

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 October 15, 2021)**

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# Index

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**IN THE MATTER OF THE *COMPANIES' CREDITORS  
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**INDEX**

<b>TAB</b>	<b>DOCUMENT</b>
1.	Notice of Motion
2.	Draft Approval and Vesting Order
3.	Comparison of Draft Approval and Vesting Order against CCAA Model Approval and Vesting Order
4.	Affidavit of Dennis Mark McEwan sworn October 1, 2021
A	Exhibit "A" – Affidavit of Dennis Mark McEwan sworn September 27, 2021 (without exhibits)
B	Exhibit "B" – Cash Flow Forecast
C	Exhibit "C" – Purchase Agreement dated September 27, 2021

1

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF MCEWAN ENTERPRISES INC.**

Applicant

**NOTICE OF MOTION  
Motion for Sale Approval Hearing  
(returnable October 15, 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 October 15, 2021, at 9:00 a.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 “**Approval and Vesting 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:<sup>1</sup>

- (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 “**Purchase Agreement**”) between the Applicant and 2864785 Ontario Corp. (the “**Purchaser**”), a newly formed company owned by Mark McEwan and Fairfax Financial Holdings Limited (“**Fairfax**”), 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 (the “**Transaction**”);
- (c) authorizing the Applicant 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;
- (d) upon delivery by the Monitor (as defined below) to the Purchaser of a certificate substantially in the form attached as Schedule “A” to the proposed Approval and

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<sup>1</sup> 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 “**McEwan Affidavit**”) filed in support of this motion, attached at Tab 4 of the within Motion Record.

Vesting Order, vesting all of the Applicant'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);

- (e) authorizing the Monitor to hold the Cash Reserve (as defined in the Purchase Agreement) on behalf of the Applicant, to pay certain amounts from the Cash Reserve on behalf the Applicant 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;
- (f) from and after the closing of the Transaction, waive any and all defaults and events of default of the Applicant under the Assumed Contracts (as defined in the 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 Purchase Agreement or steps or transactions contemplated in the Purchase Agreement and/or any other Orders of this Court;
- (g) approving the transaction deposit under the Purchase Agreement (the "**Transaction Deposit**") up to the maximum amount of \$2.25 million, and authorizing the Applicant 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 CCAA proceedings, in accordance with the terms of the Purchase Agreement;

- (h) granting to the Purchaser a Court-ordered charge (the “**Transaction Deposit Charge**”) on the Applicant’s Property (as defined in the Initial Order granted by this Court on September 28, 2021 (the “**Initial Order**”)) that will rank immediately behind the Directors’ Charge (as defined in the Initial Order);
- (i) extending the stay of proceedings granted pursuant to the Initial Order (the “**Stay of Proceedings**”) to and including December 17, 2021; and
- (j) such further and other relief as counsel may request and this Court may permit.

**THE GROUNDS FOR THE MOTION** are as follows:

*Background*

2. 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**”).

3. On September 28, 2021, the Applicant commenced these CCAA proceedings and obtained protection pursuant to the Initial Order, which among other things, granted the Stay of



Proceedings to and including October 7, 2021 (the “**Stay Period**”) and appointed Alvarez & Marsal Canada Inc. as monitor of the Applicant (the “**Monitor**”) in these CCAA proceedings.

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 Applicant 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 Applicant is seeking to complete the proposed Transaction.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

#### Strategic Review Efforts

12. 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.

13. 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.

14. 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.

15. 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 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.

16. On September 27, 2021, the Applicant entered into the Purchase Agreement with the Purchaser, pursuant to which, subject to Court approval, the parties would complete the Transaction.

#### *Proposed Transaction*

17. The proposed 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).

18. The Applicant believes there would be a significant benefit to the stakeholders of the Business from the completion of the proposed Transaction as, without the support of the Applicant’s founder (Mr. McEwan), the Applicant’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.

19. The Business, without the support of Mr. McEwan, the McEwan Group’s management team and Fairfax, would not be the same business and the interests of, and recoveries to, stakeholders could be materially negatively affected.

20. 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.

21. 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.

Transaction Deposit and Transaction Deposit Charge

22. 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.

23. The Applicant's cash flow forecast filed with the Court (the "**Cash Flow Forecast**") indicates that the Applicant will require additional funding from the Transaction Deposit in order to fund its operations and the costs of these CCAA proceedings.

24. Pursuant to the Purchase Agreement, the Purchaser has agreed to fund the Transaction Deposit up to a maximum amount of \$2.25 million for use by the McEwan Group 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, subject to Court approval of the Transaction Deposit and the granting of the Transaction Deposit Charge over the Property of the Applicant to secure the repayment of the Transaction Deposit to the Purchaser in the event the Transaction is not completed.

25. 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.

26. There would be no material prejudice to any of the Applicant's creditors as a result of the proposed Transaction Deposit or the Transaction Deposit Charge.

