2023 01G 3233
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3 as Amended (the "**BIA**")

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the "**CCAA**"); and

AND IN THE MATTER OF an application of Big Erics Inc. ("**BEI**") and Terra Nova Old Port Foods Inc. ("**TNOPFI**")

AFFIDAVIT

I, Nicole Myles Brook of the City of Halifax, in the Province of Nova Scotia, **MAKE OATH AND SAY**:

1. I am President of BEI (together with TNOPFI, the "**Companies**"). Accordingly, I have personal knowledge of the matters set out herein. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. I swear this affidavit in support of an application by the Companies for an Order extending the stay of proceedings up to and including December 31, 2023 to permit BEI, to (i) continue operations in the ordinary course to enhance value of the business and assets, including by using commercial efforts to focus on maximizing revenues and margins, while controlling expenses, (ii) focus on retaining and maximizing opportunities with high value suppliers, (iii) continue developing the sale and investment approval process ("**SISP**") in consultation with the Grant Thornton Limited in its capacity as monitor of the Applicants (the "**Monitor**") and secured lenders, and (iv) assess ongoing cash flows on a daily and weekly basis, including to assess any need for interim financing; all for the purpose of maintaining the going concern business and maximizing realizable value for

stakeholders in an eventual restructuring, by way of new investment, a sale or plan of arrangement, or a combination of the foregoing.

I. Background to the Proceedings

3. BEI's business broadly relates to the purchase and sale of commercial and residential kitchen, food service (including restaurant), and sanitation and janitorial equipment and supplies.

4. Prior to ceasing operations in August 2023, TNOPFI manufactured and sold beef, pork and other protein food products that it processed in NL and also bought and sold finished food products from other producers (together with BEI's business, the "**Business**").

5. Given the nature of the Business, many customers of both Companies operate in the food service, hospitality and tourism industries in Atlantic Canada and beyond (including numerous food service facilities in airports across Canada).

6. On 03 July 2023, the Company made an application pursuant to s.11 of the CCAA and accordingly an order was issued by the Court on 18 July 2023, and subsequently amended and restated by the Court on 28 July 2023 (hereinafter, the "**ARIO**"). A copy of the ARIO is attached as **Exhibit "A"** to my affidavit.

7. The stay of proceedings imposed by the ARIO has been extended up to and including September 30, 2023 (the "**Stay Period**"). The Applicants seek to extend the Stay Period for a further 13 weeks up to and including December 31, 2023.

II. Wind-Down and Liquidation of TNOPFI

8. As required by the Bank of Montreal ("**BMO**"), a secured lender of the Applicants, TNOPFI undertook to wind down its operations and to disclaim its lease with Lighthouse Capital Atlantic Inc. ("**LCAI**"), the landlord under the lease of the facilities utilized by TNOPFI to carry on its

business. Accordingly, TNOPFI issued notice of disclaimer of the lease on 31 July 2023 and commenced the wind-down and liquidation of its business and assets. BMO required that TNOPFI vacate its leased premises no later than August 31, 2023, which was effectively the beginning of TNOPFI ceasing its business operations. In the days following TNOPFI's vacating of the leased premises as required by BMO, it proceeded to permanently lay off approximately 40 employees.

9. I am advised by Ingo Eckoldt, the former General Manager of TNOPFI, that to meet the August 31, 2023 deadline, there was a heavy emphasis on and resource allocation toward the wind down, while at the same time making all commercially reasonable efforts to maximize sales revenues and gross margins, to the extent practicable in the circumstances. To achieve the timelines, it was necessary for the Applicants' shared management and external advisors to focus on liquidation efforts and for TNOPFI to retain its employees, many of which were unionized, to carry out the significant work to process remaining inventory for sale, liquidate product, assets and equipment, and to return the leased premises to the landlord in appropriate condition.

10. To incentivize employees to remain engaged, TNOPFI sought and obtained approval of a key employee retention plan ("**KERP**") to pay certain retention payments to key employees. I am advised by Mr. Eckoldt that there is one employee who was inadvertently not included on the list of key employees approved by the Court. The employee is an arm's length individual who has been employed at TNOPFI for over seventeen (17) years and whose role is critical to the financial administration of TNOPFI. The employee remains employed by TNOPFI, following TNOPFI's vacating the leased premises, and lay off of all other employees, and is assisting with post-wind down administration. Accordingly, TNOPFI is seeking to amend the approved KERP to include the additional employee and their retention payment of $1,500. The employee and a description of their role is appended as **Confidential Exhibit "B"**.

