of 2021, the Company engaged legal counsel to assist it in reviewing and assessing its various potential options and alternatives, in light of the financial difficulties facing the Company, including its liquidity issues and the ongoing challenges and impacts of the

COVID-19 pandemic. The Company reviewed and considered various potential alternatives with the assistance of its legal counsel, including, among others, negotiations with landlords, additional financing (debt or equity), reducing the size of the Business, a sale of the Business, and combinations thereof.

102. After extensive review and consideration of its circumstances, and its options and alternatives, and following efforts to reach consensual arrangements with landlords (discussed above), the Company determined that the best available alternative that could be implemented in the circumstances that would preserve the value of the Business for the benefit of the Company's many stakeholders, would be a sale of substantially all of the McEwan Group's assets and the Business (the "**Transaction**") to 2864785 Ontario Corp. (the "**Purchaser**"), a newly formed company owned by the Company's current shareholders, and the continuation of the Business with a reduced number of McEwan Locations, to result in a right-sizing of the Business on a sustainable basis going forward.

103. On September 27, 2021, the Company entered into an asset purchase agreement with the Purchaser, pursuant to which, subject to Court approval, the parties would complete the Transaction (the "**Purchase Agreement**"), a copy of which is attached hereto as Exhibit "C".

104. The Transaction includes, among other things:

- a) the transfer of substantially all of the assets of the Company to the Purchaser;
- b) the assumption by the Purchaser of substantially all of the Company's obligations, excluding the Excluded Liabilities (as defined and described below), currently estimated to total approximately \$11 million, resulting in, among other things, all

secured and unsecured loans, all trade payables and go-forward supply arrangements, and five of the Company's seven leased locations being assumed by the Purchaser;

- c) an offer of employment by the Purchaser to all of the Company's approximately 268 employees; and
- d) a cash reserve in an amount as may be agreed to by the Company and the Purchaser, with the consent of the Monitor (the "**Cash Reserve**") to remain with the Company following the closing of the Transaction, to fund the costs of completing these CCAA proceedings, with any remaining balance of the Cash Reserve upon completion of the CCAA proceedings to be returned to the Purchaser.

105. Under the Transaction, the Purchaser will not assume certain limited obligations of the Company (the "**Excluded Liabilities**"), comprised of: (a) lease obligations relating to those locations not being assumed by the Purchaser as part of the Transaction (the "**Excluded Locations**"), and (b) the expenses incurred by the Company in connection with these CCAA proceedings, to be funded out of the Cash Reserve. At this time, the Excluded Locations are comprised of Fabbrica Don Mills and McEwan Yonge & Bloor.

106. Pursuant to the Transaction, the Purchaser may, at any time up to the day prior to the closing of the Transaction, elect to acquire any additional assets, properties, and rights of the Company (and any such additional assets, properties, and rights shall be Purchased Assets (as defined in the Purchase Agreement)) or to not acquire any assets, properties, and rights of the

Company (and any such assets, properties, and rights shall be Purchased Assets shall be Excluded Assets (as defined in the Purchase Agreement)).

107. The aggregate consideration for the Purchased Assets pursuant to the Transaction is: (a) the assumption of the Assumed Obligations (as defined in the Purchase Agreement) by the Purchaser and/or, as applicable, one or more designees of the Purchaser, which as at the date hereof are estimated to be approximately \$11 million (calculated based on amounts outstanding as at August 31, 2021, and taking into account additional amounts expected to be incurred and additional funding requirements anticipated until the closing of the Transaction, based on a closing date of October 31, 2021), and (b) a cash payment in an amount equal to the sum of (i) \$520,000 (the “**Base Purchase Price**”), and (ii) an amount equal to the Cure Costs (as defined in the Purchase Agreement).

108. I am advised by counsel to the Company that the Base Purchase Price was calculated based on an amount equal to the damages in respect of the lease relating to the McEwan Yonge & Bloor Excluded Location as determined pursuant to the formula set forth in section 136(1)(f) of the *Bankruptcy and Insolvency Act* (the “**BIA**”). As discussed above, the Company and the Cadillac Fairview Entities are continuing their ongoing discussions to reach mutually satisfactory arrangements in respect of the Cadillac Fairview Leases, and thus there is no claim amount included in respect of the Fabbria Don Mills Excluded Location as part of the purchase price under the proposed Transaction.

109. Pursuant to the Purchase Agreement, the Purchaser has also agreed to fund a deposit of up to \$2.25 million (the “**Transaction Deposit**”) to the Company, to be provided in multiple tranches for use by the Company to fund its operations and the costs incurred in connection with

these CCAA proceedings until the closing of the Transaction. The funding of the Transaction Deposit by the Purchaser is subject to obtaining Court approval of the Transaction and a Court-ordered charge to secure the repayment of the Transaction Deposit to the Purchaser in the event the Transaction is not completed. If the Transaction is completed, the obligation to repay the Transaction Deposit would be assumed by the Purchaser pursuant to the Transaction, and there is no adjustment to the cash purchase price as a result thereof. If the Purchase Agreement is terminated, the Company will be required to repay the Transaction Deposit to the Purchaser.

110. The Company believes that the Purchase Agreement provides fair and reasonable consideration for the Purchased Assets in the circumstances. After due consideration of the circumstances of the McEwan Group, the status of the Business and the benefits of the Transaction to the McEwan Group's stakeholders, the Company determined that proceeding with the Transaction under the terms and conditions of the Purchase Agreement is in the best interests of the McEwan Group and its stakeholders.

111. The Company did not complete a third-party sale process to canvass potential interest from third parties in respect of acquiring the Company or the Business, and believes there is no prejudice to stakeholders from not having completed a third-party sale process based on all of the current circumstances. As discussed above, the Purchaser is acquiring and assuming substantially all of the assets and liabilities of the Company, with the exception of the Excluded Locations, and the Base Purchase Price provides for a cash amount in respect of the non-terminated Excluded Location based on the formula provided under the BIA.

112. I believe that there would be a significant benefit to the stakeholders of the Business from the completion of the proposed Transaction as outlined in the Purchase Agreement as, without

the support of myself, the Company's management team and Fairfax, there is a significant risk that many parties could be negatively impacted both on a financial and overall business basis. The Business, without the support of myself, the Company's management team and Fairfax, would not be the same business and the interests of, and recoveries to, stakeholders could be materially negatively affected.

113. As noted above, my continued involvement as chef and operator of the Business, which I believe to be fundamental to the success of the Business going forward, is premised on a continuation of my partnership with Fairfax as co-owners of the McEwan Group. I do not anticipate that I would remain with the Business if it were to be sold to a third party purchaser. The Company and its shareholders do not believe that a third party purchaser would be in a position to acquire the assets of the Business, without my continued involvement in the Business, for a similar or higher price.

114. The Transaction represents a transaction that will right-size the Company's Business, reduce the Company's material and unsustainable lease obligations and provide stability to the McEwan Group in a process that is fair and reasonable to all stakeholders. The Company believes that the implementation of the Transaction will result in a sustainable Business going forward for the benefit of the Company's many stakeholders, including its 268 employees whose jobs will be preserved, its secured creditors whose obligations will be unaffected and assumed by the Purchaser, and its many suppliers and service providers whose contracts and obligations will also all be assumed.

115. The Transaction is subject to customary conditions and receipt of requisite approvals, including approval by this Court.

116. As noted above, the Company intends to seek approval of the Transaction at the Sale Approval Motion. Additional details with respect to the Transaction will be set out in the materials filed in support of the Sale Approval Motion.

V. CCAA PROCEEDINGS

117. MEI is the sole applicant in these CCAA proceedings. For the reasons discussed in this Affidavit, the Company believes that it is appropriate for this Court to exercise its jurisdiction to grant the Initial Order in respect of the Company.

(A) The Company is Insolvent for the Purposes of the CCAA

118. Despite the Company's efforts to address its financial difficulties and the challenges relating to its unsustainable lease obligations on a consensual basis, MEI has been unable to find an out-of-court solution that would enable it to sufficiently restructure and right-size its business operations.

119. As discussed above, the challenges resulting from closures of and/or operating limitations on the McEwan Locations over an extended period of time due to the COVID-19 pandemic and the corresponding loss of revenues, have resulted in significant additional liquidity challenges for the Business, and have further exacerbated the financial challenges already being faced by the McEwan Group prior to the COVID-19 pandemic.

120. The Company has significant secured debt outstanding compared to its negative EBITDA for the twelve-month period ended December 31, 2020, and for the six-month period ended June 30, 2021, as well as significant unsecured obligations, including the Fairfax Loans provided in 2020 and 2021 that were required primarily to fund the Company's operations during the

challenging times over the course of the COVID-19 pandemic. The Company has also accumulated extensive rent arrears and deferral obligations over the course of the COVID-19 pandemic.

121. While the Business has begun to experience some improved performance following the recent permitted re-openings of restaurants in Toronto, a number of the McEwan Locations remain unsustainable based on the costs of operating such locations and their poor sales results. Such locations have continued to place increased liquidity pressure on the remaining Business.

122. Absent additional funding and the reduction of its unsustainable lease obligations, the Company is facing an imminent liquidity crisis and will be unable to satisfy its liabilities as they become due, and there is no reasonable expectation that the Company's financial condition will improve absent these restructuring proceedings. The Company is insolvent.

123. MEI has thoroughly considered the circumstances and the alternatives available to the Company in the present circumstances. In the exercise of its business judgment and with the assistance of the Company's legal advisors, MEI determined that it is in the best interests of the Company and its stakeholders for the Company to file for protection under the CCAA in order to preserve the value of the Business and continue as a going concern while seeking to implement a restructuring of the Business, including the proposed Transaction. By pursuing the implementation of the Transaction under the CCAA at this time, the Company can continue as a going concern while substantially all of the Company's assets and many of its obligations are transferred to and assumed by the Purchaser.

(B) Stay of Proceedings under the CCAA

124. The Company is concerned that in light of its financial circumstances, there could be an erosion of value to the detriment of all stakeholders. In particular, the Company is concerned about the following risks:

- a) secured creditors trying to take steps to enforce on their security;
- b) potential termination of contracts by key suppliers and service providers; and
- c) potential termination of leases and related enforcement steps that could be taken by landlords.

125. Having regard to the circumstances, and in an effort to preserve the value of the Business, the commencement of the within CCAA proceedings and the granting of a stay of proceedings in order to permit the Company to restructure its affairs and implement the Transaction are in the best interests of the Company and its stakeholders.

126. I am advised by Goodmans LLP, counsel to the Company, that the maximum stay period that may be granted on an initial application under the CCAA is ten days. The Company anticipates seeking an extension of the initial ten-day stay period to and including December 17, 2021, at the Comeback Hearing (as defined below).

127. The Company is also requesting that this Court exercise its discretion to extend the stay of proceedings in respect of the personal guarantees, indemnities and security that I granted in my personal capacity in connection with certain of MEI's obligations, discussed above, as well as in favour of the McEwan Subsidiary.

(C) **The Monitor**

128. Alvarez & Marsal Canada ULC was retained to, among other things, prepare for the role of proposed monitor in these CCAA proceedings. Alvarez & Marsal Canada Inc. (“**A&M**”), an affiliate of Alvarez & Marsal Canada ULC, has consented to act as the monitor of the Company in the within proceedings (in such capacity, the “**Monitor**”), subject to Court approval. A copy of A&M’s consent is to be attached as Tab “5” to the Application Record.

129. The professionals of A&M who have carriage of this matter, and who will have carriage of this matter for A&M if it is appointed as the Monitor, have acquired considerable knowledge of the Company and its business. A&M is in a position to immediately assist the Company with its restructuring process.

130. In connection with A&M’s appointment as the Monitor, it is contemplated that a Court-ordered charge over the assets and property of the Company would be granted in favour of the Monitor, its counsel and the Company’s counsel in respect of their fees and disbursements incurred prior to and following the commencement of these proceeding at their standard rates and charges (the “**Administration Charge**”). The Company is seeking an Administration Charge in an aggregate amount of \$225,000 at this time, which reflects approximately the costs of these proceedings incurred and not paid to date and the estimated costs to be incurred in the period up to the next hearing to be scheduled in these CCAA proceedings (the “**Comeback Hearing**”), as set out in the Cash Flow Forecast (as defined below). The Company anticipates requesting at the Comeback Hearing that the Administration Charge be increased to \$350,000.

131. The Administration Charge is to have the priority described in Section V(G) of this Affidavit.

132. All of the beneficiaries of the Administration Charge have contributed, and continue to contribute, to the restructuring efforts of the Company.

133. The proposed Monitor and counsel to the proposed Monitor each hold a retainer provided by the Company prior to the commencement of these proceedings, with such retainers totalling \$100,000.

(D) Funding of the Company

(i) Cash Flow Forecast

134. As at August 31, 2021, the Company had a cash balance of approximately \$1.0 million. A copy of the cash flow forecast prepared by the Company with the assistance of the proposed Monitor is attached hereto as Exhibit “D” (the “**Cash Flow Forecast**”).

135. As set out in the Cash Flow Forecast, with the remaining availability under the Secured Credit Facilities and the funding from the Transaction Deposit (if approved by the Court), the Company is expected to have sufficient funding through the period of the Cash Flow Forecast. The principal uses of cash during the next 13-week period will consist of ongoing payments made in the ordinary course in respect of employee compensation, rent, suppliers, inventory and other ordinary course business obligations (as discussed further below), and professional fees, expenses and disbursements incurred in connection with these CCAA proceedings.

136. As noted above, upon completion of the Transaction, which remains subject to, among other things, approval by this Court, substantially all of the assets of the Company, including the Company’s cash, will be transferred to the Purchaser. Under the Purchase Agreement, the parties have agreed to the Cash Reserve to remain with the Company, with any remaining funds

to be provided to the Purchaser on the earlier of six months from the completion of the Transaction or the wind-down of the Company.

(ii) Cash Management System

137. The Company has a banking relationship with RBC, and its cash management system (the “**Cash Management System**”) is operated through the various accounts held by the Company at RBC in Toronto. The Company has 10 bank accounts and maintains 11 business credit cards with RBC pursuant to the Secured Credit Facilities.

138. As discussed above, pursuant to the terms of the Secured Loan Agreement, the Company is required to maintain a general bank account at RBC in respect of each Secured Credit Facility that is a revolving demand facility, making up eight of the 10 bank accounts at RBC. The Company also has one bank account in respect of its “brand” business and one bank account for payments received from the ONE Restaurant Partnership.

139. The Company is seeking the authority to continue to use the existing Cash Management System and to maintain the banking arrangements already in place. The continued operation of the existing Cash Management System will minimize disruption to the Company’s operations and avoid the need to negotiate and implement alternative banking arrangements. The current Cash Management System includes the necessary accounting controls to enable the Company and the proposed Monitor to trace funds and ensure that all transactions are adequately ascertainable. As such, the proposed Initial Order authorizes a continuation of the current Cash Management System.

(E) **Payments during the CCAA Proceedings**

140. During the course of these CCAA proceedings, the Company also intends to pay all reasonable post-filing expenses incurred by it in carrying on the Business in the ordinary course including, without limitation, its rent obligations pursuant to the terms of the proposed Initial Order, all expenses and capital expenditures reasonably necessary for the preservation of its property and the Business, and payment for goods or services actually supplied to the Company post-filing.

141. The Company is also seeking authority to make ongoing payments in respect of certain obligations, whether such obligations are incurred pre-filing or post-filing, including:

- a) all employee obligations owing to employees in the ordinary course;
- b) advisor fees and disbursements incurred at their standard rates and charges;
- c) all outstanding and future amounts related to honouring gift cards and the Customer Program;
- d) amounts owing to providers of credit, debit, gift card or other payment process services; and
- e) with the consent of the Monitor, amounts owing for goods or services supplied to the Company prior to the Initial Order if, in the opinion of the Company, such supplier is a critical supplier of the Business or such payment is otherwise necessary to maintain the uninterrupted operations of the Business or the Company during the CCAA proceedings.

142. The authority to make the foregoing payments is necessary for the continued operation of the Business and in connection with these CCAA proceedings, the completion of the Transaction and the restructuring of the McEwan Group. The Company believes that it is in the best interests of its stakeholders that it have the authority to continue to pay these expenses in the normal course, regardless of whether such expenses were incurred prior to, on or after the date of the Initial Order. The Company is concerned that in the absence of these parties being paid in the ordinary course, they may discontinue providing ongoing goods or services to the detriment of the Company. Preserving these goods and services on an uninterrupted basis is essential to the Company's ongoing operations, as discontinuance could have an adverse impact on the operation of the Company's Business.

(F) Director and Officer Protections

143. The director and officers of the Company (collectively, the "**Directors and Officers**") have been actively involved in efforts to address the current circumstances of the Company, including the review and consideration of the Company's financial circumstances, efforts to manage and address the Company's challenging liquidity position, overseeing the Company's negotiations with landlords, the pursuit of restructuring alternatives, including the proposed Transaction, and the preparation for and commencement of these CCAA proceedings. The Directors and Officers have been mindful of their duties with respect to their supervision and guidance of the Company in advance of these CCAA proceedings.

144. It is my understanding, as advised by Goodmans LLP, counsel to the Company, that in certain circumstances, directors and officers can be held personally liable for certain of a company's obligations to the federal and provincial governments, including in connection with

payroll remittances, harmonized sales taxes, goods and services taxes, workers compensation remittances, among others. Furthermore, I understand it may be possible for directors and officers of a company to be held personally liable for certain wage-related obligations to employees.

145. The Company maintains a directors and officers insurance policy with Northbridge Insurance (the “**D&O Policy**”) for the Directors and Officers which currently expires on December 31, 2021. The D&O Policy provides \$3 million of coverage. The D&O Policy also includes certain additional coverage for the Directors and Officers of up to \$1 million in excess of coverage otherwise provided by the D&O Policy.

146. The D&O Policy insures the Directors and Officers for certain claims that may arise against them in their capacity as directors and/or officers of the Company. However, the D&O Policy contains several exclusions and limitations to the coverage provided. Further, there is the potential for coverage limits to be exhausted and for there to be insufficient coverage in respect of the potential directors’ and officers’ liabilities for which the Directors and/or Officers may be found to be responsible.

147. The Company requires the active and committed involvement of the Directors and Officers during the CCAA proceedings as it seeks to complete a successful restructuring, including the Transaction, for the benefit of the Company and its stakeholders.

148. Accordingly, the Company is requesting a Court-ordered charge (the “**Directors’ Charge**”) over the assets and property of the Company to secure the indemnity of the Directors and Officers pursuant to the proposed Initial Order in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers.

149. The Company is requesting the Directors' Charge in an amount of \$600,000 at this time, and anticipates requesting at the Comeback Hearing that the Directors' Charge be increased to \$1.45 million. The proposed amounts of the Directors' Charge have been calculated by the Company based on the estimated potential exposure of the Directors and Officers and have been reviewed with the proposed Monitor.

150. The proposed Directors' Charge would apply only to the extent that the Directors and Officers do not have coverage under the D&O Policy. The Directors' Charge is to have the priority described in Section V(G) of this Affidavit.

(G) **Priorities of Charges**

151. It is contemplated that the priorities of the Court-ordered charges discussed above (collectively, the "**Charges**"), as among them, would be as follows:

- a) First – the Administration Charge (to a maximum of \$225,000); and
- b) Second – the Directors' Charge (to a maximum of \$600,000).

152. Pursuant to the proposed Initial Order, the Charges on the assets and property of the Company would 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, notwithstanding the order of perfection or attachment, except for any secured creditor of the Company who does not receive notice of the application for the Initial Order. The proposed Initial Order authorizes the Company to seek an Order granting priority of the Charges ahead of all or certain additional Encumbrances on a subsequent motion on notice to those persons likely to be affected thereby. At the Comeback

Hearing, the Company intends to seek an Order granting priority of the Charges ahead of all Encumbrances of those secured creditors given notice of the Comeback Hearing, other than the Encumbrances granted by the Company in favour of RBC.

153. The Company believes the amounts of the Charges are fair and reasonable in the circumstances for the period until the Comeback Hearing. As noted above, the Company expects to seek to increase the amounts of the Administration Charge and the Directors' Charge at the Comeback Hearing.

VI. CONCLUSION

154. The Company, with the assistance of its advisors, has reviewed and considered its potential options and alternatives that may be available in the circumstances, taking into account the Company's unsustainable locations, liquidity issues and the ongoing challenges and impacts of the COVID-19 pandemic.

155. The Company is not able to continue in the status quo with its significant fixed obligations and based on the financial performance of the Business. There is no reasonable expectation that the Company's financial condition will improve absent these restructuring proceedings.

156. Despite the Company's efforts to address its financial difficulties and the challenges relating to its unsustainable lease obligations on a consensual basis, it has been unable to find an out-of-court solution that would enable it to sufficiently restructure and right-size its business operations.

157. After extensive review and consideration of its circumstances, and its options and alternatives, and following efforts to reach consensual arrangements with its landlords, the Company determined that the best available alternative that could be implemented in the circumstances that would preserve the value of the Business for the benefit of the Company's many stakeholders, would be a sale of substantially all of the assets of the Business pursuant to the proposed Transaction, and the continuation of the Business with a reduced number of McEwan Locations, to result in a right-sizing of the Business on a sustainable basis going forward.

158. The Transaction represents a transaction that will right-size the Company's Business, reduce the Company's material and unsustainable lease obligations and provide stability to the McEwan Group in a process that is fair and reasonable to all stakeholders. The Company believes that the implementation of the Transaction will result in a sustainable Business going forward for the benefit of the Company's many stakeholders, including its 268 employees whose jobs will be preserved, its secured creditors whose obligations will be unaffected and assumed by the Purchaser, and its many suppliers and service providers whose contracts and obligations will also all be assumed.

159. The Company believes that it is necessary and important to commence these CCAA proceedings at this time in order to protect and provide stability to the Business for the benefit of the Company's numerous stakeholders, while the Company pursues its restructuring efforts.

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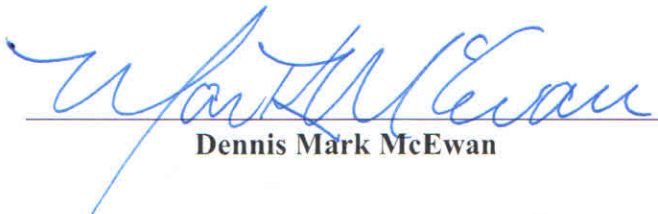
160. The Company believes that the relief sought pursuant to the proposed Initial Order is appropriate and necessary in the circumstances, and respectfully request that the Court grant the proposed Initial Order.

SWORN before me over
videoconference by Dennis Mark
McEwan stated as being located in the
City of Toronto in the Province of
Ontario, before me at the City of
Toronto in the Province of Ontario, on
September 27, 2021, in accordance with
O. Reg 431/20, Administering Oath or
Declaration Remotely

Caroline Descours

A Commissioner for taking affidavits

Caroline Descours LSO#: 58251A


Dennis Mark McEwan

B

**THIS IS EXHIBIT “B”
TO THE AFFIDAVIT OF DENNIS MARK MCEWAN
SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE
THIS 12th DAY OF NOVEMBER, 2021**

Caroline Descours

Commissioner for Taking Affidavits

Court File No. CV-21-00669445-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

**AFFIDAVIT OF DENNIS MARK MCEWAN
(sworn October 1, 2021)**

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Applicant

**AFFIDAVIT OF DENNIS MARK MCEWAN
(sworn October 1, 2021)**

I, Dennis Mark McEwan, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

I. INTRODUCTION

1. I am the President and Secretary of McEwan Enterprises Inc. ("**MEI**", the "**McEwan Group**" or the "**Company**"), a high-end, full-service restaurant, catering, gourmet grocery and events company based in the Greater Toronto Area ("**GTA**"). I am also the sole director of the Company. I have been involved in the restaurant business as chef and restaurant operator since approximately 1982. I am the founder of the McEwan Group, have been a director and officer of the Company (including predecessor entities thereof) since 1987, and currently hold a 45% equity interest in the Company. My personal name is associated with the Company and I lead the development, preparation and delivery of the culinary aspects of the Company's business.

2. I have been actively engaged in discussions and negotiations surrounding the proposed restructuring of MEI. I have knowledge of the matters deposed to herein, and where I have

relied upon other sources of information, I have stated the source of that information and believe such information to be true. The Company does not waive or intend to waive any applicable privilege by any statement herein.

3. On September 28, 2021, MEI sought and obtained an Initial Order (as may be amended from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) granting, among other things, a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Company and appointing Alvarez & Marsal Canada Inc. as the monitor of the Company (the “**Monitor**”). The Stay of Proceedings was also extended to MEI’s wholly-owned subsidiary, 2860117 Ontario Limited, and myself in respect of the guarantees, indemnities and security that I granted in my personal capacity in connection with certain of MEI’s obligations in connection with the Business (as defined below). The comeback hearing in respect of the Initial Order is scheduled for October 7, 2021 (the “**Comeback Hearing**”), at which the Company will, among other things, seek an extension of the Stay of Proceedings to November 1, 2021.

4. The principal objectives of these CCAA proceedings are to ensure the ongoing operations of the McEwan Group for the benefit of its many stakeholders and to effectuate a restructuring of the Company and its Business in order to provide for a right-sized, sustainable Business going forward. As part of its restructuring efforts pursuant to these CCAA proceedings, the Company is seeking to complete the sale and transfer of substantially all of the assets and liabilities of the McEwan Group, with the exception of the Excluded Locations (as defined below) (the “**Transaction**”) to the current owners of the McEwan Group, being myself and Fairfax Financial Holdings Limited (“**Fairfax**”).

5. The continuation of the McEwan Group under the ownership of its current shareholders is a critical aspect of any proposed restructuring. As discussed further herein, my continued involvement as chef and operator of the McEwan Group, which I believe to be fundamental to the value and success of the Business going forward, is premised on a continuation of my partnership with Fairfax as co-owners of the McEwan Group.

6. The Company has limited funding available at this time, and as discussed herein and set forth in the Company's Cash Flow Forecast (as defined below), the Company requires additional liquidity to fund its operations in the near term. The proposed Transaction would provide such needed funding to the McEwan Group by way of the Transaction Deposit (as defined below) of up to \$2.25 million.

7. At the time of the application in respect of the Initial Order, the Company advised the Court that it intended to bring a motion (the "**Sale Approval Motion**") on a future date to be set by this Court seeking approval of the proposed Transaction. This Affidavit is sworn in support of such Sale Approval Motion and the Company's requested Approval and Vesting Order (the "**Approval and Vesting Order**"), among other things:

- a) approving the Transaction and the purchase agreement dated September 27, 2021, between the Company and 2864785 Ontario Corp. (the "**Purchaser**"), a newly formed company owned by myself and Fairfax (the "**Purchase Agreement**");
- b) authorizing the Company to complete the Transaction and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets (as defined in the Purchase Agreement) to the Purchaser;

- c) upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as Schedule “A” to the Approval and Vesting Order, vesting all of the Company’s right, title and interest in and to the Purchased Assets in the Purchaser, or one or more of its designees, free and clear from any Claims and Encumbrances (as defined in the Approval and Vesting Order), which term shall not include the Permitted Encumbrances (as defined in the Approval and Vesting Order);
- d) authorizing the Monitor to hold the Cash Reserve (as defined in the Purchase Agreement) on behalf of the Company, to pay certain amounts from the Cash Reserve on behalf the Company following the completion of the Transaction, and to deliver to the Purchaser any remaining funds in the Cash Reserve on the terms set out in the Purchase Agreement;
- e) from and after the Closing Date (as defined in the Purchase Agreement), waiving any and all defaults and events of default of the Company under the Assumed Contracts (as defined in the Purchase Agreement) committed by the Company, or caused by the Company, as a result of the insolvency of the McEwan Group, the commencement or continuation of these CCAA proceedings by the Company, by any of the provisions in the Purchase Agreement or steps or transactions contemplated in the Purchase Agreement and/or any other Orders of this Court;
- f) approving the Transaction Deposit up to the maximum amount of \$2.25 million, and authorizing the Company to obtain the Transaction Deposit from the Purchaser in order to finance the Company’s working capital requirements, other general corporate

purposes and capital expenditures, and the costs of these CCAA proceedings, in accordance with the terms of the Purchase Agreement;

- g) granting to the Purchaser a Court-ordered charge (the “**Transaction Deposit Charge**”) on the Company’s Property (as defined in the Initial Order) that will rank immediately behind the Directors’ Charge (as defined in the Initial Order); and
- h) extending the Stay Period (as defined in the Initial Order) to and including December 17, 2021.

8. As discussed further herein, the Company believes that the Transaction is the best executable transaction that would be available to the Company in the circumstances, and will create a sustainable Business for its many stakeholders, including its employees, suppliers, customers and other key stakeholders.

9. Capitalized terms used and not otherwise defined in this affidavit have the meanings given to them in the Purchase Agreement.

II. BACKGROUND

10. A detailed overview of the McEwan Group, the Business, the Company’s financial challenges and the circumstances leading to the commencement of these CCAA proceedings is set out in my affidavit sworn September 27, 2021, in support of the Initial Order (the “**Initial Affidavit**”) and not repeated in detail herein. A copy of the Initial Affidavit, without exhibits, is attached hereto as Exhibit “A”.

(A) **Financial Challenges Impacting the Business**

11. The McEwan Group is recognized as one of Canada's premier hospitality companies with a portfolio of innovative, high-end restaurants, gourmet grocery stores, gourmet food-halls and catering services (the "**Business**") operating primarily in the GTA. The McEwan Group currently operates six restaurants (collectively, the "**McEwan Restaurants**"), two food-hall locations and one gourmet grocery location (collectively, the "**McEwan Grocery Locations**", and together with the McEwan Restaurants, the "**McEwan Locations**").

12. As described in the Initial Affidavit, many of the McEwan Locations have been historically successful and profitable; however, certain unprofitable and operationally expensive locations have been underperforming for a number of years, causing an overall significant strain on the Company's profitability and liquidity. The McEwan Group as a whole has not been profitable since 2017.

13. Even without taking into account the impacts of the COVID-19 pandemic, the Company's underperforming locations had proven to be unsustainable based on their negative financial results, and the McEwan Group was facing financial challenges and a need to improve its financial performance and liquidity position. In March 2020, the Company's shareholders provided approximately \$1.1 million of equity financing to support the operations of the Business, which funding was determined to be required prior to the impacts of the COVID-19 pandemic.

14. Commencing in March 2020, the significant and detrimental impacts of the COVID-19 pandemic greatly exacerbated the Company's pre-existing financial and liquidity challenges. Due to various governmental declarations of emergency, stay-at-home orders and mandated

restaurant closures, the McEwan Restaurants have been closed for approximately 10 cumulative months of the last approximately 18 months, and have otherwise operated at limited capacity for dine-in service, or outdoor dining only, for an extended period of time. The McEwan Grocery Locations have also been impacted by the COVID-19 pandemic, with two of the three McEwan Grocery Locations in particular being negatively affected by greatly reduced foot-traffic at their locations and much lower sales. As a result, the Business has experienced significantly reduced revenues for 2020 and 2021.

15. As detailed further in the Initial Affidavit, the Company implemented extensive cost-saving and cash conservation measures to address the COVID-19 challenges, negotiated various rent concessions and obtained various government subsidies and support. Those efforts, together with the Company's existing credit facilities and shareholder equity financing provided in early 2020 were insufficient to address the Company's liquidity needs during the COVID-19 pandemic, and the Company required additional funding in order to be able to satisfy its operational needs, which it obtained from Fairfax by way of a number of unsecured loans provided in 2020 and 2021, further increasing the Company's overall debt obligations.

16. While the government-mandated restrictions on dining began to be eased most recently in June and July 2021, the McEwan Restaurants continue to operate at reduced capacity, and a number of the McEwan Locations continue to suffer from reduced foot-traffic and significantly lower sales compared to pre-pandemic levels. There remains much uncertainty with respect to the ongoing COVID-19 pandemic and its continued impact on the McEwan Group and the restaurant industry as a whole. The Company expects that, even without taking into account the Excluded Locations which cause a significant drain on the Business, the McEwan Group will

require additional funding to continue operating until the COVID-19 related factors cease negatively impacting the Business and revenues improve more significantly.

(B) Discussions with Landlords

17. The McEwan Group's lease obligations are one of its primary operating expenses and uses of cash. At the outset of the COVID-19 pandemic, the McEwan Group was required to close all of its McEwan Restaurants in late March 2020, pursuant to applicable local government lock-down measures for an extended period of time, resulting in a cessation or significant reduction of revenues during the shut-down period at such leased locations, and was facing dramatically reduced sales at its McEwan Grocery Locations. Accordingly, the Company engaged in discussions with its landlords in the early stages of the COVID-19 pandemic in connection with its significant lease obligations.

18. Pursuant to consensual written lease amending agreements entered into with its landlords, the Company obtained various lease concessions, including rent abatements, rate deferrals and/or reduced minimum rent amounts. The Company has continued to honour its lease payment obligations, on the amended terms, pursuant to such lease amendments. Certain of such written lease amending agreements have expired pursuant to their terms, and the Company has continued to make payments in respect of such leases pursuant to the amended terms. As at August 31, 2021, the Company had approximately \$0.5 million of estimated rent arrears and deferrals outstanding (based on the Company's current financial statements, which amount may vary based on discussions and arrangements with the applicable landlords).

19. Throughout the COVID-19 pandemic period, the Company has continued to engage with its landlords to seek arrangements on a consensual basis that would allow the Business to

continue until the effects of the COVID-19 pandemic pass and the Company can seek to return the Business to pre-pandemic performance. In addition, recognizing that certain of the McEwan Locations are not sustainable, without taking into account the negative impacts of the COVID-19 pandemic, the Company has also engaged in discussions with its landlords in respect of such locations to seek amended terms or to otherwise seek to exit such locations on a consensual, mutually agreeable basis. Over a period of several months, the Company engaged in discussions with its landlords and presented proposed amendments and revised terms to certain lease arrangements.

20. Following such efforts and discussions with its landlords over an extended period of time, the Company has not been able to reach satisfactory agreements with its landlords that would allow the Business to continue on a sustainable basis going forward. Based on its financial position and circumstances, the Company does not have the ability to fulfill its contractual obligations in respect of the long-term leases for its unprofitable locations.

21. At this time, the Company is continuing ongoing discussions with the landlord parties (the “**Cadillac Fairview Entities**”) in respect of the leases for the Bymark, Fabbri TD, McEwan TD, Fabbri Don Mills and McEwan Don Mills locations (the “**Cadillac Fairview Leases**”) with respect to amended terms for the Cadillac Fairview Leases and the parties are working to finalize satisfactory arrangements on a consensual basis.

22. The Company has also had discussions with its landlord in respect of the McEwan Yonge & Bloor location (the “**Yonge & Bloor Landlord**”); however, the Company determined that the requests of such landlord were not reasonable in the circumstances and that the parties were unlikely to reach a mutually satisfactory resolution in respect of the McEwan Yonge & Bloor

location at the time the Company determined to commence these CCAA Proceedings. At this time the Company and the Yonge & Bloor Landlord have not reached a consensual arrangement in respect of the McEwan Yonge & Bloor location.

23. The Company does not expect to seek amendments to the lease for the Fabbria Thornbury location.

(C) **Strategic Review Efforts**

24. As described in the Initial Affidavit, in the summer of 2021, the Company engaged legal counsel to assist it in reviewing and assessing its various potential options and alternatives, in light of the financial difficulties facing the Company, including its liquidity issues and the ongoing challenges and impacts of the COVID-19 pandemic. The Company reviewed and considered various potential alternatives with the assistance of its legal counsel, including, among others, negotiations with landlords, additional financing (debt or equity), reducing the size of the Business, a sale of the Business, and combinations thereof.

25. After extensive review and consideration of its circumstances, and its options and alternatives, and following efforts to reach consensual arrangements with landlords, the Company determined that the best available alternative that could be implemented in the circumstances that would preserve the value of the Business for the benefit of the Company's many stakeholders, would be a sale of substantially all of the McEwan Group's assets and the Business to the Company's current shareholders, and the continuation of the Business with a reduced number of McEwan Locations, to result in a right-sizing of the Business on a sustainable basis going forward. On September 27, 2021, the Company entered into the Purchase

Agreement with the Purchaser, pursuant to which, subject to Court approval, the parties would complete the Transaction.

26. The Company did not complete a third-party sale process to canvass potential interest from third parties in respect of acquiring the Company or the Business, and believes there is no prejudice to stakeholders from not having completed a third-party sale process based on all of the current circumstances, including the following factors discussed below.

27. I believe that my continued involvement in the Business is fundamental to the value and success of the Business going forward. I founded the McEwan Group many years ago, and my name, my personal involvement in the Business and my creations as part of the McEwan Restaurants and catering business are key aspects of the Business. In addition, my personal brand and television projects have become inextricably linked with the brand of the Business.

28. Accordingly, the Company and its shareholders do not believe that a third party purchaser would be in a position to acquire the assets of the Business, without my continued involvement in the Business, for a similar or higher price.

29. As noted above, my continued involvement as chef and operator of the Business is premised on a continuation of my partnership with Fairfax as co-owners of the McEwan Group. My partnership with Fairfax is longstanding. They are a trusted partner that has supported me and the Business through challenging times, and we have a strong working relationship. Through my career I have experience with failed partnerships and believe that the working relationship and trust I have with Fairfax, combined with their skills, attributes and willingness to continue to support the Business through these challenging times are fundamental to the future

success of the Business. I do not anticipate that I would remain with the Business if it were to be sold to a third party purchaser.

30. Furthermore, as discussed above and described further below, the Transaction provides for the acquisition and assumption of substantially all of the assets and liabilities of the Company, with the exception of the Excluded Locations, and the purchase price under the proposed Transaction provides for an amount that, I am advised by counsel to the Company, is based on the damages claim in respect of the lease relating to the McEwan Yonge & Bloor Excluded Location (the “**Excluded Landlord Claim**”) as determined pursuant to the formula set forth in section 136(1)(f) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) (as discussed further below). The Company and the Cadillac Fairview Entities are continuing their ongoing discussions to reach mutually satisfactory arrangements in respect of the Cadillac Fairview Leases, and thus at this time there is no claim amount included in respect of the Fabbrica Don Mills Excluded Location as part of the purchase price under the proposed Transaction.