Extension of the Stay Period

27. The Stay Period currently expires on October 7, 2021. The Applicant intends to seek an extension of the Stay Period at the comeback hearing in respect of the Initial Order scheduled for October 7, 2021, to and including November 1, 2021, to provide the Applicant with continued stability for the Business and time to return before the Court to hear this motion for approval of the proposed Transaction.

28. As part of this motion, the Applicant is seeking a further extension of the Stay Period to and including December 17, 2021, to provide the Applicant 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.

29. The Cash Flow Forecast indicates that, taking into account the Transaction Deposit (if approved by the Court), the Applicant will have sufficient funding to operate the Business during the proposed Stay Period.

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

31. The Applicant is working diligently and in good faith in respect of all matters relating to the CCAA proceedings.

General

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

33. 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.

34. 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.

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

36. 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:

37. the McEwan Affidavit and the exhibits thereto, filed;

38. the Affidavit of Dennis Mark McEwan sworn September 27, 2021 and the exhibits thereto, filed;

39. the Second Report of the Monitor and the appendices attached thereto, to be filed;

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

Date: October 1, 2021

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Applicant

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable October 15, 2021)**

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2

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE CHIEF

)

FRIDAY, THE 15<sup>TH</sup>

JUSTICE MORAWETZ

)

DAY OF OCTOBER, 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  
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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 (the “**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 October ●, 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), was heard this day by video conference at Toronto, Ontario.

ON READING the McEwan Affidavit, the Second Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor 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 ● sworn ●, 2021. filed:

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## 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.

## PURCHASE AGREEMENT AND TRANSACTION

3. THIS COURT ORDERS AND DECLARES that the Purchase Agreement, the Transaction and all associated steps and transactions in respect thereof contemplated by the Purchase Agreement are hereby approved, and the execution of the 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 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 and/or one or more entities designated by the Purchaser to take title to the Purchased Assets in accordance with the Purchase Agreement (each, a “**Purchaser Designee**”).

4. 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 and/or one or more Purchaser Designees as may be designated by 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

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charges created by 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**”), 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.

5. 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.

6. 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 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).

7. 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 Purchase Agreement and paragraph 6 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.

8. 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 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.

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

10. 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.

11. 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 Purchase Agreement and the vesting of the Purchased Assets in the Purchaser and/or one or more Purchaser Designees that may be designated by 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.

12. 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 Purchase Agreement or steps or transactions contemplated in the Purchase Agreement (including, without limitation, the sale and transfer by the Applicant and the purchase and assumption by the Purchase 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.

13. 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 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 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

14. 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.

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

16. 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 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 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.

17. 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 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

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favour of Royal Bank of Canada, and shall rank immediately behind in priority to the Directors' Charge (as defined in the Amended and Restated Initial Order).

18. 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.

19. 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.

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

21. 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 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 Applicant entering into the 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 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.

22. 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**

23. 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 December 17, 2021.

#### **MISCELLANEOUS**

24. 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.

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**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 October 15, 2021, the Court approved the purchase agreement made as of September 27, 2021 (the “**Purchase Agreement**”) between the Applicant and 2864785 Ontario Corp. (the “**Purchaser**”) and provided for the vesting in the Purchaser and/or one or more of the Purchaser Designees 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 Purchase Agreement; (ii) that 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

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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 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 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 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].

**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:

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**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**

Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

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Lawyers for the Applicant

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Revised: January 21, 2014

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE CHIEF JUSTICE WEEKDAY FRIDAY, THE #15<sup>TH</sup>  
TOBER, 20YR2021

~~BETWEEN:-~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME] in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor")~~ McEwan Enterprises Inc. (the "Applicant") for an order, inter alia, approving the sale transaction (the "Transaction") contemplated by ~~an~~ a purchase agreement ~~of purchase and sale~~ (the ~~"Sale"~~ "Purchase Agreement") between the ~~Receiver~~ Applicant and ~~[NAME OF PURCHASER]~~ 2864785 Ontario Corp. (the "Purchaser") dated ~~[DATE]~~ and

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DOCS FOR 1201927114

~~appended~~ September 27, 2021 (the “Purchase Agreement”) and attached as Exhibit “C” to the Report~~affidavit of the Receiver dated [DATE]~~ Dennis Mark McEwan sworn October 9, 2021 (the “Report” “McEwan Affidavit”), and vesting in the Purchaser the Debtor~~Applicant’s~~ right, title and interest in and to the assets described in the Sale Agreement (the “Purchased Assets” (as defined in the Purchase Agreement)), was heard this day by video conference at 330 University Avenue, Toronto, Ontario.