11. TNOPFI's remaining inventory was processed and sold throughout July and August. Certain assets and equipment were sold piecemeal to buyers to maximize realization over the July and August period. The remaining equipment was liquidated via auction by Fitzpatrick's and resulted in auction proceeds of approximately $75,795.00, net after commission was $60,636.00.

12. In consultation with BMO, TNOPFI also explored a sale of its intangible assets to an interested party, however no satisfactory transaction was executed and TNOPFI continues to canvass interest for its remaining intangibles and goodwill.

13. TNOPFI's business is now wound down and all but one of its employees have been terminated. However, a small number of former employees of TNOPFI remain engaged on an as needed contract basis, to continue collecting accounts receivable, maintain the company's accounts, books and records, and perform certain post-wind down tasks including the filing of regulatory and tax forms. I am advised by Mr. Eckoldt that TNOPFI intends to continue paying those former employees and that such payments and anticipated receivables are reflected in the cash flow projections prepared by the Applicants and reviewed by the Monitor.

14. Because BMO required TNOPFI to vacate its leased premises by August 31, 2023, all of TNOPFI's remaining. In the materials filed by BMO in respect of the Applicants' application to continue the NOI proceeding under the CCAA, BMO objected to any consolidation of the Applicants. To be clear, the Applicants will not and have not consolidated their businesses or finances. To address BMO's sensitivity, the Applicants are considering what, if any, payments should be made by TNOPFI to compensate BEI for the use of space and resources at BEI's premises. The Applicants are consulting with the Monitor and will reflect any such intercompany payments in updated cash flow projections going forward.

15. I am advised by Mr. Eckoldt that TNOPFI has approximately $168,000.00 in outstanding accounts receivable and that TNOPFI will continue efforts to collect such accounts receivable for the benefit of secured lenders, primarily BMO.

BEI's Activities Over the Summer Months

16. A key objective of the conversion of the NOI proceeding under the CCAA was to allow BEI to take advantage of the peak hospitality and tourism months throughout June to August to maximize revenue while minimizing disruption and stigma of perceived bankruptcy and demonstrating stability of the going concern business for employees, customers, suppliers and vendors.

17. BEI has achieved significantly better sales over the summer than initially projected. BEI's cash flows demonstrate a positive variance in sales of approximately $18,000.00 (at the end of week 10) in comparison to the expected sales over that period. Although challenging, BEI has also retained all its management and employees throughout the restructuring period to date, which avoided any disruption from turnover and allowed strong sales on the basis of the customer, supplier and vendor networks fostered by those employees.

III. BEI's Sale and Investment Solicitation Process

18. Another objective of this CCAA proceeding, other than revenue maximization and operational turnaround, was to thoroughly canvass interest for the sale of or investment in BEI's business. BEI owns no real estate or other capital assets that would drive value in a liquidation. BEI's value is primarily in its going concern business, inventory, receivables, and goodwill. Accordingly, maintaining and stabilizing the going concern business was key to ensuring a proper sale process could be conducted in due course, with a reasonable opportunity to maximize realization for creditors and stakeholders.

19. Prior to filing the s.11 CCAA application, BEI was engaged in an investment and sale process conducted by David Howe of Noseworthy Chapman as sale advisor (the "**Sale Advisor**"). Although the process was intended originally to solicit investment on a minority basis, the scope of the process was expanded at the end of July, after the granting of the ARIO to solicit all interest, including through an asset sale and/or sale of or investment in the business on a going concern basis.

20. The particulars of the process underway are confidential and commercially sensitive, the disclosure of which may prejudice ongoing marketing efforts, retention of employees or relationships with suppliers or customers. The confidential details of the process are set out in a separate Confidential Affidavit to be filed.

21. In general, I am advised by the Sale Advisor that over ten interested parties have executed non-disclosure agreements with BEI and multiple parties, including large national and multi-national corporations and regional corporations with complementary business activities, have advanced through the process and are pursuing a going-concern transaction.