31. It is the Company’s view that given the assumption of substantially all of the McEwan Group’s liabilities by the Purchaser (other than the limited Excluded Liabilities), and the payment of the Excluded Landlord Claim based on the BIA formula from the purchase price under the Transaction, there is no prejudice to stakeholders as a result of the Transaction.

32. It is my belief that, based on the terms of the leases in respect of the Excluded Locations and the financial performance of such locations, no third-party purchaser would acquire the Excluded Locations. The leases in respect of the Excluded Locations are not economical and the closing of the Excluded Locations is a necessary part of any successful restructuring or sale of the Business.

33. Based on the Company's circumstances and my experience as the founder and operator of the McEwan Group, I believe that there is significant risk that if the Transaction does not proceed on the terms set forth in the Purchase Agreement, the Excluded Landlord Claim would receive no consideration or consideration significantly less than the amounts provided for under the proposed Transaction, including giving consideration to the following key factors: (a) the overall value of the Business, (b) the amount of the Company's secured debt, (c) the amount of obligations to be assumed pursuant to the Transaction, (d) the estimated professional fees relating to the Transaction, and (e) the anticipated ongoing funding requirements of the Business until the impacts of the COVID-19 pandemic ultimately pass and normalized operations return, which remains uncertain at this time.

34. As discussed in the Initial Affidavit, I believe that there would be a significant benefit to the stakeholders of the Business from the completion of the Transaction as outlined in the Purchase Agreement as, without the support of myself, the Company's management team and Fairfax, there is a significant risk that many parties could be negatively impacted both on a financial and overall business basis. For the reasons discussed above, the Business, without the support of myself, the Company's management team and Fairfax, would not be the same business and the interests of, and recoveries to, stakeholders could be materially negatively affected.

35. The Company also has limited funding available, and as discussed herein and set forth in the Company's cash flow forecast filed with my Initial Affidavit (the "**Cash Flow Forecast**"), a copy of which is attached hereto as Exhibit "B", the Company requires additional liquidity to fund its operations in the near term. The proposed Transaction would provide such needed funding to the McEwan Group by way of the Transaction Deposit of up to \$2.25 million.

36. As a result, the Company determined, in consultation with its counsel, that a third-party sale process was not necessary in the circumstances and could have a negative effect on the ongoing Business of the Company.

37. The proposed Transaction represents a transaction that will right-size the Company's Business, reduce the Company's material and unsustainable lease obligations and provide stability to the McEwan Group in a process that is fair and reasonable to all stakeholders. The Company believes that the implementation of the Transaction will result in a sustainable Business going forward for the benefit of the Company's many stakeholders, including its 268 employees whose jobs will be preserved, its secured creditors whose obligations will be unaffected and assumed by the Purchaser, and its many suppliers and service providers whose contracts and obligations will also all be unaffected and assumed by the Purchaser.

38. After due consideration of the circumstances of the McEwan Group, the status of the Business and the benefits of the Transaction to the McEwan Group's stakeholders, the Company determined that proceeding with the Transaction under the terms and conditions of the Purchase Agreement is in the best interests of the McEwan Group and its stakeholders.

III. TRANSACTION AND PURCHASE AGREEMENT

39. The detailed terms of the Transaction are set forth in the Purchase Agreement between the Company and the Purchaser, a copy of which is attached hereto as Exhibit "C".

40. The Transaction will result in the transfer of substantially all of the assets and the assumption of substantially all of the liabilities of the Company, with the exception of certain limited excluded obligations of the Company (the "**Excluded Liabilities**"), including: (a) lease

obligations relating to those locations not being assumed by the Purchaser as part of the Transaction (the “**Excluded Locations**”), and (b) the expenses incurred by the Company in connection with these CCAA proceedings, to be funded out of the Cash Reserve. At this time, the Excluded Locations are comprised of Fabbrica Don Mills and McEwan Yonge & Bloor. To the extent certain other leases are terminated or disclaimed as part of the completion of the Transaction (with new leases being entered into on amended terms or not with respect to such locations), such terminated or disclaimed locations could also become Excluded Locations.

41. As noted above, the McEwan Group will require additional funding, which the Company’s current shareholders are prepared to provide as part of the Transaction. Such new funding must be balanced against the restructured Company’s profile and the overall future financial risk of the Business. The Company’s ongoing lease obligations, their terms and their structure play an important factor in making those determinations and balancing overall risk. Accordingly, the proposed Transaction excludes the Excluded Locations. It is my belief, based on a detailed review of the Company’s historical revenue, operational performance and other financial factors, that the leased properties that comprise the Excluded Locations under the proposed Transaction would also not be assumed on their existing terms by any third party as part of any other transaction.

42. Pursuant to the Transaction, all employees of the McEwan Group (currently approximately 268 individuals) will be offered employment on existing terms by the Purchaser as part of the Business going forward, and all employee obligations (including accrued vacation payable of approximately \$460,000 currently) will be assumed by the Purchaser. For clarity, the employment offers under the proposed Transaction will include offers to those employees currently involved at the Excluded Location that remains open at this time (being McEwan

Yonge & Bloor), and those employees will be offered employment with the Business at an alternative location on otherwise existing employment terms, resulting in all employees having an opportunity to continue with the Business.

43. The aggregate consideration for the Purchased Assets pursuant to the Transaction consists of: (a) the assumption of the Assumed Obligations, which as at the date hereof are estimated to be approximately \$11 million (calculated based on amounts outstanding as at August 31, 2021, and taking into account additional amounts expected to be incurred and additional funding requirements anticipated until the closing of the Transaction, based on a closing date of October 31, 2021); and (b) a cash payment in an amount equal to the sum of (i) \$520,000 (the “**Base Purchase Price**”), and (ii) an amount equal to the Cure Costs.

44. As discussed above, I am advised by counsel to the Company that the Base Purchase Price was calculated based on an amount equal to the damages in respect of the lease relating to the McEwan Yonge & Bloor Excluded Location as determined pursuant to the formula set forth in section 136(1)(f) of the BIA. The Company is of the view that this amount is fair, reasonable and appropriate in the circumstances given it guarantees to the Yonge & Bloor Landlord the amount I am advised by counsel to the Company that a landlord would be entitled to pursuant to section 136(1)(f) of the BIA. For the reasons discussed above, I believe that there is significant risk that such landlord would receive less consideration if the Transaction is not completed on the terms of the Purchase Agreement.

45. Certain key terms of the Transaction, which are more fully set out in the Purchase Agreement, are summarized as follows:

Summary of Certain Key Terms of the Proposed Transaction	
Consideration for the Purchased Assets	<ul style="list-style-type: none"> a) The assumption of the Assumed Obligations, which as at the date hereof are estimated to be approximately \$11 million; and b) a cash payment in an amount equal to the sum of (i) the Base Purchase Price, being \$520,000, and (ii) an amount equal to the Cure Costs.
Purchased Assets	<p>All of the Company's right, title and interest in and to the assets and properties of the Company used, maintained, owned or operated for, in respect of or in connection with the Business, excluding the Excluded Assets, including the following:</p> <ul style="list-style-type: none"> a) the Assumed Real Property Leases; b) the Purchased Equipment; c) the Assumed Contracts; d) the Inventory and Supplies; e) all motor vehicles owned or leased by the Company; f) the Company's rights, interests and benefits (through ownership, licensing or otherwise) in the Intellectual Property used in the Business; g) all Cash and Cash Equivalents, whether on hand, in transit to the Company on the Closing Date of the Transaction or in banks or other financial institutions, and all security entitlements, securities accounts, commodity contracts and commodity accounts on hand at Closing; h) to the extent assignable or transferable in accordance with the terms and conditions of the applicable insurance policies, Applicable Law or the Approval and Vesting Order, (i) all of the Company's insurance policies and rights and benefits thereunder, and (ii) any letters of credit related thereto; i) the Specified Insurance Proceeds;

Summary of Certain Key Terms of the Proposed Transaction	
	<p>j) the Receivables;</p> <p>k) the Prepaid Expenses;</p> <p>l) all shares, partnership or joint venture interests and any other securities of any Person owned or held by the Company;</p> <p>m) all documents used by the Company and with respect to which the Company has possession or a right to possession of, in connection with, or relating to, the Purchased Assets, the Assumed Obligations, or the operations of the Business;</p> <p>n) all original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the Company and/or the Business;</p> <p>o) all assets and rights under the Employee Plans other than any Employee Plan that is an employment or similar agreement between a Company's Employee and the Company, and all human resources and other employee-related files and records relating to the Transferred Employees, except to the extent prohibited by Applicable Law;</p> <p>p) all rights of the Company under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of the Company or with third parties;</p> <p>q) all rights, claims, actions, refunds, causes of action, choses in action, suits, proceedings, rights of recovery, rights of setoff, rights of recoupment, rights of indemnity or contribution, and other similar rights against any Person, including all warranties, representations, guarantees, indemnities, and other contractual claims; and</p> <p>r) the goodwill of the Business, including the exclusive right of the Purchaser to: (i) represent itself as carrying on the Business in continuation of and in succession to the Purchaser; and (ii) use any words indicating that the Business is carried on,</p> <p>for greater certainty, in each case excluding any Excluded Assets.</p> <p>Pursuant to the Purchase Agreement, the Purchaser may, at any time up to the day prior to the closing of the Transaction, elect to acquire any</p>

Summary of Certain Key Terms of the Proposed Transaction	
	additional assets, properties, and rights of the Company (and any such additional assets, properties, and rights shall be Purchased Assets) or to not acquire any assets, properties, and rights of the Company (and any such assets, properties, and rights shall be Purchased Assets shall be Excluded Assets).
Excluded Assets	<ul style="list-style-type: none"> a) All rights and interests in and to the Excluded Contracts; b) all of the Company's rights and benefits under the Purchase Agreement and the Transaction; c) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period, or otherwise in compliance with the terms of the Purchase Agreement; and d) all director and officer insurance policies and any entitlements and any proceeds paid or payable thereunder to or on behalf of the directors and officers of the Purchaser.
Assumed Obligations	<ul style="list-style-type: none"> a) All obligations and liabilities in respect of the Assumed Contracts but excluding the Excluded Obligations; b) all obligations and liabilities in respect of customer loyalty programs, gift cards, food and merchandise credits and other similar customer retainer, engagement and incentive programs of the Business; c) all Cure Costs; d) all liabilities and obligations in respect of the Deposit Amount; e) all liabilities and obligations secured by Permitted Encumbrances prescribed in the Purchase Agreement, but excluding the Excluded Obligations; f) all obligations under Applicable Law after the Closing with respect to the storage and retention of personal, financial or other records in respect of or included as the Purchased Assets; g) all employee liabilities and obligations; h) all liabilities and obligations with respect to Employee Plans duly assigned to, and assumed as a Purchased Asset, by the

Summary of Certain Key Terms of the Proposed Transaction	
	<p>Purchaser pursuant to the Purchase Agreement;</p> <ul style="list-style-type: none"> i) all Taxes that are specified as liabilities and obligations of the Purchaser under the Purchase Agreement; and j) any other obligations and liabilities expressly assumed under the Purchase Agreement.
Excluded Obligations	<ul style="list-style-type: none"> a) All liabilities and obligations of any kind relating to the Excluded Assets; b) all obligations and liabilities of the Company that are secured by court-ordered charges in the CCAA Proceedings and that are subject to the Cash Reserve; c) any liability with respect to any legal, accounting audit, financial advisory, and investment banking fees and any other expenses incurred by the Company, including with respect to the transactions contemplated by the Purchase Agreement or the CCAA Proceedings; and d) any other obligations or liabilities expressly excluded from the Assumed Obligations under the Purchase Agreement.
Employee Matters	<p>The Purchaser will make an offer of employment, effective as of the Closing Date, to each of the Company's employees on the same terms and conditions as the current employment terms.</p>
Transaction Deposit	<p>During the Interim Period, but subject to the Approval and Vesting Order having been granted by the Court, the Company and the Purchaser shall enter into terms for the payment of a deposit payable in one or more installments up to a total amount of \$2.25 million, to be repaid or assumed, as the case may be, in accordance with or as otherwise contemplated by the terms of the Purchase Agreement and/or such additional terms as may be entered into between the Company and the Purchaser, each acting reasonably, at the time of their funding (the "Transaction Deposit"). The Transaction Deposit shall be used solely to finance the Company's working capital requirements, other general corporate purposes and capital expenditures, and the costs of the CCAA Proceedings.</p> <p>Upon Closing, the Transaction Deposit (collectively with all interest, income and earnings on the Transaction Deposit, the "Deposit Amount") will constitute an Assumed Obligation assumed by the</p>

Summary of Certain Key Terms of the Proposed Transaction	
	<p>Purchaser under the Purchase Agreement.</p> <p>If the Purchase Agreement is terminated for any reason, then the Deposit Amount shall be immediately due and payable in full by Company to Purchaser without any additional notice, demand or other action or otherwise to the Company or from the Purchaser.</p> <p>Pursuant to the Purchase Agreement, the Transaction Deposit is required to be secured as a priority Encumbrance pursuant to the Approval and Vesting Order in order to secure the repayment of the Transaction Deposit to the Purchaser in the event the Transaction is not completed.</p>
Cash Reserve	<p>On Closing, the Company shall retain the Cash Reserve in an amount agreed to by the Company and the Purchaser, with the consent of the Monitor prior to the Closing Date, to fund the costs of completing these CCAA proceedings.</p> <p>Within three Business Days of the earlier of (i) six months after the Closing Date and (ii) the date the administration of the Company's wind-down is completed, the Company shall deliver to the Purchaser any funds remaining in the Cash Reserve.</p>
Certain Key Conditions	<ul style="list-style-type: none"> a) The granting by the Court of the Approval and Vesting Order; b) the receipt by the Purchaser of a Third Party Consent or a CCAA Assignment Order with respect to each Material Contract which cannot be assigned to the Purchaser without such a Third Party Consent or CCAA Assignment Order; and c) other customary conditions for a transaction of this nature.
Termination Rights	<ul style="list-style-type: none"> a) By mutual written consent of the Company and the Purchaser; b) by the Company, on the one hand, or the Purchaser, on the other hand, if the Closing has not occurred on or before the Sunset Date; c) by the Company, if there has been a material violation or breach by the Purchaser of any covenant, representation or warranty which would prevent the satisfaction of any condition by the Sunset Date and such violation or breach has not been waived by the Company or cured within fifteen (15) days after written notice thereof from the Company, unless the Company is in

Summary of Certain Key Terms of the Proposed Transaction	
	<p>material breach of its obligations under this Agreement; and</p> <p>d) by the Purchaser, if there has been a material violation or breach by the Company of any covenant, representation or warranty which would prevent the satisfaction of any condition by the Sunset Date and such violation or breach has not been waived by the Purchaser or cured within fifteen (15) days after written notice thereof from the Purchaser, unless the Purchaser is in material breach of its obligations under this Agreement.</p>
Sunset Date	November 12, 2021

IV. TRANSACTION DEPOSIT AND TRANSACTION DEPOSIT CHARGE

46. Even without taking into account the Excluded Locations which cause a significant drain on the Business, the Company will require additional funding to continue operating until the COVID-19 related factors cease negatively impacting the Business and revenues improve more significantly. The Cash Flow Forecast indicates that the Company will require additional funding from the Transaction Deposit in order to fund its operations and the costs of these CCAA proceedings.

47. Pursuant to the Purchase Agreement, the Purchaser has agreed to fund the Transaction Deposit up to a maximum amount of \$2.25 million to the Company for use by the Company to fund its working capital requirements, other general corporate purposes and capital expenditures, and the costs of these CCAA proceedings, in accordance with the terms of the Purchase Agreement and the terms and conditions governing the Transaction Deposit, if any, subject to Court approval of the Transaction Deposit and the granting of the Transaction Deposit Charge over the Property (as defined in the Initial Order) of the Company to secure the repayment of the

Transaction Deposit to the Purchaser in the event the Transaction is not completed. The Transaction Deposit Charge would rank behind the Administration Charge and Directors' Charge (each as defined in the Initial Order) and would not secure any pre-filing obligations.

48. As summarized above, if the Transaction is completed, the obligation to repay the Transaction Deposit would be assumed by the Purchaser pursuant to the Purchase Agreement. If the Purchase Agreement is terminated, the Transaction Deposit would become immediately due and payable by the Company to the Purchaser.

49. The Company is of the view that there would be no material prejudice to any of its creditors as a result of the proposed Transaction Deposit or the Transaction Deposit Charge.

V. STAY EXTENSION

50. The Stay Period granted under the Initial Order expires on October 7, 2021. The Company intends to seek an extension of the Stay Period at the Comeback Hearing on October 7, 2021, to and including November 1, 2021, to provide the Company with continued stability for the Business and time to return before the Court to hear the within Sale Approval Motion.

51. In connection with the within Sale Approval Motion, scheduled for October 15, 2021, the Company intends to seek a further extension of the Stay Period to and including December 17, 2021, to provide the Company time to work to implement the Transaction and transition the Business to the Purchaser, should the Transaction be approved by this Court, and to advance and complete these CCAA proceedings.

52. The Cash Flow Forecast indicates that, with the Transaction Deposit, the Company will have sufficient funding to operate the Business during the proposed Stay Period.

53. The extension of the Stay Period is necessary in order to maintain continued stability for the Company while it works diligently and in good faith to pursue its restructuring efforts, including the proposed Transaction.

54. I do not believe that any creditor will suffer any material prejudice as a result of the extension of the Stay Period.

VI. CONCLUSION

55. The Company, with the assistance of its advisors, has reviewed and considered its potential options and alternatives that may be available in the circumstances, taking into account the Company's unsustainable locations, liquidity issues and the ongoing challenges and impacts of the COVID-19 pandemic. The Company is not able to continue in the status quo with its significant fixed obligations and based on the financial performance of the Business.

56. After extensive review and consideration of its circumstances, and its options and alternatives, and following efforts to reach consensual arrangements with its landlords, the Company determined that the best available alternative that could be implemented in the circumstances that would preserve the value of the Business for the benefit of the Company's many stakeholders, would be a sale of substantially all of the assets of the Business pursuant to the proposed Transaction, and the continuation of the Business with a reduced number of McEwan Locations.

57. The Company believes that the Purchase Agreement provides fair and reasonable consideration for the Purchased Assets in the circumstances, and the implementation of the Transaction will result in a sustainable Business going forward for the benefit of the Company's

- 25 -

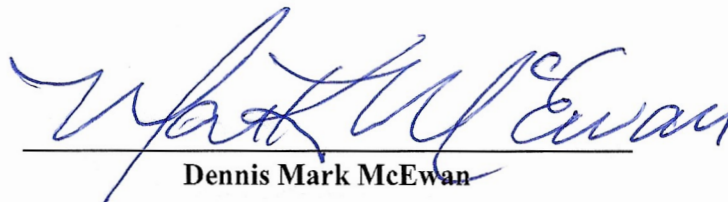
many stakeholders, including its 268 employees whose jobs will be preserved, its secured creditors whose obligations will be unaffected and assumed by the Purchaser, and its many suppliers and service providers whose contracts and obligations will also all be assumed.

58. The Company believes that the relief sought pursuant to the proposed Approval and Vesting Order is appropriate in the circumstances, and respectfully request that the Court grant the proposed Approval and Vesting Order.

SWORN before me over
videoconference by Dennis Mark
McEwan stated as being located in the
Village of Thornbury in the
Province of Ontario, before me at
the City of Toronto in the Province
of Ontario, on October 1, 2021, in
accordance with O. Reg 431/20,
Administering Oath or Declaration
Remotely

Caroline Descours

A Commissioner for taking affidavits


Dennis Mark McEwan

Caroline Descours LSO#: 58251A

C

THIS IS EXHIBIT "C"
TO THE AFFIDAVIT OF DENNIS MARK MCEWAN
SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE
THIS 12th DAY OF NOVEMBER, 2021

Caroline Descours

Commissioner for Taking Affidavits

PURCHASE AGREEMENT

MCEWAN ENTERPRISES INC.

as the Seller

- and -

2864785 ONTARIO CORP.

as the Buyer

Made as of September 27, 2021

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PURCHASE AGREEMENT

THIS AGREEMENT is made as of September **27**, 2021

B E T W E E N:

MCEWAN ENTERPRISES INC., a corporation organized under the laws of the Province of Ontario (the “**Seller**”)

- and -

2864785 ONTARIO CORP., a corporation organized under the laws of the Province of Ontario (the “**Buyer**”)

RECITALS:

- A. The Seller owns and operates restaurants, catering, gourmet grocery and an events company in Canada.
- B. The Seller has agreed to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer has agreed to purchase, acquire, assume and accept from the Seller, substantially all of Seller’s assets used in connection with, and certain liabilities and obligations of, the Business, on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged and confirmed), the Parties agree as follows:

ARTICLE 1– INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) “**2860117**” means 2860117 Ontario Limited, a wholly-owned subsidiary of the Seller;
- (b) “**Additional Indemnitees**” means, with respect to any Party, its directors, officers and employees;
- (c) “**affiliate**” has the same meaning as “**affiliate**” under National Instrument 45-106 – *Registration and Prospectus Exemptions*;
- (d) “**Agreement**” means this purchase agreement and all Exhibits and Schedules attached hereto, in each case as the same may be supplemented, amended, restated or replaced from time to time; and the expressions “**Article**”, “**Section**”, “**Schedule**” and “**Exhibit**” followed by a number or letter mean and refer to the specified Article, Section, Schedule or Exhibit of this Agreement;
- (e) “**Applicable Law**” means any Canadian statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or licence of any Governmental Authority, that applies in whole or in part to the Transaction, the Seller, the Buyer or any of the Purchased Assets;
- (f) “**Assumed Contracts**” has the meaning given to it in Section 2.1(c);

- (g) **“Assumed Liabilities”** means those Assumed Obligations that are amounts owing or accrued by the Seller as at the Closing Date;
- (h) **“Assumed Obligations”** has the meaning given to it in Section 3.1;
- (i) **“Assumed Real Property Leases”** has the meaning given to it in Section 2.1(a);
- (j) **“Authorizations”** means, with respect to any Person, any order, permit, approval, waiver, license or similar authorization of any Governmental Authority having jurisdiction over the Person;
- (k) **“Base Purchase Price”** has the meaning given to it in Section 2.7(a);
- (l) **“Business”** means the Seller’s business of owning and operating restaurants, catering, gourmet grocery and an events company in Canada.
- (m) **“Business Day”** means any day of the year on which national banking institutions in Toronto, Ontario are open to the public for conducting business and are not required or authorized by Applicable Law to close;
- (n) **“Buyer”** has the meaning given to it in the preamble to this Agreement;
- (o) **“Buyer Designee”** means one or more affiliates of the Buyer designated by the Buyer to the Seller prior to the Closing;
- (p) **“Cash and Cash Equivalents”** means all of the Seller’s cash and cash equivalents (including petty cash and cheques received prior to the close of business on the Closing Date), bank balances, monies in possession of banks and other depositories and other similar cash property, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper and government securities and other cash equivalents.
- (q) **“Cash Reserve”** means cash in such amount as may be agreed to by the Parties with the consent of the Monitor prior to the Closing Date.
- (r) **“CCAA”** means the *Companies’ Creditors Arrangement Act* (Canada);
- (s) **“CCAA Approval and Vesting Order”** means an order of the CCAA Court, among other things, authorizing and approving this Agreement, the Transaction and granting a court-ordered charge to secure the obligation of the Seller to repay to the Buyer the Transaction Deposit pursuant to the terms hereof in the event the Agreement is terminated in accordance with the terms of this Agreement, in form and substance acceptable to the Parties, acting reasonably;
- (t) **“CCAA Assignment Order”** means an order or orders of the CCAA Court pursuant to Section 11.3 and other applicable provisions of the CCAA authorizing and approving the assignment of any Assumed Contract for which a consent, approval or waiver necessary for the assignment of such Assumed Contract has not been obtained, in form and substance acceptable to the Parties, acting reasonably;
- (u) **“CCAA Court”** means the Ontario Superior Court of Justice (Commercial List);
- (v) **“CCAA Initial Order”** means an order that may be granted or issued by the CCAA Court granting protection to the Seller pursuant to the CCAA;
- (w) **“CCAA Proceedings”** means proceedings that may be commenced by the Seller under the CCAA pursuant to the CCAA Initial Order;
- (x) **“CF Loan Agreement”** means the loan agreement entered into on August 6, 2008 between C/F Realty Holdings Inc., as lender, and the Seller, as borrower, as amended

pursuant to an amending agreement entered into as of December 15, 2008, as may be further amended, modified, restated, replaced and supplemented from time to time;

- (y) **“Closing”** means the completion of the Transaction pursuant to the terms and conditions of this Agreement at the time set forth in Section 7.1 (including, as applicable, pursuant to the CCAA Proceedings) and of all other transactions contemplated by this Agreement (or, as applicable, the CCAA Proceedings) that are to occur concurrently with the sale and purchase of the Purchased Assets;
- (z) **“Closing Date”** means the first Business Day that is at least five (5) Business Days following the first date by which all of the conditions in Section 6.8 have been satisfied or waived, or such other date as may be agreed upon by the Parties hereto;
- (aa) **“Commercially Reasonable Efforts”** means the efforts that a reasonably prudent Person who desires to complete the Transaction on commercially reasonable terms would use in similar circumstances without the necessity of, directly or indirectly, assuming or incurring any material obligations or paying or committing to pay any material amounts to an unrelated Person;
- (bb) **“Confidential Information”** means information concerning the Seller, its affiliates and/or its and their respective businesses, operations, finances and affairs that is or has been disclosed by the Seller, its affiliates or any of their respective Representatives to the Buyer, its affiliates or any of their respective Representatives in connection with the Transaction, the proposed transactions of the Seller and its affiliates concerning their assets, business, properties and/or operations outside Canada, this Agreement, including the existence of, the terms and conditions of, or the status of the Transaction, any such other proposed transaction, this Agreement, or any other facts pertaining to any of them, any information about identifiable individuals or any other information relating to the Seller, its affiliates and/or its and their respective businesses, operations, finances and affairs, associates, customers, suppliers, partners, investors, employees and consultants, and includes all data, reports, analyses, compilations, forecasts, records and other material (in whatever form maintained) that contain or otherwise reflect any such information, as well as all notes, analyses, compilations, studies, interpretations or other documents prepared by the Buyer, its affiliates or any of their respective Representatives that contain, reflect or are based upon, in whole or in part, any such information. Notwithstanding the foregoing, **“Confidential Information”** does not include information that the Buyer can demonstrate that: (A) is or becomes readily available to the public other than as a result of disclosure by the Buyer, its affiliates or any of their respective Representatives; (B) is received by the Buyer from an independent third party that obtained it lawfully and was under no duty of confidentiality; (C) has been in the possession of the Buyer on a non-confidential basis prior to the disclosure of such information by the Seller or its Representatives; (D) was independently developed by the Buyer without use or reference of any Confidential Information; or (E) is disclosed pursuant to Applicable Laws or a valid and enforceable order of a court or other Governmental Authority having jurisdiction over the Buyer provided that (other than in respect of disclosure by the Seller pursuant to applicable securities laws) the Buyer shall, to the extent possible, first promptly notify the Seller in writing of such requirement and fully cooperate with respect to any reasonable steps possible to further protect Confidential Information;
- (cc) **“Contract”** means any contract, agreement, lease, sublease, license, sublicense, sales order, purchase order, instrument, or other commitment, whether written or oral, that is binding on any Person or any part of its property under Applicable Law;

- (dd) **“Court Approvals”** means the issuance of the CCAA Initial Order, the CCAA Approval and Vesting Order and, as applicable, CCAA Assignment Orders by the CCAA Court in respect of one or more Assumed Contracts in the CCAA Proceedings, each such order in form and substance satisfactory to the Buyer and the Seller acting reasonably;
- (ee) **“Cure Costs”** means, in respect of any Assumed Contract, all amounts owing as at the Closing Date by the Seller or an affiliate thereof pursuant to such Assumed Contract and all amounts required to be paid to cure any monetary defaults thereunder, if any, required to effect an assignment thereof from the Seller to the Buyer and/or, as applicable, one or more Buyer Designees, and/or to obtain any Third Party Consent and/or, as applicable, pursuant to any CCAA Assignment Order, and any fees required to be paid to obtain such Third Party Consent or CCAA Assignment Order, as agreed upon by the Parties in writing;
- (ff) **“Deposit Amount”** has the meaning given to it in Section 2.6(b);
- (gg) **“Designation Deadline”** has the meaning given to it in Section 2.4;
- (hh) **“Disclosed Personal Information”** has the meaning given to it in Section 10.5(b);
- (ii) **“Employee Plans”** means all oral and written employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive or performance compensation, savings, severance or termination pay, retirement, supplementary retirement, registered or unregistered retirement savings, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, policy, agreement, practice, undertaking or arrangement, and every other oral or written benefit plan, program, policy, agreement, practice, undertaking or arrangement sponsored, maintained or contributed to or required to be contributed to by the Seller for the benefit of the current or former directors, officers, employees, contractors, consultants of the Seller in respect of the Business and/or their respective dependants or beneficiaries, by which the Seller is bound or with respect to which the Seller participates or has any actual or potential liability, other than statutory benefit plans which the Seller is required to participate in or comply with, including the Canada Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation;
- (jj) **“Encumbrance”** means any and all right, title, interest, priorities, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, assignments, judgments, options, levies, charges, other financial or monetary claims or encumbrances, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, by or of any and all persons or entities of any kind whatsoever;
- (kk) **“Environmental Laws”** means all Applicable Laws relating to the protection, preservation and remediation of the environment (including the *Canadian Environmental Protection Act, 1999*) or health and safety;
- (ll) **“Excluded Assets”** has the meaning given to it in Section 2.2;
- (mm) **“Excluded Contracts”** has the meaning given to it in Section 2.2(a);
- (nn) **“Excluded Encumbrances”** means the Encumbrances set out on Schedule 1.1(nn);
- (oo) **“Excluded Obligations”** has the meaning given to it in Section 3.2;

- (pp) **“Governmental Authority”** means: (i) any federal, provincial, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above;
- (qq) **“HST”** means harmonized sales tax payable under the HST Legislation;
- (rr) **“HST Legislation”** means the *Excise Tax Act* (Canada) and other Applicable Laws in Canada (or any province thereof) giving rise to the requirement to pay harmonized sales tax;
- (ss) **“Improvements”** means all plants, buildings, structures, systems, fixtures, erections and improvements located on, over, under or upon, the Leased Locations;
- (tt) **“Indemnified Losses”** means all claims, liabilities, obligations, damages, awards, assessments, settlement amounts, penalties, fines, judgments, losses, costs, charges and expenses, but for greater certainty, excluding in all cases any and all indirect, incidental, consequential, punitive, exemplary and special damages (including, as exclusions, loss of future revenue or income, business interruption, cost of capital or loss of business reputation or opportunity or diminution in value);
- (uu) **“Intellectual Property”** means any domestic and foreign (i) registered and unregistered trademarks, trade names, business names, brand names, designs, logos, indicia, distinguishing guises, trade dress, service marks, copyrights, trade secrets, industrial designs, inventions, patents, formulas, processes, know-how, technology and related goodwill, (ii) issued patents, continuations in part, divisional applications or analogous rights therefor, (iii) telephone and facsimile numbers, domain name registrations, website names, world wide web addresses and social media accounts, (iv) all right, title and benefit to any and all consents, whether express or implied, granted in accordance with or pursuant to *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 (Canada)* (commonly known as **“Canada’s Anti-Spam Law”** or **“CASL”**), and (v) any applications or registrations of any of the foregoing, in each case whether registered or not, as well as all other intellectual property rights in the foregoing;
- (vv) **“Interim Period”** means the period between the date hereof and the Closing Date;
- (ww) **“Inventory and Supplies”** has the meaning given to it in Section 2.1(d);
- (xx) **“Leased Locations”** means those premises occupied by the Business that are listed in Schedule 2.1(a) by reference to their respective municipal addresses;
- (yy) **“Loan Agreements”** means, collectively, (A) the loan agreement entered into on October 2, 2018 between the Seller, as borrower and Royal Bank of Canada, as lender, as amended pursuant to an amending agreement entered into as of February 26, 2019, (B) the CF Loan Agreement, (C) the debentures dated October 31, 2018 (as amended), March 18, 2020, August 5, 2020, and March 22, 2021 between the Seller and Northbridge Financial Corporation, (D) the loan received from the Canada Emergency Benefit Account, and (E) the loan agreement entered into on March 30, 2021 between the Seller, as borrower and Royal Bank of Canada, as lender under the Highly Affected Sectors

Credit Availability Program, in each case as amended, modified, restated, replaced and supplemented from time to time;

- (zz) **“Material Contracts”** means the Assumed Contracts listed in Schedule 1.1(zz) (as may be amended by the Buyer by adding or deleting any Contract therefrom pursuant to and in accordance with Section 2.4);
- (aaa) **“Monitor”** means the monitor appointed pursuant to the CCAA Proceedings;
- (bbb) **“Monitor’s Certificate”** means the certificate of the Monitor contemplated by the CCAA Approval and Vesting Order certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all of the conditions of Closing have been satisfied or waived by the applicable Parties;
- (ccc) **“Ordinary Course”** means, with respect to an action taken or omitted to be taken by a Person, that such action is reasonably practicable and generally consistent with the past practices of the Person having regard to the transactions contemplated by this Agreement and, as applicable, the CCAA Proceedings;
- (ddd) **“Parties”** means the Seller and the Buyer, and **“Party”** means any of them;
- (eee) **“Permitted Encumbrances”** means the following, but, for greater certainty, in each case excluding the Excluded Encumbrances and any and all Encumbrances granted under, pursuant to or in connection with any Excluded Contracts or other Excluded Assets, and also excluding any and all Encumbrances granted in connection with or in respect of, or otherwise securing, any Excluded Obligations:
 - (i) Encumbrances or privileges reserved to, vested in or in favour of any Person by (a) any Applicable Law or (b) the terms of any Authorization, that affects any lands or premises, to amend or terminate any such Authorization or to require annual or other periodic payments or other requirements as a condition to the continuance or effect thereof;
 - (ii) Encumbrances for Taxes, assessments or governmental charges and Encumbrances in favour of a Governmental Authority arising by (a) Applicable Law or (b) operation of Applicable Law and which relate to or secure obligations of the Seller;
 - (iii) covenants, conditions, restrictions, easements and other imperfections or irregularities or similar matters affecting title to the Leased Locations;
 - (iv) any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind including rights to coal, petroleum and minerals of any kind, including rights to enter, prospect and remove the same, and statutory exceptions, qualifications or limitations to the title;
 - (v) Encumbrances associated with, and financing statements evidencing, the rights of equipment or other capital lessors under equipment contracts or other capital lease arrangements forming part of the Purchased Assets in and to the equipment or other capital assets which are subject to such Assumed Contracts;
 - (vi) permits, licenses, zoning, entitlement and other land use regulations, agreements, arrangements, easements, restrictions, reservations, restrictive covenants, conditions, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land of, granted to or reserved by other Persons (including,

without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, subdivisions, development, site plan, zoning, rights-of-way, sidewalks, public ways, as well as rights in the nature of easements or servitudes for sewers, drains, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables);

- (vii) all matters that are disclosed (whether or not subsequently endorsed over) in any title policies issued in connection with the Leased Locations to the extent such policies have been made available to the Buyer and any plans or surveys to the extent such policies and copies of such surveys and exception documents have been made available to Buyer;
 - (viii) all matters as would be disclosed on current title reports or surveys and that would not reasonably be expected to have a material adverse effect on a Leased Location;
 - (ix) any Encumbrances against the interest of the landlord or sub-landlord at a Leased Location;
 - (x) any Encumbrances granted under the Assumed Contracts including any leases or subleases;
 - (xi) any Encumbrance to be released on or prior to the Closing;
 - (xii) any Encumbrance set out in Schedule 1.1(eee); and
 - (xiii) any amendment, supplement, replacement, extension or renewal of any of the foregoing from time to time;
- (fff) **“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, co-operative, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;
- (ggg) **“Personal Property Leases”** means a personal or movable property lease, equipment lease, conditional or instalment sale contract and other similar agreement relating to any Purchased Equipment to which the Seller is a party or under which it has rights to use any Purchased Equipment;
- (hhh) **“Prepaid Expenses”** has the meaning given to it in Section 2.1(k);
- (iii) **“Purchased Assets”** has the meaning given to it in Section 2.1;
- (jjj) **“Purchased Equipment”** has the meaning given to it in Section 2.1(b);
- (kkk) **“Representatives”** means, in respect of any Party, their respective affiliates, directors, officers, employees, agents and advisors (including financial advisors and legal counsel) of that Party and its affiliates, as well as the directors, officers and employees of any such Party’s agents or advisors;
- (lll) **“Seller”** has the meaning given to it in the preamble to this Agreement;
- (mmm) **“Seller’s Employees”** means the employees of the Seller (full-time or part-time and including those on leave or on disability) and employed for or in the Business on the Closing Date;
- (nnn) **“Specified Insurance Proceeds”** has the meaning given to it in Section 2.1(i);
- (ooo) **“Sunset Date”** has the meaning given to it in Section 9.1(b);

- (ppp) **“Tax”** and **“Taxes”** means all taxes, duties, fees, premiums, assessments, levies and other charges of any kind whatsoever imposed by any Governmental Authority, together with all interest, penalties and fines in respect thereof.
- (qqq) **“Tax Act”** means the *Income Tax Act* (Canada), as amended from time to time;
- (rrr) **“Third Party Consents”** means the consents, approvals and/or authorizations of the contracting parties to the Transaction or any part thereof, including the assignment, novation or other similar arrangement of the Authorizations, the Personal Property Leases, the Assumed Real Property Leases and the other Assumed Contracts, as may be required by the terms thereof;
- (sss) **“Transaction”** means the purchase of assets and assumption of liabilities of the Business by the Buyer contemplated by this Agreement (including pursuant to the CCAA Proceedings, as applicable);
- (ttt) **“Transaction Deposit”** has the meaning given to it in Section 2.6(a);
- (uuu) **“Transfer Taxes”** means any HST or any other federal, provincial, state or local or foreign value-added, sale, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, documentary, filing, transfer, land or real property transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges; and
- (vvv) **“Transferred Employees”** means those Seller’s Employees who accept the offer of employment made by the Buyer or its affiliate(s) pursuant to Section 8.1.