ON READING the McEwan Affidavit, the Second Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor of the Applicant (the “Monitor”), and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING]~~Applicant, counsel for the Monitor 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 [NAME]~~Sworn [DATE]~~ 2021, filed<sup>1</sup>:

### 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.

### PURCHASE AGREEMENT AND TRANSACTION

3. ~~1.~~ THIS COURT ORDERS AND DECLARES that the Purchase Agreement, the Transaction ~~is~~ and all associated steps and transactions in respect thereof contemplated by the Purchase Agreement are hereby approved,<sup>2</sup> and the execution of the ~~Sale~~ Purchase Agreement by

<sup>1</sup> ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

<sup>2</sup> ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~



the ~~Receiver~~<sup>3</sup>Applicant is hereby authorized and approved, with such ~~minor~~ amendments as the ~~Receiver~~Applicant and the Purchaser may deem necessary, with the consent of the Monitor. The ~~Receiver~~Applicant is hereby authorized to complete the Transaction, subject to the terms of the Purchase Agreement, and ~~directed~~ 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 and/or one or more entities designated by the Purchaser to take title to the Purchased Assets in accordance with the Purchase Agreement (each, a "Purchaser Designee").

4. ~~2.~~—THIS COURT ORDERS AND DECLARES that upon the delivery of a ~~Receiver~~Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "~~Receiver~~"Monitor's Certificate"), all of the ~~Debtor~~Applicant's right, title and interest in and to the Purchased Assets ~~described in the Sale Agreement [and listed on Schedule B hereto]~~<sup>4</sup> shall vest absolutely in the Purchaser and/or one or more Purchaser Designees as may be designated by 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, ~~or~~ 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"<sup>5</sup> and Encumbrances", which term shall not include the Permitted Encumbrances) including, without limiting the generality of the foregoing: ~~(i)~~, any encumbrances or charges created by the Order of the Honourable Chief Justice [NAME] Morawetz dated [DATE]; ~~(ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are~~

<sup>3</sup> In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

<sup>4</sup> To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

~~collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~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"), 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.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

5. ~~4.~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds<sup>7</sup> 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~~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<sup>8</sup>, 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.

6. 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 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

<sup>6</sup> ~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

<sup>7</sup> ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup> ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

Applicant from time to time after the completion of the Transaction (for certainty, other than the Base Purchase Price).

7. 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 Purchase Agreement and paragraph 6 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.

8. 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 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.

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

10. ~~6.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the ~~Receiver~~Applicant is authorized and

permitted to disclose and transfer to the Purchaser all human resources and payroll information in the ~~Company'~~Applicant's records pertaining to the ~~Debtor'~~Applicant's past and current employees, ~~including personal information of those employees listed on Schedule "●" to the Sale Agreement.~~ 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 ~~Debtor~~Applicant.

11. ~~7.~~ 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 ~~Debtor~~Applicant and any bankruptcy order issued pursuant to any such applications; ~~and~~
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~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 ~~pursuant to this Order~~and/or one or more Purchaser Designees that may be designated by the Purchaser shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicant and shall not be void or voidable by creditors of the ~~Debtor~~Applicant, nor shall ~~it~~they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the ~~*Bankruptcy and Insolvency Act (Canada)*~~BIA or any other applicable federal or provincial legislation, nor shall ~~it~~they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

12. 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 Purchase Agreement or steps or transactions contemplated in the Purchase Agreement (including, without limitation, the sale and transfer by the Applicant and the purchase and assumption by the Purchase 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.

13. 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 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 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

14. 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.

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

16. 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 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 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.

17. 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 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 immediately behind in priority to the Directors’ Charge (as defined in the Amended and Restated Initial Order).

18. 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.

19. 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.

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

21. 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 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 Applicant entering into the 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 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.

22. 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

23. 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 December 17, 2021.

#### MISCELLANEOUS

24. ~~9.~~ 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 ~~Receiver~~Applicant and ~~its~~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 ~~Receiver~~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 ~~Receiver~~Applicant and ~~its~~the Monitor and their respective agents in carrying out the terms of this Order.

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Schedule “A” – Form of ~~Receiver~~Monitor’s Certificate

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

~~—and—~~

~~DEFENDANT~~

Defendant

~~RECEIVER~~

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 ~~[NAME OF JUDGE]~~Chief Justice Morawetz of the Ontario Superior Court of ~~Justice~~(Commercial List) (the ~~“Court”~~) dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~September 28, 2021, Alvarez & Marsal Canada Inc. was

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appointed as the ~~receiver~~ monitor (the "~~Receiver~~" "Monitor") of ~~the undertaking, property and assets of [DEBTOR]~~ McEwan Enterprises Inc. (the "~~Debtor~~" Applicant").

B. Pursuant to an Order of the Court dated ~~[DATE]~~ October 15, 2021, the Court approved the purchase agreement ~~of purchase and sale~~ made as of ~~[DATE OF AGREEMENT]~~ September 27, 2021 (the "~~Sale~~" "Purchase Agreement") between the ~~Receiver [Debtor] and [NAME OF PURCHASER]~~ Applicant and 2864785 Ontario Corp. (the "~~Purchaser~~" "Purchaser") and provided for the vesting in the Purchaser and/or one or more of the ~~Debtor~~ Purchaser Designees 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~~ Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Base Purchase Price ~~for the Purchased Assets~~ plus an amount equal to Cure Costs, if any, pursuant to Section 2.7 of the Purchase Agreement; (ii) that the conditions to Closing as set out in ~~section~~ sections 6.6, 6.7 and 6.8 of the ~~Sale~~ Purchase Agreement have been satisfied or waived by the ~~Receiver~~ Applicant and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~ Monitor.