22. BEI has reported to BMO and the mezzanine lenders (the "**Mezzanine Lenders**", and together with BMO, the "**Secured Parties**") on the status of its current marketing. BEI has advised the Secured Parties that it intends to seek approval of a SISP before the next comeback hearing or as otherwise determined by the Court, that builds upon the marketing efforts to date and directs and authorizes the Sale Advisor, in consultation with BEI, to conduct the SISP.

23. BEI has circulated a draft SISP to the Secured Parties for review and aims to finalize the SISP and seek approval of the Court in the coming weeks. BEI is hopeful that it will be able to obtain consensus on the SISP and bring its application for approval of the SISP on consent.

24. I am advised by the Sale Advisor. BEI's legal counsel and Monitor that the form of SISP is substantially similar to other sale processes that have been approved by this Court and is typical under the circumstances.

IV. Cash Flow Projections

25. As of the date of the NOI, the BEI revolving credit facility with the Bank was frozen at the outstanding balance of $4,931,000, which left no available credit to fund working capital. BEI has been funding its operations from cash flow, which to date has been sufficient to satisfy obligations incurred in the normal course. However, BEI has also experienced a contraction of credit from suppliers and vendors as a result of the restructuring proceedings, along with increased requests for pre-payments and deposits. The full impact of credit contraction is not yet apparent, but I expect that BEI may in the near future require interim financing to satisfy credit terms and to make pre-payments and deposits. In the context of requests for proposals ("**RFPs**"), BEI may also require interim financing to demonstrate sufficient go-forward liquidity to perform a contract, including the supply of all equipment and other components within the counterparty's scope.

26. Interim financing may also be needed to support normal course operations over the course of the SISP. Among the factors considered by the Sale Advisor and BEI in developing the SISP is the fact that the primary value of BEI's enterprise is in its contracts, including ongoing tender contracts to supply schools, hospitals, and other public and commercial customers. BEI expects that over the course of the SISP, BEI will have to dedicate liquidity and resources to performing and maintaining those contracts, maintaining going concern operations, and maintaining its licenses, regulatory approvals and security clearances (for airport and Department of National Defence projects).

27. BEI continues to review its evolving cash needs, particularly since it has outperformed its expected sales during the summer months and as it continues to bid on new contracts. The cash

flow projections prepared by the Applicants and reviewed by the Monitor will be filed by the Monitor with its report and will demonstrate sufficient liquidity to operate through the extended Stay Period.

V. Extension of the Stay Period

28. The Applicants continue to operate in good faith and with due diligence. A large proportion of the resources allocated, and work done to date has been to liquidate TNOPFI for BMO's benefit and to maximize revenue from BEI, also for the benefit of BMO and other stakeholders. Through difficult circumstances, BEI has achieved greater than anticipated sales targets over the summer months, which achievement is in my view a testament to the dedication of BEI's employees.

29. The Applicants are seeking a further extension of the Stay Period to provide continued stability and reassure employees, customers, suppliers, and vendors that BEI will have sufficient breathing room to continue bidding for and performing contracts, and that TNOPFI will continue pursuing outstanding accounts receivable.

30. I believe that maintaining the going concern operations of BEI is the only reasonable way to maximize value for creditors and stakeholders. There is unlikely to be significant value in the enterprise in a liquidation, accordingly it is unlikely that the Secured Creditors will receive material recovery on their outstanding debt in a liquidation. Further, BEI wishes to avoid the societal and economic impact of winding down this 78-year-old business. The jobs that BEI sustains in the Atlantic region would be lost completely if the company were to wind down operations. I also strongly believe that there is economic value in retaining its supply chains dedicated to servicing restaurant, hospitality, institutions and higher education facilities, health care, seniors' residences, and other critical businesses in the Atlantic region.

31. I believe that an extension of the stay period up to and including December 31, 2023, is appropriate and necessary.

32. I swear this affidavit in support of the application seeking an extension of the stay of proceedings and for no other or improper purpose.