1.2 Schedules

The following Schedules form part of this Agreement:

Schedule 1.1(nn)	Excluded Encumbrances
Schedule 1.1(zz)	Material Contracts
Schedule 1.1(eee)	Permitted Encumbrances
Schedule 2.1(a)	Leased Locations / Assumed Real Property Leases
Schedule 2.1(c)	Assumed Contracts
Schedule 2.1(f)	Intellectual Property
Schedule 2.1(l)	Securities
Schedule 2.2(a)	Excluded Contracts
Schedule 4.10	Environmental Matters
Schedule 6.2(a)	Insurance Policies

1.3 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

1.4 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 Interpretations

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. In addition, every use of the words “including” or “includes” in this Agreement is to be construed as meaning “**including, without limitation**” or “**includes, without limitation**”, respectively.

1.6 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars.

1.7 Knowledge

Any reference to the “**knowledge**” or awareness of the Seller, will mean the actual knowledge, information and belief of the Seller’s senior executive officers, without inquiry, in their respective capacity as senior executive officers of the Seller only and not in their personal capacity or in any other capacity, and without personal liability, as of the date of this Agreement.

1.8 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.9 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.10 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by each of the Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.11 Governing Law, Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the Transaction (including for the CCAA Proceedings or any part thereof, and in each case whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, as well as the rights and obligations of the Parties hereunder or thereunder, shall in all respects be governed by, and

interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein (including, as applicable, the CCAA), without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the courts of the Province of Ontario (including, as applicable, the CCAA Court) for the resolution of any such disputes arising under this Agreement or any other arrangement between the Parties (including the CCAA Proceedings or any part thereof). Each Party agrees that service of process on such Party as provided in Section 10.11 shall be deemed effective service of process on such Party.

ARTICLE 2– PURCHASE AND SALE

2.1 Purchased Assets

Subject to the terms and conditions of this Agreement, at the Closing and effective as at 12:01 am (EST) on the Closing Date, the Seller agrees to sell, assign, transfer and convey to the Buyer and/or, as applicable, one or more Buyer Designees, and the Buyer agrees to or to cause one or more Buyer Designees to purchase, assume and accept from the Seller, all of the Seller's respective right, title and interest in and to, and the Buyer agrees to assume and perform all of the Seller's obligations in and under, the assets and properties of the Seller used, maintained, owned or operated for, in respect of or in connection with the Business, in each case free and clear of all Encumbrances other than the Permitted Encumbrances, excluding the Excluded Assets (including, for greater certainty, the Excluded Contracts listed on Schedule 2.2(a) hereof) (all of such assets and property hereinafter collectively referred to as the "**Purchased Assets**"), including the following:

- (a) **Assumed Real Property Leases.** All of the Seller's respective leasehold interest (subject to the burdens, obligations, restrictions and conditions therein) in the Contracts listed in Schedule 2.1(a), as Schedule 2.1(a) may be amended pursuant to and in accordance with Section 2.4, pursuant to which the Seller uses or occupies the Leased Locations (including all related Contracts such as estoppels, subordination and non-disturbance agreements, guarantees, extensions, renewals and modifications) or rights and any amendments, extensions and restatements thereof, including all Contracts incidental thereto subject to the rights of the applicable landlord or any third party (including rights to ownership or use of such property) under such leases (the "**Assumed Real Property Leases**");
- (b) **Purchased Equipment.** All equipment, machinery, chattels, Improvements, furnishings, computer hardware and peripheral equipment and other tangible personal and movable property (other than Inventory and Supplies) owned by the Seller or the Seller's interests in any such property subject to a personal or movable property lease, equipment lease, conditional or instalment sale contract or other similar agreement to which the Seller is a party or under which the Seller has rights to use any such property (the "**Purchased Equipment**");
- (c) **Contracts.** Without duplication of the Assumed Real Property Leases, the Seller's respective benefit (in each case subject to the burdens, including restrictive covenants, termination rights and other obligations, restrictions and conditions therein) in the Loan Agreements and the other Contracts listed in Schedule 2.1(c), as Schedule 2.1(c) may be amended pursuant to and in accordance with Section 2.4 (including the Assumed Real Property Leases and the Personal Property Leases for Purchased Equipment, collectively, the "**Assumed Contracts**");
- (d) **Inventory and Supplies.** As at the Closing, all those inventories and supplies (both warehouse and retail) that are held by or on behalf of the Seller for sale, rental, lease or

other distribution for, in or of the Business, whether situated at a Leased Location or at any other location (collectively, the “**Inventory and Supplies**”);

- (e) **Motor Vehicles.** All motor vehicles owned or leased by Seller;
- (f) **Intellectual Property.** The Seller’s rights, interests and benefits (through ownership, licensing or otherwise) in the Intellectual Property used in the Business, and including the Intellectual Property listed in Schedule 2.1(f);
- (g) **Cash.** All Cash and Cash Equivalents, whether on hand, in transit to the Seller on the Closing Date or in banks or other financial institutions, and all security entitlements, securities accounts, commodity contracts and commodity accounts on hand at Closing;
- (h) **Insurance Policies.** To the extent assignable or transferable in accordance with the terms and conditions of the applicable insurance policies, Applicable Law, the CCAA Assignment Order or the CCAA Approval and Vesting Order, (i) all of the Seller’s insurance policies and rights and benefits thereunder (including (A) all rights pursuant to and proceeds, condemnation, or expropriation awards or other compensation in respect of loss or damage to any Purchased Asset from such insurance policies, and (B) all claims, demands, proceedings and causes of action asserted by the Seller under such insurance policies relating to any Purchased Asset or Assumed Obligation), and (ii) any letters of credit related thereto;
- (i) **Specified Insurance Proceeds.** The net proceeds of any insurance payable or paid in respect of any Purchased Asset, as well as the Seller’s rights in and to any such proceeds (the “**Specified Insurance Proceeds**”);
- (j) **Receivables.** All accounts receivable of the Seller that are outstanding as at the Closing Date (but excluding amounts owing or receivable in respect of any Excluded Asset), any Tax credit or attribute, HST and other Tax receivables, as well as future Tax receivables and Tax refund entitlements related to periods ending on or before the Closing Date, or in respect of a taxable period that includes but does not end on the Closing Date, the portion thereof up to and including the Closing Date, in each case of a Seller or any of its businesses (collectively, the “**Receivables**”);
- (k) **Prepaid Expenses and Deposits.** All amounts which are prepaid in respect of or in relation to the Purchased Assets, including all deposits made by the Seller or on account of the Seller for goods and services purchased, ordered or leased by the Seller in respect of the Business as well as all deposits, advances, advance payments, prepayments, deferred charges or rebates in favour of the Seller including (i) security deposits with third-party suppliers, vendors or utility or service providers, ad valorem taxes and lease and rental payments, (ii) rebates, (iii) collateral pledged for workers’ compensation and (iv) prepayments, in respect of the Assumed Real Property Leases, the Personal Property Leases for Purchased Equipment and the other Assumed Contracts, the benefit of all of which are transferable to the Buyer in accordance with the terms of this Agreement, all of which are Assumed Contracts being assigned to and assumed by the Buyer and are Assumed Obligations (the “**Prepaid Expenses**”);
- (l) **Securities.** All shares, partnership or joint venture interests and any other securities of any Person owned or held by the Seller, as set forth in Schedule 2.1(l);
- (m) **Books and Records.** All documents used by the Seller and with respect to which the Seller has possession or a right to possession of, in connection with, or relating to, the Purchased Assets, the Assumed Obligations, or the operations of the Seller’s Business, including all files, data, reports, plans, mailing lists, supplier lists, customer lists, price

lists, all books of account and other financial data and information of the Seller or the Business, employee personnel records of Transferred Employees, marketing information and procedures, advertising and promotional materials, equipment records, warranty information, environmental site assessments, building condition reports, surveys, records of operations, standard forms of documents, manuals of operations or business procedures, and other similar procedures (including all discs, tapes, and other media-storage data containing such information);

- (n) **Tax Records.** All original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the Seller and/or the Business, *provided that* the Seller shall retain the original copies of any of the records required to be provided to the Buyer hereunder (and provide the Buyer with a copy thereof) to the extent the Seller is expressly required to do so under Applicable Law;
- (o) **Employee Plans.** All (i) assets and rights under the Employee Plans other than any Employee Plan that is an employment or similar agreement between a Seller's Employee and the Seller and (ii) human resources and other employee-related files and records relating to the Transferred Employees, except to the extent prohibited by Applicable Law;
- (p) **Confidentiality Rights.** All rights of the Seller under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of the Seller or with third parties;
- (q) **Other Rights.** All rights, claims, actions, refunds, causes of action, choses in action, suits, proceedings, rights of recovery, rights of setoff, rights of recoupment, rights of indemnity or contribution, and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against any Person, including all warranties, representations, guarantees, indemnities, and other contractual claims (express, implied, or otherwise); and
- (r) **Goodwill.** The goodwill of the Business, including the exclusive right of the Buyer to (i) represent itself as carrying on the Business in continuation of and in succession to the Seller, and (ii) use any words indicating that the Business is carried on,

but, for greater certainty, in each case excluding any Excluded Assets.

Notwithstanding anything in this Agreement to the contrary, the Buyer may, in its sole and absolute discretion, at any time on or prior to the Designation Deadline, elect to acquire any additional assets, properties, and rights of the Seller, and any asset so designated by the Buyer shall be a Purchased Asset for all purposes hereunder; *provided, however*, that, with respect to Contracts, such designation shall be made in accordance with Section 2.4.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement, the Purchased Assets will not, and will not be deemed to, include any of the following assets, property, rights, benefits or undertakings of the Seller (collectively, the "**Excluded Assets**"):

- (a) all rights and interests in and to the Contracts to which the Seller is a party, other than the Assumed Contracts, as set out in Schedule 2.2(a) (the "**Excluded Contracts**");
- (b) all of the Seller's rights and benefits under this Agreement and the Transaction;

- (c) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period, or otherwise in compliance with the terms of this Agreement; and
- (d) all director and officer insurance policies and any entitlements and any proceeds paid or payable thereunder to or on behalf of the directors and officers of the Seller.

Notwithstanding anything in this Agreement to the contrary, the Buyer may, in its sole and absolute discretion, at any time on or prior to the Designation Deadline, elect not to acquire any of the assets, properties, and rights of the Seller, and any asset so designated by the Buyer shall be an Excluded Asset for all purposes hereunder; provided, however, that, with respect to Contracts, such designation shall be made in accordance with Section 2.4.

2.3 Condition of Conveyance

Without limiting the provisions of this Agreement relating to sale, transfer, assignment, conveyance, or delivery, the Purchased Assets and the Assumed Obligations shall be sold, transferred, assigned, conveyed, and delivered by the Seller to the Buyer and/or, as applicable, one or more Buyer Designees, by appropriate instruments of transfer, bills of sale, endorsements, assignments, and deeds, in recordable form, by way of CCAA Assignment Order, as appropriate, or as otherwise acceptable to the Buyer, and free and clear of any and all Encumbrances of any and every kind, nature, and description, other than Permitted Encumbrances.

2.4 Material Contracts, Assumed Contracts and Assumed Real Property Leases Schedules

Notwithstanding anything in this Agreement to the contrary, the Buyer, in its sole discretion, shall have the right at any time and from time to time up to one (1) day prior to the Closing Date (the “**Designation Deadline**”), upon written notice to the Seller, to (a) amend and update Schedules 1.1(zz), 2.1(a), 2.1(c) and 2.2(a), as applicable, to add (or in the case of Schedule 2.2(a), delete) any one or more of the Contracts to which the Seller is party, to such schedule and upon delivery of each such notice, the Contract so added or deleted shall, for all purposes of this Agreement, be deemed to be a Material Contract, Assumed Real Property Lease and/or Assumed Contract, as the case may be, and liabilities arising at and after the Closing Date under such Contract shall be an Assumed Obligation for all purposes of this Agreement to the extent so provided herein; (b) for any particular Assumed Contract that will be assumed in whole or in part by a Buyer Designee, to identify such Buyer Designee, and (c) amend and update Schedules 1.1(zz), 2.1(a), 2.1(c) and 2.2(a) as applicable, to delete (or in the case of Schedule 2.2(a), add) any one or more Contracts therefrom, and the Contract so deleted or added shall, for all purposes of this Agreement, be deemed to have ceased to be a Material Contract and/or be an Excluded Contract, as the case may be, and in the case of the latter, all liabilities arising at any time therefrom shall be Excluded Obligations for all purposes of this Agreement to the extent so provided herein, provided, however, that if the addition of an Excluded Contract results in a material increase in the aggregate amount of Excluded Obligations, such addition of an Excluded Contract shall be subject to the consent of the Monitor. If the Buyer indicates in writing to the Seller after the Closing Date that it wishes to acquire a Contract of the Seller that was not an Assumed Contract on the Closing Date, the Seller will use its Commercially Reasonable Efforts to assign such Contract to the Buyer and/or, as applicable, one or more Buyer Designees; provided, however, that nothing herein shall be deemed or construed to obligate the Seller to retain, or refrain from rejecting or terminating, any Contract after the Designation Deadline that does not constitute an Assumed Contract; provided, further, that nothing herein shall be deemed to require the Seller to delay or otherwise alter the completion of the CCAA Proceedings or any winding-up of the Seller or any of its affiliates. Notwithstanding the foregoing or anything else contained

in this Agreement, the Closing shall not be delayed or restricted in any way as a consequence of this Section 2.4.

2.5 As is, Where is

THE BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS ARE PURCHASED AND THE ASSUMED OBLIGATIONS ARE ASSUMED BY THE BUYER AND/OR, AS APPLICABLE, ONE OR MORE BUYER DESIGNEES, “**AS IS, WHERE IS**” AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED OBLIGATIONS, AND WITHOUT ANY RECOURSE TO THE SELLER OR ANY OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, REPRESENTATIVES OR ADVISORS, OTHER THAN FOR KNOWING AND INTENTIONAL FRAUD. THE BUYER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED OBLIGATIONS IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE BUYER’S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Buyer acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Seller in this Agreement or in any instrument furnished in connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, merchantability, quantity, condition, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are expressly excluded.

2.6 Deposit Amount

- (a) During the Interim Period, but subject to the CCAA Approval and Vesting Order having been granted by the CCAA Court, the Seller and the Buyer may enter into terms for the payment of a deposit payable in one or more installments up to a total amount of \$2,250,000, to be repaid or assumed, as the case may be, in accordance with or as otherwise contemplated by the terms of this Agreement and/or such additional terms as may be entered into between Seller and Buyer, each acting reasonably, at the time of their funding (the “**Transaction Deposit**”). The Transaction Deposit shall be used solely to finance the Seller’s working capital requirements, other general corporate purposes and capital expenditures, and the costs of the CCAA Proceedings.
- (b) Upon Closing, all interest, income and earnings on the Transaction Deposit (together with the Transaction Deposit, the “**Deposit Amount**”) will constitute an Assumed Obligation of the Buyer pursuant to Section 3.1 of this Agreement.
- (c) If this Agreement is terminated for any reason, then the Deposit Amount shall be, and become immediately due and payable in full by Seller to Buyer without any additional notice, demand or other action or otherwise to the Seller or from the Buyer, and the Buyer shall be deemed to have made a formal demand thereunder, secured as a priority Encumbrance against the Seller pursuant to the CCAA Approval and Vesting Order.

2.7 Purchase Price and Payment

- (a) The aggregate consideration for the Purchased Assets is the aggregate sum of (A) \$520,000 (the “**Base Purchase Price**”), plus (B) an amount equal to Cure Costs, plus (C) the assumption of the Assumed Obligations by Buyer or one or more Buyer Designees.
- (b) At the Closing, the Buyer shall (A) pay to the Seller the Base Purchase Price by way of wire transfer of immediately available funds to such bank account as is designated by the Seller and advised by the Seller to the Buyer no later than the Closing Date, (B) pay to the Monitor all Cure Costs, if any, as may be directed by the Monitor, and (C) assume the Assumed Obligations. For the avoidance of doubt, the consideration for the purchase by Buyer of the Purchased Assets includes the assumption of the Assumed Obligations by Buyer or one or more Buyer Designees. Notwithstanding the previous sentence, for the purposes of the Tax Act and for computing Transfer Taxes, the consideration for the Purchased Assets shall include only the Assumed Liabilities.

2.8 Purchase Price Allocation

The Buyer and the Seller agree to act in good faith to determine the allocation of the aggregate consideration for the Purchased Assets in accordance with the Tax Act and other Applicable Law. In the event that agreement cannot be reached, the Parties will jointly choose an independent accounting firm, whose decision shall be final. Half of the costs of such firm shall be paid by the Seller and the other half of such costs by the Buyer. The Parties agree to execute and file all Tax returns, declarations, reports, statements and other filings on the basis of such allocation.

2.9 Tax Matters

- (a) All amounts payable by the Buyer to the Seller pursuant to this Agreement are exclusive of Transfer Taxes arising in connection with the sale, conveyance, assignment and transfer of the Purchased Assets to the Buyer and/or, as applicable, one or more Buyer Designees. The Buyer and/or, as applicable, one or more Buyer Designees, will be solely liable and responsible for and will pay, if required by Applicable Law, all Transfer Taxes (and within the time periods required thereunder). The Parties will cooperate with each other in good faith and will use Commercially Reasonable Efforts to assist the Buyer and/or, as applicable, one or more Buyer Designees, in mitigating such taxes. If the Seller is required by any Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Buyer and/or, as applicable, one or more Buyer Designees, the Buyer and/or such Buyer Designees will pay such amounts to the Seller concurrent with the payment of any consideration payable pursuant to this Agreement or, if arising after Closing, forthwith, and Seller will pay such amounts to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.
- (b) The Parties will use their Commercially Reasonable Efforts in good faith to minimize (or eliminate) any taxes payable under the HST Legislation in respect of the Closing by, among other things, at the specific request of the Buyer to the Seller, the Parties filing a joint election in a timely manner under Section 167 of the *Excise Tax Act* (Canada), if applicable and available). If the Buyer requests the Seller to make any such election, then in addition to any other indemnification obligation of the Buyer to the Seller, the Buyer will at all times indemnify and hold harmless the Seller and its Additional Indemnitees against and in respect of any and all Indemnified Losses, including all amounts assessed (together with any and all interests and penalties) by the Minister of

National Revenue (Canada) or the corresponding Governmental Authority in each other applicable jurisdiction (including all legal and professional fees incurred by the Seller or its shareholders, directors, officers, agents, advisors and/or employees, as a consequence of or in relation to any such assessment) as a consequence of either the Minister or any such other Governmental Authorities determining, for any reason, other than the actions or inaction of the Seller, that either election is unavailable, inapplicable, invalid or not properly made.

- (c) If requested by the Seller, the Parties shall enter into an election under Section 22 of the Tax Act.
- (d) If requested by Seller, the Seller and the Buyer will duly and timely execute an election pursuant to Subsection 20(24) of the Tax Act and any analogous provisions of any other Tax law to apply to such amount determined and paid by Seller to Buyer for assuming future obligations of Seller in respect of undertakings which arise from the operation of the corresponding business and to which Paragraph 12(1)(a) of the Tax Act or any analogous provision of other Tax law applies or applied.
- (e) Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Purchased Assets (including real estate Taxes, personal property Taxes and similar Taxes), but for greater certainty, excluding Taxes imposed or assessed against the Seller in respect of Seller's income, capital gains/losses or similar Taxes, for any Tax period, including prior to the Closing, will be assumed by and shall be the sole responsibility of the Buyer.

ARTICLE 3– ASSUMED OBLIGATIONS AND EXCLUDED OBLIGATIONS

3.1 Assumed Obligations

Subject to Closing, the Buyer agrees to or to cause one or more Buyer Designees to assume, pay, discharge, perform and fulfil, and will indemnify and hold harmless the Seller and its Additional Indemnitees from and against, the following debts, commitments, claims, obligations and liabilities of the Seller with respect to the Business and the Purchased Assets, in each case whether direct or indirect, present or future, absolute, accrued or contingent (collectively, but for greater certainty excluding all Excluded Obligations, the “**Assumed Obligations**”):

- (a) all obligations and liabilities in respect of the Assumed Contracts but, for greater certainty, excluding the Excluded Obligations;
- (b) all obligations and liabilities in respect of customer loyalty programs, gift cards, food and merchandise credits and other similar customer retainer, engagement and incentive programs of the Business;
- (c) all Cure Costs;
- (d) all liabilities and obligations in respect of the Deposit Amount;
- (e) all liabilities and obligations secured by Permitted Encumbrances prescribed in the clause (xii) of such definition, but, for greater certainty, excluding the Excluded Obligations;
- (f) for greater certainty, all obligations under Applicable Law after the Closing with respect to the storage and retention of personal, financial or other records in respect of or included as the Purchased Assets;
- (g) all liabilities and obligations assumed by the Buyer as described in Section 8.2;

- (h) all liabilities and obligations with respect to Employee Plans duly assigned to, and assumed as a Purchased Asset, by the Buyer pursuant to Sections 2.1(o) and 8.1(c), respectively;
- (i) all Taxes that are specified as liabilities and obligations of the Buyer under Section 2.9; and
- (j) any other obligations and liabilities expressly assumed under this Agreement.

For greater certainty, the amount or value of the Assumed Liabilities shall not be included in determining the value of a Purchased Asset.

3.2 Excluded Obligations

Except for those arising from, due to or attributable to any violation or breach by the Buyer of any of its covenants, representations or warranties and except as expressly assumed by the Buyer and/or, as applicable, one or more Buyer Designees, pursuant to any of Sections 3.1(a) to 3.1(j) (inclusive), the Buyer and/or, as applicable, one or more Buyer Designees, will not assume and will have no obligation to discharge, perform or fulfill any of the following liabilities, debts, obligations, commitments or claims, direct or indirect, whether present or future, absolute, accrued or contingent, of the Seller (collectively, the “**Excluded Obligations**”):

- (a) all liabilities and obligations of any kind relating to the Excluded Assets (including any Contract that is not an Assumed Contract);
- (b) all obligations and liabilities of the Seller that are secured by court-ordered charges in the CCAA Proceedings and that are subject to the Cash Reserve, in an amount not less than \$100,000;
- (c) any liability with respect to any legal, accounting audit, financial advisory, and investment banking fees and any other expenses incurred by the Seller, including with respect to the transactions contemplated by this Agreement or the CCAA Proceedings; and
- (d) any other obligations or liabilities expressly excluded from the Assumed Obligations under this Agreement.

The Buyer covenants and agrees that, from and after the Closing Date, (i) it will, at no cost to the Seller, forthwith upon receipt from time to time provide the Seller with all notices, demands and other communications received by or on behalf of the Buyer and/or, as applicable, one or more Buyer Designees, in respect of any Excluded Obligations or Excluded Assets; (ii) it will, at no cost to the Seller, co-operate with the Seller in connection with all reasonable demands under any Excluded Obligations or Excluded Assets, including providing the Seller with access to all personnel, information, data, documents, agreements and instruments reasonably required by the Seller to the extent relating to Excluded Obligations or Excluded Assets; and (iii) the Seller shall be entitled to exercise any rights and remedies that the Seller or the Buyer may have in respect of any of the Excluded Obligations and Excluded Assets, either by contract, law or in equity. This ending provision of Section 3.2 shall survive and not merge on the Closing.

3.3 Assumption of Contractual and Real Property Leases Obligations

- (a) Notwithstanding anything contained in this Agreement or elsewhere, other than the obligation of the Buyer to pay all Cure Costs, the Buyer and/or, as applicable, one or more Buyer Designees, will not assume and will have no obligation to discharge any

liability or obligation under any Assumed Contract which is not assignable or assumable in whole or in part without a Third Party Consent, unless such Third Party Consent or, as applicable, a CCAA Assignment Order, has been obtained.

- (b) Without limiting the generality of the foregoing but subject to the payment by the Buyer of the applicable Cure Costs, in each case in accordance with this Agreement, if any of the Assumed Contracts cannot be assigned to or assumed by the Buyer and/or, as applicable, one or more Buyer Designees, without a Third Party Consent or by way of a novation agreement, or, if applicable, a CCAA Assignment Order (which Third Party Consent, novation agreement or CCAA Assignment Order shall not have been obtained at or prior to the Closing), then notwithstanding anything contained in this Agreement or elsewhere, this Agreement does not constitute an assignment or attempted assignment of any such Assumed Contract if the assignment or attempted assignment would constitute a breach of such Assumed Contract. For greater certainty, in respect of any Assumed Contract (other than a Material Contract), if the consent of any Person is required to assign such Assumed Contract but such consent or CCAA Assignment Order, as applicable, is not obtained prior to Closing, such Assumed Contract shall not form part of the Purchased Assets and (A) neither Party shall be in breach of this Agreement as a consequence thereof, (B) no condition to Closing shall be, or be deemed to be, unsatisfied as a consequence thereof, and (C) the Closing shall not be delayed or restricted in any way as a consequence thereof.
- (c) Each Party shall use reasonable best efforts, acting in good faith, cooperatively and in a timely manner, to obtain, or cause to be obtained, at or prior to the Closing Date, the requisite Third Party Consents or, if applicable, CCAA Assignment Orders, pursuant to the Assumed Contracts.
- (d) The Seller agrees, as required by the Buyer, to enter into any occupancy agreements on terms acceptable to the Parties, each acting reasonably, in connection with any real property lease that is not an Assumed Real Property Lease.
- (e) Without limiting the Buyer's obligations under Sections 3.3(c) and 10.1, the Buyer will forthwith provide to the Seller and, if requested by the Seller, the requisite landlords, materials suitable for presentation to landlords of the Leased Locations or any other information required by any Assumed Real Property Lease or any such landlord. Furthermore, the Buyer will execute and deliver all necessary amendments, acknowledgements or assumption agreements required by any counterparty, in form acceptable to the Parties, each acting reasonably, as a condition to the issuance of its consent and that are commercially reasonable and contemplated in the corresponding Assumed Contracts and shall provide all necessary certificates of insurance required under such Assumed Contracts.
- (f) The Buyer acknowledges that if any Third Party Consents are not obtained in respect of any such Assumed Real Property Lease and such Assumed Real Property Lease is terminated by the landlords thereunder, the Seller shall have no liability therefor to the Buyer and such Assumed Real Property Lease shall be an Excluded Asset and the liabilities thereunder shall be Excluded Obligations.
- (g) This Section 3.3 shall survive and not merge on the Closing.

ARTICLE 4– REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants as follows to the Buyer as of the date hereof and acknowledges and confirms that the Buyer is relying upon the following representations and warranties in completing the Transaction.

4.1 Corporate Power

- (a) The Seller is duly organized and validly existing under the laws of its jurisdiction of organization; and
- (b) The Seller has the power, authority and capacity to enter into and perform its obligations under this Agreement and to own the Purchased Assets and to carry on the Business as currently conducted.

4.2 Residence of the Seller

The Seller is not a non-resident of Canada for the purposes of the Tax Act.

4.3 Absence of Conflicts

Subject to receipt of the Court Approvals, the Seller is not a party to, bound or affected by or subject to any charter or by-law provision or Applicable Laws or Authorizations that would be violated, breached, or under which any default would occur or with notice or the passage of time would be created, as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults that would not have a material adverse effect on the Seller or the Business.

4.4 Due Authorization and Enforceability of Obligations

Subject to receipt of the Court Approvals, the execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Seller. Subject to receipt of the Court Approvals, this Agreement has been duly and validly executed by the Seller and constitutes a valid and binding obligation of the Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally and by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

4.5 Approvals and Consents

Except for the Court Approvals and the Third Party Consents, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Seller and each of the agreements to be executed and delivered by the Seller hereunder or the sale of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices the failure of which to receive or obtain would not have a material adverse effect on the Business and the Purchased Assets, taken as a whole.

4.6 Compliance with Laws

The Seller is conducting the Business in compliance with all Applicable Laws except where the failure to be in compliance would not reasonably be expected to result in a material adverse effect on the Business and the Purchased Assets, taken as a whole. No written notice or warning from any Governmental Authority with respect to any failure or alleged failure of, or necessity for, the Seller (solely in respect of the Purchased Assets and the Business) to comply with any Applicable Law has been received by the Seller nor, to the knowledge of the Seller, is any such notice or warning proposed or threatened except as would not reasonably be expected to result in a material adverse effect on the Business and the Purchased Assets, taken as a whole.

4.7 Title to the Purchased Assets

Except in respect of the Leased Locations (which are addressed in Section 4.8) and the leased Purchased Equipment (in which the Seller only has a leasehold interest subject to the terms of the corresponding Personal Property Leases), the Seller is the sole legal and beneficial owner of the Purchased Assets.

4.8 Assumed Real Property Leases

The Seller is not currently a party to, or under any agreement to become a party to, any leases, subleases, licenses, rights of way, easements or other occupation agreement as lessee or occupant with respect to the Leased Locations other than the Assumed Real Property Leases. With respect to each Assumed Real Property Lease, except for defaults (x) due to, arising from or caused by the CCAA Proceedings or the insolvency of the Seller or (y) otherwise disclosed to the Buyer, the Third Party Consents and other than the Cure Costs owing, (i) there are no outstanding defaults by the Seller thereunder which would reasonably be expected to have a material adverse effect on the Purchased Assets and (ii) to the knowledge of the Seller, there exists no outstanding default by the landlord which would reasonably be expected to have a material adverse effect on the Purchased Assets.

4.9 Assumed Contracts

All of the Assumed Contracts are valid and binding against the Seller. Except for defaults (x) due to, arising from or caused by the CCAA Proceedings or the insolvency of the Seller or (y) otherwise disclosed to the Buyer, the Third Party Consents and other than the Cure Costs owing, (i) there are no outstanding defaults by the Seller thereunder which would reasonably be expected to have a material adverse effect on the Purchased Assets and (ii) to the knowledge of the Seller, there exists no outstanding default by the counterparties to the Assumed Contracts which would reasonably be expected to have a material adverse effect on the Purchased Assets.

4.10 Environmental Matters

Other than as set out in Schedule 4.10 and solely with respect to the Leased Locations:

- (a) the Seller is conducting the Business in compliance (in all material respects) with Environmental Laws;
- (b) the Seller has not received any written notice or warning from any Governmental Authority with respect to any material adverse condition or any material non-compliance with any Environmental Laws that remains outstanding at this time; and

- (c) no litigation or regulatory action is pending, or, to the knowledge of the Seller, threatened against the Seller with respect to the Business alleging material non-compliance with or material liability under Environmental Laws at the Leased Locations.

Notwithstanding anything else contained in this Agreement, the representations and warranties contained in this Section 4.10 are the sole and exclusive representations and warranties of the Seller pertaining or relating to any environmental, health or safety matters, including any arising under any Environmental Laws.

4.11 Taxes

The Seller is registered for purposes of the Tax imposed under the HST Legislation.

4.12 No Other Representations and Warranties

Notwithstanding anything else contained in this Agreement, except for the representations and warranties contained in this Article 4, neither the Seller nor any other Person on behalf of the Seller makes any representation or warranty, express or implied, with respect to the Seller, the Purchased Assets, the Business, the Assumed Obligations or the Transaction.

ARTICLE 5– REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller is relying upon the following representations and warranties in connection with its sale of the Purchased Assets:

5.1 Corporate Power

- (a) The Buyer is duly organized and validly existing under the laws of its jurisdiction of organization; and
- (b) The Buyer has the power, authority and capacity to enter into and perform its obligations under this Agreement and to own and lease real property and carry on business.

5.2 Residence of the Buyer

The Buyer:

- (a) is not a non-resident of Canada for the purposes of the Tax Act;
- (b) is a “**Canadian**” or “**WTO investor**” for the purposes of the *Investment Canada Act* (Canada); and
- (c) is not a “**state-owned enterprise**” for the purposes of the *Investment Canada Act* (Canada).

5.3 Absence of Conflicts

The Buyer is not a party to, bound or affected by or subject to any charter or by-law provision or Applicable Laws or Authorizations that would be violated, breached, or under which any default would occur or with notice or the passage of time would be created, as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be

entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults that would not have a material adverse effect on the Buyer.

5.4 Due Authorization and Enforceability of Obligations

The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Buyer, if applicable or required. This Agreement has been duly and validly executed by the Buyer, and constitutes a valid and binding obligation of the Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally and by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

5.5 Approvals and Consents

No authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices that would not have a material adverse effect on the Buyer.

5.6 HST Legislation

The Buyer will be registered at Closing for purposes of the Tax imposed under the HST Legislation.

5.7 Financing and Solvency

The Buyer will, on Closing, have available in immediately-available funds on hand, from its working capital and/or currently available unrestricted credit facilities, all the cash that the Buyer shall need at the Closing to consummate the purchase of the Purchased Assets and the Transaction. As of the Closing and immediately after consummating the transactions contemplated by this Agreement, the Buyer will not (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable liability on its debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in its business or (iii) have incurred or plan to incur debts beyond its ability to repay such debts as they become absolute and matured.

5.8 Regulatory

At all relevant times, the Buyer is qualified in all respects (including under Applicable Laws), to acquire and own the Purchased Assets and operate the Business as currently conducted.

5.9 Compliance with Laws

The Buyer is conducting its business and operations in compliance, in all material respects, with all Applicable Laws of each jurisdiction in which its business and operations is carried on. No written notice or warning from any Governmental Authority with respect to any failure or alleged failure of, or necessity for, its business and operations to comply with any Applicable Law has been received by the Buyer nor, to the knowledge of the Buyer, is any such notice or warning proposed or threatened.

5.10 Informed and Sophisticated Buyer

The Buyer is an informed and sophisticated Buyer, and has engaged expert advisors and is experienced in the evaluation and purchase of property and assets and assumption of liabilities such as the Purchased Assets, the Business and the Assumed Obligations as contemplated hereunder. The Buyer has undertaken such investigations and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement.

5.11 Diligence

The Buyer acknowledges and agrees that: (a) it is purchasing the Business and the Purchased Assets and assuming the Assumed Obligations on an “**as is, where is**” basis; (b) it has relied upon its own independent review, investigation and inspection of the documents and information made available by or on behalf of the Seller for the purpose of the Transaction, as well as of the Business, the Purchased Assets and the Assumed Obligations; (c) except as expressly set forth in this Agreement, it is not relying upon any written or oral statements, documents, information, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, the Business and the Assumed Obligations; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence. The provisions of this Section 5.11 shall survive and not merge on Closing.

5.12 No Brokers

No agent, broker, person or firm acting on behalf of the Buyer is, or will be, entitled to any commission or brokers’ or finders’ fees from the Buyer or from any affiliate of the Buyer, in connection with any of the Transaction.

5.13 No Other Representations and Warranties.

Notwithstanding anything else contained in this Agreement, except for the representations and warranties contained in this Article 5, neither the Buyer nor any other Person on behalf of the Buyer makes any representation or warranty, express or implied, with respect to the Buyer or the Transaction.

ARTICLE 6– CONDITIONS AND OTHER AGREEMENTS

6.1 Conduct Prior to Closing

- (a) During the Interim Period, except, in each case, either (A) in furtherance of or in relation to the Transaction, (B) with the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed) or (C) as applicable, in connection with the CCAA Proceedings or otherwise pursuant to any orders or directions of the CCAA Court, the Seller will, in all material respects, conduct the Business and deal with the Purchased Assets in the Ordinary Course and in accordance with Applicable Law, including, as may be permitted by the CCAA Court, as applicable, paying and discharging the liabilities of the Business when due in accordance and consistent with past practice.
- (b) Without limiting the generality of Section 6.1(a), but except, in each case, either (A) in furtherance of or in relation to the Transaction, (B) with the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed) or (C) as applicable, in

connection with the CCAA Proceedings or otherwise pursuant to any orders or directions of the CCAA Court, during the Interim Period, the Seller will use Commercially Reasonable Efforts to:

- (i) in all material respects, keep available the services of the Seller's Employees and preserve current relations with, and the current goodwill of, suppliers, customers, landlords, Governmental Authorities and all other Persons having material business relationships with the Seller;
- (ii) not amend in any material respect or renew, extend the term or accept the surrender of any Assumed Real Property Lease;
- (iii) in all material respects, preserve, protect and maintain the Purchased Assets in the Ordinary Course;
- (iv) not make any material changes in employment terms or Employee Plan terms for any of the Seller's officers, directors and employees; and
- (v) continue and keep in full force and effect all insurance coverage currently held by the Seller.