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

THE ~~RECEIVER~~ MONITOR CERTIFIES the following:

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

~~{NAME OF RECEIVER}~~, Alvarez & Marsal Canada Inc., solely in its capacity as ~~Receiver of the undertaking, property and assets of {DEBTOR}~~ Court-appointed Monitor of McEwan Enterprises Inc., and not in its personal or corporate capacity

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

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	<u>ONTARIO</u> <u>SUPERIOR COURT OF JUSTICE</u> <u>(COMMERCIAL LIST)</u>  <u>Proceeding commenced at Toronto</u>
	<u>APPROVAL AND VESTING ORDER</u>
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DRAFT  
DOCSID: 120192714

~~Schedule C—Claims to be deleted and expunged from title to Real Property~~

~~Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property  
(unaffected by the Vesting Order)~~

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 October 1, 2021)**



## TABLE OF CONTENTS

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. BACKGROUND.....</b>	<b>5</b>
<b>(A) Financial Challenges Impacting the Business.....</b>	<b>6</b>
<b>(B) Discussions with Landlords .....</b>	<b>8</b>
<b>(C) Strategic Review Efforts .....</b>	<b>10</b>
<b>III. TRANSACTION AND PURCHASE AGREEMENT.....</b>	<b>14</b>
<b>IV. TRANSACTION DEPOSIT AND TRANSACTION DEPOSIT CHARGE.....</b>	<b>22</b>
<b>V. STAY EXTENSION.....</b>	<b>23</b>
<b>VI. CONCLUSION.....</b>	<b>24</b>

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**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 Fabbrica 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 Fabbica 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:

<b>Summary of Certain Key Terms of the Proposed Transaction</b>	
<b>Consideration for the Purchased Assets</b>	<ul style="list-style-type: none"> <li>a) The assumption of the Assumed Obligations, which as at the date hereof are estimated to be approximately \$11 million; and</li> <li>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.</li> </ul>
<b>Purchased Assets</b>	<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"> <li>a) the Assumed Real Property Leases;</li> <li>b) the Purchased Equipment;</li> <li>c) the Assumed Contracts;</li> <li>d) the Inventory and Supplies;</li> <li>e) all motor vehicles owned or leased by the Company;</li> <li>f) the Company's rights, interests and benefits (through ownership, licensing or otherwise) in the Intellectual Property used in the Business;</li> <li>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;</li> <li>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;</li> <li>i) the Specified Insurance Proceeds;</li> </ul>

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>

<b>Summary of Certain Key Terms of the Proposed Transaction</b>	
	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).
<b>Excluded Assets</b>	<ul style="list-style-type: none"> <li>a) All rights and interests in and to the Excluded Contracts;</li> <li>b) all of the Company's rights and benefits under the Purchase Agreement and the Transaction;</li> <li>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</li> <li>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.</li> </ul>
<b>Assumed Obligations</b>	<ul style="list-style-type: none"> <li>a) All obligations and liabilities in respect of the Assumed Contracts but excluding the Excluded Obligations;</li> <li>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;</li> <li>c) all Cure Costs;</li> <li>d) all liabilities and obligations in respect of the Deposit Amount;</li> <li>e) all liabilities and obligations secured by Permitted Encumbrances prescribed in the Purchase Agreement, but excluding the Excluded Obligations;</li> <li>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;</li> <li>g) all employee liabilities and obligations;</li> <li>h) all liabilities and obligations with respect to Employee Plans duly assigned to, and assumed as a Purchased Asset, by the</li> </ul>

<b>Summary of Certain Key Terms of the Proposed Transaction</b>	
	<p>Purchaser pursuant to the Purchase Agreement;</p> <ul style="list-style-type: none"> <li>i) all Taxes that are specified as liabilities and obligations of the Purchaser under the Purchase Agreement; and</li> <li>j) any other obligations and liabilities expressly assumed under the Purchase Agreement.</li> </ul>
<b>Excluded Obligations</b>	<ul style="list-style-type: none"> <li>a) All liabilities and obligations of any kind relating to the Excluded Assets;</li> <li>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;</li> <li>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</li> <li>d) any other obligations or liabilities expressly excluded from the Assumed Obligations under the Purchase Agreement.</li> </ul>
<b>Employee Matters</b>	<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>
<b>Transaction Deposit</b>	<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 "<b>Transaction Deposit</b>"). 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 "<b>Deposit Amount</b>") will constitute an Assumed Obligation assumed by the</p>

<b>Summary of Certain Key Terms of the Proposed Transaction</b>	
	<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>
<b>Cash Reserve</b>	<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>
<b>Certain Key Conditions</b>	<ul style="list-style-type: none"> <li>a) The granting by the Court of the Approval and Vesting Order;</li> <li>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</li> <li>c) other customary conditions for a transaction of this nature.</li> </ul>
<b>Termination Rights</b>	<ul style="list-style-type: none"> <li>a) By mutual written consent of the Company and the Purchaser;</li> <li>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;</li> <li>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</li> </ul>

<b>Summary of Certain Key Terms of the Proposed Transaction</b>	
	<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>
<b>Sunset Date</b>	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.