[Remainder of this page intentionally left blank; signature page follows]

[Signature page to affidavit of Nicole Myles Brook, 17 September 2023]

SWORN before me electronically in the City of Halifax in the Province of Nova Scotia, Canada, this 17th of September 2023:	
DARREN D. O'KEEFE Barrister, NL	NICOLE MYLES BROOK
Sworn electronically utilizing the Microsoft Teams® video conferencing platform.	
Darren D. O`Keefe, B.C.L, LL.B Barrister, Solicitor, Notary Public Newfoundland & Labrador, Canada	

EXHIBIT "A"

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AND IN THE MATTER OF an application of Big Erics Inc. ("**BEI**") and Terra Nova Old Port Foods Inc. ("**TNOPFI**")

Estate Nos.	51-2962147 (Terra Nova Old Port Foods Inc.) 51-2962148 (Big Erics Inc.)
Court Nos.	24543 (Terra Nova Old Port Foods Inc.) 24544 (Big Erics Inc.)

AMENDED AND RESTATED INITIAL ORDER
(*Companies' Creditors Arrangement Act*, RSC 1985 C-36)

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this 18th day of July, 2023.

ON READING the affidavit of Bill Barlett sworn July 11, 2023, and the Exhibits thereto (the "**Barlett Affidavit**"), the affidavit of Nicole Myles Brook sworn July 16, 2023 and the Exhibits thereto (the "**Myles Brook Affidavit**") the report dated July 17, 2023 (the "**First Report**"), of Grant Thornton Ltd. ("**GTL**") in its capacity as proposal trustee (the "**Proposal Trustee**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the Proposal Trustee, as well as any person listed on the affidavit of service of Sharon Kour filed with this application, and further upon reading the consent of GTL to act as the monitor (the "**Monitor**").

Filed July 28 2023

SERVICE

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

CONTINUANCE UNDER THE CCAA

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

3. **THIS COURT ORDERS AND DECLARES** that effective July 18, 2023, the Applicants' proposal proceedings (the "**Proposal Proceedings**") commenced under Part III of the BIA are hereby taken up and continued under the CCAA and that, as of such date, the provisions of Part III of the BIA shall have no further application to the Applicants, save that any and all steps, agreements and procedures validly taken, done or entered into by the Applicants and all Orders granted during the Proposal Proceedings shall remain valid and binding, notwithstanding the commencement of the CCAA proceedings. For greater certainty, in the event of a conflict between an Order granted during the Proposal Proceedings and this Order, this Order shall govern.

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

7. **THIS COURT ORDERS** that from and after the date of this Order, the Applicants shall each maintain separate books and records and shall account separately in respect of receipts and disbursements. The Applicants shall not commingle funds and revenues received or receivable by the Applicant nor incur or pay any expenses or costs payable directly by the other Applicant or for the benefit of the other Applicant. The Applicants shall continue to maintain separate accounts for each corporate entity and shall not commingle funds except with the consent of BMO and the Monitor or leave of this Court.

8. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

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

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services;

(b) payment for goods or services actually supplied to the Applicants following the date of this Order; and

(c) payment of amounts in respect of the key employee retention plan ("**KERP**") as described in the First Report.

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

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by each of the Applicants.

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

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

RESTRUCTURING

13. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding $75,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate; and

(c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

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

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

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

16. **THIS COURT ORDERS** that until and including September 30, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are

hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

23. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $150,000, as security for the indemnity provided in paragraph 22 of this Order. The Director' Charge shall have the priority set out in paragraphs 34 and 36 herein.

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

APPOINTMENT OF MONITOR

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

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

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicants in their preparation of the Applicant's cash flow statements;

(d) advise the Applicants in their development of the Plan and any amendments to the Plan;

(e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants'

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business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(h) perform such other duties as are required by this Order or by this Court from time to time.

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

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

29. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is

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confidential or commercially sensitive, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

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

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel and other external professional advisors to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis.

32. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 34 and 36 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First - Administration Charge (to the maximum amount of $150,000);

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Second - Directors' Charge (to the maximum amount of $150,000);

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

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

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

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

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Evening Telegram (St. John's) and the Chronicle Herald (Halifax) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order make this Order publicly available in the manner prescribed under the CCAA, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

40. **THIS COURT ORDERS** that the Applicants and Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

41. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

43. **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 Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

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

COURT
OFFICER

EXHIBIT "B"

Confidential

[Submitted under separate cover]