6.2 Insurance Obligations

- (a) Prior to the Closing Date, the Seller shall use Commercially Reasonable Efforts to cause the insurance policies identified for assignment in Schedule 6.2 to be assigned to the Buyer and obtain any consents required in respect thereof. In the event the Seller is unable, despite its Commercially Reasonable Efforts, to assign one or more of such policies to the Buyer, the Seller shall use Commercially Reasonable Efforts to cause the Buyer to be named as an additional insured and loss payee on each such policy. Notwithstanding anything to the contrary contained herein, the Seller will not cancel, terminate or otherwise impair any such insurance policy (other than, in respect of any occurrence based policy with a policy period expiring after the Closing Date, a termination of any portion of the policy period occurring on or after the Closing Date), and, in the event that any such policy is so terminated, cancelled or otherwise impaired by the Seller, any liability which would have otherwise been covered under such policy shall not be an Assumed Obligation and instead shall be an Excluded Obligation.
- (b) In the event that the Seller succeeds in assigning one or more of the insurance policies identified for assignment in Section 6.2(a) hereof to the Buyer, the Buyer shall cause the Seller to be named as additional insured and loss payees on each such policy concurrently with the effectiveness of such assignment. Notwithstanding anything to the contrary contained herein, the Buyer will not cancel, terminate or otherwise impair any such transferred insurance policy (other than, in respect of any occurrence based policy with a policy period expiring after the Closing Date, a termination of any portion of the policy period occurring on or after the Closing Date), and, in the event that any such policy is so terminated, cancelled or otherwise impaired by the Buyer, any liability which would have otherwise been covered under such policy shall be treated as an Assumed Liability hereunder.

6.3 CCAA Proceedings

- (a) The Seller and the Buyer will effectuate the Transaction pursuant to the CCAA Proceedings under Applicable Laws. Acting in a timely manner and in good faith, the Parties shall amend this Agreement, if required, to effect the Transaction pursuant to the

CCAA Proceedings on or prior to the Sunset Date, including each taking or causing to be taken all such action and executing and delivering or causing to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to effect the Transaction in such other agreed-upon manner.

- (b) Without limiting the generality of Section 6.3(a):
 - (i) The Seller shall file (A) promptly following execution of this Agreement, an application for an order of the CCAA Court with respect to the CCAA Proceedings, granting the CCAA Initial Order, (B) as soon as practicable thereafter, a motion for an approval and vesting order of the CCAA Court approving this Agreement and authorizing the Seller to complete the Transaction and vesting the Purchased Assets in the Buyer in accordance with this Agreement and (C) as applicable, a motion for the CCAA Assignment Order. The Buyer and the Seller each agree that it or they will promptly take such actions as are reasonably requested by the other of them to assist in the filing of each such motion and to obtain entry of each such order, including filing affidavits. All motions brought by the Seller in respect of any such order shall be brought on notice to such parties as may be reasonably required by the Buyer, in addition to any parties to whom notice is required by the CCAA Court to be given.
 - (ii) The Buyer and the Seller shall promptly provide to the other of them all such information and assistance as may be reasonably requested to obtain entry of any Court Approval.

6.4 Possession of Purchased Assets; Expenses for Removal

- (a) On Closing, the Buyer shall take possession of the Purchased Assets *in situ* at Closing. The Buyer acknowledges that the Seller has no obligation to deliver physical possession of the Purchased Assets to the Buyer.
- (b) The Buyer shall promptly notify the Seller of any Excluded Assets that may come into the possession or control of the Buyer or its affiliates, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Seller or its affiliates, or to such other Person as the Seller may direct in writing and, for greater certainty, no title or other license to use shall, or shall be deemed to, vest to the Buyer in respect of any Excluded Assets.
- (c) The Seller shall promptly notify the Buyer of any Purchased Assets that may come into the possession or control of the Seller or its affiliates after Closing, and thereupon shall promptly release such Purchased Assets to the Buyer or their affiliates at the cost and expense of the Buyer to pick up and transfer such Purchased Assets, or to such other Person as the Buyer may direct in writing and, for greater certainty, no title or other license to use shall, or shall be deemed to, vest to the Seller in respect of any Purchased Assets.
- (d) If the Closing occurs and the Buyer is required pursuant to Section 6.4(e), or decides in its sole and absolute discretion, to dismantle, remove, transport or otherwise move any of the Purchased Assets (there being no obligation or requirement on the Buyer to do so other than as required by Section 6.4(e)), the Seller shall provide such reasonable assistance as is requested by the Buyer with respect to any location that is not subject to an Assumed Real Property Lease, but in all cases the Buyer shall be solely responsible and liable for and pay as and when required:

- (i) any and all costs of dismantling or removing Purchased Assets from any location that is not a Leased Location or other location under the control of the Seller and/or transporting them to a new location; and
 - (ii) the cost of repairing any damage caused to the site exclusively by the dismantling or removal by the Buyer or its representatives of any of the Purchased Assets from any such Leased Location or other location, it being acknowledged that the Buyer will have no responsibility to repair any damage caused by the installation, presence, use or operation of the Purchased Asset at such location.
- (e) Within 30 days from the Closing, the Buyer shall ensure that all Purchased Assets are removed, at the Buyer's sole cost and expense, from each location currently occupied by the Business that is not subject to an Assumed Real Property Lease or other location under the control of the Seller.
- (f) During the Interim Period, if, with the consent of the Buyer, any Contract for a leased location of the Business is disclaimed or a leased location of the Business is otherwise closed, the Seller shall cause any Purchased Assets (including any Inventory and Supplies and equipment) at such Leased Location to be delivered, at the Seller's expense, to a Leased Location that is reasonably proximate to such disclaimed or closed location on or before Closing. For greater certainty, if any such Contract is disclaimed or any such location is closed at or after the Closing, the Buyer shall ensure that all Purchased Assets are removed, at the Buyer's sole cost and expense, from each such location.

6.5 Access to Information

Until the Closing Date and to the extent permitted by Applicable Law, the Seller shall give to the Buyer's personnel engaged in this transaction and their accountants, legal advisers, consultants and other Representatives during normal business hours and upon reasonable advance notice, reasonable access to their premises and shall furnish them with all such information relating to the Purchased Assets as the Buyer may reasonably request in connection with the Transaction. Notwithstanding anything in this Section 6.5 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not disrupt the business or any of the assets of the Seller. The Buyer acknowledges and confirms its representations and warranties in Sections 5.10 and 5.11 and that access to information pursuant to this Section 6.5 is not intended to, and shall not, provide for any due diligence inquiry as a condition to the Closing or otherwise.

6.6 Conditions for the Benefit of the Buyer

The obligation of the Buyer to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of the Buyer and may be waived, in whole or in part, by the Buyer in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Seller contained in this Agreement must be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date), in each case except to the extent that the same would not result in a material adverse effect with respect to the Seller or the Business; provided that the Seller must have delivered to the Buyer a signed certificate of a senior officer to that effect.
- (b) **Performance of Covenants.** The Seller must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement to be fulfilled or complied with

by it at or prior to the Closing, and the Seller must have delivered to the Buyer a signed certificate of a senior officer to that effect.

- (c) **Deliverables.** The Seller must have delivered to the Buyer the documents contemplated in Section 7.2, in each case in form and substance satisfactory to the Buyer, acting reasonably.
- (d) **Proceedings.** All proceedings to be taken in connection with the Transaction on the part of the Seller must be satisfactory in form and substance to the Buyer, acting reasonably, and the Buyer must have received copies of all instruments and other evidence as it may reasonably request in order to establish the consummation of the Transaction and the taking of all necessary corporate proceedings in connection therewith.

6.7 Conditions for the Benefit of the Seller

The obligation of the Seller to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of the Seller and may be waived, in whole or in part, by the Seller in its sole discretion:

- (a) **Truth of Representation and Warranties.** The representations and warranties of the Buyer contained in this Agreement must be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date), in each case except to the extent that the same would not result in a material adverse effect with respect to the Buyer; provided, that the Buyer must have delivered to the Seller a signed certificate of a senior officer to that effect.
- (b) **Performance of Covenants.** The Buyer must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement to be fulfilled or complied with by it at or prior to the Closing, and the Buyer must have delivered to the Seller a signed certificate of a senior officer to that effect.
- (c) **Deliverables.** The Buyer must have delivered to the Seller the documents contemplated in Section 7.3, in each case in form and substance satisfactory to the Seller, acting reasonably.

6.8 Mutual Conditions

The obligation of the Parties to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of each of the Seller and the Buyer and may only be waived, in whole or in part, by both the Seller and the Buyer:

- (a) **No Legal Action.** No provision of any Applicable Laws and no judgment, injunction, order or decree that prohibits the consummation of the Transaction pursuant to and in accordance with this Agreement being in effect.
- (b) **Court Approvals.** The Seller must have received the Court Approvals as required for the completion of the Transaction in accordance with the terms and conditions of this Agreement and such Court Approvals have not been stayed or varied in a manner prejudicial to the Buyer and/or the Seller, or vacated.
- (c) **Consents and Approvals.** The Buyer shall have received a Third Party Consent or a CCAA Assignment Order with respect to each Material Contract which cannot be assigned to the Buyer without such a Third Party Consent or CCAA Assignment Order.

6.9 No Frustration of Closing Condition

Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Sections 6.6, 6.7 and 6.8, as the case may be, to be satisfied if such failure was caused by such Party's or its affiliates' failure to use its reasonable best efforts (or Commercially Reasonable Efforts, to the extent specifically provided) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant of such Party hereunder, including to seek and obtain on reasonably satisfactory terms all requisite Third Party Consent and CCAA Assignment Orders, as applicable, as may be necessary or desirable.

6.10 Change of Name

- (a) Prior to the Closing, the Seller shall take all steps required to permit the Buyer to adopt a corporate name in which the words "McEwan" or "Enterprises" are used. Such steps shall include executing any consents and acknowledgements required in order to enable the Buyer to file articles of incorporation or articles of amendment containing a corporate name in which the words "McEwan" or "Enterprises" are used.
- (b) From and after the Closing Date, the Seller shall, with respect to its business, operations and locations:
 - (i) discontinue use of any and all Intellectual Property and do all such acts and make all such filings or otherwise to change the name of itself and its business, operations and locations, if any, to another name that is not confusingly similar to any of the Intellectual Property and any variation or derivative of any one or more of them; and
 - (ii) remove all the Intellectual Property and any variation or derivative thereof from all public display and signage, and cease creation of any new documents, correspondence or communication of any kind in any format made available or delivered to any other Person or to the public that includes any of the Intellectual Property, including any of its marketing materials, social media and Internet activities.
- (c) Forthwith after Closing, Seller shall take all steps necessary to change its corporate name to one which does not include the words "McEwan" or "Enterprises".
- (d) From and after the Closing Date, at no time may Seller use any of the Intellectual Property to suggest or imply, in any manner, directly or indirectly, that the Seller or its business is in any way, from and after the Closing Date, associated, affiliated, endorsed by, licensed by or related to the Buyer or the Business.
- (e) Seller acknowledges and agrees that, from and after the Closing Date, Buyer owns all right, title and interest, in and to the Intellectual Property and any derivatives, modifications, enhancements or improvements thereto.

ARTICLE 7- CLOSING

7.1 Date, Time and Place of Closing

The completion of the Transaction will take place at the offices of Goodmans LLP at Suite 3400, Bay Adelaide Centre, 333 Bay Street, Toronto, Ontario M5H 2S7 at 10:00 a.m. (EST) on the Closing Date, or at such other place, on such other date and at such other time as may be agreed upon in writing

by the Parties. Notwithstanding the foregoing, the Parties acknowledge and agree that the Transaction will be deemed to have closed effective as at 12:01 am (EST) on the Closing Date.

7.2 Seller's Deliverables at Closing

At Closing, the Seller will deliver or cause to be delivered to the Buyer the following:

- (a) the Cash and Cash Equivalents, net of the Cash Reserve, by wire transfer of immediately available funds to such accounts as are designated by the Buyer two (2) Business Days prior to the Closing;
- (b) the executed Monitor's Certificate;
- (c) an issued copy of the CCAA Approval and Vesting Order;
- (d) one or more bills of sale executed by the Seller to convey the Purchased Assets to the Buyer and/or, as applicable, one or more Buyer Designees, free and clear of all Encumbrances other than Permitted Encumbrances, duly executed by the Seller;
- (e) an assignment of intangible property to transfer the Purchased Assets that are intangible property to the Buyer and/or, as applicable, one or more Buyer Designees, free and clear of all Encumbrances (other than Permitted Encumbrances), duly executed by the Seller;
- (f) an assignment and assumption agreement providing for the assignment by the Seller of its right, title, and interest in and to the Purchased Assets and the Buyer and/or, as applicable, one or more Buyer Designees' assumption of the Assumed Obligations executed by the Seller, as may be required by either the Seller or the counterparties thereto, and, if applicable and otherwise agreed to by the Parties, a CCAA Assignment Order in respect of the Assumed Contracts;
- (g) an employment agreement duly executed and delivered to the Buyer by Dennis Mark McEwan, substantially on the same terms as the current terms of his employment;
- (h) if applicable, the elections referred to in Section 2.9, in each case signed by the Seller;
- (i) the certificates referred to in Section 6.6(a) and Section 6.6(b);
- (j) an irrevocable share transfer power of attorney in respect of all of the shares of 2860117, duly executed in blank by the Seller; and
- (k) all other documents reasonably requested by the Buyer to be entered into or delivered by the Seller at Closing pursuant to the terms of this Agreement.

7.3 Buyer Deliverables at Closing

At Closing, the Buyer will deliver or cause to be delivered to the Seller the following:

- (a) the Base Purchase Price, in the manner set forth in Section 2.7;
- (b) certified copies of:
 - (i) the charter documents of the Buyer;
 - (ii) resolutions of the board of directors of the Buyer approving the entering into of this Agreement and the completion of the Transaction;
 - (iii) a list of the officers and directors of the Buyer authorized to sign agreements together with their specimen signatures; and

- (iv) resolutions of the board of directors of 2860117 in respect of the transfer of shares of 2860117 from the Seller to the Buyer;
- (c) a certificate of status, compliance, good standing or like certificate with respect to the Buyer issued by the appropriate governmental officials of its jurisdiction of incorporation;
- (d) evidence satisfactory to the Seller, acting reasonably, of payment by the Buyer to the Monitor of Cure Costs, if any;
- (e) one or more bills of sale executed by the Buyer and/or, as applicable, one or more Buyer Designees, to purchase the Purchased Assets from the Seller free and clear of all Encumbrances other than Permitted Encumbrances;
- (f) an assignment of intangible property to transfer the Purchased Assets that are intangible property to the Buyer and/or, as applicable, one or more Buyer Designees, free and clear of all Encumbrances (other than Permitted Encumbrances), duly executed by the Buyer;
- (g) an assignment and assumption agreement providing for the assignment by the Seller of its right, title, and interest in and to the Purchased Assets and the Buyer and/or, as applicable, one or more Buyer Designees' assumption of the Assumed Obligations executed by the Buyer, as may be required by either the Seller or the counterparties thereto, in respect of the Assumed Contracts, as well as all documentation, deliveries and assurances, in each case as may be required by the relevant counterparties in connection therewith and that have been agreed to be the Buyer;
- (h) a general security agreement delivered in connection with the CF Loan Agreement, in substantially similar form as the general security agreement delivered by the Seller in respect of the CF Loan Agreement and acceptable to the Buyer and Seller, acting reasonably, provided, for certainty, that the general security agreement delivered by the Buyer shall grant security solely with respect to the obligations with respect to the Loan (as defined under the CF Loan Agreement) and no other obligations;
- (i) if applicable, the elections referred to in Section 2.9, in each case signed by the Buyer;
- (j) the certificates referred to in Section 6.7(a) and Section 6.7(b); and
- (k) all other documents reasonably requested by the Seller to be entered into or delivered by the Buyer at Closing pursuant to the terms of this Agreement.

7.4 Cash Reserve

The Seller shall deliver to the Buyer, within three (3) Business Days by wire transfer of immediately available funds to such accounts as are designated by the Buyer, any funds remaining in the Cash Reserve on the earlier of (i) six (6) months after the Closing Date and (ii) the date the administration of the Seller's wind-down is completed.

ARTICLE 8– EMPLOYEES

8.1 Employees

- (a) At least seven (7) days prior to the Closing Date, the Buyer and/or, as applicable, one or more Buyer Designees, shall make an offer of employment, effective as of the Closing Date and contingent upon the Closing, to each of the Seller's Employees on substantially the same terms and conditions of employment as in effect immediately prior to the

Closing, subject to, for greater certainty, reasonably necessary changes on account of the fact that the Buyer is not acquiring the Excluded Assets (including some of the existing locations where certain of the Seller's Employees have been employed), which shall not be conditional (other than Closing) or include any probationary or other similar period. With respect to any Seller's Employee who is on a long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Seller's Employee returning to active status. Each Seller's Employee who accepts such offer of employment shall be referred to hereinafter as a "Transferred Employee". Notwithstanding the foregoing, nothing herein shall be construed as to prevent the Buyer and/or, as applicable, one or more Buyer Designees, at its sole responsibility, liability and obligation, from terminating the employment of any Transferred Employee, consistent with Applicable Law, at any time following the Closing Date.

- (b) Each Transferred Employee shall be given credit for all service with the Seller, and its predecessors for all employment purposes, including under any employee benefit plans or arrangements of the Buyer and/or, as applicable, one or more Buyer Designees, maintained by the Buyer and/or, as applicable, one or more Buyer Designees, in which such Transferred Employees participate following the Closing Date, for purposes of eligibility, vesting, and entitlement to benefits, including for severance benefits and vacation entitlement (but not for accrual of pension benefits). Notwithstanding the foregoing, nothing in this Section 8.1(b) shall be construed to require crediting of service that would result in a duplication of benefits.
- (c) Prior to the Closing Date, the Seller shall (i) cause each of the Employee Plans, together with all assets and rights thereunder, to be transferred to the Buyer and/or, as applicable, one or more Buyer Designees, (ii) assign all Contracts entered into in connection with the Employee Plans to the Buyer, and (iii) obtain any consents required in respect thereof, to ensure that all Transferred Employees and their dependents continue to participate in the Employee Plans and accrue benefits thereunder through and after the Closing Date. In the event the Seller is unable to assign one or more of such plans to the Buyer, the Seller shall use Commercially Reasonable Efforts to ensure that the Transferred Employees and their dependents continue to participate in the Employee Plans and accrue benefits thereunder through and after the Closing Date. Notwithstanding anything to the contrary contained herein, the Seller will not cancel, terminate or otherwise impair any of the Employee Plans.
- (d) The Buyer shall, or shall cause the applicable Buyer Designees to, provide each Transferred Employee with credit for the same number of vacation and sickness benefit days such Transferred Employee shall have accrued but not used in the calendar year in which the Closing Date occurs. In the event that a Transferred Employee is unable to use such carried over vacation and sickness days within the calendar year in which the Closing Date occurs, the Buyer shall, or shall cause the applicable Buyer Designees to, allow such Transferred Employee to carry over such vacation and sickness days to be used in the subsequent calendar year.
- (e) The Parties agree that nothing in this Section 8.1, whether express or implied, is intended to create any third party beneficiary rights in any Transferred Employee.
- (f) Effective upon the Closing Date, the Seller hereby waives, for the benefit of the Buyer and/or, as applicable, one or more Buyer Designees only, any and all restrictions in any Employee Plan or Contract relating to (i) non-competition with the Seller, (ii) non-solicitation of the Seller's Employees or customers, or (iii) maintenance of confidentiality

of any information for the benefit of the Seller, in each case, with or covering any Transferred Employee.

8.2 Employee Liability

The Buyer and/or, as applicable, one or more Buyer Designees, will assume and be responsible for:

- (a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, retirement benefits, if any, and pay in lieu thereof, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees prior to and after the Closing Date;
- (b) all liabilities for vacation and sick pay and entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date;
- (c) all severance payments, payments for notice of termination or in lieu of notice of termination, damages for wrongful dismissal and all related costs in respect of the termination by the Seller, Buyer and/or, as applicable, one or more Buyer Designees, of the employment of any employee of the Business;
- (d) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees prior to and after the Closing Date; and
- (e) all employment-related claims, penalties, contributions, premiums and assessments in respect of the Business arising out of matters which occur prior to and after the Closing Date.

ARTICLE 9– TERMINATION

9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Seller and the Buyer, *provided however* that if this Agreement has been approved by the CCAA Court, any such termination may require approval of the CCAA Court, as applicable;
- (b) by the Seller, on the one hand, or the Buyer, on the other hand, if the Closing has not occurred on or before November 12, 2021 (the “**Sunset Date**”), *provided however* that if the Closing shall not have occurred on or before the Sunset Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 9.1(b);
- (c) by the Seller, if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.7 or 6.8 by the Sunset Date and such violation or breach has not been waived by the Seller or cured within fifteen (15) days after written notice thereof from the Seller, unless the Seller is in material breach of its obligations under this Agreement; and

- (d) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.8 by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within fifteen (15) days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

The Party (or in the case of Section 9.1(a), Parties) desiring to terminate this Agreement pursuant to this Section 9.1 shall provide the Monitor with reasonable advance notice of the termination.

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force and effect, except as contemplated in Sections 1.11, 2.6, 2.7, 3.3 and 5.11 and Article 10, each of which shall survive termination. Nothing in this Section 9.2 shall be deemed to relieve any Party from liability for any breach of this Agreement or to impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement.

ARTICLE 10– GENERAL MATTERS

10.1 Further Assurances

- (a) Each of the Parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use Commercially Reasonable Efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement. Upon and subject to the terms and conditions of this Agreement and subject to the directions of any applicable courts to the Parties, including the CCAA Court, the Parties shall use their Commercially Reasonable Efforts to take or cause to be taken all actions and to do or cause to be done all things necessary proper or advisable under Applicable Laws and within their reasonable control to consummate and make effective the Transaction, including using Commercially Reasonable Efforts to satisfy or waive the conditions precedent to the obligations of the Parties hereto.
- (b) Without limiting the generality of the foregoing, following the Closing:
 - (i) the Seller will forward and transfer to the Buyer and/or, as applicable, one or more Buyer Designees, as soon as is commercially reasonable and practicable, any payments, documents, information, communications or correspondence which the Seller or any affiliate thereof may receive from time to time that solely and directly relates to the Purchased Assets or the Assumed Obligations and which should have properly been paid, provided or delivered to the Buyer and/or, as applicable, one or more Buyer Designees, and that any payments so received by it or any affiliate thereof will be held in trust pending such transfer;
 - (ii) the Buyer will forward and transfer to the Seller, as soon as is commercially reasonable and practicable, any payments which the Buyer or any affiliate thereof may receive from time to time in respect of any Excluded Asset or Excluded Obligation which should have properly been paid, provided or delivered to the Seller, and that any payments so received by it or any affiliate thereof will be held in trust pending such transfer; and

- (iii) the Buyer and/or, as applicable, one or more Buyer Designees, shall permit the Seller and its agents reasonable access to the historical records and other documentation relating to the Purchased Assets, the Business (including the books and records), the Assumed Obligations and Seller's Employees (subject to the Seller agreeing to appropriate confidentiality requirements), where required by the Seller in connection with any legal, administrative or other similar inquiry or proceeding.

10.2 Third Party Beneficiaries

Except as otherwise provided in Sections 2.9 and 10.3 in respect of Indemnified Losses only, the Parties intend that this Agreement will not benefit or create any right or cause of action in, or on behalf of, any Person, other than the Parties to this Agreement and no Person, other than the Parties to this Agreement, will be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Seller acts as trustee and agent on behalf of each of its Additional Indemnitees and holds for their benefit their rights under Section 2.9 and 10.3 in respect of Indemnified Losses only. Each Party agrees that the other Parties may enforce the indemnity for and on behalf of such Additional Indemnitees and, in such event, the indemnifying Party will not in any proceeding to enforce the indemnity by or on behalf of such Additional Indemnitees assert any defence thereto based on the absence of authority or consideration or privity of contract and irrevocably waives the benefit of any such defence. The Parties to this Agreement reserve their right to vary or rescind the rights at any time and in any way whatsoever granted by or under this Agreement to any Person who is not a Party to this Agreement, without notice to or consent of that Person, including any of its Additional Indemnitees.

10.3 Confidentiality

- (a) Until the Closing Date and, if this Agreement is terminated for any reason, for one (1) year after the date hereof, the Buyer agrees that neither it nor its affiliates nor any of their respective Representatives shall disclose to any third party and shall hold in strict confidence, and each agrees to instruct its Representatives not to disclose to any third party and to hold in strict confidence, all Confidential Information, without the prior written consent of the Seller.
- (b) Without limiting the generality of the foregoing, all press releases, notices to third parties (including public store signage) and all other publicity concerning the Transaction (including the CCAA Proceedings) or any matter contemplated or referenced by this Agreement (including the existence of, the terms and conditions of, and the status of the Transaction, all of which constitute Confidential Information), and, to the extent practicable, any announcements, notices or other communications to any employee, customer or supplier, shall be jointly planned and coordinated by the Parties and no Party shall, directly or indirectly, allow, permit or otherwise enable or assist in any such matter without the express prior written approval of the other Parties, each acting reasonably.
- (c) Notwithstanding Section 10.3(a), the Buyer shall be entitled to disclose Confidential Information to its Representatives who have a need to know for the sole purpose of the Transaction (including any requisite review and approval thereof).
- (d) Without limitation to any rights or remedies of the Seller against the Buyer, its affiliates or any of their respective Representatives, the Buyer shall be principally liable for any and all breaches of the terms of Sections 10.3 and 10.4 by its affiliates or its or their Representatives. In the event of a breach of the terms of Sections 10.3 and 10.4, the Buyer shall indemnify, defend and hold harmless the Seller and each of its Additional

Indemnitees for any and all Indemnified Losses whatsoever incurred by the Seller or its Additional Indemnitees as a result of such breach.

- (e) No Confidential Information shall be copied, reproduced in any form, or stored in a retrieval system or database by the Buyer, its affiliates or any of their respective Representatives without the prior written consent of the Seller, except for such copies and storage as may reasonably be required internally by the foregoing for the purposes herein described. In the event that the Buyer becomes aware that it or any of its affiliates or its or their Representatives has disclosed Confidential Information contrary to Sections 10.1 to 10.4 (inclusive), the Buyer shall forthwith advise the Seller in writing.

Notwithstanding the foregoing or anything to the contrary herein, if the Seller has commenced CCAA Proceedings, (i) this Agreement may be filed by the Seller with the CCAA Court; and (ii) the Transaction may be disclosed by the Seller to the CCAA Court, subject to redacting confidential or sensitive information as permitted by Applicable Law and rules, including preparation and filing of reports and other documents by the Monitor and other professional advisors and consultants of the Seller with the CCAA Court, as applicable or required, containing references to the Transaction and the terms of such Transaction as may reasonably be necessary to obtain the Court Approvals and to complete the Transaction contemplated by this Agreement or to comply with their obligations to the CCAA Court.

10.4 Return and Destruction of Confidential Information

If Closing does not occur by the Closing Date or such earlier date of termination if this Agreement is terminated in accordance with the provisions hereof, upon the written request of the Seller, the Buyer shall return to the Seller or, at the Seller's option, destroy all Confidential Information in the possession or control of the Buyer, any of its affiliates or any of their respective Representatives and shall be liable for ensuring that each of the Buyer's affiliates and its and their respective Representatives either return to the Seller or, at the Seller's option, destroy the Confidential Information in their respective control, and shall delete all Confidential Information from any retrieval system or database in its possession or control and shall be liable for ensuring that each of the Buyer's affiliates and its and their respective Representatives delete all Confidential Information from any retrieval system or database with their respective control, provided however that:

- (a) the Buyer shall not be required to expunge from its records internally generated documents (including electronic copies) containing any Confidential Information;
- (b) the Buyer shall be permitted to maintain one copy of the Confidential Information solely for audit and enforcement purposes;
- (c) the Buyer is not required to alter its normal record retention policies; and
- (d) legal counsel of the Buyer will be permitted to retain one copy of the Confidential Information,

provided further that in each of the cases in Sections 10.4(a) through 10.4(d), such Confidential Information shall be kept on a confidential basis and continue to be subject to terms and conditions contained in this Agreement, notwithstanding any expiry or termination hereof.

10.5 Privacy Laws

- (a) For the purpose of this Section 10.5, “**Personal Information**” means information about an identifiable individual but excludes an individual's name, position name or title, business telephone number, business address, business e-mail, business fax number and

other similar business information collected, used or disclosed to contact an individual in their capacity as an official or employee of an organization. For greater certainty, “**Personal Information**” shall include all health and medical information and records.

- (b) Prior to the Closing, none of the Parties will use any Personal Information of any Person (including the Seller’s Employees) disclosed to the Buyer by the Seller pursuant to or in connection with this Agreement (the “**Disclosed Personal Information**”) for any purposes other than those related to the performance of this Agreement and the completion of the Transaction.
- (c) Each of the Parties acknowledges and confirms that the disclosure of Disclosed Personal Information is necessary for the purposes of determining if the Parties will proceed with the Transaction, and that the disclosure of Disclosed Personal Information relates solely to the carrying on of the Seller’s business of owning and operating restaurants, catering, gourmet grocery and an events company in Canada and the completion of the Transaction.
- (d) The Buyer undertakes, after the Closing, to comply at all times with Applicable Laws as it pertains to privacy which govern the collection, use and disclosure of Personal Information, including in respect of the Disclosed Personal Information and all Personal Information of the Seller’s Employees.
- (e) The Buyer covenants and agrees that where the Parties do not complete or proceed with the Transaction, the Buyer will, if such information is still in the custody of or under the control of the Buyer, either, at the Buyer’s option, destroy (and promptly provide to the Seller an officer’s certificate executed by the Chief Executive Officer of the Buyer confirming same) such information or return it to the Seller.

10.6 Survival

None of the representations, warranties or covenants (except the covenants in Sections 1.11, 2.5-2.9, 3.1, 3.2, 3.3, 5.11, 6.2, 6.4(b), 6.4(c), 6.4(d), 6.4(e), 6.10, 7.4, 8.2 and 9.2, as well as Article 10, in each case to the extent they are to be performed or operate by their express terms after the Closing) of either of the Parties set forth in this Agreement shall survive Closing.

10.7 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, stockholder, affiliate, agent, attorney or representative of the respective Parties hereto, in such capacity, shall have any liability for any obligations or liabilities of the Buyer or the Seller, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the Transaction. In addition, under no circumstance shall any of the Parties, their respective affiliates or theirs or their affiliates’ Representatives be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

10.8 Expenses

Except as otherwise specifically provided herein or in the CCAA Initial Order, each of the Seller and the Buyer shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by them, respectively, in connection with the negotiation and settlement of this Agreement and the completion of the Transaction.

10.9 Time of the Essence

Time will be of the essence in this Agreement.

10.10 Successors and Assigns

- (a) This Agreement will become effective when executed by each of the Parties and after that time will be binding upon and enure to the benefit of each Party and its respective successors and permitted assigns.
- (b) Except as provided herein, neither this Agreement, nor any of the rights or obligations hereunder, will be assignable or transferable by any Party without the prior written consent of the other Party, not be to unreasonably withheld, provided that the Buyer may, without the consent of the Seller, assign or transfer any or all of its right and/or obligations hereunder to one or more of its affiliates (it being understood that the Buyer nonetheless shall remain liable for the performance of all of the Buyer's obligations hereunder to the extent not performed by the assignee or any Buyer Designee); provided, further, that, after Closing, the Buyer may, without the consent of the Seller, assign or transfer any or all of its rights and/or obligations hereunder.

10.11 Access to Books and Records

For (i) a period of two (2) years from the Closing Date or (ii) for such longer period as may be reasonably required for the Seller (or any trustee in bankruptcy of the estate of the Seller) to comply with Applicable Law, provided that in the case of (ii), the Seller or such trustee in bankruptcy shall have provided the Buyer with reasonably advanced written notice prior to the expiry of the initial two (2) year period specifying the Applicable Laws requiring an extension and the length of the requested extension, the Buyer will retain, in all material respects, all original Books and Records that are transferred to the Buyer under this Agreement. So long as any such Books and Records are retained by the Buyer pursuant to this Agreement, the Seller (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Seller, including the Monitor) has the right (at its own cost, expense and liability) to inspect and to make copies of them upon reasonable notice and request during normal business hours and without undue interference to the business operations of the Buyer, for the sole purpose of such Person making the request complying with Applicable Laws, and strictly limited to the extent required for such compliance.

10.12 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by facsimile or e-mail, with confirmed transmission and receipt or the date of transmission by electronic transmission (in each case, if sent during normal business hours of the recipient, and if not, then on the next Business Day); (iii) two days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five days after mailing via certified mail, return receipt requested. All notices not delivered personally or by facsimile or e-mail will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

- (a) If to the Buyer at: 2864785 Ontario Corp.
38 Karl Fraser Road
Toronto, Ontario M3C 0H7

Attention: Dennis Mark McEwan
Facsimile: (416) 444-6212

(b) If to the Seller at:

McEwan Enterprises Inc.
c/o Goodmans LLP
333 Bay Street
Suite 3400
Toronto, Ontario M5H 2S7

Attention: Robert J. Chadwick/
Caroline Descours
Facsimile: (416) 979-1234
E-mail: rchadwick@goodmans.ca/
cdescours@goodmans.ca

Any Party may change its address or other information for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address or such change information.

10.13 Monitor's Certificate

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Buyer, and file with the CCAA Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no liability to the Parties in connection therewith.

10.14 No Liability

The Parties acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Seller, shall have no liability in its personal capacity or otherwise, in connection with this Agreement.

10.15 Specific Performance

The Buyer acknowledges and agrees that the Seller and its estates would be damaged irreparably in the event the Buyer does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that the Seller may have under law or equity, the Seller shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

10.16 Counterparts, Facsimile Signatures


This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by facsimile signature, by email, PDF or other electronic format or transmission which, for all purposes, shall be deemed to be an original signature.

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

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

SELLER

MCEWAN ENTERPRISES INC.

Per: 
Name: Dennis Mark McEwan
Title: President

Per: _____

BUYER**2864785 ONTARIO CORP.**

Per:

A handwritten signature in blue ink, appearing to read "Dennis Mark McEwan", is written over a light blue rectangular background.

Name: Dennis Mark McEwan

Title: President

SCHEDULE 1.1(nm)
EXCLUDED ENCUMBRANCES

PERSONAL PROPERTY SECURITY ACT (ONTARIO)

(a) McEwan Enterprises Inc., 2004995 Ontario Limited, 2416668 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Ontrea Inc. The Cadillac Fairview Corporation Limited OPB (TDC) Inc.	McEwan Enterprises Inc.	734565906 - 20171201 1657 1862 0465 (25 years)	Equipment, Other	General security agreement re inducement with respect to Unit No. 0022A in The Toronto Dominion Centre, Toronto, Ontario	
2. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	702570006 - 20141223 1600 1862 8170 (25 years)	Inventory, Equipment, Accounts, Other		<u>Amended by 20171208 1013 1862 1106</u> Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc." pursuant to an amalgamation <u>Amended by 20171208 1053 1862 1118</u> Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc."

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					pursuant to an amalgamation
3. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	702570015 - 20141223 1600 1862 8171 (25 years)	Inventory, Equipment, Accounts, Other		<u>Amended by 20171208 1013 1862 1105</u> Amendment to change the name of the debtor from "2416668 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
4. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	657968355 - 20091203 0938 1862 1141 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re loan with respect to Unit No. Q003 in Shops at Don Mills, Toronto, Ontario	<u>Amended by 20171208 1014 1862 1108</u> Amendment to change the name of the debtor from "2220223 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
5. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	657968364 - 20091203 0938 1862 1142 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re inducement with respect to Unit No. Q003 in Shops at Don Mills, Toronto, Ontario	<u>Amended by 20171208 1014 1862 1107</u> Amendment to change the name of the debtor from "2220223 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
6. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	648858402 - 20080929 1359 1862 0147 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re loan with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario	
7. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	648858465 - 20080929 1401 1862 0150 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re inducement with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario	

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
8. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	883483488 - 20020523 1044 9065 0541 (22 years)	Inventory, Equipment, Accounts, Other	Please direct all correspondence to Toronto Dominion Centre Leaseholds Limited, c/o The Cadillac Fairview Corporation Limited 20 Queen St. West, 5th Floor, Toronto, Ontario M5H 3R4 Attention- Corporate Secretary	<u>Amended by 20171208 1053 1862 1117</u> Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc." pursuant to an amalgamation

SCHEDULE 1.1(zz)
MATERIAL CONTRACTS

1. Assumed Real Property Leases
2. Select Merchant Payment Instrument Processing Agreement dated as of October 6, 2017 between Chase Paymentech Solutions and the Seller

To be amended and updated prior to Closing pursuant to Section 2.4.