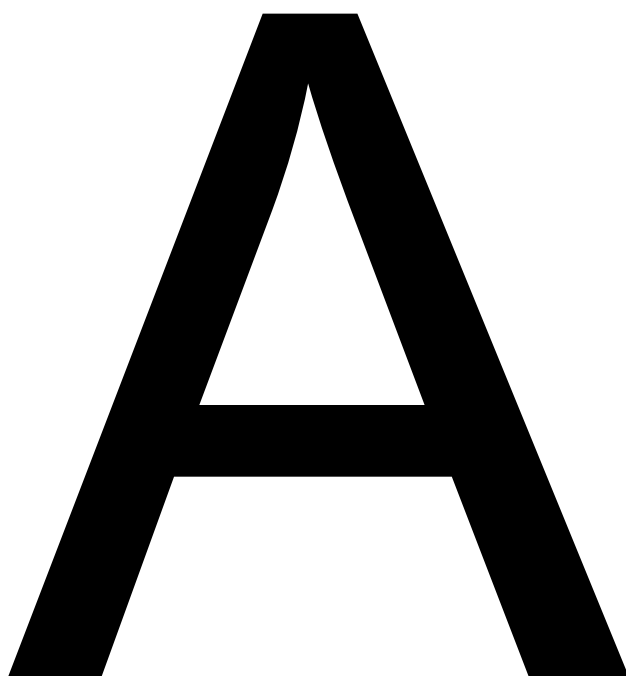
SWORN before me over  
videoconference by Dennis Mark  
McEwan stated as being located in the  
Village of Thornbury in the  
Province of Ontario, before me at  
the City of Toronto in the Province  
of Ontario, on October 1, 2021, in  
accordance with O. Reg 431/20,  
Administering Oath or Declaration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

*Caroline Descours*

A Commissioner for taking affidavits

  
Dennis Mark McEwan

Caroline Descours LSO#: 58251A



**THIS IS EXHIBIT "A"**  
**TO THE AFFIDAVIT OF DENNIS MARK MCEWAN**  
**SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE**  
**THIS 1<sup>st</sup> DAY OF OCTOBER, 2021**

*Caroline Descours*

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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)**

## TABLE OF CONTENTS

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. OVERVIEW .....</b>	<b>3</b>
<b>III. BACKGROUND.....</b>	<b>6</b>
<b>(A) The Business.....</b>	<b>6</b>
(i) Overview of the Business.....	6
(ii) Suppliers.....	9
(iii) Customers.....	10
(iv) Employees .....	11
<b>(B) Corporate Structure.....</b>	<b>12</b>
<b>(C) Financial Position of the Company .....</b>	<b>13</b>
<b>(D) Liabilities and Obligations.....</b>	<b>16</b>
(i) Secured Credit Facility .....	18
(ii) Don Mills Fixtures Loan .....	20
(iii) Secured Equipment Lease Obligations.....	21
(iv) Real Property Lease Obligations .....	23
(v) Fairfax Loans.....	24
(vi) Government / Government-Assisted Loans .....	25
(a) CEBA Loan .....	25
(b) HASCAP Loan .....	25
(vii) Employee, Trade and Customer Obligations .....	26
(viii) Litigation .....	26
<b>IV. INDUSTRY, BUSINESS AND FINANCIAL CHALLENGES.....</b>	<b>27</b>
<b>(A) Challenges Prior to the COVID-19 Pandemic .....</b>	<b>27</b>
<b>(B) Additional Challenges Due to the COVID-19 Pandemic .....</b>	<b>28</b>

(C)	Cash Conservation Efforts and Additional Sources of Funding.....	31
(D)	Discussions with Landlords .....	33
(E)	Strategic Review Efforts and the Transaction.....	34
V.	CCAA PROCEEDINGS .....	40
(A)	The Company is Insolvent for the Purposes of the CCAA .....	40
(B)	Stay of Proceedings under the CCAA .....	42
(C)	The Monitor .....	43
(D)	Funding of the Company .....	44
(i)	Cash Flow Forecast .....	44
(ii)	Cash Management System .....	45
(E)	Payments during the CCAA Proceedings .....	46
(F)	Director and Officer Protections.....	47
(G)	Priorities of Charges .....	49
VI.	CONCLUSION.....	50

**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)**

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

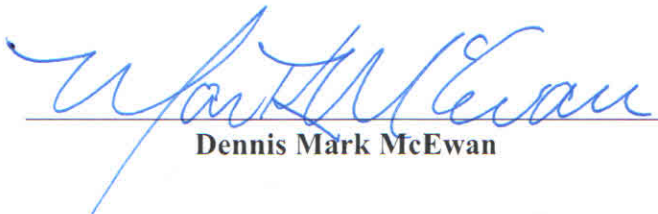
160. The Company believes that the relief sought pursuant to the proposed Initial Order is appropriate and necessary in the circumstances, and respectfully request that the Court grant the proposed Initial Order.