**SCHEDULE 1.1(eee)
PERMITTED ENCUMBRANCES**

PERSONAL PROPERTY SECURITY ACT (ONTARIO)

(a) McEwan Enterprises Inc., 2004995 Ontario Limited, 2416668 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Highland Chevrolet Buick GMC Cadillac Ltd.	McEwan Enterprises Inc	771456249 - 20210412 1408 1462 0170 (5 years)	Consumer Goods, Equipment, Motor Vehicles, Amount Secured: \$75,334, Date of Maturity: 30APR2026, 2021 Ford Transit 250 1FTBR1C88MKA01283	Includes 1 refridgeration (<i>sic</i>) system as detailed on invoice #3416 from Experts In Transportation Climate Control Ltd. Kingtec W/XTCC Insulation System, T235E bearing Serial # 110321200011A121 and all dtailed (<i>sic</i>) componets (<i>sic</i>)	
2. Highland Chevrolet Buick GMC Cadillac Ltd.	McEwan Enterprises Inc	767005776 - 20201023 1004 1462 1588 (5 years)	Consumer Goods, Equipment, Motor Vehicles, Amount Secured: \$76,549, Date of Maturity: 31OCT2025, 2020 Ford Transit 250 1FTBR1C80LKB19343	1- Kingtec Refrigeration System Serial# 0619216E0041A081	
3. Mercedes-Benz Financial Services Canada Corporation	McEwan Enterprises Inc. Dennis M. McEwan DOB: 07MAY1957	751615011 - 20190527 1622 1532 2624 (4 years)	Equipment, Other, Motor Vehicles, 2019 Mercedes-Benz GLC300 4M WDC0G4KB6KV183759		

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
Mercedes-Benz Financial					
4. Xerox Canada Ltd	McEwan Enterprises Inc.	750278826 - 20190417 1704 1462 8901 (6 years)	Equipment, Other		
5. Xerox Canada Ltd	McEwan Enterprises Inc	748565748 - 20190225 1707 1462 8478 (6 years)	Equipment, Other		
6. Royal Bank of Canada	McEwan Enterprises Inc.	746303571 - 20181128 1434 8077 2743 (6 years)	Equipment, Other	Restaurant/Take-Out Equipment and Leasehold, Refrigerator Pressure Package S/N D2018060319 as per lease 201000044268 together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation	<u>Renewed by 20210514 1028 8077 6230</u> 1 year

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				for loss or damage to the collateral or proceeds of the collateral	
7. Royal Bank of Canada	McEwan Enterprises Inc.	740022939 - 20180601 1037 8077 4110 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated June 01 2018 together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	<u>Amended by 20180601 1439 8077 4154</u> Amendment to change the address of the debtor
8. Royal Bank of Canada	McEwan Enterprises Inc.	740041893 - 20180601 1439 8077	Equipment, Other	Equipment Purchases and Leasehold Improvements as per	<u>Renewed by 20210514 1028 8077 6229</u>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
		4141 (5 years)		lease 201000040501 together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral	1 year
9. Royal Bank of Canada	McEwan Enterprises Inc.	737973342 - 20180405 1935 1531 6491 (5 years)	Accounts, Other	Priority agreement dated March 22, 2018 between Ontrea Inc, The Cadillac Fairview Corporation Limited and OPB (TDC) Inc. and Royal Bank of Canada, in favor of security agreement between Royal Bank of Canada and McEwan Enterprises Inc.	
10. Royal Bank	McEwan	736669647 -	Inventory, Equipment,	All present and after-acquired	

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
of Canada	Enterprises Inc.	20180222 1930 1531 4182 (5 years)	Accounts, Other, Motor Vehicles	equipment, securities, chattel paper, instruments and documents of title. Proceeds - a security interest is claimed in all present and after-acquired goods (including trade-ins), chattel paper, securities, documents of title, instruments, money and intangibles of every item or kind that may derived from the sale or other disposition of the collateral described above, all insurance proceeds and any proceeds of any of the foregoing.	
11. Royal Bank of Canada	McEwan Enterprises Inc.	735291927 - 20171229 1034 1529 5381 (5 years)	Other	Priority agreement dated November 23, 2017 between CF/Realty Holdings Inc. and Royal Bank of Canada, in favor of security agreement between Royal Bank of Canada and McEwan Enterprises Inc.	
12. Royal Bank of Canada	McEwan Enterprises Inc.	733881384 - 20171110 1037 1529 0481 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		
13. Royal Bank of Canada (two addresses listed)	McEwan Enterprises Inc.	733060917 - 20171018 1035 8077 2049 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated October 18, 2017 together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions,	<u>Transferred by 20180517 1039 8077 3262</u> Transferor: 2004995 Ontario Limited Transferee: McEwan Enterprises Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	
14. Royal Bank of Canada	McEwan Enterprises Inc.	717156873 - 20160531 1442 1530 4953 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Amended by 20180103 1932 1531 3423</u> Amendment to change the name of the debtor from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation <u>Renewed by 20210430 1445 1530 9664</u> 5 years
15. Royal Bank	McEwan	703429515 - 20150204 1438 8077	Inventory, Equipment,	As per master lease agreement dated January 28th, 2015.	<u>Amended by 20150709 1031</u>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
of Canada	Enterprises Inc.	3265 (10 years)	Accounts, Other	Together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	<u>8077 5867</u> Amendment to include an additional address for the debtor <u>Transferred by 20180517 1039 8077 3261</u> Transferor: 2416668 Ontario Inc. Transferee: McEwan Enterprises Inc.
16. Royal Bank of Canada	McEwan Enterprises Inc.	701721396 - 20141120 1428 8077 8038 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated November 20th, 2014. Together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions,	<u>Transferred by 20180517 1039 8077 3264</u> Transferor: North 44 Inc. Transferee: McEwan Enterprises Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	
17. Royal Bank of Canada	McEwan Enterprises Inc.	697662945 - 20140703 1434 1530 5522 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Amended by 20180103 1437 1530 9110</u> Amendment to change the name of the debtor from "2416668 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation <u>Renewed by 20190531 1441 1530 8680</u> 5 years
18. Royal Bank	McEwan	642899511 - 20080225 1129 6005	Equipment, Accounts,	"Master lease dated February 25, 2008 together with all	<u>Transferred by 20090511 1638</u>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
of Canada	Enterprises Inc. McEwan	7076 (10 years)	Other	inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral."	<u>6005 3022</u> Transferor: McEwan Enterprises Inc. Transferee: McEwan Enterprises Inc. <i>(it appears that this amendment was filed to change the address of the debtor)</i> <u>Renewed by 20160627 1441 8077 1288</u> 10 years <u>Amended by 20160627 1441 8077 1290</u> Amendment to include a general collateral description
19. Royal Bank of Canada	McEwan Enterprises Inc.	642904551 - 20080225 1455 1530 5165 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Renewed by 20130109 1047 1529 4046</u> 5 years <u>Amended by 20180103 1932 1531 3422</u> Amendment to change the

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					name of the debtor from "McEwan Enterprises Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation and to change the address of the secured party <u>Renewed by 20180119 1428 1530 6115</u> 5 years
20. Royal Bank of Canada	McEwan Enterprises Inc.	892169892 - 20030304 1835 1531 2850 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Renewed by 20080227 1452 1530 8579</u> 5 years <u>Renewed by 20130111 1945 1531 6991</u> 5 years <u>Amended by 20180103 1932 1531 3419</u> Amendment to change the name of the debtor from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation and to change the address of the secured party <u>Renewed by 20180126 1932 1531 3277</u> 5 years
21. Royal Bank	North 44 Degrees	963231255 -	Inventory, Equipment,		<u>Amended by 19890706 0901</u>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
of Canada	McEwan Enterprises Inc.	19890525 0845 88 6360 (3 years)	Book Debts, Other, Motor Vehicles		<p><u>88 4523</u></p> <p>Amendment to include “Degrees” in the name of the business name</p> <p><u>Renewed by 19920429 1552 0004 0992</u></p> <p>5 years</p> <p><u>Renewed by 19970220 1906 1529 2013</u></p> <p>5 years</p> <p><u>Amended by 19970221 1907 1529 3883</u></p> <p>Amendment to change the address of the secured party</p> <p><u>Renewed by 20020510 1030 1533 8923</u></p> <p>5 years</p> <p><u>Amended by 20020617 1817 1531 1403</u></p> <p>Amendment to change the name of one of the debtors from “821669 Ontario Limited” to “North 44 Inc.” pursuant to an amalgamation</p> <p><u>Renewed by 20070316 1943 1531 3404</u></p> <p>5 years</p>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					<p><u>Amended by 20120426 1946 1531 0643</u></p> <p>Amendment to change the address of the secured party</p> <p><u>Renewed by 20120426 1946 1531 0644</u></p> <p>5 years</p> <p><u>Renewed by 20170421 1437 1530 4239</u></p> <p>5 years</p> <p><u>Amended by 20180103 1932 1531 3418</u></p> <p>Amendment to change the name of one of the debtors from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation</p>

**(b) McEwan One Mark Inc.; and
McEwan One Mark**

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Royal Bank of Canada	McEwan One Mark Inc.	701442765 - 20141110 1441 1530	Inventory, Equipment, Accounts, Other, Motor		<u>Renewed by 20191004 1436 1530 8561</u>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
		2557 (5 years)	Vehicles		5 years

(c) **2220223 Ontario Inc.**

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Royal Bank of Canada	2220223 Ontario Inc.	663817158 - 20100819 1451 1530 6635 (5 years)	Other	Inter-company creditor agreement dated (August 4,2010)) (<i>sic</i>), between Royal Bank of Canada (CF/Realty Holdings Inc. and 2220223 Ontario Inc.)	<u>Renewed by 20150717 1945 1531 9693</u> 5 years <u>Renewed by 20200717 1442 1530 4305</u> 5 years

SCHEDULE 2.1(a)
LEASED LOCATIONS / ASSUMED REAL PROPERTY LEASES

1. Bymark – Lease dated as of October 1, 2017 between Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and the Seller, as tenant, as amended by the Third Tenant Assistance Agreement dated May 6, 2021 between The Cadillac Fairview Corporation Limited (as agent for Ontrea Inc., OPB (TDC) Inc. and C/F Realty Holdings Inc.), the Seller and Mark McEwan (the “TAA”)
2. Fabbrica Rustic Italian Market – Lease dated as of October 1, 2017 between Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and the Seller, as tenant, as amended by the TAA
3. McEwan – Lease dated as of May 2, 2014 between Toronto Dominion Centre Leaseholds Limited, as landlord, and 2416668 Ontario Inc. (a predecessor of Seller), as tenant, as amended by the TAA
4. McEwan – Lease dated as of June 28, 2007 between CF/Realty Holdings Inc., as landlord, and the Seller, as tenant, as amended by a lease and loan amending agreement dated as of December 15, 2008
5. Fabbrica Thornbury – Lease dated as of April 21, 2018, between Denyse Sterio, as landlord, and the Seller, as tenant

To be amended and updated prior to Closing pursuant to Section 2.4.

SCHEDULE 2.1(c)
ASSUMED CONTRACTS




All contracts to which the Seller is a party as of the Closing Date (other than the Excluded Contracts) including, but not limited to:


1. The Material Contracts listed in Schedule 1.1(zz)
2. The Loan Agreements
3. Master Lease Agreement dated as of October 18, 2017, between Royal Bank of Canada, as lessor, and 2004995 Ontario Limited (a predecessor of the Seller), as lessee
4. Master Lease Agreement dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and the Seller, as lessee
5. Equipment Lease #201000044268 dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and the Seller, as Lessee

To be amended and updated prior to Closing pursuant to Section 2.4.

SCHEDULE 2.1(f)
INTELLECTUAL PROPERTY

Trademarks

Trademark	Status	Security
McEWAN KOSHER	Registered App 1593654 App 11-SEP-2012 Reg TMA848695 Reg 17-APR-2013	None
North 44 & Design NORTH 44)°	Registered App 1579704 App 28-MAY-2012 Reg TMA852576 Reg 05-JUN-2013	None
Bymark & Design 	Registered App 1579705 App 28-MAY-2012 Reg TMA852575 Reg 05-JUN-2013	None
THE McEWAN GROUP 	Registered App 1572192 App 05-APR-2012 Reg TMA859196 Reg 04-SEP-2013	None
We Deliver... Experiences <i>We Deliver... Experiences</i>	Registered App 1572193 App 05-APR-2012 Reg TMA858174 Reg 20-AUG-2013	None
personal shopper & DESIGN personal  shopper	Registered App 1523277 App 08-APR-2011 Reg TMA832405 Reg 20-SEP-2012	None
FABBRICA	Registered App 1457215 App 28-OCT-2009 Reg TMA777529 Reg 20-SEP-2010	None

Trademark	Status	Security
	Registered App 1429860 App 24-FEB-2009 Reg TMA785167 Reg 17-DEC-2010	None
SUPPER GASTRO PUB	Registered App 1285262 App 20-DEC-2005 Reg TMA679301 Reg 11-JAN-2007	None

Business Names

Business name/style	Effective From	Effective To
McEwan Kosher	March 21, 2013	March 19, 2023
Fabbrica	October 4, 2017	October 3, 2022
North 44	October 4, 2017	October 3, 2022
Bymark	October 4, 2017	October 3, 2022
Fabbrica Italian Rustic Market	October 4, 2017	October 3, 2022
McEwan	October 4, 2017	October 3, 2022
McEwan at Aga Khan Museum	October 4, 2017	October 3, 2022
The McEwan Group	October 4, 2017	October 3, 2022
McEwan Restaurant Consultants	October 4, 2017	October 3, 2022
McEwan at TD Centre	October 4, 2017	October 3, 2022
Fabbrica Rustic Italian Market	October 4, 2017	October 3, 2022
McEwan at Bloor Yonge	October 4, 2017	October 3, 2022
McEwan One Mark	October 17, 2017	October 16, 2022
Fabbrica at Thornbury	May 14, 2018	May 13, 2023

Domain Names

bymark.ca

chefmcewan.ca
chefmcewan.com
fabbrica.ca
mcewan.catering
mcewan.properties
mcewancatering.ca
mcewancatering.com
mcewanfinefoods.ca
mcewanfinefoods.com
mcewanfoods.com
mcewangroup.ca
mcewan-group.ca
mcewan-group.com
mcewanrestaurants.ca
mcewanrestaurants.com
north44caters.com
north44restaurant.com
onehazelton.com
themcewangroup.ca
themcewangroup.com

Social Media Handles

- **Instagram:** @mcewanfoods, @chefmarkmcewan, @themcewangroup, @mcewanfoods, @fabbricarestaurant
- **Twitter:** @Chef_MarkMcEwan
- **Facebook:** The McEwan Group (<https://www.facebook.com/McEwanGroup/>)
- **LinkedIn:** The McEwan Group (<https://www.linkedin.com/company/the-mcewan-group/>)

SCHEDULE 2.1(I)
SECURITIES

Issuer	Owner	Description of Security
2860117 Ontario Limited	McEwan Enterprises Inc.	100% of the shares of the Issuer owned by the Seller

SCHEDULE 2.2(a)
EXCLUDED CONTRACTS

1. McEwan – Lease dated as of April 27, 2018, between First Capital Holdings (Ontario) Corporation, as landlord, and the Seller, as tenant, as amended by lease amending agreements dated December 21, 2018, April 22, 2019, June 7, 2019, April 3, 2020 and April 6, 2021
2. Fabbrica – Lease dated as of October 9, 2009 between CF/Realty Holdings Inc., as landlord, and 2220223 Ontario Inc. (a predecessor of the Seller), as tenant, as amended by the Tenant Assistance Agreement dated February 19, 2019 between C/F Realty Holdings Inc. and the Seller and as further amended by the TAA
3. Any and all security agreements and priority agreements entered into in connection with (i) the CF Loan Agreement, (ii) the Assumed Real Property Leases and/or (iii) any other Excluded Contracts
4. Engagement letter dated as of September 10, 2021, between Alvarez & Marsal Canada ULC and the Seller

To be amended and updated prior to Closing pursuant to Section 2.4.

SCHEDULE 4.10
ENVIRONMENTAL MATTERS

Nil.

SCHEDULE 6.2(a)
INSURANCE POLICIES

1. Property, liability and fleet vehicle policy with Federated Insurance
2. Directors and officers policy with Northbridge Insurance
3. Errors and omissions policy with CFC Underwriting

D

**THIS IS EXHIBIT “D”
TO THE AFFIDAVIT OF DENNIS MARK MCEWAN
SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE
THIS 12th DAY OF NOVEMBER, 2021**

Caroline Descours

Commissioner for Taking Affidavit

AMENDING AGREEMENT

THIS AMENDING AGREEMENT (this “**Agreement**”) is made effective November 12, 2021

BETWEEN:

MCEWAN ENTERPRISES INC., a corporation organized under the laws of the Province of Ontario (the “**Seller**”)

- and -

2864785 ONTARIO CORP., a corporation organized under the laws of the Province of Ontario (the “**Buyer**”, and together with the Seller, the “**Parties**”, and each, a “**Party**”)

RECITALS:

- A. The Parties entered into a purchase agreement made as of September 27, 2021, pursuant to which the Seller agreed to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer agreed to purchase, acquire and accept from the Seller the Purchased Assets and the assumption of the Assumed Obligations (the “**Purchase Agreement**”), on the terms and subject to the conditions contained therein.
- B. In accordance with section 1.10 of the Purchase Agreement, the Parties wish to enter into this Agreement in order to amend certain of the terms of the Purchase Agreement.
- C. Capitalized terms used in this Agreement and not otherwise defined herein have the meanings given to such terms in the Purchase Agreement.

NOW THEREFORE, in consideration of the foregoing and the representations, warranties, covenants, conditions, agreements and promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties to this Agreement, the Parties agree as follows:

ARTICLE I AMENDMENTS

1.1 Amendments to Purchase Agreement

- (a) For all purposes of the Purchase Agreement, the definition of “Buyer Designee” and all references to such definition (including, as applicable, conjunctive words such as “and/or, as applicable one or more,” and “and/or such”) in the Purchase Agreement are deleted, such that all provisions contemplating or providing for, and all references to, one of more Buyer Designees as the relevant, applicable or permitted Person(s) therein, shall be, and be deemed to be, the Buyer only.
- (b) Section 1.1 of the Purchase Agreement is hereby amended by adding new subsection (uu.1) after subsection (uu) as follows:

(uu.1) “**Interim Funding**” means any and all interim funding provided by the Buyer to the Seller pursuant to one or more debentures entered into by the Buyer and the Seller, including the interim funding approved by order of the CCAA Court in the CCAA Proceedings dated November 1, 2021;

- (c) Section 1.1 of the Purchase Agreement is hereby amended by adding new subsections (www), (yyy) and (zzz) after subsection (vvv) as follows:

(www) “**Y&B Equipment**” means the equipment located at the premises leased by the Seller from the Y&B Landlord pursuant to the Y&B Lease;

(yyy) “**Y&B Landlord**” means First Capital Holdings (Ontario) Corporation; and

(zzz) “**Y&B Lease**” means the lease dated as of April 27, 2018, between Y&B Landlord, as landlord, and the Seller, as tenant, as amended from time to time.

- (d) Section 2.2 of the Purchase Agreement is hereby amended by adding new subsection (a.1) after subsection (a) as follows:

(a.1) the Y&B Equipment;

- (e) Section 2.1(b) of the Purchase Agreement is hereby amended by adding the words “, excluding, for greater certainty, the Y&B Equipment” immediately prior to the words “(the “Purchased Equipment”)”.

- (f) Section 2.7(a) of the Purchase Agreement is hereby amended by deleting the words “\$520,000” and replacing them with words “\$2,200,000 (which amount is inclusive of all applicable HST)”.

- (g) Section 2.7(b) of the Purchase Agreement is hereby amended by adding the following words at the end of clause (A): “for delivery to the Y&B Landlord in respect of the Y&B Lease on or as soon as practicable following Closing”.

- (h) Section 3.1 of the Purchase Agreement is hereby amended by adding new subsection (c.1) after subsection (c) as follows:

(c.1) all liabilities and obligations in respect of the Interim Funding;

- (i) Article 7 of the Purchase Agreement is hereby amended by adding new Section 7.2.1 after Section 7.2 as follows:

7.2.1 Seller’s Deliverable at or as soon as practicable following Closing

At or as soon as practicable following Closing, the Seller will deliver or cause to be delivered to the Y&B Landlord the following:

- (a) the Base Purchase Price following receipt thereof from the Buyer; and

- (b) an assignment and assumption agreement providing for the assignment by the Seller of the Y&B Equipment, provided that the Y&B Landlord shall take all such equipment *in situ* and neither the Buyer nor the Seller shall have any obligation to dismantle, remove, transport or otherwise move any such equipment to be assumed by the Y&B Landlord.
- (j) Section 7.3(h) of the Purchase Agreement is hereby amended as follows (for ease of reference only, new text is marked as double-underlined):
 - (h) either a new, or an amended and restated, general security agreement delivered in connection with the CF Loan Agreement, in substantially similar form as the general security agreement delivered by the Seller in respect of the CF Loan Agreement and acceptable to the Buyer and Seller, acting reasonably, provided, for certainty, that the general security agreement delivered by the Buyer shall grant security solely with respect to the obligations with respect to the Loan (as defined under the CF Loan Agreement) and no other obligations;
- (k) Section 9.1(b) of the Purchase Agreement is hereby amended by deleting the words “November 12, 2021” and replacing them with words “January 28, 2022”.
- (l) Schedule 1.1(nn) of the Purchase Agreement is hereby deleted in its entirety and replaced with new Schedule 1.1(nn) attached here to as Appendix 1.
- (m) Schedule 1.1(eee) of the Purchase Agreement is hereby deleted in its entirety and replaced with new Schedule 1.1(eee) attached here to as Appendix 2.
- (n) Schedule 2.1(a) of the Purchase Agreement is hereby deleted in its entirety and replaced with new Schedule 2.1(a) attached here to as Appendix 3.
- (o) Schedule 2.1(c) of the Purchase Agreement is hereby deleted in its entirety and replaced with new Schedule 2.1(c) attached here to as Appendix 4.
- (p) Schedule 2.2(a) of the Purchase Agreement is hereby deleted in its entirety and replaced with new Schedule 2.2(a) attached here to as Appendix 5.

ARTICLE II GENERAL

2.1 Effectiveness

The Parties agree that this Agreement shall become effective on the date first written above (the “**Amendment Effective Date**”). On and following the Amendment Effective Date, all references in the Purchase Agreement (or in other related documents, instruments or agreements made between the Parties in connection therewith or with the transactions contemplated therein) to the Purchase Agreement, “Agreement”, “herein”, “hereof”, “hereunder” or words of similar

import, shall mean and be a reference to the Purchase Agreement as amended by this Agreement and as may in the future be amended, restated, supplemented or modified from time to time.

2.2 Ratification and Confirmation

The Purchase Agreement, as amended by this Agreement, remains in full force and effect and is hereby ratified and confirmed. Provisions of the Purchase Agreement that have not been amended by this Agreement remain in full force and effect, unamended. All rights and liabilities that have accrued to any Party under the Purchase Agreement up to the date of this Agreement remain unaffected by this Agreement. This Agreement shall not, except as expressly provided herein, operate as an amendment or waiver of any right or remedy of any Party under the Purchase Agreement nor constitute a waiver of any provision thereof.

2.3 Applicable Law

This Agreement shall be construed in accordance with the governing law as identified in section 1.11 of the Purchase Agreement.

2.4 Counterparts


This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by facsimile signature, by email, PDF or other electronic format or transmission which, for all purposes, shall be deemed to be an original signature.

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

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first written above.

SELLER


MCEWAN ENTERPRISES INC.

Per: 

Name: Dennis Mark McEwan
Title: President

BUYER

2864785 ONTARIO CORP.

Per: 

Name: Dennis Mark McEwan
Title: Director

APPENDIX 1**SCHEDULE 1.1(nn)
EXCLUDED ENCUMBRANCES*****PERSONAL PROPERTY SECURITY ACT (ONTARIO)*****(a) McEwan Enterprises Inc., 2004995 Ontario Limited, 2416668 Ontario Inc.**

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Ontrea Inc. The Cadillac Fairview Corporation Limited OPB (TDC) Inc.	McEwan Enterprises Inc.	734565906 - 20171201 1657 1862 0465 (25 years)	Equipment, Other	General security agreement re inducement with respect to Unit No. 0022A in The Toronto Dominion Centre, Toronto, Ontario	
2. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	702570006 - 20141223 1600 1862 8170 (25 years)	Inventory, Equipment, Accounts, Other		<u>Amended by 20171208 1013 1862 1106</u> Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc." pursuant to an amalgamation <u>Amended by 20171208 1053 1862 1118</u>

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc." pursuant to an amalgamation
3. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	702570015 - 20141223 1600 1862 8171 (25 years)	Inventory, Equipment, Accounts, Other		<u>Amended by 20171208 1013 1862 1105</u> Amendment to change the name of the debtor from "2416668 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
4. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	657968355 - 20091203 0938 1862 1141 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re loan with respect to Unit No. Q003 in Shops at Don Mills, Toronto, Ontario	<u>Amended by 20171208 1014 1862 1108</u> Amendment to change the name of the debtor from "2220223 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
5. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	657968364 - 20091203 0938 1862 1142 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re inducement with respect to Unit No. Q003 in Shops at Don Mills, Toronto, Ontario	<u>Amended by 20171208 1014 1862 1107</u> Amendment to change the name of the debtor from "2220223 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
6. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	648858465 - 20080929 1401 1862 0150 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re inducement with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario	
7. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	883483488 - 20020523 1044 9065 0541 (22 years)	Inventory, Equipment, Accounts, Other	Please direct all correspondence to Toronto Dominion Centre Leaseholds Limited, c/o The Cadillac Fairview Corporation Limited 20 Queen St. West, 5th Floor, Toronto, Ontario M5H 3R4 Attention- Corporate Secretary	<u>Amended by 20171208 1053 1862 1117</u> Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc." pursuant to an amalgamation

APPENDIX 2

**SCHEDULE 1.1(eee)
PERMITTED ENCUMBRANCES**

PERSONAL PROPERTY SECURITY ACT (ONTARIO)

(a) McEwan Enterprises Inc., 2004995 Ontario Limited, 2416668 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Highland Chevrolet Buick GMC Cadillac Ltd.	McEwan Enterprises Inc	771456249 - 20210412 1408 1462 0170 (5 years)	Consumer Goods, Equipment, Motor Vehicles, Amount Secured: \$75,334, Date of Maturity: 30APR2026, 2021 Ford Transit 250 1FTBR1C88MKA01283	Includes 1 re Fridgeration (<i>sic</i>) system as detailed on invoice #3416 from Experts In Transportation Climate Control Ltd. Kingtec W/XTCC Insulation System, T235E bearing Serial # 110321200011A121 and all dtailed (<i>sic</i>) componets (<i>sic</i>)	
2. Highland Chevrolet Buick GMC Cadillac Ltd.	McEwan Enterprises Inc	767005776 - 20201023 1004 1462 1588 (5 years)	Consumer Goods, Equipment, Motor Vehicles, Amount Secured: \$76,549, Date of Maturity: 31OCT2025, 2020 Ford Transit 250 1FTBR1C80LKB19343	1- Kingtec Refrigeration System Serial# 0619216E0041A081	
3. Mercedes-Benz Financial Services	McEwan Enterprises Inc. Dennis M. McEwan	751615011 - 20190527 1622 1532 2624 (4 years)	Equipment, Other, Motor Vehicles, 2019 Mercedes-Benz GLC300 4M		

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
Canada Corporation Mercedes-Benz Financial	DOB: 07MAY1957		WDC0G4KB6KV183759		
4. Xerox Canada Ltd	McEwan Enterprises Inc.	750278826 - 20190417 1704 1462 8901 (6 years)	Equipment, Other		
5. Xerox Canada Ltd	McEwan Enterprises Inc	748565748 - 20190225 1707 1462 8478 (6 years)	Equipment, Other		
6. Royal Bank of Canada	McEwan Enterprises Inc.	746303571 - 20181128 1434 8077 2743 (6 years)	Equipment, Other	Restaurant/Take-Out Equipment and Leasehold, Refrigerator Pressure Package S/N D2018060319 as per lease 201000044268 together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques,	<u>Renewed by 20210514 1028 8077 6230</u> 1 year

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral	
7. Royal Bank of Canada	McEwan Enterprises Inc.	740022939 - 20180601 1037 8077 4110 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated June 01 2018 together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking	<u>Amended by 20180601 1439 8077 4154</u> Amendment to change the address of the debtor

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	
8. Royal Bank of Canada	McEwan Enterprises Inc.	740041893 - 20180601 1439 8077 4141 (5 years)	Equipment, Other	Equipment Purchases and Leasehold Improvements as per lease 201000040501 together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel	<u>Renewed by 20210514 1028 8077 6229</u> 1 year

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral	
9. Royal Bank of Canada	McEwan Enterprises Inc.	737973342 - 20180405 1935 1531 6491 (5 years)	Accounts, Other	Priority agreement dated March 22, 2018 between Ontrea Inc, The Cadillac Fairview Corporation Limited and OPB (TDC) Inc. and Royal Bank of Canada, in favor of security agreement between Royal Bank of Canada and McEwan Enterprises Inc.	
10. Royal Bank of Canada	McEwan Enterprises Inc.	736669647 - 20180222 1930 1531 4182 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles	All present and after-acquired equipment, securities, chattel paper, instruments and documents of title. Proceeds - a security interest is claimed in all present and after-acquired goods (including trade-ins), chattel paper, securities, documents of title, instruments, money and intangibles of every item or	

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				kind that may derived from the sale or other disposition of the collateral described above, all insurance proceeds and any proceeds of any of the foregoing.	
11. Royal Bank of Canada	McEwan Enterprises Inc.	735291927 - 20171229 1034 1529 5381 (5 years)	Other	Priority agreement dated November 23, 2017 between CF/Realty Holdings Inc. and Royal Bank of Canada, in favor of security agreement between Royal Bank of Canada and McEwan Enterprises Inc.	
12. Royal Bank of Canada	McEwan Enterprises Inc.	733881384 - 20171110 1037 1529 0481 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		
13. Royal Bank of Canada (two addresses listed)	McEwan Enterprises Inc.	733060917 - 20171018 1035 8077 2049 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated October 18, 2017 together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all	<u>Transferred by 20180517 1039 8077 3262</u> Transferor: 2004995 Ontario Limited Transferee: McEwan Enterprises Inc.

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	
14. Royal Bank of Canada	McEwan Enterprises Inc.	717156873 - 20160531 1442 1530 4953 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Amended by 20180103 1932 1531 3423</u> Amendment to change the name of the debtor from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation <u>Renewed by 20210430 1445 1530 9664</u> 5 years

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
15. Royal Bank of Canada	McEwan Enterprises Inc.	703429515 - 20150204 1438 8077 3265 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated January 28th, 2015. Together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	<u>Amended by 20150709 1031 8077 5867</u> Amendment to include an additional address for the debtor <u>Transferred by 20180517 1039 8077 3261</u> Transferor: 2416668 Ontario Inc. Transferee: McEwan Enterprises Inc.

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
16. Royal Bank of Canada	McEwan Enterprises Inc.	701721396 - 20141120 1428 8077 8038 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated November 20th, 2014. Together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	<u>Transferred by 20180517 1039 8077 3264</u> Transferor: North 44 Inc. Transferee: McEwan Enterprises Inc.

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
17. Royal Bank of Canada	McEwan Enterprises Inc.	697662945 - 20140703 1434 1530 5522 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Amended by 20180103 1437 1530 9110</u> Amendment to change the name of the debtor from "2416668 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation <u>Renewed by 20190531 1441 1530 8680</u> 5 years
18. Royal Bank of Canada	McEwan Enterprises Inc. McEwan	642899511 - 20080225 1129 6005 7076 (10 years)	Equipment, Accounts, Other	"Master lease dated February 25, 2008 together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the	<u>Transferred by 20090511 1638 6005 3022</u> Transferor: McEwan Enterprises Inc. Transferee: McEwan Enterprises Inc. <i>(it appears that this amendment was filed to change the address of the debtor)</i> <u>Renewed by 20160627 1441 8077 1288</u> 10 years <u>Amended by 20160627 1441 8077 1290</u> Amendment to include a general collateral description

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.”	
19. Royal Bank of Canada	McEwan Enterprises Inc.	642904551 - 20080225 1455 1530 5165 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Renewed by 20130109 1047 1529 4046</u> 5 years <u>Amended by 20180103 1932 1531 3422</u> Amendment to change the name of the debtor from “McEwan Enterprises Inc.” to “McEwan Enterprises Inc.” pursuant to an amalgamation and to change the address of the secured party <u>Renewed by 20180119 1428 1530 6115</u> 5 years
20. Royal Bank of Canada	McEwan Enterprises Inc.	892169892 - 20030304 1835 1531 2850 (5	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Renewed by 20080227 1452 1530 8579</u>

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
		years)			5 years <u>Renewed by 20130111 1945 1531 6991</u> 5 years <u>Amended by 20180103 1932 1531 3419</u> Amendment to change the name of the debtor from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation and to change the address of the secured party <u>Renewed by 20180126 1932 1531 3277</u> 5 years
21. Royal Bank of Canada	North 44 Degrees McEwan Enterprises Inc.	963231255 - 19890525 0845 88 6360 (3 years)	Inventory, Equipment, Book Debts, Other, Motor Vehicles		<u>Amended by 19890706 0901 88 4523</u> Amendment to include "Degrees" in the name of the business name <u>Renewed by 19920429 1552 0004 0992</u> 5 years <u>Renewed by 19970220 1906 1529 2013</u> 5 years

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					<p><u>Amended by 19970221 1907 1529 3883</u></p> <p>Amendment to change the address of the secured party</p> <p><u>Renewed by 20020510 1030 1533 8923</u></p> <p>5 years</p> <p><u>Amended by 20020617 1817 1531 1403</u></p> <p>Amendment to change the name of one of the debtors from "821669 Ontario Limited" to "North 44 Inc." pursuant to an amalgamation</p> <p><u>Renewed by 20070316 1943 1531 3404</u></p> <p>5 years</p> <p><u>Amended by 20120426 1946 1531 0643</u></p> <p>Amendment to change the address of the secured party</p> <p><u>Renewed by 20120426 1946 1531 0644</u></p> <p>5 years</p> <p><u>Renewed by 20170421 1437 1530 4239</u></p> <p>5 years</p>

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Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					<u>Amended by 20180103 1932 1531 3418</u> Amendment to change the name of one of the debtors from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
22. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	648858402 - 20080929 1359 1862 0147 (25 years)*	Inventory, Equipment, Accounts, Other	General security agreement re loan with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario	

*Only those Encumbrances which secure obligations under the CF Loan Agreement relating to the Loan (as defined in the CF Loan Agreement) with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario shall constitute Permitted Encumbrances in connection with this registration.

**(b) McEwan One Mark Inc.; and
McEwan One Mark**

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Royal Bank of Canada	McEwan One Mark Inc.	701442765 - 20141110 1441 1530 2557 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Renewed by 20191004 1436 1530 8561</u> 5 years

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(a) 2220223 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Royal Bank of Canada	2220223 Ontario Inc.	663817158 - 20100819 1451 1530 6635 (5 years)	Other	Inter-company creditor agreement dated (August 4,2010)) (<i>sic</i>), between Royal Bank of Canada (CF/Realty Holdings Inc. and 2220223 Ontario Inc.)	<u>Renewed by 20150717 1945 1531 9693</u> 5 years <u>Renewed by 20200717 1442 1530 4305</u> 5 years

APPENDIX 3

SCHEDULE 2.1(a)

LEASED LOCATIONS / ASSUMED REAL PROPERTY LEASES

1. Bymark – Lease dated as of October 1, 2017 between Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and the Seller, as tenant, Unit 0022D, TD Centre, Toronto as amended from time to time, including by the Third Tenant Assistance Agreement dated May 6, 2021 between The Cadillac Fairview Corporation Limited (as agent for Ontrea Inc., OPB (TDC) Inc. and C/F Realty Holdings Inc.), the Seller and Mark McEwan (the “TAA”); together with associated Storage Lease between the landlord and tenant dated October 25, 2017 as amended from time to time in respect of Storage S707A & S003
2. Fabbrica Rustic Italian Market – Lease dated as of October 1, 2017 between Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and the Seller, as tenant, Unit 0022A, TD Centre, Toronto, as amended from time to time, including by the TAA
3. McEwan – Lease dated as of May 2, 2014 between Toronto Dominion Centre Leaseholds Limited, as predecessor of Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and 2416668 Ontario Inc. (a predecessor of Seller), as tenant, Unit 0021A, TD Centre, Toronto, as amended from time to time, including by the TAA, together with associated Storage Lease between the landlord and tenant dated March 16, 2015 as amended from time to time in respect of Storage ST1
4. McEwan – Lease dated as of June 28, 2007 between CF/Realty Holdings Inc., as landlord, and the Seller, as tenant, Unit L002, CF Shops at Don Mills, Toronto, as amended from time to time, including by a lease and loan amending agreement dated as of December 15, 2008, together with associated Storage Lease between the landlord and tenant dated October 25, 2018 as amended from time to time in respect of Storage B008S, B012S & B013S
5. Fabbrica Thornbury – Lease dated as of April 21, 2018, between Denyse Sterio, as landlord, and the Seller, as tenant

To be amended and updated prior to Closing pursuant to Section 2.4.

APPENDIX 4**SCHEDULE 2.1(c)
ASSUMED CONTRACTS**

All contracts to which the Seller is a party as of the Closing Date (other than the Excluded Contracts) including, but not limited to:

1. The Material Contracts listed in Schedule 1.1(zz)
2. The Loan Agreements
3. Master Lease Agreement dated as of October 18, 2017, between Royal Bank of Canada, as lessor, and 2004995 Ontario Limited (a predecessor of the Seller), as lessee, including:
 - a. Equipment Lease #201000036206 dated as of October 18, 2017 between Royal Bank of Canada, as lessor, and 2004995 Ontario Limited (a predecessor of the Seller), as lessee, as amended by an amending agreement dated April 21, 2021
4. Master Lease Agreement dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and the Seller, as lessee, including:
 - a. Equipment Lease #201000044268 dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and the Seller, as Lessee, as amended by an amending agreement dated April 21, 2021
 - b. Equipment Lease #201000040501 dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and the Seller, as Lessee, as amended by an amending agreement dated April 21, 2021
5. Contracts for or in respect of the Interim Funding or any part thereof.

To be amended and updated prior to Closing pursuant to Section 2.4.

APPENDIX 5**SCHEDULE 2.2(a)
EXCLUDED CONTRACTS**

1. McEwan – Lease dated as of April 27, 2018, between First Capital Holdings (Ontario) Corporation, as landlord, and the Seller, as tenant, as amended by lease amending agreements dated December 21, 2018, April 22, 2019, June 7, 2019, April 3, 2020 and April 6, 2021
2. Fabbica – Lease dated as of October 9, 2009 between CF/Realty Holdings Inc., as landlord, and 2220223 Ontario Inc. (a predecessor of the Seller), as tenant, as amended from time to time including by the Tenant Assistance Agreement dated February 19, 2019 between C/F Realty Holdings Inc. and the Seller and as further amended by the TAA, together with associated Storage Lease between the landlord and tenant dated December 21, 2016 as amended from time to time and currently extended on a month-to-month overhold in respect of Storage SP001
3. Any and all security agreements and priority agreements entered into in connection with (i) the CF Loan Agreement, (ii) the Assumed Real Property Leases and/or (iii) any other Excluded Contracts
4. Engagement letter dated as of September 10, 2021, between Alvarez & Marsal Canada ULC and the Seller

To be amended and updated prior to Closing pursuant to Section 2.4.

E

**THIS IS EXHIBIT “E”
TO THE AFFIDAVIT OF DENNIS MARK MCEWAN
SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE
THIS 12th DAY OF NOVEMBER, 2021**

Caroline Descours

Commissioner for Taking Affidavits

PURCHASE AGREEMENT

**[ALVAREZ & MARSAL CANADA INC.,]
solely in its capacity as the Court-appointed receiver of the property, assets
and undertakings of McEwan Enterprises Inc., and not in any other capacity**

as the Receiver

- and -

2864785 ONTARIO CORP.

as the Buyer

Made as of ●, 2021

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PURCHASE AGREEMENT

THIS AGREEMENT is made as of ●, 2021

B E T W E E N:

[**ALVAREZ & MARSAL CANADA INC.**,] solely in its capacity as the Court-appointed receiver of the property, assets and undertakings of McEwan Enterprises Inc., and not in any other capacity (the “**Receiver**”)

- and -

2864785 ONTARIO CORP., a corporation organized under the laws of the Province of Ontario (the “**Buyer**”)

RECITALS:

- A. McEwan Enterprises Inc. (“**MEI**”) owns and operates restaurants, catering, gourmet grocery and an events company in Canada.
- B. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated ●, 2021 (the “**Approval and Vesting Order**”), this Agreement and the Transaction contemplated hereby have been approved by the Court, subject to, among other things, the appointment of the Receiver over the property, assets and undertakings of MEI for the purposes of completing the Transaction.
- C. Pursuant to an Order of the Court dated ●, 2021 (the “**Receivership Order**”), the Receiver was appointed over the property, assets and undertakings of MEI for the purposes of completing the Transaction.
- D. Pursuant to the Receivership Order and the Approval and Vesting Order, the Receiver has agreed to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer has agreed to purchase, acquire, assume and accept from the Receiver, substantially all of MEI’s assets used in connection with, and certain liabilities and obligations of, the Business, on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged and confirmed), the Parties agree as follows:

ARTICLE 1– INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) “**2860117**” means 2860117 Ontario Limited, a wholly-owned subsidiary of MEI;
- (b) “**Additional Indemnitees**” means, with respect to any Party, its directors, officers and employees;
- (c) “**affiliate**” has the same meaning as “**affiliate**” under National Instrument 45-106 – *Registration and Prospectus Exemptions*;

- (d) **“Agreement”** means this purchase agreement and all Exhibits and Schedules attached hereto, in each case as the same may be supplemented, amended, restated or replaced from time to time; and the expressions **“Article”**, **“Section”**, **“Schedule”** and **“Exhibit”** followed by a number or letter mean and refer to the specified Article, Section, Schedule or Exhibit of this Agreement;
- (e) **“Applicable Law”** means any Canadian statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or licence of any Governmental Authority, that applies in whole or in part to the Transaction, MEI, the Receiver, the Buyer or any of the Purchased Assets;
- (f) **“Approval and Vesting Order”** has the meaning given to it in Recital B of this Agreement;
- (g) **“Assignment Order”** means an order or orders of the Court authorizing and approving the assignment of any Assumed Contract for which a consent, approval or waiver necessary for the assignment of such Assumed Contract has not been obtained, in form and substance acceptable to the Parties, acting reasonably;
- (h) **“Assumed Contracts”** has the meaning given to it in Section 2.1(c);
- (i) **“Assumed Liabilities”** means those Assumed Obligations that are amounts owing or accrued by MEI as at the Closing Date;
- (j) **“Assumed Obligations”** has the meaning given to it in Section 3.1;
- (k) **“Assumed Real Property Leases”** has the meaning given to it in Section 2.1(a);
- (l) **“Authorizations”** means, with respect to any Person, any order, permit, approval, waiver, license or similar authorization of any Governmental Authority having jurisdiction over the Person;
- (m) **“Base Purchase Price”** has the meaning given to it in Section 2.6(a);
- (n) **“Business”** means MEI’s business of owning and operating restaurants, catering, gourmet grocery and an events company in Canada;
- (o) **“Business Day”** means any day of the year on which national banking institutions in Toronto, Ontario are open to the public for conducting business and are not required or authorized by Applicable Law to close;
- (p) **“Buyer”** has the meaning given to it in the preamble to this Agreement;
- (q) **“Cash and Cash Equivalents”** means all of MEI’s or the Receiver’s cash and cash equivalents (including petty cash and cheques received prior to the close of business on the Closing Date), bank balances, monies in possession of banks and other depositories and other similar cash property, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper and government securities and other cash equivalents;
- (r) **“Cash Reserve”** means cash in such amount as may be agreed to by the Parties prior to the Closing Date;
- (s) **“CCAA”** means the *Companies’ Creditors Arrangement Act* (Canada);
- (t) **“CCAA Proceedings”** means the proceedings commenced by MEI under the CCAA;
- (u) **“CF Loan Agreement”** means the loan agreement entered into on August 6, 2008 between C/F Realty Holdings Inc., as lender, and MEI, as borrower, as amended pursuant

to an amending agreement entered into as of December 15, 2008, as may be further amended, modified, restated, replaced and supplemented from time to time;

- (v) **“Closing”** means the completion of the Transaction pursuant to the terms and conditions of this Agreement at the time set forth in Section 7.1 and of all other transactions contemplated by this Agreement that are to occur concurrently with the sale and purchase of the Purchased Assets;
- (w) **“Closing Date”** means the first Business Day that is at least five (5) Business Days following the first date by which all of the conditions in Section 6.8 have been satisfied or waived, or such other date as may be agreed upon by the Parties hereto;
- (x) **“Commercially Reasonable Efforts”** means the efforts that a reasonably prudent Person who desires to complete the Transaction on commercially reasonable terms would use in similar circumstances without the necessity of, directly or indirectly, assuming or incurring any material obligations or paying or committing to pay any material amounts to an unrelated Person;
- (y) **“Confidential Information”** means information concerning MEI, its affiliates and/or its and their respective businesses, operations, finances and affairs that is or has been disclosed by the Receiver, MEI, its affiliates or any of their respective Representatives to the Buyer, its affiliates or any of their respective Representatives in connection with the Transaction, the proposed transactions of MEI and its affiliates concerning their assets, business, properties and/or operations, this Agreement, including the existence of, the terms and conditions of, or the status of the Transaction, any such other proposed transaction, this Agreement, or any other facts pertaining to any of them, any information about identifiable individuals or any other information relating to MEI, its affiliates and/or its and their respective businesses, operations, finances and affairs, associates, customers, suppliers, partners, investors, employees and consultants, and includes all data, reports, analyses, compilations, forecasts, records and other material (in whatever form maintained) that contain or otherwise reflect any such information, as well as all notes, analyses, compilations, studies, interpretations or other documents prepared by the Buyer, its affiliates or any of their respective Representatives that contain, reflect or are based upon, in whole or in part, any such information. Notwithstanding the foregoing, **“Confidential Information”** does not include information that the Buyer can demonstrate that: (A) is or becomes readily available to the public other than as a result of disclosure by the Buyer, its affiliates or any of their respective Representatives; (B) is received by the Buyer from an independent third party that obtained it lawfully and was under no duty of confidentiality; (C) has been in the possession of the Buyer on a non-confidential basis prior to the disclosure of such information by the Receiver, MEI, its affiliates or any of their respective Representatives; (D) was independently developed by the Buyer without use or reference of any Confidential Information; or (E) is disclosed pursuant to Applicable Laws or a valid and enforceable order of a court or other Governmental Authority having jurisdiction over the Buyer provided that (other than in respect of disclosure by the Buyer pursuant to applicable securities laws) the Buyer shall, to the extent possible, first promptly notify the Receiver and MEI in writing of such requirement and fully cooperate with respect to any reasonable steps possible to further protect Confidential Information;
- (z) **“Contract”** means any contract, agreement, lease, sublease, license, sublicense, sales order, purchase order, instrument, or other commitment, whether written or oral, that is binding on any Person or any part of its property under Applicable Law;
- (aa) **“Court”** has the meaning given to it in Recital B of this Agreement;

- (bb) **“Cure Costs”** means, in respect of any Assumed Contract, all amounts owing as at the Closing Date by MEI or an affiliate thereof pursuant to such Assumed Contract and all amounts required to be paid to cure any monetary defaults thereunder, if any, required to effect an assignment thereof from MEI to the Buyer, and/or to obtain any Third Party Consent and/or, as applicable, pursuant to any Assignment Order, and any fees required to be paid to obtain such Third Party Consent or Assignment Order, as agreed upon by the Parties in writing;
- (cc) **“Designation Deadline”** has the meaning given to it in Section 2.4;
- (dd) **“Disclosed Personal Information”** has the meaning given to it in Section 10.5(b);
- (ee) **“Employee Plans”** means all oral and written employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive or performance compensation, savings, severance or termination pay, retirement, supplementary retirement, registered or unregistered retirement savings, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, policy, agreement, practice, undertaking or arrangement, and every other oral or written benefit plan, program, policy, agreement, practice, undertaking or arrangement sponsored, maintained or contributed to or required to be contributed to by MEI for the benefit of the current or former directors, officers, employees, contractors, consultants of MEI in respect of the Business and/or their respective dependants or beneficiaries, by which MEI is bound or with respect to which MEI participates or has any actual or potential liability, other than statutory benefit plans which MEI is required to participate in or comply with, including the Canada Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation;
- (ff) **“Encumbrance”** means any and all right, title, interest, priorities, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, assignments, judgments, options, levies, charges, other financial or monetary claims or encumbrances, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, by or of any and all persons or entities of any kind whatsoever;
- (gg) **“Excluded Assets”** has the meaning given to it in Section 2.2;
- (hh) **“Excluded Contracts”** has the meaning given to it in Section 2.2(a);
- (ii) **“Excluded Encumbrances”** means the Encumbrances set out on Schedule 1.1(ii);
- (jj) **“Excluded Obligations”** has the meaning given to it in Section 3.2;
- (kk) **“Governmental Authority”** means: (i) any federal, provincial, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above;
- (ll) **“HST”** means harmonized sales tax payable under the HST Legislation;
- (mm) **“HST Legislation”** means the *Excise Tax Act* (Canada) and other Applicable Laws in Canada (or any province thereof) giving rise to the requirement to pay harmonized sales tax;

- (nn) **“Improvements”** means all plants, buildings, structures, systems, fixtures, erections and improvements located on, over, under or upon, the Leased Locations;
- (oo) **“Indemnified Losses”** means all claims, liabilities, obligations, damages, awards, assessments, settlement amounts, penalties, fines, judgments, losses, costs, charges and expenses, but for greater certainty, excluding in all cases any and all indirect, incidental, consequential, punitive, exemplary and special damages (including, as exclusions, loss of future revenue or income, business interruption, cost of capital or loss of business reputation or opportunity or diminution in value);
- (pp) **“Intellectual Property”** means any domestic and foreign (i) registered and unregistered trademarks, trade names, business names, brand names, designs, logos, indicia, distinguishing guises, trade dress, service marks, copyrights, trade secrets, industrial designs, inventions, patents, formulas, processes, know-how, technology and related goodwill, (ii) issued patents, continuations in part, divisional applications or analogous rights therefor, (iii) telephone and facsimile numbers, domain name registrations, website names, world wide web addresses and social media accounts, (iv) all right, title and benefit to any and all consents, whether express or implied, granted in accordance with or pursuant to *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 (Canada)* (commonly known as **“Canada’s Anti-Spam Law”** or **“CASL”**), and (v) any applications or registrations of any of the foregoing, in each case whether registered or not, as well as all other intellectual property rights in the foregoing;
- (qq) **“Interim Funding”** means the interim funding provided by the Buyer to MEI pursuant to debentures entered into by the Buyer and MEI, including the interim funding approved by orders of the Court in the CCAA Proceedings dated November 1, 2021 and November 26, 2021;
- (rr) **“Interim Period”** means the period between the date hereof and the Closing Date;
- (ss) **“Inventory and Supplies”** has the meaning given to it in Section 2.1(d);
- (tt) **“Leased Locations”** means those premises occupied by the Business that are listed in Schedule 2.1(a) by reference to their respective municipal addresses;
- (uu) **“Loan Agreements”** means, collectively, (A) the loan agreement entered into on October 2, 2018 between MEI, as borrower and Royal Bank of Canada, as lender, as amended pursuant to an amending agreement entered into as of February 26, 2019, (B) the CF Loan Agreement, (C) the debentures dated October 31, 2018 (as amended), March 18, 2020, August 5, 2020, and March 22, 2021 between MEI and Northbridge Financial Corporation, (D) the loan received from the Canada Emergency Benefit Account, and (E) the loan agreement entered into on March 30, 2021 between MEI, as borrower and Royal Bank of Canada, as lender under the Highly Affected Sectors Credit Availability Program, in each case as amended, modified, restated, replaced and supplemented from time to time;
- (vv) **“Material Contracts”** means the Assumed Contracts listed in Schedule 1.1(vv) (as may be amended by the Buyer by adding or deleting any Contract therefrom pursuant to and in accordance with Section 2.4);
- (ww) **“MEI”** has the meaning given to it in Recital A of this Agreement;

- (xx) **“MEI Employees”** means the employees of MEI (full-time or part-time and including those on leave or on disability) and employed for or in the Business on the Closing Date;
- (yy) **“Ordinary Course”** means, with respect to an action taken or omitted to be taken by a Person, that such action is reasonably practicable and generally consistent with the past practices of the Person having regard to the transactions contemplated by this Agreement and, as applicable, the insolvency, restructuring, receivership or other similar proceedings of the Person;
- (zz) **“Parties”** means the Receiver and the Buyer, and **“Party”** means any of them;
- (aaa) **“Permitted Encumbrances”** means the following, but, for greater certainty, in each case excluding the Excluded Encumbrances and any and all Encumbrances granted under, pursuant to or in connection with any Excluded Contracts or other Excluded Assets, and also excluding any and all Encumbrances granted in connection with or in respect of, or otherwise securing, any Excluded Obligations:
 - (i) Encumbrances or privileges reserved to, vested in or in favour of any Person by (a) any Applicable Law or (b) the terms of any Authorization, that affects any lands or premises, to amend or terminate any such Authorization or to require annual or other periodic payments or other requirements as a condition to the continuance or effect thereof;
 - (ii) Encumbrances for Taxes, assessments or governmental charges and Encumbrances in favour of a Governmental Authority arising by (a) Applicable Law or (b) operation of Applicable Law and which relate to or secure obligations of MEI;
 - (iii) covenants, conditions, restrictions, easements and other imperfections or irregularities or similar matters affecting title to the Leased Locations;
 - (iv) any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind including rights to coal, petroleum and minerals of any kind, including rights to enter, prospect and remove the same, and statutory exceptions, qualifications or limitations to the title;
 - (v) Encumbrances associated with, and financing statements evidencing, the rights of equipment or other capital lessors under equipment contracts or other capital lease arrangements forming part of the Purchased Assets in and to the equipment or other capital assets which are subject to such Assumed Contracts;
 - (vi) permits, licenses, zoning, entitlement and other land use regulations, agreements, arrangements, easements, restrictions, reservations, restrictive covenants, conditions, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land of, granted to or reserved by other Persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, subdivisions, development, site plan, zoning, rights-of-way, sidewalks, public ways, as well as rights in the nature of easements or servitudes for sewers, drains, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables);
 - (vii) all matters that are disclosed (whether or not subsequently endorsed over) in any title policies issued in connection with the Leased Locations to the extent such policies have been made available to the Buyer and any plans or surveys to the

- extent such policies and copies of such surveys and exception documents have been made available to Buyer;
- (viii) all matters as would be disclosed on current title reports or surveys and that would not reasonably be expected to have a material adverse effect on a Leased Location;
 - (ix) any Encumbrances against the interest of the landlord or sub-landlord at a Leased Location;
 - (x) any Encumbrances granted under the Assumed Contracts including any leases or subleases;
 - (xi) any Encumbrance to be released on or prior to the Closing;
 - (xii) any Encumbrance set out in Schedule 1.1(aaa); and
 - (xiii) any amendment, supplement, replacement, extension or renewal of any of the foregoing from time to time;
- (bbb) **“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, co-operative, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;
 - (ccc) **“Personal Property Leases”** means a personal or movable property lease, equipment lease, conditional or instalment sale contract and other similar agreement relating to any Purchased Equipment to which MEI is a party or under which it has rights to use any Purchased Equipment;
 - (ddd) **“Prepaid Expenses”** has the meaning given to it in Section 2.1(k);
 - (eee) **“Purchased Assets”** has the meaning given to it in Section 2.1;
 - (fff) **“Purchased Equipment”** has the meaning given to it in Section 2.1(b);
 - (ggg) **“Receiver”** has the meaning given to it in the preamble to this Agreement;
 - (hhh) **“Receiver’s Certificate”** means the certificate of the Receiver contemplated by the Approval and Vesting Order certifying, *inter alia*, that the Receiver has received written confirmation in form and substance satisfactory to the Receiver from the Buyer that all of the conditions of Closing have been satisfied or waived by the Buyer;
 - (iii) **“Receivership Order”** has the meaning given to it in Recital C of this Agreement;
 - (jjj) **“Receivership Proceedings”** means the proceedings before the Court under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, in respect of MEI ;
 - (kkk) **“Representatives”** means, in respect of any Party or MEI, their respective affiliates, directors, officers, employees, agents and advisors (including financial advisors and legal counsel) of that Party or MEI and its affiliates, as well as the directors, officers and employees of any such Party’s or MEI’s agents or advisors;
 - (lll) **“Specified Insurance Proceeds”** has the meaning given to it in Section 2.1(i);
 - (mmm) **“Sunset Date”** has the meaning given to it in Section 9.1(b);
 - (nnn) **“Tax”** and **“Taxes”** means all taxes, duties, fees, premiums, assessments, levies and other charges of any kind whatsoever imposed by any Governmental Authority, together with all interest, penalties and fines in respect thereof;

- (ooo) “**Tax Act**” means the *Income Tax Act* (Canada), as amended from time to time;
- (ppp) “**Third Party Consents**” means the consents, approvals and/or authorizations of the contracting parties to the Transaction or any part thereof, including the assignment, novation or other similar arrangement of the Authorizations, the Personal Property Leases, the Assumed Real Property Leases and the other Assumed Contracts, as may be required by the terms thereof;
- (qqq) “**Transaction**” means the purchase of assets and assumption of liabilities of the Business by the Buyer contemplated by this Agreement;
- (rrr) “**Transfer Taxes**” means any HST or any other federal, provincial, state or local or foreign value-added, sale, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, documentary, filing, transfer, land or real property transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges;
- (sss) “**Transferred Employees**” means those MEI Employees who accept the offer of employment made by the Buyer or its affiliate(s) pursuant to Section 8.1;
- (ttt) “**Y&B Equipment**” means the equipment located at the premises leased by MEI from the Y&B Landlord pursuant to the Y&B Lease;
- (uuu) “**Y&B Landlord**” means First Capital Holdings (Ontario) Corporation; and
- (vvv) “**Y&B Lease**” means the lease dated as of April 27, 2018, between Y&B Landlord, as landlord, and MEI, as tenant, as amended from time to time.

1.2 Schedules

The following Schedules form part of this Agreement:

Schedule 1.1(ii)	Excluded Encumbrances
Schedule 1.1(vv)	Material Contracts
Schedule 1.1(aaa)	Permitted Encumbrances
Schedule 2.1(a)	Leased Locations / Assumed Real Property Leases
Schedule 2.1(c)	Assumed Contracts
Schedule 2.1(f)	Intellectual Property
Schedule 2.1(l)	Securities
Schedule 2.2(a)	Excluded Contracts
Schedule 6.2(a)	Insurance Policies

1.3 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

1.4 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 Interpretations

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. In addition, every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.

1.6 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.8 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by each of the Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law, Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the Transaction (in each case whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, as well as the rights and obligations of the Parties hereunder or thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the courts of the Province of Ontario (including, as applicable, the Court) for the resolution of any such disputes arising under this Agreement or any other arrangement between the Parties. Each Party agrees that service of process on such Party as provided in Section 10.11 shall be deemed effective service of process on such Party.

ARTICLE 2– PURCHASE AND SALE

2.1 Purchased Assets

Subject to the terms and conditions of this Agreement, at the Closing and effective as at 12:01 a.m. (EST) on the Closing Date, the Receiver agrees to sell, assign, transfer and convey to the Buyer, and the Buyer agrees to purchase, assume and accept from the Receiver, all of MEI's right, title and interest in and to, and the Buyer agrees to assume and perform all of MEI's obligations in and under, the assets and properties of MEI used, maintained, owned or operated for, in respect of or in connection with the Business, in each case free and clear of all Encumbrances other than the Permitted Encumbrances, excluding the Excluded Assets (including, for greater certainty, the Excluded Contracts listed on Schedule 2.2(a) hereof) (all of such assets and property hereinafter collectively referred to as the "**Purchased Assets**"), including the following:

- (a) **Assumed Real Property Leases.** All of MEI's respective leasehold interest (subject to the burdens, obligations, restrictions and conditions therein) in the Contracts listed in Schedule 2.1(a), as Schedule 2.1(a) may be amended pursuant to and in accordance with Section 2.4, pursuant to which MEI uses or occupies the Leased Locations (including all related Contracts such as estoppels, subordination and non-disturbance agreements, guarantees, extensions, renewals and modifications) or rights and any amendments, extensions and restatements thereof, including all Contracts incidental thereto subject to the rights of the applicable landlord or any third party (including rights to ownership or use of such property) under such leases (the "**Assumed Real Property Leases**");
- (b) **Purchased Equipment.** All equipment, machinery, chattels, Improvements, furnishings, computer hardware and peripheral equipment and other tangible personal and movable property (other than Inventory and Supplies) owned by MEI or MEI's interests in any such property subject to a personal or movable property lease, equipment lease, conditional or instalment sale contract or other similar agreement to which MEI is a party or under which MEI has rights to use any such property, excluding, for greater certainty, the Y&B Equipment (the "**Purchased Equipment**");
- (c) **Contracts.** Without duplication of the Assumed Real Property Leases, MEI's benefit (in each case subject to the burdens, including restrictive covenants, termination rights and other obligations, restrictions and conditions therein) in the Loan Agreements and the other Contracts listed in Schedule 2.1(c), as Schedule 2.1(c) may be amended pursuant to and in accordance with Section 2.4 (including the Assumed Real Property Leases and the Personal Property Leases for Purchased Equipment, collectively, the "**Assumed Contracts**");
- (d) **Inventory and Supplies.** As at the Closing, all those inventories and supplies (both warehouse and retail) that are held by or on behalf of MEI for sale, rental, lease or other distribution for, in or of the Business, whether situated at a Leased Location or at any other location (collectively, the "**Inventory and Supplies**");
- (e) **Motor Vehicles.** All motor vehicles owned or leased by MEI;
- (f) **Intellectual Property.** MEI's rights, interests and benefits (through ownership, licensing or otherwise) in the Intellectual Property used in the Business, and including the Intellectual Property listed in Schedule 2.1(f);
- (g) **Cash.** All Cash and Cash Equivalents, whether on hand, in transit to MEI on the Closing Date or in banks or other financial institutions, and all security entitlements, securities accounts, commodity contracts and commodity accounts on hand at Closing;

- (h) **Insurance Policies.** To the extent assignable or transferable in accordance with the terms and conditions of the applicable insurance policies, Applicable Law, the Assignment Order or the Approval and Vesting Order, (i) all of MEI's insurance policies and rights and benefits thereunder (including (A) all rights pursuant to and proceeds, condemnation, or expropriation awards or other compensation in respect of loss or damage to any Purchased Asset from such insurance policies, and (B) all claims, demands, proceedings and causes of action asserted by MEI under such insurance policies relating to any Purchased Asset or Assumed Obligation), and (ii) any letters of credit related thereto;
- (i) **Specified Insurance Proceeds.** The net proceeds of any insurance payable or paid in respect of any Purchased Asset, as well as MEI's rights in and to any such proceeds (the "**Specified Insurance Proceeds**");
- (j) **Receivables.** All accounts receivable of MEI that are outstanding as at the Closing Date (but excluding amounts owing or receivable in respect of any Excluded Asset), any Tax credit or attribute, HST and other Tax receivables, as well as future Tax receivables and Tax refund entitlements related to periods ending on or before the Closing Date, or in respect of a taxable period that includes but does not end on the Closing Date, the portion thereof up to and including the Closing Date, in each case of MEI or any of its businesses (collectively, the "**Receivables**");
- (k) **Prepaid Expenses and Deposits.** All amounts which are prepaid in respect of or in relation to the Purchased Assets, including all deposits made by MEI or on account of MEI for goods and services purchased, ordered or leased by MEI in respect of the Business as well as all deposits, advances, advance payments, prepayments, deferred charges or rebates in favour of MEI including (i) security deposits with third-party suppliers, vendors or utility or service providers, ad valorem taxes and lease and rental payments, (ii) rebates, (iii) collateral pledged for workers' compensation and (iv) prepayments, in respect of the Assumed Real Property Leases, the Personal Property Leases for Purchased Equipment and the other Assumed Contracts, the benefit of all of which are transferable to the Buyer in accordance with the terms of this Agreement, all of which are Assumed Contracts being assigned to and assumed by the Buyer and are Assumed Obligations (the "**Prepaid Expenses**");
- (l) **Securities.** All shares, partnership or joint venture interests and any other securities of any Person owned or held by MEI, as set forth in Schedule 2.1(l);
- (m) **Books and Records.** All documents used by MEI and with respect to which MEI has possession or a right to possession of, in connection with, or relating to, the Purchased Assets, the Assumed Obligations, or the operations of MEI's Business, including all files, data, reports, plans, mailing lists, supplier lists, customer lists, price lists, all books of account and other financial data and information of MEI or the Business, employee personnel records of Transferred Employees, marketing information and procedures, advertising and promotional materials, equipment records, warranty information, environmental site assessments, building condition reports, surveys, records of operations, standard forms of documents, manuals of operations or business procedures, and other similar procedures (including all discs, tapes, and other media-storage data containing such information);
- (n) **Tax Records.** All original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to MEI and/or the Business, *provided that* MEI shall retain the original copies of any of the records required to be provided to the Buyer hereunder (and provide the Buyer

with a copy thereof) to the extent MEI is expressly required to do so under Applicable Law;

- (o) **Employee Plans.** All (i) assets and rights under the Employee Plans other than any Employee Plan that is an employment or similar agreement between an Employee of MEI and MEI and (ii) human resources and other employee-related files and records relating to the Transferred Employees, except to the extent prohibited by Applicable Law;
- (p) **Confidentiality Rights.** All rights of MEI under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of MEI or with third parties;
- (q) **Other Rights.** All rights, claims, actions, refunds, causes of action, choses in action, suits, proceedings, rights of recovery, rights of setoff, rights of recoupment, rights of indemnity or contribution, and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against any Person, including all warranties, representations, guarantees, indemnities, and other contractual claims (express, implied, or otherwise); and
- (r) **Goodwill.** The goodwill of the Business, including the exclusive right of the Buyer to (i) represent itself as carrying on the Business in continuation of and in succession to MEI, and (ii) use any words indicating that the Business is carried on,

but, for greater certainty, in each case excluding any Excluded Assets.

Notwithstanding anything in this Agreement to the contrary, the Buyer may, in its sole and absolute discretion, at any time on or prior to the Designation Deadline, elect to acquire any additional assets, properties, and rights of MEI, and any asset so designated by the Buyer shall be a Purchased Asset for all purposes hereunder; provided, however, that, with respect to Contracts, such designation shall be made in accordance with Section 2.4.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement, the Purchased Assets will not, and will not be deemed to, include any of the following assets, property, rights, benefits or undertakings of MEI (collectively, the “**Excluded Assets**”):

- (a) all rights and interests in and to the Contracts to which MEI is a party, other than the Assumed Contracts, as set out in Schedule 2.2(a) (the “**Excluded Contracts**”);
- (b) the Y&B Equipment;
- (c) all of MEI’s rights and benefits under this Agreement and the Transaction;
- (d) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period, or otherwise in compliance with the terms of this Agreement; and
- (e) all director and officer insurance policies and any entitlements and any proceeds paid or payable thereunder to or on behalf of the directors and officers of MEI.

Notwithstanding anything in this Agreement to the contrary, the Buyer may, in its sole and absolute discretion, at any time on or prior to the Designation Deadline, elect not to acquire any of the assets, properties, and rights of MEI, and any asset so designated by the Buyer shall be an Excluded Asset

for all purposes hereunder; provided, however, that, with respect to Contracts, such designation shall be made in accordance with Section 2.4.

2.3 Condition of Conveyance

Without limiting the provisions of this Agreement relating to sale, transfer, assignment, conveyance, or delivery, the Purchased Assets and the Assumed Obligations shall be sold, transferred, assigned, conveyed, and delivered by the Receiver to the Buyer by appropriate instruments of transfer, bills of sale, endorsements, assignments, and deeds, in recordable form, by way of an Assignment Order, as appropriate, or as otherwise acceptable to the Buyer, and free and clear of any and all Encumbrances of any and every kind, nature, and description, other than Permitted Encumbrances.

2.4 Material Contracts, Assumed Contracts and Assumed Real Property Leases Schedules

Notwithstanding anything in this Agreement to the contrary, but subject to paragraph [5] of the Approval and Vesting Order, the Buyer, in its sole discretion, shall have the right at any time and from time to time up to one (1) day prior to the Closing Date (the “**Designation Deadline**”), upon written notice to the Receiver, to (a) amend and update Schedules 1.1(vv), 2.1(a), 2.1(c) and 2.2(a), as applicable, to add (or in the case of Schedule 2.2(a), delete) any one or more of the Contracts to which MEI is party, to such schedule and upon delivery of each such notice, the Contract so added or deleted shall, for all purposes of this Agreement, be deemed to be a Material Contract, Assumed Real Property Lease and/or Assumed Contract, as the case may be, and liabilities arising at and after the Closing Date under such Contract shall be an Assumed Obligation for all purposes of this Agreement to the extent so provided herein; and (b) amend and update Schedules 1.1(vv), 2.1(a), 2.1(c) and 2.2(a) as applicable, to delete (or in the case of Schedule 2.2(a), add) any one or more Contracts therefrom, and the Contract so deleted or added shall, for all purposes of this Agreement, be deemed to have ceased to be a Material Contract and/or be an Excluded Contract, as the case may be, and in the case of the latter, all liabilities arising at any time therefrom shall be Excluded Obligations for all purposes of this Agreement to the extent so provided herein, provided, however, that if the addition of an Excluded Contract results in an increase in the aggregate amount of Excluded Obligations, such addition of an Excluded Contract shall be subject to the consent of the Receiver. If the Buyer indicates in writing to the Receiver after the Closing Date that it wishes to acquire a Contract of MEI that was not an Assumed Contract on the Closing Date, the Receiver will use its Commercially Reasonable Efforts to assign such Contract to the Buyer; provided, however, that nothing herein shall be deemed or construed to obligate the Receiver or MEI, as applicable, to retain, or refrain from rejecting or terminating, any Contract after the Designation Deadline that does not constitute an Assumed Contract; provided, further, that nothing herein shall be deemed to require the Receiver or MEI, as applicable, to delay or otherwise alter the completion of its insolvency proceedings or any winding-up of MEI or any of its affiliates. Notwithstanding the foregoing or anything else contained in this Agreement, the Closing shall not be delayed or restricted in any way as a consequence of this Section 2.4.

2.5 As is, Where is

THE BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS ARE PURCHASED AND THE ASSUMED OBLIGATIONS ARE ASSUMED BY THE BUYER “**AS IS, WHERE IS**” AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED OBLIGATIONS, AND WITHOUT ANY RECOURSE TO THE RECEIVER, MEI OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, REPRESENTATIVES OR ADVISORS, OTHER THAN

FOR KNOWING AND INTENTIONAL FRAUD. THE BUYER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED OBLIGATIONS IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE BUYER'S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE RECEIVER OR MEI, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Buyer acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Receiver or MEI in this Agreement or in any instrument furnished in connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, merchantability, quantity, condition, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are expressly excluded.

2.6 Purchase Price and Payment

- (a) The aggregate consideration for the Purchased Assets is the aggregate sum of (A) \$2,200,000 (which amount is inclusive of all applicable HST) (the "**Base Purchase Price**"), plus (B) an amount equal to Cure Costs, plus (C) the assumption of the Assumed Obligations by Buyer.
- (b) At the Closing, the Buyer shall (A) pay to the Receiver the Base Purchase Price by way of wire transfer of immediately available funds to such bank account as is designated by the Receiver and advised by the Receiver to the Buyer no later than the Closing Date, for delivery to the Y&B Landlord in respect of the Y&B Lease on or as soon as practicable following the Closing Date, (B) pay to the Receiver all Cure Costs, if any, as may be directed by the Receiver, and (C) assume the Assumed Obligations. For the avoidance of doubt, the consideration for the purchase by the Buyer of the Purchased Assets includes the assumption of the Assumed Obligations by the Buyer. Notwithstanding the previous sentence, for the purposes of the Tax Act and for computing Transfer Taxes, the consideration for the Purchased Assets shall include only the Assumed Liabilities.

2.7 Purchase Price Allocation

The Buyer and the Receiver agree to act in good faith to determine the allocation of the aggregate consideration for the Purchased Assets in accordance with the Tax Act and other Applicable Law. In the event that agreement cannot be reached, the Parties will jointly choose an independent accounting firm, whose decision shall be final. The costs of such firm shall be paid by the Buyer. The Parties agree to execute and file all Tax returns, declarations, reports, statements and other filings on the basis of such allocation.

2.8 Tax Matters

- (a) All amounts payable by the Buyer to the Receiver pursuant to this Agreement are exclusive of Transfer Taxes arising in connection with the sale, conveyance, assignment and transfer of the Purchased Assets to the Buyer. The Buyer will be solely liable and responsible for and will pay, if required by Applicable Law, all Transfer Taxes (and within the time periods required thereunder). The Parties will cooperate with each other in good faith and will use Commercially Reasonable Efforts to assist the Buyer in mitigating such taxes. If the Receiver or MEI is required by any Applicable Law or by

administration thereof to collect any applicable Transfer Taxes from the Buyer, the Buyer will pay such amounts to the Receiver concurrent with the payment of any consideration payable pursuant to this Agreement or, if arising after Closing, forthwith, and the Receiver will pay such amounts to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws. For greater certainty, the Buyer shall indemnify the Receiver for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Receiver may pay or for which the Receiver may become liable as a result of any failure or delay by the Buyer to pay or remit such Transfer Taxes.

- (b) The Parties will use their Commercially Reasonable Efforts in good faith to minimize (or eliminate) any taxes payable under the HST Legislation in respect of the Closing by, among other things, at the specific request of the Buyer to the Receiver, the Parties and MEI, as applicable, filing a joint election in a timely manner under Section 167 of the *Excise Tax Act* (Canada), if applicable and available). If the Buyer requests the Receiver and/or MEI to make any such election, then in addition to any other indemnification obligation of the Buyer to the Receiver and MEI, the Buyer will at all times indemnify and hold harmless the Receiver, MEI and their respective Additional Indemnitees against and in respect of any and all Indemnified Losses, including all amounts assessed (together with any and all interests and penalties) by the Minister of National Revenue (Canada) or the corresponding Governmental Authority in each other applicable jurisdiction (including all legal and professional fees incurred by the Receiver, MEI or their respective shareholders, directors, officers, agents, advisors and/or employees, as a consequence of or in relation to any such assessment) as a consequence of either the Minister or any such other Governmental Authorities determining, for any reason, other than the actions or inaction of the Receiver, that either election is unavailable, inapplicable, invalid or not properly made.
- (c) If requested by the Receiver or MEI, the Parties and MEI, as applicable, shall enter into an election under Section 22 of the Tax Act.
- (d) If requested by the Receiver or MEI, the Receiver or MEI, as applicable, and the Buyer will duly and timely execute an election pursuant to Subsection 20(24) of the Tax Act and any analogous provisions of any other Tax law to apply to such amount determined and paid to the Buyer for assuming future obligations of MEI in respect of undertakings which arise from the operation of the corresponding business and to which Paragraph 12(1)(a) of the Tax Act or any analogous provision of other Tax law applies or applied.
- (e) Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Purchased Assets (including real estate Taxes, personal property Taxes and similar Taxes), but for greater certainty, excluding Taxes imposed or assessed against MEI in respect of MEI's income, capital gains/losses or similar Taxes, for any Tax period, including prior to the Closing, will be assumed by and shall be the sole responsibility of the Buyer.

ARTICLE 3– ASSUMED OBLIGATIONS AND EXCLUDED OBLIGATIONS

3.1 Assumed Obligations

Subject to Closing, the Buyer agrees to assume, pay, discharge, perform and fulfil, and will indemnify and hold harmless the Receiver, MEI and their respective Additional Indemnitees from and

against, the following debts, commitments, claims, obligations and liabilities of MEI with respect to the Business and the Purchased Assets, in each case whether direct or indirect, present or future, absolute, accrued or contingent (collectively, but for greater certainty excluding all Excluded Obligations, the “**Assumed Obligations**”):

- (a) all obligations and liabilities in respect of the Assumed Contracts but, for greater certainty, excluding the Excluded Obligations;
- (b) all obligations and liabilities in respect of customer loyalty programs, gift cards, food and merchandise credits and other similar customer retainer, engagement and incentive programs of the Business;
- (c) all Cure Costs;
- (d) all liabilities and obligations in respect of the Interim Funding;
- (e) all liabilities and obligations secured by Permitted Encumbrances prescribed in clause (xii) of such definition, but, for greater certainty, excluding the Excluded Obligations;
- (f) for greater certainty, all obligations under Applicable Law after the Closing with respect to the storage and retention of personal, financial or other records in respect of or included as the Purchased Assets;
- (g) all liabilities and obligations assumed by the Buyer as described in Section 8.2;
- (h) all liabilities and obligations with respect to Employee Plans duly assigned to, and assumed as a Purchased Asset, by the Buyer pursuant to Sections 2.1(o) and 8.1(c), respectively;
- (i) all Taxes that are specified as liabilities and obligations of the Buyer under Section 2.8; and
- (j) any other obligations and liabilities expressly assumed under this Agreement.