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

**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

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE-  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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

**Goodmans LLP**

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Fax: (416) 979-1234

Lawyers for the Applicant

**B**

**THIS IS EXHIBIT “B”  
TO THE AFFIDAVIT OF DENNIS MARK MCEWAN  
SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE  
THIS 1<sup>st</sup> DAY OF OCTOBER, 2021**

*Caroline Descours*

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Commissioner for Taking Affidavits

## McEwan Enterprises Inc.

## Cash Flow Forecast

For the thirteen-week period ending December 24, 2021

(Unaudited, in 000s CAD)

Week ending	Notes	Week 1 Oct 01	Week 2 Oct 08	Week 3 Oct 15	Week 4 Oct 22	Week 5 Oct 29	Week 6 Nov 05	Week 7 Nov 12	Week 8 Nov 19	Week 9 Nov 26	Week 10 Dec 03	Week 11 Dec 10	Week 12 Dec 17	Week 13 Dec 24	13 Week Total
<b>Receipts</b>	(1)	653	667	667	667	667	667	667	667	667	667	667	667	667	8,655
<b>Disbursements</b>															
Vendors	(2)	(474)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(481)	(6,245)
Employee wages	(3)	(416)	-	(388)	-	(388)	-	(388)	-	(388)	-	(388)	-	(388)	(2,743)
Rent	(4)	-	(486)	-	-	-	(736)	-	-	-	(486)	-	-	-	(1,708)
Other SG&A (incl. HST remittances)	(5)	(42)	(36)	(36)	(37)	(39)	(37)	(37)	(37)	(39)	(37)	(37)	(37)	(37)	(486)
<b>Total Disbursements</b>		<b>(932)</b>	<b>(1,003)</b>	<b>(905)</b>	<b>(518)</b>	<b>(908)</b>	<b>(1,254)</b>	<b>(905)</b>	<b>(518)</b>	<b>(908)</b>	<b>(1,004)</b>	<b>(905)</b>	<b>(518)</b>	<b>(905)</b>	<b>(11,182)</b>
<b>Operating Net Cash Flow</b>		<b>(279)</b>	<b>(336)</b>	<b>(238)</b>	<b>149</b>	<b>(241)</b>	<b>(587)</b>	<b>(239)</b>	<b>149</b>	<b>(241)</b>	<b>(337)</b>	<b>(239)</b>	<b>149</b>	<b>(239)</b>	<b>(2,527)</b>
RBC principal, lease payments & interest	(6)	(26)	(4)	-	-	(71)	(10)	-	-	(71)	(10)	-	-	(71)	(264)
Restructuring professional fees	(7)	(170)	(57)	(170)	(57)	(102)	(28)	(28)	(73)	(62)	(28)	(28)	(57)	(51)	(910)
<b>Net Cash Flow</b>		<b>(474)</b>	<b>(397)</b>	<b>(408)</b>	<b>93</b>	<b>(414)</b>	<b>(625)</b>	<b>(267)</b>	<b>76</b>	<b>(374)</b>	<b>(375)</b>	<b>(267)</b>	<b>93</b>	<b>(361)</b>	<b>(3,701)</b>
<b>Beginning Cash</b>		930	481	284	126	219	305	430	163	239	364	239	197	443	930
Net Cash Flow		(474)	(397)	(408)	93	(414)	(625)	(267)	76	(374)	(375)	(267)	93	(361)	(3,701)
Transaction Deposit	(8)	-	-	250	-	500	750	-	-	500	250	-	-	-	2,250
Change in Revolving credit line		25	200	-	-	-	-	-	-	-	-	225	153	153	755
<b>Ending Cash</b>		<b>481</b>	<b>284</b>	<b>126</b>	<b>219</b>	<b>305</b>	<b>430</b>	<b>163</b>	<b>239</b>	<b>364</b>	<b>239</b>	<b>197</b>	<b>443</b>	<b>234</b>	<b>234</b>
<b><u>RBC Credit Line</u></b>															
Revolving credit line limit		850	850	850	850	850	850	850	850	850	850	850	850	850	
Revolving credit line drawn		(120)	(320)	(320)	(320)	(320)	(320)	(320)	(320)	(320)	(320)	(545)	(698)	(850)	
<b>Revolving credit line available</b>		<b>730</b>	<b>530</b>	<b>530</b>	<b>530</b>	<b>530</b>	<b>530</b>	<b>530</b>	<b>530</b>	<b>530</b>	<b>530</b>	<b>305</b>	<b>153</b>	<b>-</b>	

Prepared by Management. To be read in conjunction with the attached Notes.