For greater certainty, the amount or value of the Assumed Liabilities shall not be included in determining the value of a Purchased Asset.

3.2 Excluded Obligations

Except for those arising from, due to or attributable to any violation or breach by the Buyer of any of its covenants, representations or warranties and except as expressly assumed by the Buyer pursuant to any of Sections 3.1(a) to 3.1(j) (inclusive), the Buyer will not assume and will have no obligation to discharge, perform or fulfill any of the following liabilities, debts, obligations, commitments or claims, direct or indirect, whether present or future, absolute, accrued or contingent, of MEI (collectively, the “**Excluded Obligations**”):

- (a) all liabilities and obligations of any kind relating to the Excluded Assets (including any Contract that is not an Assumed Contract);
- (b) all obligations and liabilities of MEI that are secured by Court-ordered charges and that are subject to the Cash Reserve, in an amount not less than \$100,000;
- (c) any liability with respect to any legal, accounting audit, financial advisory, and investment banking fees and any other expenses incurred by MEI, including with respect to the transactions contemplated by this Agreement or MEI’s insolvency proceedings; and

- (d) any other obligations or liabilities expressly excluded from the Assumed Obligations under this Agreement.

The Buyer covenants and agrees that, from and after the Closing Date, (i) it will, at no cost to the Receiver or MEI, forthwith upon receipt from time to time provide the Receiver and MEI with all notices, demands and other communications received by or on behalf of the Buyer in respect of any Excluded Obligations or Excluded Assets; (ii) it will, at no cost to the Receiver or MEI, co-operate with the Receiver and MEI in connection with all reasonable demands under any Excluded Obligations or Excluded Assets, including providing the Receiver and MEI with access to all personnel, information, data, documents, agreements and instruments reasonably required by the Receiver or MEI to the extent relating to Excluded Obligations or Excluded Assets; and (iii) the Receiver and MEI, as applicable, shall be entitled to exercise any rights and remedies that the Receiver, MEI or the Buyer may have in respect of any of the Excluded Obligations and Excluded Assets, either by contract, law or in equity. This ending provision of Section 3.2 shall survive and not merge on the Closing.

3.3 Assumption of Contractual and Real Property Leases Obligations

- (a) Notwithstanding anything contained in this Agreement or elsewhere, other than the obligation of the Buyer to pay all Cure Costs, the Buyer will not assume and will have no obligation to discharge any liability or obligation under any Assumed Contract which is not assignable or assumable in whole or in part without a Third Party Consent, unless such Third Party Consent or, as applicable, an Assignment Order, has been obtained.
- (b) Without limiting the generality of the foregoing but subject to the payment by the Buyer of the applicable Cure Costs, in each case in accordance with this Agreement, if any of the Assumed Contracts cannot be assigned to or assumed by the Buyer without a Third Party Consent or by way of a novation agreement, or, if applicable, an Assignment Order (which Third Party Consent, novation agreement or Assignment Order shall not have been obtained at or prior to the Closing), then notwithstanding anything contained in this Agreement or elsewhere, this Agreement does not constitute an assignment or attempted assignment of any such Assumed Contract if the assignment or attempted assignment would constitute a breach of such Assumed Contract. For greater certainty, in respect of any Assumed Contract (other than a Material Contract), if the consent of any Person is required to assign such Assumed Contract but such consent or Assignment Order, as applicable, is not obtained prior to Closing, such Assumed Contract shall not form part of the Purchased Assets and (A) neither Party shall be in breach of this Agreement as a consequence thereof, (B) no condition to Closing shall be, or be deemed to be, unsatisfied as a consequence thereof, and (C) the Closing shall not be delayed or restricted in any way as a consequence thereof.
- (c) Each Party shall use reasonable best efforts, acting in good faith, cooperatively and in a timely manner, to obtain, or cause to be obtained, at or prior to the Closing Date, the requisite Third Party Consents or, if applicable, Assignment Orders, pursuant to the Assumed Contracts.
- (d) The Receiver agrees, on behalf of MEI, as required by the Buyer, to enter into any occupancy agreements on terms acceptable to the Parties, each acting reasonably, in connection with any real property lease that is not an Assumed Real Property Lease.
- (e) Without limiting the Buyer's obligations under Sections 3.3(c) and 10.1, the Buyer will forthwith provide to the Receiver and, if requested by the Receiver, the requisite landlords, materials suitable for presentation to landlords of the Leased Locations or any other information required by any Assumed Real Property Lease or any such landlord.

Furthermore, the Buyer will execute and deliver all necessary amendments, acknowledgements or assumption agreements required by any counterparty, in form acceptable to the Parties, each acting reasonably, as a condition to the issuance of its consent and that are commercially reasonable and contemplated in the corresponding Assumed Contracts and shall provide all necessary certificates of insurance required under such Assumed Contracts.

- (f) The Buyer acknowledges that if any Third Party Consents are not obtained in respect of any such Assumed Real Property Lease and such Assumed Real Property Lease is terminated by the landlords thereunder, neither the Receiver nor MEI shall have any liability therefor to the Buyer and such Assumed Real Property Lease shall be an Excluded Asset and the liabilities thereunder shall be Excluded Obligations.
- (g) This Section 3.3 shall survive and not merge on the Closing.

ARTICLE 4– REPRESENTATIONS AND WARRANTIES OF THE RECEIVER

The Receiver represents and warrants as follows to the Buyer as of the date hereof and acknowledges and confirms that the Buyer is relying upon the following representations and warranties in completing the Transaction.

4.1 Corporate Power

- (a) The Receiver is duly organized and validly existing under the laws of its jurisdiction of organization; and
- (b) Subject to the Receivership Order and the Approval and Vesting Order, the Receiver has the power, authority and capacity to enter into and perform its obligations under this Agreement.

4.2 Due Authorization and Enforceability of Obligations

Subject to the Receivership Order and the Approval and Vesting Order, the execution and delivery of this Agreement and the consummation of the Transaction by the Receiver have been duly authorized. Subject to the Receivership Order and the Approval and Vesting Order, this Agreement has been duly and validly executed by the Receiver and constitutes a valid and binding obligation of the Receiver enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally and by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

4.3 No Other Representations and Warranties

Notwithstanding anything else contained in this Agreement, except for the representations and warranties contained in this Article 4, none of the Receiver, MEI nor any other Person on behalf of the Receiver or MEI makes any representation or warranty, express or implied, with respect to the Receiver, MEI, the Purchased Assets, the Business, the Assumed Obligations or the Transaction.

ARTICLE 5– REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Receiver as follows, and acknowledges that the Receiver is relying upon the following representations and warranties in connection with its sale of the Purchased Assets:

5.1 Corporate Power

- (a) The Buyer is duly organized and validly existing under the laws of its jurisdiction of organization; and
- (b) The Buyer has the power, authority and capacity to enter into and perform its obligations under this Agreement and to own and lease real property and carry on business.

5.2 Residence of the Buyer

The Buyer:

- (a) is not a non-resident of Canada for the purposes of the Tax Act;
- (b) is a “**Canadian**” or “**WTO investor**” for the purposes of the *Investment Canada Act* (Canada); and
- (c) is not a “**state-owned enterprise**” for the purposes of the *Investment Canada Act* (Canada).

5.3 Absence of Conflicts

The Buyer is not a party to, bound or affected by or subject to any charter or by-law provision or Applicable Laws or Authorizations that would be violated, breached, or under which any default would occur or with notice or the passage of time would be created, as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults that would not have a material adverse effect on the Buyer.

5.4 Due Authorization and Enforceability of Obligations

The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Buyer, if applicable or required. This Agreement has been duly and validly executed by the Buyer, and constitutes a valid and binding obligation of the Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally and by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

5.5 Approvals and Consents

No authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices that would not have a material adverse effect on the Buyer.

5.6 HST Legislation

The Buyer will be registered at Closing for purposes of the Tax imposed under the HST Legislation.

5.7 Financing and Solvency

The Buyer will, on Closing, have available in immediately-available funds on hand, from its working capital and/or currently available unrestricted credit facilities, all the cash that the Buyer shall need at the Closing to consummate the purchase of the Purchased Assets and the Transaction. As of the Closing and immediately after consummating the transactions contemplated by this Agreement, the Buyer will not (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable liability on its debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in its business or (iii) have incurred or plan to incur debts beyond its ability to repay such debts as they become absolute and matured.

5.8 Regulatory

At all relevant times, the Buyer is qualified in all respects (including under Applicable Laws), to acquire and own the Purchased Assets and operate the Business as currently conducted.

5.9 Compliance with Laws

The Buyer is conducting its business and operations in compliance, in all material respects, with all Applicable Laws of each jurisdiction in which its business and operations is carried on. No written notice or warning from any Governmental Authority with respect to any failure or alleged failure of, or necessity for, its business and operations to comply with any Applicable Law has been received by the Buyer nor, to the knowledge of the Buyer, is any such notice or warning proposed or threatened.

5.10 Informed and Sophisticated Buyer

The Buyer is an informed and sophisticated Buyer, and has engaged expert advisors and is experienced in the evaluation and purchase of property and assets and assumption of liabilities such as the Purchased Assets, the Business and the Assumed Obligations as contemplated hereunder. The Buyer has undertaken such investigations and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement.

5.11 Diligence

The Buyer acknowledges and agrees that: (a) it is purchasing the Business and the Purchased Assets and assuming the Assumed Obligations on an “**as is, where is**” basis; (b) it has relied upon its own independent review, investigation and inspection of the documents and information made available by or on behalf of MEI for the purpose of the Transaction, as well as of the Business, the Purchased Assets and the Assumed Obligations; (c) except as expressly set forth in this Agreement, it is not relying upon any written or oral statements, documents, information, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, the Business and the Assumed Obligations; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence. The provisions of this Section 5.11 shall survive and not merge on Closing.

5.12 No Brokers

No agent, broker, person or firm acting on behalf of the Buyer is, or will be, entitled to any commission or brokers' or finders' fees from the Buyer or from any affiliate of the Buyer, in connection with any of the Transaction.

5.13 No Other Representations and Warranties.

Notwithstanding anything else contained in this Agreement, except for the representations and warranties contained in this Article 5, neither the Buyer nor any other Person on behalf of the Buyer makes any representation or warranty, express or implied, with respect to the Buyer or the Transaction.

ARTICLE 6– CONDITIONS AND OTHER AGREEMENTS

6.1 Conduct Prior to Closing

- (a) During the Interim Period, except, in each case, either (A) in furtherance of or in relation to the Transaction, (B) with the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed) or (C) as applicable, in connection with MEI's insolvency proceedings or otherwise pursuant to any orders or directions of the Court, the Receiver and MEI, as applicable, will, in all material respects, conduct the Business and deal with the Purchased Assets in the Ordinary Course and in accordance with Applicable Law, including, as may be permitted by the Court, as applicable, paying and discharging the liabilities of the Business when due in accordance and consistent with past practice.
- (b) Without limiting the generality of Section 6.1(a), but except, in each case, either (A) in furtherance of or in relation to the Transaction, (B) with the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed) or (C) as applicable, in connection with MEI's insolvency proceedings or otherwise pursuant to any orders or directions of the Court, during the Interim Period, the Receiver and MEI, as applicable, will use Commercially Reasonable Efforts to:
 - (i) in all material respects, keep available the services of the MEI Employees and preserve current relations with, and the current goodwill of, suppliers, customers, landlords, Governmental Authorities and all other Persons having material business relationships with MEI;
 - (ii) not amend in any material respect or renew, extend the term or accept the surrender of any Assumed Real Property Lease;
 - (iii) in all material respects, preserve, protect and maintain the Purchased Assets in the Ordinary Course;
 - (iv) not make any material changes in employment terms or Employee Plan terms for any of MEI's officers, directors and employees; and
 - (v) continue and keep in full force and effect all insurance coverage currently held by MEI.

6.2 Insurance Obligations

- (a) Prior to the Closing Date, the Receiver shall use Commercially Reasonable Efforts to cause the insurance policies identified for assignment in Schedule 6.2 to be assigned to

the Buyer and obtain any consents required in respect thereof. In the event the Receiver is unable, despite its Commercially Reasonable Efforts, to assign one or more of such policies to the Buyer, the Receiver shall use Commercially Reasonable Efforts to cause the Buyer to be named as an additional insured and loss payee on each such policy. Notwithstanding anything to the contrary contained herein, neither the Receiver nor MEI shall cancel, terminate or otherwise impair any such insurance policy (other than, in respect of any occurrence based policy with a policy period expiring after the Closing Date, a termination of any portion of the policy period occurring on or after the Closing Date), and, in the event that any such policy is so terminated, cancelled or otherwise impaired by the Receiver or MEI, any liability which would have otherwise been covered under such policy shall not be an Assumed Obligation and instead shall be an Excluded Obligation.

- (b) In the event that the Receiver succeeds in assigning one or more of the insurance policies identified for assignment in Section 6.2(a) hereof to the Buyer, the Buyer shall cause MEI to be named as additional insured and loss payees on each such policy concurrently with the effectiveness of such assignment. Notwithstanding anything to the contrary contained herein, the Buyer will not cancel, terminate or otherwise impair any such transferred insurance policy (other than, in respect of any occurrence based policy with a policy period expiring after the Closing Date, a termination of any portion of the policy period occurring on or after the Closing Date), and, in the event that any such policy is so terminated, cancelled or otherwise impaired by the Buyer, any liability which would have otherwise been covered under such policy shall be treated as an Assumed Liability hereunder.

6.3 Receivership Proceedings

- (a) The Receiver and the Buyer will effectuate the Transaction pursuant to the Receivership Proceedings under Applicable Laws. Acting in a timely manner and in good faith, the Parties shall amend this Agreement, if required, to effect the Transaction pursuant to the Receivership Proceedings on or prior to the Sunset Date, including each taking or causing to be taken all such action and executing and delivering or causing to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to effect the Transaction in such other agreed upon manner.
- (b) Without limiting the generality of Section 6.3(a), the Receiver shall file, as applicable, a motion for an Assignment Order. The Buyer and the Receiver each agree that it or they will promptly take such actions as are reasonably requested by the other of them to assist in the filing of any such motion and to obtain entry of any such order, including filing affidavits. Any motion brought by the Receiver in respect of any such order shall be brought on notice to such parties as may be reasonably required by the Buyer, in addition to any parties to whom notice is required by the Court to be given. The Buyer and the Receiver shall promptly provide to the other of them all such information and assistance as may be reasonably requested to obtain entry of any Assignment Order.

6.4 Possession of Purchased Assets; Expenses for Removal

- (a) On Closing, the Buyer shall take possession of the Purchased Assets *in situ* at Closing. The Buyer acknowledges that neither the Receiver nor MEI has any obligation to deliver physical possession of the Purchased Assets to the Buyer.

- (b) The Buyer shall promptly notify the Receiver and MEI of any Excluded Assets that may come into the possession or control of the Buyer or its affiliates, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Receiver, MEI or its affiliates, or to such other Person as the Receiver or MEI may direct in writing and, for greater certainty, no title or other license to use shall, or shall be deemed to, vest to the Buyer in respect of any Excluded Assets.
- (c) The Receiver shall promptly notify the Buyer of any Purchased Assets that may come into the possession or control of the Receiver, MEI or its affiliates after Closing, and thereupon shall promptly release or cause to be released such Purchased Assets to the Buyer or their affiliates at the cost and expense of the Buyer to pick up and transfer such Purchased Assets, or to such other Person as the Buyer may direct in writing and, for greater certainty, no title or other license to use shall, or shall be deemed to, vest to MEI or its affiliates in respect of any Purchased Assets.
- (d) If the Closing occurs and the Buyer is required pursuant to Section 6.4(e), or decides in its sole and absolute discretion, to dismantle, remove, transport or otherwise move any of the Purchased Assets (there being no obligation or requirement on the Buyer to do so other than as required by Section 6.4(e)), the Receiver shall provide such reasonable assistance as is requested by the Buyer with respect to any location that is not subject to an Assumed Real Property Lease, but in all cases the Buyer shall be solely responsible and liable for and pay as and when required:
 - (i) any and all costs of dismantling or removing Purchased Assets from any location that is not a Leased Location or other location under the control of MEI and/or transporting them to a new location; and
 - (ii) the cost of repairing any damage caused to the site exclusively by the dismantling or removal by the Buyer or its representatives of any of the Purchased Assets from any such Leased Location or other location, it being acknowledged that the Buyer will have no responsibility to repair any damage caused by the installation, presence, use or operation of the Purchased Asset at such location.
- (e) Within 30 days from the Closing, the Buyer shall ensure that all Purchased Assets are removed, at the Buyer's sole cost and expense, from each location currently occupied by the Business that is not subject to an Assumed Real Property Lease or other location under the control of MEI.
- (f) During the Interim Period, if, with the consent of the Buyer, any Contract for a leased location of the Business is disclaimed or a leased location of the Business is otherwise closed, the Receiver shall cause any Purchased Assets (including any Inventory and Supplies and equipment) at such Leased Location to be delivered, at the Buyer's expense, to a Leased Location that is reasonably proximate to such disclaimed or closed location on or before Closing. For greater certainty, if any such Contract is disclaimed or any such location is closed at or after the Closing, the Buyer shall ensure that all Purchased Assets are removed, at the Buyer's sole cost and expense, from each such location.

6.5 Access to Information

Until the Closing Date and to the extent permitted by Applicable Law, the Receiver shall give to the Buyer's personnel engaged in this Transaction and their accountants, legal advisers, consultants and other Representatives during normal business hours and upon reasonable advance notice, reasonable access to their premises and shall furnish them with all such information relating to the Purchased Assets as the Buyer may reasonably request in connection with the Transaction. Notwithstanding anything in

this Section 6.5 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not disrupt the business or any of the assets of MEI. The Buyer acknowledges and confirms its representations and warranties in Sections 5.10 and 5.11 and that access to information pursuant to this Section 6.5 is not intended to, and shall not, provide for any due diligence inquiry as a condition to the Closing or otherwise.

6.6 Conditions for the Benefit of the Buyer

The obligation of the Buyer to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of the Buyer and may be waived, in whole or in part, by the Buyer in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Receiver contained in this Agreement must be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date), in each case except to the extent that the same would not result in a material adverse effect with respect to the Transaction; provided that the Receiver must have delivered to the Buyer a signed certificate of a senior officer to that effect.
- (b) **Performance of Covenants.** The Receiver must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement to be fulfilled or complied with by it at or prior to the Closing, and the Receiver must have delivered to the Buyer a signed certificate of a senior officer to that effect.
- (c) **Deliverables.** The Receiver must have delivered to the Buyer the documents contemplated in Section 7.2, in each case in form and substance satisfactory to the Buyer, acting reasonably.
- (d) **Proceedings.** All proceedings to be taken in connection with the Transaction on the part of the Receiver or MEI must be satisfactory in form and substance to the Buyer, acting reasonably, and the Buyer must have received copies of all instruments and other evidence as it may reasonably request in order to establish the consummation of the Transaction and the taking of all necessary corporate proceedings in connection therewith.

6.7 Conditions for the Benefit of the Receiver

The obligation of the Receiver to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of the Receiver and may be waived, in whole or in part, by the Receiver in its sole discretion:

- (a) **Truth of Representation and Warranties.** The representations and warranties of the Buyer contained in this Agreement must be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date), in each case except to the extent that the same would not result in a material adverse effect with respect to the Buyer; provided, that the Buyer must have delivered to the Receiver a signed certificate of a senior officer to that effect.
- (b) **Performance of Covenants.** The Buyer must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement to be fulfilled or complied with

by it at or prior to the Closing, and the Buyer must have delivered to the Receiver a signed certificate of a senior officer to that effect.

- (c) **Deliverables.** The Buyer must have delivered to the Receiver the documents contemplated in Section 7.4, in each case in form and substance satisfactory to the Receiver, acting reasonably.

6.8 Mutual Conditions

The obligation of the Parties to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of each of the Receiver and the Buyer and may only be waived, in whole or in part, by both the Receiver and the Buyer:

- (a) **No Legal Action.** No provision of any Applicable Laws and no judgment, injunction, order or decree that prohibits the consummation of the Transaction pursuant to and in accordance with this Agreement being in effect.
- (b) **Court Approvals.** The Approval and Vesting Order shall not have been stayed or varied in a manner prejudicial to the Buyer and/or the Receiver, or vacated.
- (c) **Consents and Approvals.** The Buyer shall have received a Third Party Consent or an Assignment Order with respect to each Material Contract which cannot be assigned to the Buyer without such a Third Party Consent or Assignment Order.

6.9 No Frustration of Closing Condition

Neither the Buyer nor the Receiver may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Sections 6.6, 6.7 and 6.8, as the case may be, to be satisfied if such failure was caused by such Party's or its affiliates' failure to use its reasonable best efforts (or Commercially Reasonable Efforts, to the extent specifically provided) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant of such Party hereunder, including to seek and obtain on reasonably satisfactory terms all requisite Third Party Consent and Assignment Orders, as applicable, as may be necessary or desirable.

6.10 Change of Name

- (a) Prior to the Closing, the Receiver shall take all steps required to permit the Buyer to adopt a corporate name in which the words "McEwan" or "Enterprises" are used. Such steps shall include executing any consents and acknowledgements required in order to enable the Buyer to file articles of incorporation or articles of amendment containing a corporate name in which the words "McEwan" or "Enterprises" are used.
- (b) From and after the Closing Date, the Receiver and MEI shall, with respect to MEI's business, operations and locations:
 - (i) discontinue use of any and all Intellectual Property and do all such acts and make all such filings or otherwise to change the name of itself and its business, operations and locations, if any, to another name that is not confusingly similar to any of the Intellectual Property and any variation or derivative of any one or more of them; and

- (ii) remove all the Intellectual Property and any variation or derivative thereof from all public display and signage, and cease creation of any new documents, correspondence or communication of any kind in any format made available or delivered to any other Person or to the public that includes any of the Intellectual Property, including any of its marketing materials, social media and Internet activities.
- (c) Forthwith after Closing, the Receiver shall take all steps necessary to change MEI's corporate name to one which does not include the words "McEwan" or "Enterprises".
- (d) From and after the Closing Date, at no time may the Receiver or MEI use any of the Intellectual Property to suggest or imply, in any manner, directly or indirectly, that MEI or its business is in any way, from and after the Closing Date, associated, affiliated, endorsed by, licensed by or related to the Buyer or the Business.
- (e) It is acknowledged and agreed that, from and after the Closing Date, Buyer owns all right, title and interest, in and to the Intellectual Property and any derivatives, modifications, enhancements or improvements thereto.

ARTICLE 7– CLOSING

7.1 Date, Time and Place of Closing

The completion of the Transaction will take place at the offices of Goodmans LLP at Suite 3400, Bay Adelaide Centre, 333 Bay Street, Toronto, Ontario M5H 2S7 at 10:00 a.m. (EST) on the Closing Date, or at such other place, on such other date and at such other time as may be agreed upon in writing by the Parties. Notwithstanding the foregoing, the Parties acknowledge and agree that the Transaction will be deemed to have closed effective as at 12:01 a.m. (EST) on the Closing Date.

7.2 Receiver's Deliverables at Closing

At Closing, the Receiver will deliver or cause to be delivered to the Buyer the following:

- (a) the Cash and Cash Equivalents, net of the Cash Reserve, by wire transfer of immediately available funds to such accounts as are designated by the Buyer two (2) Business Days prior to the Closing;
- (b) the executed Receiver's Certificate;
- (c) one or more bills of sale executed by the Receiver to convey all of MEI's right, title and interest in and to the Purchased Assets to the Buyer, free and clear of all Encumbrances other than Permitted Encumbrances, duly executed by the Receiver;
- (d) an assignment of intangible property to transfer all of MEI's right, title and interest in and to the Purchased Assets that are intangible property to the Buyer, free and clear of all Encumbrances (other than Permitted Encumbrances), duly executed by the Receiver;
- (e) an assignment and assumption agreement providing for the assignment of MEI's right, title, and interest in and to the Purchased Assets and the Buyer's assumption of the Assumed Obligations executed by the Receiver, as may be required by either the Receiver or the counterparties thereto, and, if applicable and otherwise agreed to by the Parties, an Assignment Order in respect of the Assumed Contracts;

- (f) an employment agreement duly executed and delivered to the Buyer by Dennis Mark McEwan, substantially on the same terms as the current terms of his employment;
- (g) if applicable, the elections referred to in Section 2.8, in each case signed by the Receiver or MEI, as applicable;
- (h) the certificates referred to in Section 6.6(a) and Section 6.6(b);
- (i) an irrevocable share transfer power of attorney in respect of all of the shares of 2860117, duly executed in blank by the Receiver; and
- (j) all other documents reasonably requested by the Buyer to be entered into or delivered by the Receiver at Closing pursuant to the terms of this Agreement.

7.3 Receiver's Deliverable at or as soon as practicable following Closing

At or as soon as practicable following Closing, the Receiver will deliver or cause to be delivered to the Y&B Landlord the following:

- (a) the Base Purchase Price following receipt thereof from the Buyer; and
- (b) an assignment and assumption agreement providing for the assignment of the Y&B Equipment, provided that the Y&B Landlord shall take all such equipment *in situ* and neither the Buyer, the Receiver nor MEI shall have any obligation to dismantle, remove, transport or otherwise move any such equipment to be assumed by the Y&B Landlord.

7.4 Buyer Deliverables at Closing

At Closing, the Buyer will deliver or cause to be delivered to the Receiver the following:

- (a) the Base Purchase Price and an amount equal to the Cure Costs, if any, in the manner set forth in Section 2.6;
- (b) certified copies of:
 - (i) the charter documents of the Buyer;
 - (ii) resolutions of the board of directors of the Buyer approving the entering into of this Agreement and the completion of the Transaction; and
 - (iii) a list of the officers and directors of the Buyer authorized to sign agreements together with their specimen signatures; and
- (c) a certificate of status, compliance, good standing or like certificate with respect to the Buyer issued by the appropriate governmental officials of its jurisdiction of incorporation;
- (d) one or more bills of sale executed by the Buyer to purchase the Purchased Assets free and clear of all Encumbrances other than Permitted Encumbrances;
- (e) an assignment of intangible property to transfer the Purchased Assets that are intangible property to the Buyer, free and clear of all Encumbrances (other than Permitted Encumbrances), duly executed by the Buyer;
- (f) an assignment and assumption agreement providing for the assignment of MEI's right, title, and interest in and to the Purchased Assets and the Buyer's assumption of the Assumed Obligations executed by the Buyer, as may be required by either the Receiver

or the counterparties thereto, in respect of the Assumed Contracts, as well as all documentation, deliveries and assurances, in each case as may be required by the relevant counterparties in connection therewith and that have been agreed to be the Buyer;

- (g) either a new, or an amended and restated, general security agreement delivered in connection with the CF Loan Agreement, in substantially similar form as the general security agreement delivered by MEI in respect of the CF Loan Agreement and acceptable to the Buyer and the Receiver, acting reasonably, provided, for certainty, that the general security agreement delivered by the Buyer shall grant security solely with respect to the obligations with respect to the Loan (as defined under the CF Loan Agreement) and no other obligations;
- (h) if applicable, the elections referred to in Section 2.8, in each case signed by the Buyer;
- (i) the certificates referred to in Section 6.7(a) and Section 6.7(b); and
- (j) all other documents reasonably requested by the Receiver to be entered into or delivered by the Buyer at Closing pursuant to the terms of this Agreement.

7.5 Cash Reserve

The Receiver shall deliver to the Buyer, within three (3) Business Days by wire transfer of immediately available funds to such accounts as are designated by the Buyer, any funds remaining in the Cash Reserve on the earlier of (i) six (6) months after the Closing Date and (ii) the date the administration of MEI's wind-down is completed.

ARTICLE 8– EMPLOYEES

8.1 Employees

- (a) At least seven (7) days prior to the Closing Date, the Buyer shall make an offer of employment, effective as of the Closing Date and contingent upon the Closing, to each of the MEI Employees on substantially the same terms and conditions of employment as in effect immediately prior to the Closing, subject to, for greater certainty, reasonably necessary changes on account of the fact that the Buyer is not acquiring the Excluded Assets (including some of the existing locations where certain of the MEI Employees have been employed), which shall not be conditional (other than Closing) or include any probationary or other similar period. With respect to any MEI Employee who is on a long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such MEI Employee returning to active status. Each MEI Employee who accepts such offer of employment shall be referred to hereinafter as a “Transferred Employee”. Notwithstanding the foregoing, nothing herein shall be construed as to prevent the Buyer, at its sole responsibility, liability and obligation, from terminating the employment of any Transferred Employee, consistent with Applicable Law, at any time following the Closing Date.
- (b) Each Transferred Employee shall be given credit for all service with MEI and its predecessors for all employment purposes, including under any employee benefit plans or arrangements of the Buyer, maintained by the Buyer, in which such Transferred Employees participate following the Closing Date, for purposes of eligibility, vesting, and entitlement to benefits, including for severance benefits and vacation entitlement (but not for accrual of pension benefits). Notwithstanding the foregoing, nothing in this

Section 8.1(b) shall be construed to require crediting of service that would result in a duplication of benefits.

- (c) Prior to the Closing Date, the Receiver shall (i) cause each of the Employee Plans, together with all assets and rights thereunder, to be transferred to the Buyer, (ii) assign all Contracts entered into in connection with the Employee Plans to the Buyer, and (iii) obtain any consents required in respect thereof, to ensure that all Transferred Employees and their dependents continue to participate in the Employee Plans and accrue benefits thereunder through and after the Closing Date. In the event the Receiver is unable to assign or cause to be assigned one or more of such plans to the Buyer, the Receiver shall use Commercially Reasonable Efforts to ensure that the Transferred Employees and their dependents continue to participate in the Employee Plans and accrue benefits thereunder through and after the Closing Date. Notwithstanding anything to the contrary contained herein, the Receiver will not cancel, terminate or otherwise impair any of the Employee Plans.
- (d) The Buyer shall provide each Transferred Employee with credit for the same number of vacation and sickness benefit days such Transferred Employee shall have accrued but not used in the calendar year in which the Closing Date occurs. In the event that a Transferred Employee is unable to use such carried over vacation and sickness days within the calendar year in which the Closing Date occurs, the Buyer shall allow such Transferred Employee to carry over such vacation and sickness days to be used in the subsequent calendar year.
- (e) The Parties agree that nothing in this Section 8.1, whether express or implied, is intended to create any third party beneficiary rights in any Transferred Employee.
- (f) Effective upon the Closing Date, the Receiver hereby, for and on behalf of itself and MEI, waives, for the benefit of the Buyer only, any and all restrictions in any Employee Plan or Contract relating to (i) non-competition with MEI, (ii) non-solicitation of MEI Employees or customers, or (iii) maintenance of confidentiality of any information for the benefit of MEI, in each case, with or covering any Transferred Employee.

8.2 Employee Liability

The Buyer will assume and be responsible for:

- (a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, retirement benefits, if any, and pay in lieu thereof, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees prior to and after the Closing Date;
- (b) all liabilities for vacation and sick pay and entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date;
- (c) all severance payments, payments for notice of termination or in lieu of notice of termination, damages for wrongful dismissal and all related costs in respect of the termination by the Receiver, as applicable, MEI or the Buyer of the employment of any employee of the Business;
- (d) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees prior to and after the Closing Date; and

- (e) all employment-related claims, penalties, contributions, premiums and assessments in respect of the Business arising out of matters which occur prior to and after the Closing Date.

ARTICLE 9– TERMINATION

9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Receiver and the Buyer, subject to any required approval of the Court, as applicable;
- (b) by the Receiver, on the one hand, or the Buyer, on the other hand, if the Closing has not occurred on or before January 28, 2022 (the “**Sunset Date**”), as such date may be extended by the agreement of the Parties, *provided however* that if the Closing shall not have occurred on or before the Sunset Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by the Buyer or the Receiver, then the breaching Party may not terminate this Agreement pursuant to this Section 9.1(b);
- (c) by the Receiver if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.7 or 6.8 by the Sunset Date and such violation or breach has not been waived by the Receiver or cured within fifteen (15) days after written notice thereof from the Receiver, unless the Receiver is in material breach of its obligations under this Agreement; and
- (d) by the Buyer, if there has been a material violation or breach by the Receiver of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.8 by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within fifteen (15) days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force and effect, except as contemplated in Sections 1.10, 2.6, 3.3 and 5.11 and Article 10, each of which shall survive termination. Nothing in this Section 9.2 shall be deemed to relieve any Party from liability for any breach of this Agreement or to impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement.

ARTICLE 10– GENERAL MATTERS

10.1 Further Assurances

- (a) Each of the Parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use Commercially Reasonable Efforts and take all such steps as may be reasonably within its power to implement to their full extent the

provisions of this Agreement. Upon and subject to the terms and conditions of this Agreement and subject to the directions of any applicable courts to the Parties, including the Court, the Parties shall use their Commercially Reasonable Efforts to take or cause to be taken all actions and to do or cause to be done all things necessary proper or advisable under Applicable Laws and within their reasonable control to consummate and make effective the Transaction, including using Commercially Reasonable Efforts to satisfy or waive the conditions precedent to the obligations of the Parties hereto.

- (b) Without limiting the generality of the foregoing, following the Closing:
 - (i) the Receiver will forward and transfer to the Buyer, as soon as is commercially reasonable and practicable, any payments, documents, information, communications or correspondence which the Receiver or any affiliate thereof may receive from time to time that solely and directly relates to the Purchased Assets or the Assumed Obligations and which should have properly been paid, provided or delivered to the Buyer, and that any payments so received by it or any affiliate thereof will be held in trust pending such transfer;
 - (ii) the Buyer will forward and transfer to the Receiver, as soon as is commercially reasonable and practicable, any payments which the Buyer or any affiliate thereof may receive from time to time in respect of any Excluded Asset or Excluded Obligation which should have properly been paid, provided or delivered to the Receiver or MEI, and that any payments so received by it or any affiliate thereof will be held in trust pending such transfer; and
 - (iii) the Buyer shall permit the Receiver, MEI and their respective agents reasonable access to the historical records and other documentation relating to the Purchased Assets, the Business (including the books and records), the Assumed Obligations and the MEI Employees (subject to appropriate confidentiality requirements), where required by the Receiver or MEI in connection with any legal, administrative or other similar inquiry or proceeding.

10.2 Third Party Beneficiaries

Except as otherwise provided in Sections 2.8 and 10.3 in respect of Indemnified Losses only, the Parties intend that this Agreement will not benefit or create any right or cause of action in, or on behalf of, any Person, other than the Parties to this Agreement and MEI, and no Person, other than the Parties to this Agreement and MEI, will be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Receiver and MEI each acts as trustee and agent on behalf of each of their respective Additional Indemnitees and holds for their benefit their rights under Section 2.8 and 10.3 in respect of Indemnified Losses only. Each Party agrees that the other Parties and MEI may enforce the indemnity for and on behalf of such Additional Indemnitees and, in such event, the indemnifying Party will not in any proceeding to enforce the indemnity by or on behalf of such Additional Indemnitees assert any defence thereto based on the absence of authority or consideration or privity of contract and irrevocably waives the benefit of any such defence. The Parties to this Agreement reserve their right to vary or rescind the rights at any time and in any way whatsoever granted by or under this Agreement to any Person who is not a Party to this Agreement (other than MEI), without notice to or consent of that Person, including any of its Additional Indemnitees.

10.3 Confidentiality

- (a) Until the Closing Date and, if this Agreement is terminated for any reason, for one (1) year after the date hereof, the Buyer agrees that neither it nor its affiliates nor any of their

respective Representatives shall disclose to any third party and shall hold in strict confidence, and each agrees to instruct its Representatives not to disclose to any third party and to hold in strict confidence, all Confidential Information, without the prior written consent of MEI.

- (b) Without limiting the generality of the foregoing, all press releases, notices to third parties (including public store signage) and all other publicity concerning the Transaction or any matter contemplated or referenced by this Agreement (including the existence of, the terms and conditions of, and the status of the Transaction, all of which constitute Confidential Information), and, to the extent practicable, any announcements, notices or other communications to any employee, customer or supplier, shall be jointly planned and coordinated by the Parties and no Party shall, directly or indirectly, allow, permit or otherwise enable or assist in any such matter without the express prior written approval of the other Parties, each acting reasonably.
- (c) Notwithstanding Section 10.3(a), the Buyer shall be entitled to disclose Confidential Information to its Representatives who have a need to know for the sole purpose of the Transaction (including any requisite review and approval thereof).
- (d) Without limitation to any rights or remedies of the Receiver or MEI against the Buyer, its affiliates or any of their respective Representatives, the Buyer shall be principally liable for any and all breaches of the terms of Sections 10.3 and 10.4 by its affiliates or its or their Representatives. In the event of a breach of the terms of Sections 10.3 and 10.4, the Buyer shall indemnify, defend and hold harmless the Receiver, MEI and each of their respective Additional Indemnitees for any and all Indemnified Losses whatsoever incurred by the Receiver, MEI or their respective Additional Indemnitees as a result of such breach.
- (e) No Confidential Information shall be copied, reproduced in any form, or stored in a retrieval system or database by the Buyer, its affiliates or any of their respective Representatives without the prior written consent of MEI, except for such copies and storage as may reasonably be required internally by the foregoing for the purposes herein described. In the event that the Buyer becomes aware that it or any of its affiliates or its or their Representatives has disclosed Confidential Information contrary to Sections 10.1 to 10.4 (inclusive), the Buyer shall forthwith advise the Receiver and MEI in writing.