## McEwan Enterprises Inc. (“MEI”)

### Cash Flow Forecast

### Notes

#### Disclaimer

*In preparing this cash flow forecast (the “Forecast”), MEI has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast includes assumptions discussed below with respect to the requirements and impact of a filing under the Companies’ Creditors Arrangement Act (“CCAA”). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized. The Forecast is presented in thousands of Canadian dollars.*

#### **Note 1      Receipts**

Receipts include sales from MEI’s restaurant, grocery, catering and events businesses, inclusive of sales tax. The projections are based on management’s estimates of near-term sales, taking into consideration recent sales experience and expectations with respect to ongoing social distancing measures, capacity restrictions and other COVID-19 related impacts on the business.

#### **Note 2      Vendors**

Consists primarily of disbursements to purchase produce, meat, seafood and other food & groceries used in MEI’s restaurant, grocery and catering businesses. The Forecast includes the payment of both pre-filing and post-filing obligations to vendors in accordance with the Initial Order.

#### **Note 3      Employee wages**

Salaries, wages, remittances and employee benefits for salaried and hourly employees.

#### **Note 4      Rent**

Disbursements include: (i) the payment in full for ongoing post-filing monthly rent obligations; and (ii) an estimated payment during the week ending November 5 in respect of certain rent arrears.

#### **Note 5      Other SG&A**

Consists primarily of packaging, logistics, IT, facility management and other miscellaneous costs and monthly HST remittances. Forecast includes the payment of both pre-filing and post-filing obligations in accordance with the Initial Order.

#### **Note 6      RBC principal, lease payments & interest**

Forecast includes principal and interest payments owing to RBC for mortgages, equipment leases and the Secured Credit Facilities. The Secured Credit Facilities consist of: (i) a revolving credit facility with cumulative maximum availability of \$850,000 (the “**Revolving Facility**”); (ii) credit cards with a cumulative maximum availability of \$360,000; and (iii) a \$90,000 letter of credit, as well as the equipment leasing arrangements.

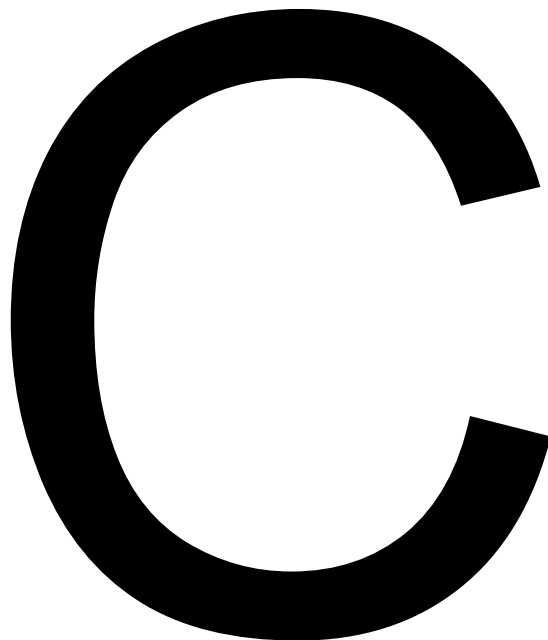
#### **Note 7      Restructuring professional fees**

Disbursements include forecast payments to MEI’s legal counsel, the Monitor and the Monitor’s legal counsel.

#### **Note 8      Transaction Deposit**

As described in the McEwan Affidavit, pursuant to the Purchase Agreement, the Purchaser has agreed to fund a deposit of up to \$2.25 million to MEI for use by MEI to fund its operations until the closing of the Proposed Transaction. The funding of the Transaction Deposit by the Purchaser is subject to obtaining Court approval of the Proposed Transaction and a Court-ordered charge to secure the repayment of the Transaction Deposit to the Purchaser in the event the Proposed Transaction is not completed. If the Proposed Transaction is completed, the obligation to repay the Transaction Deposit would be assumed by the Purchaser pursuant to the Proposed 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.





**THIS IS EXHIBIT “C”  
TO THE AFFIDAVIT OF DENNIS MARK MCEWAN  
SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE  
THIS 1<sup>st</sup> DAY OF OCTOBER, 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**

## TABLE OF CONTENTS

<b>ARTICLE 1 – INTERPRETATION .....</b>	<b>1</b>
1.1 Definitions.....	1
1.2 Schedules .....	8
1.3 Statutes .....	8
1.4 Headings and Table of Contents .....	8
1.5 Interpretations .....	9
1.6 Currency.....	9
1.7 Knowledge .....	9
1.8 Invalidity of Provisions .....	9
1.9 Entire Agreement .....	9
1.10 Waiver, Amendment .....	9
1.11 Governing Law, Jurisdiction and Venue.....	9
<b>ARTICLE 2 – PURCHASE AND SALE .....</b>	<b>10</b>
2.1 Purchased Assets.....	10
2.2 Excluded Assets .....	12
2.3 Condition of Conveyance.....	13
2.4 Material Contracts, Assumed Contracts and Assumed Real Property Leases Schedules .....	13
2.5 As is, Where is .....	14
2.6 Deposit Amount .....	14
2.7 Purchase Price and Payment .....	15
2.8 Purchase Price Allocation .....	15
2.9 Tax Matters .....	15
<b>ARTICLE 3 – ASSUMED OBLIGATIONS AND EXCLUDED OBLIGATIONS .....</b>	<b>16</b>
3.1 Assumed Obligations .....	16
3.2 Excluded Obligations .....	17
3.3 Assumption of Contractual and Real Property Leases Obligations .....	17
<b>ARTICLE 4 – REPRESENTATIONS AND WARRANTIES OF THE SELLER .....</b>	<b>19</b>
4.1 Corporate Power .....	19
4.2 Residence of the Seller.....	19
4.3 Absence of Conflicts.....	19
4.4 Due Authorization and Enforceability of Obligations .....	19
4.5 Approvals and Consents.....	19
4.6 Compliance with Laws.....	20
4.7 Title to the Purchased Assets .....	20
4.8 Assumed Real Property Leases .....	20
4.9 Assumed Contracts .....	20
4.10 Environmental Matters.....	20
4.11 Taxes .....	21
4.12 No Other Representations and Warranties.....	21
<b>ARTICLE 5 – REPRESENTATIONS AND WARRANTIES OF THE BUYER .....</b>	<b>21</b>
5.1 Corporate Power .....	21
5.2 Residence of the Buyer .....	21
5.3 Absence of Conflicts.....	21
5.4 Due Authorization and Enforceability of Obligations .....	22

5.5	Approvals and Consents.....	22
5.6	HST Legislation .....	22
5.7	Financing and Solvency .....	22
5.8	Regulatory .....	22
5.9	Compliance with Laws.....	22
5.10	Informed and Sophisticated Buyer.....	23
5.11	Diligence .....	23
5.12	No Brokers .....	23
5.13	No Other Representations and Warranties.....	23
<b>ARTICLE 6 – CONDITIONS AND OTHER AGREEMENTS .....</b>		<b>23</b>
6.1	Conduct Prior to Closing.....	23
6.2	Insurance Obligations .....	24
6.3	CCAA Proceedings .....	24
6.4	Possession of Purchased Assets; Expenses for Removal .....	25
6.5	Access to Information .....	26
6.6	Conditions for the Benefit of the Buyer .....	26
6.7	Conditions for the Benefit of the Seller .....	27
6.8	Mutual Conditions.....	27
6.9	No Frustration of Closing Condition.....	28
6.10	Change of Name.....	28
<b>ARTICLE 7 – CLOSING .....</b>		<b>28</b>
7.1	Date, Time and Place of Closing.....	28
7.2	Seller’s Deliverables at Closing .....	29
7.3	Buyer Deliverables at Closing .....	29
7.4	Cash Reserve.....	30
<b>ARTICLE 8 – EMPLOYEES .....</b>		<b>30</b>
8.1	Employees.....	30
8.2	Employee Liability .....	32
<b>ARTICLE 9 – TERMINATION .....</b>		<b>32</b>
9.1	Termination .....	32
9.2	Effect of Termination .....	33
<b>ARTICLE 10 – GENERAL MATTERS .....</b>		<b>33</b>
10.1	Further Assurances.....	33
10.2	Third Party Beneficiaries .....	34
10.3	Confidentiality .....	34
10.4	Return and Destruction of Confidential Information .....	35
10.5	Privacy Laws.....	35
10.6	Survival .....	36
10.7	Non-Recourse.....	36
10.8	Expenses.....	36
10.9	Time of the Essence .....	37
10.10	Successors and Assigns.....	37
10.11	Access to Books and Records .....	37
10.12	Notices .....	37
10.13	Monitor’s Certificate.....	38
10.14	No Liability .....	38
10.15	Specific Performance .....	38
10.16	Counterparts, Facsimile Signatures.....	38

## 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](mailto:rchadwick@goodmans.ca)/  
[cdescours@goodmans.ca](mailto: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.**

<b>Secured Party(ies)</b>	<b>Debtor(s)</b>	<b>Reference File No. &amp; Registration Number (Registration Period)</b>	<b>Collateral Classification</b>	<b>General Collateral Description</b>	<b>Amendments/Assignments Discharges/Renewals Transfers/Subordinations</b>
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.**

<b>Secured Party(ies)</b>	<b>Debtor(s)</b>	<b>Reference File No. &amp; Registration Number (Registration Period)</b>	<b>Collateral Classification</b>	<b>General Collateral Description</b>	<b>Amendments/Assignments Discharges/Renewals Transfers/Subordinations</b>
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 reffridgeration ( <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
					<p>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." 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	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**

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

Trademark	Status	Security
	Registered <b>App</b> 1429860 <b>App</b> 24-FEB-2009 <b>Reg</b> TMA785167 <b>Reg</b> 17-DEC-2010	None
SUPPER GASTRO PUB	Registered <b>App</b> 1285262 <b>App</b> 20-DEC-2005 <b>Reg</b> TMA679301 <b>Reg</b> 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. 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 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

**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

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

**Goodmans LLP**

Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

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**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 October 15, 2021)**

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