Notwithstanding the foregoing or anything to the contrary herein, (i) this Agreement may be filed by the Receiver or MEI with the Court; and (ii) the Transaction may be disclosed by the Receiver or MEI to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Law and rules, including preparation and filing of reports and other documents by the Receiver and other professional advisors and consultants of the Receiver or MEI with the Court, as applicable or required, containing references to the Transaction and the terms of such Transaction as may reasonably be necessary to obtain any applicable approvals of the Court and to complete the Transaction contemplated by this Agreement or to comply with their obligations to the Court.

10.4 Return and Destruction of Confidential Information

If Closing does not occur by the Closing Date or such earlier date of termination if this Agreement is terminated in accordance with the provisions hereof, upon the written request of the Receiver or MEI, the Buyer shall return to MEI or, at MEI's option, destroy all Confidential Information in the possession or control of the Buyer, any of its affiliates or any of their respective Representatives and shall be liable for ensuring that each of the Buyer's affiliates and its and their respective Representatives either return to MEI or, at MEI's option, destroy the Confidential Information in their

respective control, and shall delete all Confidential Information from any retrieval system or database in its possession or control and shall be liable for ensuring that each of the Buyer's affiliates and its and their respective Representatives delete all Confidential Information from any retrieval system or database with their respective control, provided however that:

- (a) the Buyer shall not be required to expunge from its records internally generated documents (including electronic copies) containing any Confidential Information;
- (b) the Buyer shall be permitted to maintain one copy of the Confidential Information solely for audit and enforcement purposes;
- (c) the Buyer is not required to alter its normal record retention policies; and
- (d) legal counsel of the Buyer will be permitted to retain one copy of the Confidential Information,

provided further that in each of the cases in Sections 10.4(a) through 10.4(d), such Confidential Information shall be kept on a confidential basis and continue to be subject to terms and conditions contained in this Agreement, notwithstanding any expiry or termination hereof.

10.5 Privacy Laws

- (a) For the purpose of this Section 10.5, "**Personal Information**" means information about an identifiable individual but excludes an individual's name, position name or title, business telephone number, business address, business e-mail, business fax number and other similar business information collected, used or disclosed to contact an individual in their capacity as an official or employee of an organization. For greater certainty, "**Personal Information**" shall include all health and medical information and records.
- (b) Prior to the Closing, none of the Parties will use any Personal Information of any Person (including MEI Employees) disclosed to the Buyer by MEI or the Receiver pursuant to or in connection with this Agreement (the "**Disclosed Personal Information**") for any purposes other than those related to the performance of this Agreement and the completion of the Transaction.
- (c) Each of the Parties acknowledges and confirms that the disclosure of Disclosed Personal Information is necessary for the purposes of determining if the Parties will proceed with the Transaction, and that the disclosure of Disclosed Personal Information relates solely to the carrying on of MEI's business of owning and operating restaurants, catering, gourmet grocery and an events company in Canada and the completion of the Transaction.
- (d) The Buyer undertakes, after the Closing, to comply at all times with Applicable Laws as it pertains to privacy which govern the collection, use and disclosure of Personal Information, including in respect of the Disclosed Personal Information and all Personal Information of MEI Employees.
- (e) The Buyer covenants and agrees that where the Parties do not complete or proceed with the Transaction, the Buyer will, if such information is still in the custody of or under the control of the Buyer, either, at the Buyer's option, destroy (and promptly provide to the Receiver an officer's certificate executed by the Chief Executive Officer of the Buyer confirming same) such information or return it to MEI.

10.6 Survival

None of the representations, warranties or covenants (except the covenants in Sections 1.10, 2.5-2.8, 3.1, 3.2, 3.3, 5.11, 6.2, 6.4(b), 6.4(c), 6.4(d), 6.4(e), 6.10, 7.5, 8.2 and 9.2, as well as Article 10, in each case to the extent they are to be performed or operate by their express terms after the Closing) of either of the Parties set forth in this Agreement shall survive Closing.

10.7 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, stockholder, affiliate, agent, attorney or representative of MEI or the respective Parties hereto, in such capacity, shall have any liability for any obligations or liabilities of the Buyer, MEI or the Receiver, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the Transaction. In addition, under no circumstance shall any of the Parties or MEI, or any of their respective affiliates or theirs or their affiliates' Representatives be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

10.8 Expenses

Except as otherwise specifically provided herein, each of the Receiver, MEI and the Buyer shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by them, respectively, in connection with the negotiation and settlement of this Agreement and the completion of the Transaction.

10.9 Time of the Essence

Time will be of the essence in this Agreement.

10.10 Successors and Assigns

- (a) This Agreement will become effective when executed by each of the Parties and after that time will be binding upon and enure to the benefit of each Party and its respective successors and permitted assigns.
- (b) Except as provided herein, neither this Agreement, nor any of the rights or obligations hereunder, will be assignable or transferable by any Party without the prior written consent of the other Party, not be to unreasonably withheld, provided that the Buyer may, without the consent of the Receiver, assign or transfer any or all of its right and/or obligations hereunder to one or more of its affiliates (it being understood that the Buyer nonetheless shall remain liable for the performance of all of the Buyer's obligations hereunder to the extent not performed by the assignee); provided, further, that, after Closing, the Buyer may, without the consent of the Receiver, assign or transfer any or all of its rights and/or obligations hereunder.

10.11 Access to Books and Records

For (i) a period of two (2) years from the Closing Date or (ii) for such longer period as may be reasonably required for the Receiver and/or MEI (or any trustee in bankruptcy of the estate of MEI) to comply with Applicable Law, provided that in the case of (ii), the Receiver, MEI or such trustee in bankruptcy shall have provided the Buyer with reasonably advanced written notice prior to the expiry of the initial two (2) year period specifying the Applicable Laws requiring an extension and the length of the

requested extension, the Buyer will retain, in all material respects, all original Books and Records that are transferred to the Buyer under this Agreement. So long as any such Books and Records are retained by the Buyer pursuant to this Agreement, each of the Receiver and MEI (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of MEI) has the right (at its own cost, expense and liability) to inspect and to make copies of them upon reasonable notice and request during normal business hours and without undue interference to the business operations of the Buyer, for the sole purpose of such Person making the request complying with Applicable Laws, and strictly limited to the extent required for such compliance.

10.12 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by facsimile or e-mail, with confirmed transmission and receipt or the date of transmission by electronic transmission (in each case, if sent during normal business hours of the recipient, and if not, then on the next Business Day); (iii) two days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five days after mailing via certified mail, return receipt requested. All notices not delivered personally or by facsimile or e-mail will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

- | | |
|----------------------------|--|
| (a) If to the Buyer at: | 2864785 Ontario Corp.
38 Karl Fraser Road
Toronto, Ontario M3C 0H7

Attention: Dennis Mark McEwan
Facsimile: (416) 444-6212 |
| With a copy to: | Goodmans LLP
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Attention: Robert J. Chadwick/
Caroline Descours
Facsimile: (416) 979-1234
E-mail: rchadwick@goodmans.ca /
cdescours@goodmans.ca |
| (b) If to the Receiver at: | [Alvarez & Marsal Canada Inc.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900
P.O. Box 22
Toronto, ON M5J 2J1

Attention: Greg Karpel
Facsimile: (416) 847-5201
E-mail: gkarpel@alvarezandmarsal.com] |
| With a copy to: | [Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4 |

Attention: Sean Zweig
Facsimile: (416) 863-1716
E-mail: zweigs@bennettjones.com

Any Party may change its address or other information for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address or such change information.

10.13 Receiver's Certificate

The Parties acknowledge and agree that the Receiver shall be entitled to deliver to the Buyer, and file with the Court, the executed Receiver's Certificate without independent investigation, upon receiving written confirmation from the Buyer (or the Buyer's counsel) that all conditions of Closing in favour of the Buyer have been satisfied or waived, and the Buyer shall have no liability to the Buyer in connection therewith.

10.14 No Liability

The Parties acknowledge and agree that the Receiver, acting in its capacity as Receiver of the property, assets and undertakings of MEI, shall have no liability in its personal capacity or otherwise, in connection with this Agreement. If Closing occurs, the Buyer shall (a) be liable to the Receiver for and (b) as a separate covenant, indemnify the Receiver its Affiliates and Representatives from and against, all Indemnified Losses suffered, sustained, paid or incurred by any of them to the extent arising or accruing on or after the Effective Time and which relate to the Purchased Assets, including all Indemnified Losses attributable to the ownership, operation, use, construction or maintenance of the Purchased Assets arising or accruing on or after the Effective Time. The Buyer's indemnity obligation set forth in this Section 10.14 shall survive the Closing Date indefinitely.

10.15 Specific Performance

The Buyer acknowledges and agrees that MEI and its estates would be damaged irreparably in the event the Buyer does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that the Receiver may have under law or equity, the Receiver shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

10.16 Counterparts, Facsimile Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by facsimile signature, by email, PDF or other electronic format or transmission which, for all purposes, shall be deemed to be an original signature.

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

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

RECEIVER

[ALVAREZ & MARSAL CANADA INC.,] in its capacity as the Court-appointed receiver of the property, assets and undertakings of McEwan Enterprises Inc., and not in any other capacity

Per: _____
Name:
Title:

Per: _____
Name:
Title:

BUYER**2864785 ONTARIO CORP.**

Per:

*Name:**Title:*

SCHEDULE 1.1(ii)
EXCLUDED ENCUMBRANCES

PERSONAL PROPERTY SECURITY ACT (ONTARIO)

(a) McEwan Enterprises Inc., 2004995 Ontario Limited, 2416668 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Ontrea Inc. The Cadillac Fairview Corporation Limited OPB (TDC) Inc.	McEwan Enterprises Inc.	734565906 - 20171201 1657 1862 0465 (25 years)	Equipment, Other	General security agreement re inducement with respect to Unit No. 0022A in The Toronto Dominion Centre, Toronto, Ontario	
2. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	702570006 - 20141223 1600 1862 8170 (25 years)	Inventory, Equipment, Accounts, Other		<u>Amended by 20171208 1013 1862 1106</u> Amendment to change the name of the debtor from “2004995 Ontario Limited” to “McEwan Enterprises Inc.” pursuant to an amalgamation <u>Amended by 20171208</u>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					<u>1053 1862 1118</u> Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc." pursuant to an amalgamation
3. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	702570015 - 20141223 1600 1862 8171 (25 years)	Inventory, Equipment, Accounts, Other		<u>Amended by 20171208 1013 1862 1105</u> Amendment to change the name of the debtor from "2416668 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
4. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	657968355 - 20091203 0938 1862 1141 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re loan with respect to Unit No. Q003 in Shops at Don Mills, Toronto, Ontario	<u>Amended by 20171208 1014 1862 1108</u> Amendment to change the name of the debtor from "2220223 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
5. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	657968364 - 20091203 0938 1862 1142 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re inducement with respect to Unit No. Q003 in Shops at Don Mills, Toronto, Ontario	<u>Amended by 20171208 1014 1862 1107</u> Amendment to change the

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					name of the debtor from "2220223 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
6. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	648858465 - 20080929 1401 1862 0150 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re inducement with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario	
7. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	883483488 - 20020523 1044 9065 0541 (22 years)	Inventory, Equipment, Accounts, Other	Please direct all correspondence to Toronto Dominion Centre Leaseholds Limited, c/o The Cadillac Fairview Corporation Limited 20 Queen St. West, 5th Floor, Toronto, Ontario M5H 3R4 Attention- Corporate Secretary	<u>Amended by 20171208 1053 1862 1117</u> Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc." pursuant to an amalgamation

SCHEDULE 1.1(vv)
MATERIAL CONTRACTS

1. Assumed Real Property Leases
2. Select Merchant Payment Instrument Processing Agreement dated as of October 6, 2017 between Chase Paymentech Solutions and MEI

To be amended and updated prior to Closing pursuant to Section 2.4.

SCHEDULE 1.1(aaa)
PERMITTED ENCUMBRANCES

PERSONAL PROPERTY SECURITY ACT (ONTARIO)

(a) McEwan Enterprises Inc., 2004995 Ontario Limited, 2416668 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Highland Chevrolet Buick GMC Cadillac Ltd.	McEwan Enterprises Inc	771456249 - 20210412 1408 1462 0170 (5 years)	Consumer Goods, Equipment, Motor Vehicles, Amount Secured: \$75,334, Date of Maturity: 30APR2026, 2021 Ford Transit 250 1FTBR1C88MKA01283	Includes 1 re Fridgeration (<i>sic</i>) system as detailed on invoice #3416 from Experts In Transportation Climate Control Ltd. Kingtec W/XTCC Insulation System, T235E bearing Serial # 110321200011A121 and all dtailed (<i>sic</i>) componets (<i>sic</i>)	
2. Highland Chevrolet Buick GMC Cadillac Ltd.	McEwan Enterprises Inc	767005776 - 20201023 1004 1462 1588 (5 years)	Consumer Goods, Equipment, Motor Vehicles, Amount Secured: \$76,549, Date of Maturity: 31OCT2025, 2020 Ford Transit 250 1FTBR1C80LKB19343	1- Kingtec Refrigeration System Serial# 0619216E0041A081	
3. Mercedes-Benz Financial Services	McEwan Enterprises Inc. Dennis M.	751615011 - 20190527 1622 1532 2624 (4	Equipment, Other, Motor Vehicles, 2019 Mercedes-Benz GLC300 4M		

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
Canada Corporation Mercedes-Benz Financial	McEwan DOB: 07MAY1957	years)	WDC0G4KB6KV183759		
4. Xerox Canada Ltd	McEwan Enterprises Inc.	750278826 - 20190417 1704 1462 8901 (6 years)	Equipment, Other		
5. Xerox Canada Ltd	McEwan Enterprises Inc	748565748 - 20190225 1707 1462 8478 (6 years)	Equipment, Other		
6. Royal Bank of Canada	McEwan Enterprises Inc.	746303571 - 20181128 1434 8077 2743 (6 years)	Equipment, Other	Restaurant/Take-Out Equipment and Leasehold, Refrigerator Pressure Package S/N D2018060319 as per lease 201000044268 together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds	<u>Renewed by 20210514 1028 8077 6230</u> 1 year

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral	
7. Royal Bank of Canada	McEwan Enterprises Inc.	740022939 - 20180601 1037 8077 4110 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated June 01 2018 together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing	<u>Amended by 20180601 1439 8077 4154</u> Amendment to change the address of the debtor

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	
8. Royal Bank of Canada	McEwan Enterprises Inc.	740041893 - 20180601 1439 8077 4141 (5 years)	Equipment, Other	Equipment Purchases and Leasehold Improvements as per lease 201000040501 together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without	<u>Renewed by 20210514 1028 8077 6229</u> 1 year

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral	
9. Royal Bank of Canada	McEwan Enterprises Inc.	737973342 - 20180405 1935 1531 6491 (5 years)	Accounts, Other	Priority agreement dated March 22, 2018 between Ontrea Inc, The Cadillac Fairview Corporation Limited and OPB (TDC) Inc. and Royal Bank of Canada, in favor of security agreement between Royal Bank of Canada and McEwan Enterprises Inc.	
10. Royal Bank of Canada	McEwan Enterprises Inc.	736669647 - 20180222 1930 1531 4182 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles	All present and after-acquired equipment, securities, chattel paper, instruments and documents of title. Proceeds - a security	

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				interest is claimed in all present and after-acquired goods (including trade-ins), chattel paper, securities, documents of title, instruments, money and intangibles of every item or kind that may derived from the sale or other disposition of the collateral described above, all insurance proceeds and any proceeds of any of the foregoing.	
11. Royal Bank of Canada	McEwan Enterprises Inc.	735291927 - 20171229 1034 1529 5381 (5 years)	Other	Priority agreement dated November 23, 2017 between CF/Realty Holdings Inc. and Royal Bank of Canada, in favor of security agreement between Royal Bank of Canada and McEwan Enterprises Inc.	
12. Royal Bank of Canada	McEwan Enterprises Inc.	733881384 - 20171110 1037 1529 0481 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		
13. Royal Bank of Canada (two	McEwan Enterprises Inc.	733060917 - 20171018 1035 8077 2049 (10	Inventory, Equipment, Accounts, Other	As per master lease agreement dated October 18, 2017 together with all	<u>Transferred by 20180517 1039 8077 3262</u> Transferor: 2004995

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
<i>addresses listed)</i>		years)		inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	Ontario Limited Transferee: McEwan Enterprises Inc.
14. Royal Bank of Canada	McEwan Enterprises Inc.	717156873 - 20160531 1442	Inventory, Equipment, Accounts, Other, Motor		<u>Amended by 20180103 1932 1531 3423</u>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
		1530 4953 (5 years)	Vehicles		Amendment to change the name of the debtor from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation <u>Renewed by 20210430 1445 1530 9664</u> 5 years
15. Royal Bank of Canada	McEwan Enterprises Inc.	703429515 - 20150204 1438 8077 3265 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated January 28th, 2015. Together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods,	<u>Amended by 20150709 1031 8077 5867</u> Amendment to include an additional address for the debtor <u>Transferred by 20180517 1039 8077 3261</u> Transferor: 2416668 Ontario Inc. Transferee: McEwan Enterprises Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	
16. Royal Bank of Canada	McEwan Enterprises Inc.	701721396 - 20141120 1428 8077 8038 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated November 20th, 2014. Together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-	<u>Transferred by 20180517 1039 8077 3264</u> Transferor: North 44 Inc. Transferee: McEwan Enterprises Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	
17. Royal Bank of Canada	McEwan Enterprises Inc.	697662945 - 20140703 1434 1530 5522 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Amended by 20180103 1437 1530 9110</u> Amendment to change the name of the debtor from "2416668 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation <u>Renewed by 20190531 1441 1530 8680</u> 5 years
18. Royal Bank of Canada	McEwan Enterprises Inc. McEwan	642899511 - 20080225 1129 6005 7076 (10 years)	Equipment, Accounts, Other	"Master lease dated February 25, 2008 together with all inventory and equipment now or hereafter acquired by	<u>Transferred by 20090511 1638 6005 3022</u> Transferor: McEwan Enterprises Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.”	Transferee: McEwan Enterprises Inc. <i>(it appears that this amendment was filed to change the address of the debtor)</i> <u>Renewed by 20160627 1441 8077 1288</u> 10 years <u>Amended by 20160627 1441 8077 1290</u> Amendment to include a general collateral description
19. Royal Bank of Canada	McEwan Enterprises Inc.	642904551 - 20080225 1455 1530 5165 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Renewed by 20130109 1047 1529 4046</u> 5 years

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					<p><u>Amended by 20180103 1932 1531 3422</u></p> <p>Amendment to change the name of the debtor from “McEwan Enterprises Inc.” to “McEwan Enterprises Inc.” pursuant to an amalgamation and to change the address of the secured party</p> <p><u>Renewed by 20180119 1428 1530 6115</u></p> <p>5 years</p>
20. Royal Bank of Canada	McEwan Enterprises Inc.	892169892 - 20030304 1835 1531 2850 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<p><u>Renewed by 20080227 1452 1530 8579</u></p> <p>5 years</p> <p><u>Renewed by 20130111 1945 1531 6991</u></p> <p>5 years</p> <p><u>Amended by 20180103 1932 1531 3419</u></p> <p>Amendment to change the name of the debtor from “North 44 Inc.” to “McEwan Enterprises Inc.”</p>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					<p>pursuant to an amalgamation and to change the address of the secured party</p> <p><u>Renewed by 20180126 1932 1531 3277</u></p> <p>5 years</p>
21. Royal Bank of Canada	North 44 Degrees McEwan Enterprises Inc.	963231255 - 19890525 0845 88 6360 (3 years)	Inventory, Equipment, Book Debts, Other, Motor Vehicles		<p><u>Amended by 19890706 0901 88 4523</u></p> <p>Amendment to include "Degrees" in the name of the business name</p> <p><u>Renewed by 19920429 1552 0004 0992</u></p> <p>5 years</p> <p><u>Renewed by 19970220 1906 1529 2013</u></p> <p>5 years</p> <p><u>Amended by 19970221 1907 1529 3883</u></p> <p>Amendment to change the address of the secured party</p> <p><u>Renewed by 20020510 1030 1533 8923</u></p>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					<p>5 years</p> <p><u>Amended by 20020617</u> <u>1817 1531 1403</u></p> <p>Amendment to change the name of one of the debtors from "821669 Ontario Limited" to "North 44 Inc." pursuant to an amalgamation</p> <p><u>Renewed by 20070316</u> <u>1943 1531 3404</u></p> <p>5 years</p> <p><u>Amended by 20120426</u> <u>1946 1531 0643</u></p> <p>Amendment to change the address of the secured party</p> <p><u>Renewed by 20120426</u> <u>1946 1531 0644</u></p> <p>5 years</p> <p><u>Renewed by 20170421</u> <u>1437 1530 4239</u></p> <p>5 years</p> <p><u>Amended by 20180103</u> <u>1932 1531 3418</u></p>

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					Amendment to change the name of one of the debtors from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
22. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	648858402 - 20080929 1359 1862 0147 (25 years)*	Inventory, Equipment, Accounts, Other	General security agreement re loan with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario	

*Only those Encumbrances which secure obligations under the CF Loan Agreement relating to the Loan (as defined in the CF Loan Agreement) with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario shall constitute Permitted Encumbrances in connection with this registration.

**(b) McEwan One Mark Inc.; and
McEwan One Mark**

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Royal Bank of Canada	McEwan One Mark Inc.	701442765 - 20141110 1441 1530 2557 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<u>Renewed by 20191004 1436 1530 8561</u> 5 years

(c) 2220223 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Royal Bank of Canada	2220223 Ontario Inc.	663817158 - 20100819 1451 1530 6635 (5 years)	Other	Inter-company creditor agreement dated (August 4,2010)) (<i>sic</i>), between Royal Bank of Canada (CF/Realty Holdings Inc. and 2220223 Ontario Inc.)	<u>Renewed by 20150717 1945 1531 9693</u> 5 years <u>Renewed by 20200717 1442 1530 4305</u> 5 years

SCHEDULE 2.1(a)
LEASED LOCATIONS / ASSUMED REAL PROPERTY LEASES

1. Bymark – Lease dated as of October 1, 2017 between Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and MEI, as tenant, Unit 0022D, TD Centre, Toronto as amended from time to time, including by the Third Tenant Assistance Agreement dated May 6, 2021 between The Cadillac Fairview Corporation Limited (as agent for Ontrea Inc., OPB (TDC) Inc. and C/F Realty Holdings Inc.), MEI and Mark McEwan (the “TAA”); together with associated Storage Lease between the landlord and tenant dated October 25, 2017 as amended from time to time in respect of Storage S707A & S003
2. Fabbrica Rustic Italian Market – Lease dated as of October 1, 2017 between Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and MEI, as tenant, Unit 0022A, TD Centre, Toronto, as amended from time to time, including by the TAA
3. McEwan – Lease dated as of May 2, 2014 between Toronto Dominion Centre Leaseholds Limited, as predecessor of Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and 2416668 Ontario Inc. (a predecessor of MEI), as tenant, Unit 0021A, TD Centre, Toronto, as amended from time to time, including by the TAA, together with associated Storage Lease between the landlord and tenant dated March 16, 2015 as amended from time to time in respect of Storage ST1
4. McEwan – Lease dated as of June 28, 2007 between CF/Realty Holdings Inc., as landlord, and MEI, as tenant, Unit L002, CF Shops at Don Mills, Toronto, as amended from time to time, including by a lease and loan amending agreement dated as of December 15, 2008, together with associated Storage Lease between the landlord and tenant dated October 25, 2018 as amended from time to time in respect of Storage B008S, B012S & B013S
5. Fabbrica Thornbury – Lease dated as of April 21, 2018, between Denyse Sterio, as landlord, and MEI, as tenant

To be amended and updated prior to Closing pursuant to Section 2.4.




SCHEDULE 2.1(c)
ASSUMED CONTRACTS


All contracts to which MEI is a party as of the Closing Date (other than the Excluded Contracts) including, but not limited to:

1. The Material Contracts listed in Schedule 1.1(zz)
2. The Loan Agreements
3. Master Lease Agreement dated as of October 18, 2017, between Royal Bank of Canada, as lessor, and 2004995 Ontario Limited (a predecessor of MEI), as lessee, including:
 - a. Equipment Lease #201000036206 dated as of October 18, 2017 between Royal Bank of Canada, as lessor, and 2004995 Ontario Limited (a predecessor of MEI), as lessee, as amended by an amending agreement dated April 21, 2021
4. Master Lease Agreement dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and MEI, as lessee, including:
 - a. Equipment Lease #201000044268 dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and MEI, as Lessee, as amended by an amending agreement dated April 21, 2021
 - b. Equipment Lease #201000040501 dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and MEI, as Lessee, as amended by an amending agreement dated April 21, 2021 To be amended and updated prior to Closing pursuant to Section 2.4.
5. Contracts for or in respect of the Interim Funding or any part thereof.

SCHEDULE 2.1(f)
INTELLECTUAL PROPERTY

Trademarks

Trademark	Status	Security
McEWAN KOSHER	Registered App 1593654 App 11-SEP-2012 Reg TMA848695 Reg 17-APR-2013	None
North 44 & Design NORTH 44)°	Registered App 1579704 App 28-MAY-2012 Reg TMA852576 Reg 05-JUN-2013	None
Bymark & Design 	Registered App 1579705 App 28-MAY-2012 Reg TMA852575 Reg 05-JUN-2013	None
THE McEWAN GROUP 	Registered App 1572192 App 05-APR-2012 Reg TMA859196 Reg 04-SEP-2013	None
We Deliver... Experiences <i>We Deliver... Experiences</i>	Registered App 1572193 App 05-APR-2012 Reg TMA858174 Reg 20-AUG-2013	None
personal shopper & DESIGN personal  shopper	Registered App 1523277 App 08-APR-2011 Reg TMA832405 Reg 20-SEP-2012	None
FABBRICA	Registered App 1457215 App 28-OCT-2009 Reg TMA777529 Reg 20-SEP-2010	None

Trademark	Status	Security
	Registered App 1429860 App 24-FEB-2009 Reg TMA785167 Reg 17-DEC-2010	None
SUPPER GASTRO PUB	Registered App 1285262 App 20-DEC-2005 Reg TMA679301 Reg 11-JAN-2007	None

Business Names

Business name/style	Effective From	Effective To
McEwan Kosher	March 21, 2013	March 19, 2023
Fabbrica	October 4, 2017	October 3, 2022
North 44	October 4, 2017	October 3, 2022
Bymark	October 4, 2017	October 3, 2022
Fabbrica Italian Rustic Market	October 4, 2017	October 3, 2022
McEwan	October 4, 2017	October 3, 2022
McEwan at Aga Khan Museum	October 4, 2017	October 3, 2022
The McEwan Group	October 4, 2017	October 3, 2022
McEwan Restaurant Consultants	October 4, 2017	October 3, 2022
McEwan at TD Centre	October 4, 2017	October 3, 2022
Fabbrica Rustic Italian Market	October 4, 2017	October 3, 2022
McEwan at Bloor Yonge	October 4, 2017	October 3, 2022
McEwan One Mark	October 17, 2017	October 16, 2022
Fabbrica at Thornbury	May 14, 2018	May 13, 2023

Domain Names

bymark.ca

chefmcewan.ca
chefmcewan.com
fabbrica.ca
mcewan.catering
mcewan.properties
mcewancatering.ca
mcewancatering.com
mcewanfinefoods.ca
mcewanfinefoods.com
mcewanfoods.com
mcewangroup.ca
mcewan-group.ca
mcewan-group.com
mcewanrestaurants.ca
mcewanrestaurants.com
north44caters.com
north44restaurant.com
onehazelton.com
themcewangroup.ca
themcewangroup.com

Social Media Handles

- **Instagram:** @mcewanfoods, @chefmarkmcewan, @themcewangroup, @mcewanfoods, @fabbricarestaurant
- **Twitter:** @Chef_MarkMcEwan
- **Facebook:** The McEwan Group (<https://www.facebook.com/McEwanGroup/>)
- **LinkedIn:** The McEwan Group (<https://www.linkedin.com/company/the-mcewan-group/>)

SCHEDULE 2.1(I)
SECURITIES

Issuer	Owner	Description of Security
2860117 Ontario Limited	McEwan Enterprises Inc.	100% of the shares of the Issuer owned by MEI

SCHEDULE 2.2(a)
EXCLUDED CONTRACTS

1. McEwan – Lease dated as of April 27, 2018, between First Capital Holdings (Ontario) Corporation, as landlord, and MEI, as tenant, as amended by lease amending agreements dated December 21, 2018, April 22, 2019, June 7, 2019, April 3, 2020 and April 6, 2021
2. Fabbrica – Lease dated as of October 9, 2009 between CF/Realty Holdings Inc., as landlord, and 2220223 Ontario Inc. (a predecessor of MEI), as tenant, as amended from time to time including by the Tenant Assistance Agreement dated February 19, 2019 between C/F Realty Holdings Inc. and MEI and as further amended by the TAA, together with associated Storage Lease between the landlord and tenant dated December 21, 2016 as amended from time to time and currently extended on a month-to-month overhold in respect of Storage SP001
3. Any and all security agreements and priority agreements entered into in connection with (i) the CF Loan Agreement, (ii) the Assumed Real Property Leases and/or (iii) any other Excluded Contracts
4. Engagement letter dated as of September 10, 2021, between Alvarez & Marsal Canada ULC and MEI

To be amended and updated prior to Closing pursuant to Section 2.4.

SCHEDULE 6.2(a)
INSURANCE POLICIES

1. Property, liability and fleet vehicle policy with Federated Insurance
2. Directors and officers policy with Northbridge Insurance
3. Errors and omissions policy with CFC Underwriting

7189306

F

**THIS IS EXHIBIT “F”
TO THE AFFIDAVIT OF DENNIS MARK MCEWAN
SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE
THIS 12th DAY OF NOVEMBER, 2021**

Caroline Descours

Commissioner for Taking Affidavits

DEBENTURE
(the “Debenture”)

\$2,250,000

●, 2021

ARTICLE 1
INTERPRETATION

1.1 Defined Terms

As used herein the following expressions will have the following meanings:

“Additional Interim Transaction Funding Approval Order” means an order of the Ontario Superior Court of Justice (Commercial List), in form and substance acceptable to the Corporation and the Holder, approving this Debenture and the funding to be provided by the Holder to the Corporation hereunder, and approving the Additional Interim Transaction Funding Lender’s Charge.

“Additional Interim Transaction Funding Lender’s Charge” has the meaning assigned to such term in the Additional Interim Transaction Funding Approval Order.

“Business Day” means any day other than Saturday, Sunday or a day on which chartered banks are closed for business in Toronto, Ontario.

“Corporation” means McEwan Enterprises Inc., an Ontario corporation, and its legal successors and permitted assigns.

“Debenture” means this debenture.

“Holder” means 2864785 Ontario Corp., and its legal successors and permitted assigns.

“Principal Amount” means the principal amount advanced pursuant to Section 2.1 of this Debenture and outstanding under this Debenture from time to time, as evidenced on the grid schedule attached hereto as Schedule A.

“Repayment Event” has the meaning assigned to such term in Section 2.2.

1.2 Interpretation

- (1) **“This Debenture”**, **“hereto”**, **“hereby”**, **“hereunder”**, **“herein”**, and similar expressions refer to the whole of this Debenture and not to any particular Article, Section, paragraph or other portion hereof.
- (2) Words importing the singular number only include the plural and vice versa and words importing gender will include all genders.

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- (3) The division of this Debenture into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Debenture.
- (4) References to sums of money herein are to Canadian dollars.
- (5) If any date on which any action is required to be taken hereunder is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.
- (6) Time is of the essence hereof.
- (7) Where the word “**including**” or “**includes**” is used in this Debenture, it means “**including (or includes) without limitation**”.

1.3 Governing Law

This Debenture is governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

ARTICLE 2 TERMS

2.1 Principal Amount

The Holder shall advance amounts to the Corporation under this Debenture upon two (2) Business Days’ prior written request therefor, up to an aggregate principal amount not to exceed \$2,250,000 at any time. For value received, the Corporation promises to pay upon the occurrence of the Repayment Event to the order of the Holder the Principal Amount outstanding under this Debenture in lawful money of Canada at the office of the Holder set forth in Section 3.4(a), or such other place as the Holder may designate. The Corporation and the Holder agree that the Holder’s record of the Principal Amount, as evidenced on Schedule A of this Debenture shall be conclusive evidence of the Principal Amount outstanding under this Debenture from time to time, absent manifest error. The Principal Amount shall not bear interest.

2.2 Repayment

The Principal Amount outstanding under this Debenture will be immediately due and payable upon the earlier of:

- (a) the Corporation and the Holder, in consultation with the Monitor (as defined in the Additional Interim Transaction Funding Approval Order) determining to not proceed with the Transaction (as defined in the Additional Interim Transaction Funding Approval Order); and
- (b) the Corporation obtaining any interim financing from any party other than the Holder

(each a “**Repayment Event**”).

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2.3 Security

The Principal Amount will be secured by the Additional Interim Transaction Funding Lender's Charge granted pursuant to the Additional Interim Transaction Funding Approval Order.

ARTICLE 3 GENERAL

3.1 Termination

The Holder covenants and agrees with the Corporation that, if the Corporation pays the Principal Amount outstanding under this Debenture and satisfies all of its other obligations under this Debenture, this Debenture shall be and become fully ended and terminated and all covenants and agreements of the Corporation hereunder shall be at an end and the Holder, upon the request of the Corporation, shall execute such instruments, discharges or re-assignments and give such notification or assurances as the Corporation may properly require to fully release, discharge and cancel this Debenture in the circumstances.

3.2 Waiver

No act or omission by the Holder in any manner whatsoever will extend to or be taken to affect any provision hereof or any subsequent breach or default or the rights resulting therefrom. A waiver of default will not extend to, or be taken in any manner whatsoever to affect the rights of the Holder with respect to, any subsequent default, whether similar or not. The Corporation waives every defence based upon any or all indulgences that may be granted by the Holder.

3.3 Holder May Remedy Default

If the Corporation fails to do anything hereby required to be done by it, the Holder may, but will not be obliged to, do such thing and all reasonable sums thereby expended by the Holder will be payable forthwith by the Corporation, but no such performance by the Holder will be deemed to relieve the Corporation from any default hereunder.

3.4 Notices

Any notice, direction or other communication to be given under this Debenture will be in writing and given by delivering it or sending it by facsimile or other similar form of recorded communication addressed:

(a) to the Holder at:

2864785 Ontario Corp.
38 Karl Fraser Road
Toronto, Ontario M3C 0H7

Attention: Dennis Mark McEwan
Email: dennismmcewan@gmail.com

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(b) to the Corporation at:

c/o Goodmans LLP
333 Bay Street
Suite 3400
Toronto, Ontario M5H 2S7

Attention: Robert J. Chadwick / Caroline Descours
Email: rhadwick@goodmans.ca / cdescours@goodmans.ca

Any such communication will be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, or (ii) if transmitted by electronic mail on the Business Day following the date of transmission. Any party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice will be sent to such party at its changed address.

3.5 Invalidity of any Provisions

Any provision of this Debenture which is prohibited by the laws of any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining terms and provisions hereof or thereof and no such invalidity will affect the obligation of the Corporation to repay the amounts due under this Debenture.

3.6 Indemnification

The Corporation agrees to indemnify the Holder from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits and reasonable costs, expenses or disbursements which may be imposed on, incurred by, or asserted against the Holder in connection with this Debenture and arising by reason of any action (including any action referred to herein) or inaction or omission to do any act legally required of the Corporation under this Debenture. In addition to the foregoing, the Corporation agrees to reimburse the Holder for all reasonable legal or other expense incurred in connection with investigating, defending or participating in any action or other proceeding relating to any such losses or liabilities arising from any such action, inaction or omission.

3.7 Assignment

This Debenture may not be assigned by the Corporation or the Holder without the prior written agreement of the other party in its sole discretion, provided that any assignment by the Holder to a party that is not an affiliate of Fairfax Financial Holdings Limited shall require the consent of the Monitor or the Receiver, as applicable (each as defined in the Additional Interim Transaction Funding Approval Order).

3.8 Enurement

This Debenture and all its provisions enures to the benefit of the Holder, its successors and permitted assigns and will be binding upon the Corporation, its successors and permitted assigns. Presentment, notice of dishonour, protest and notice of protest hereof are hereby waived.

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3.9 Amendments

This Debenture may only be amended by a written agreement of the Corporation and the Holder.

3.10 Further Assurances

The Holder and the Corporation will do, execute and deliver or will cause to be done, executed and delivered all such further acts, documents and things as may be reasonably required for the purpose of giving effect to the transactions contemplated under this Debenture.

3.11 Counterparts and Delivery

This Debenture may be executed in separate counterparts and delivered electronically, each of which when so executed and delivered will be deemed to be an original and all of such counterparts will together constitute one and the same instrument. Any party may execute this Debenture by facsimile signature.

[signature pages follow]

IN WITNESS WHEREOF the parties have executed this Debenture as of the date first written above.

MCEWAN ENTERPRISES INC.

Per: _____

Name: Dennis Mark McEwan

Title: President

2864785 ONTARIO CORP., as Holder

Per: _____

Name: Dennis Mark McEwan

Title: President

SCHEDULE A

PRINCIPAL AMOUNT

**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
MCEWAN ENTERPRISES INC.**

Court File No. CV-21-00669445-00CL
329

Applicant

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

Proceeding commenced at Toronto

**AFFIDAVIT OF DENNIS MARK MCEWAN
(sworn November 12, 2021)**

Goodmans LLP

Barristers & Solicitors
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Toronto, ON M5H 2S7

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Tel: (416) 979-2211

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Lawyers for the Applicant

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

Court File No. CV-21-00669445-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MCEWAN ENTERPRISES INC.**

Applicant

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

**MOTION RECORD
(Returnable November 26, 2021)**

GOODMANS LLP

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Toronto, ON M5H 2S7

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