2023 01G
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**");

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

AND IN THE MATTER OF an application of Big Erics Inc. and Terra Nova Old Port Foods Inc.

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.)

NOTICE OF MOTION
(Re: Continuation under the *Companies' Creditors Arrangement Act*)

BIG ERICS INC. ("**BEI**") and **TERRA NOVA OLD PORT FOODS INC.** ("**TNOPFI**") (collectively, the "**Companies**" or the "**Debtors**") will make a motion to a Judge presiding on ___ July 2023, at 10:00 a.m., or as soon after that time as the motion can be heard at the Supreme Court, 223 Duckworth Street, St. John's, NL for the relief set out herein.

PROPOSED METHOD OF HEARING: The motion is to be heard orally either in person or by videoconference, in a manner that suits the Court.

THE MOTION IS FOR:

1. An Order, substantially in the form attached as **Schedule "A"** to this Application (the "**Initial Order**") that, among other things:

   a) abridges the time for service of this Motion, validates the manner of service, and declares that this Motion is properly returnable before the Court;

b) declares that each of the Debtors are companies to which the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") applies;

c) authorizes the continuation under the CCAA of these proposal proceedings initiated under the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3 (the "**BIA**"), commenced on 03 July 2023 pursuant to the Notices of Intention to Make a Proposal filed by each of the Debtors;

d) appoints Grant Thornton Ltd. ("**GTL**" or the "**Proposed Monitor**") as an officer of this Honourable Court to monitor the business and financial affairs of the Debtors;

e) stays all proceedings and enforcement processes taken or that might be taken in respect of the Debtors, the Proposed Monitor, or their respective employees, directors, officers, and their respective other representatives until 10 October 2023;

f) grants an administrative charge over the property of the Debtors, to the maximum amount of $300,000 in priority to all other secured or unsecured liens, charges, and encumbrances as against the assets of the Debtors; and

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE AS FOLLOWS:

A. OVERVIEW:

3. On 03 July 2023, the Debtors filed Notices of Intention to Make a Proposal ("**NOI**") pursuant to section 50.4(1) of the BIA and GTL was appointed as proposal trustee (the "**Proposal Trustee**").

4. The Debtors are a part of a corporate group (the "**Debtor Group**") which have common ownership and share certain human resources, including my role as CFO for both companies, Chair of the Board for both companies, and an IT Manager. The main business engaged in by BEI is the buying and sale of kitchen, restaurant and janitorial equipment and

supplies, to both commercial and residential customers, while the main business of TNOPFI is the manufacture and sale of protein products (i.e. beef and pork products), the sale of third party producers finished food products, the production and sale of white labelled food products for clients, and the general buying and selling of food products, based in one or more of the Provinces of Newfoundland and Labrador, Nova Scotia, New Brunswick and Prince Edward Island (the "**Atlantic Provinces**") and beyond.

B. BACKGROUND LEADING TO THIS FILING:

5. The Debtor Group has been in business for more than 75 years. The current financial issues with the Debtor Group can be primarily attributed to the unforeseen, devastating and other diverse impacts and losses occasioned by the Covid-19 Pandemic which began in March 2020.

6. Starting in March 2020, the Debtor Group (like many of its customers, suppliers, and other businesses) faced an unprecedented and unpredictable financial and operational impact due to the COVID 19 pandemic. Given both of the Debtors' extensive involvement in and business with the restaurant, food service, hospitality and commercial building maintenance industries, the nationwide shutdown and sporadic openings of bars, restaurants, the hospitality and other commercial businesses and facilities, coupled with the stay-at-home orders issued across the country, took a significant toll on the Debtor Group's Business. Due to worldwide supply chain disruptions, the construction of new kitchen projects for businesses affected to lesser degrees by COVID 19 restrictions, also came to an abrupt halt. The loss of this important source of new customers and business for BEI was devasting as new projects were either cancelled or delayed but have shown significant improvement in Q4 of 2022 and are an important source of current growth for BEI.

7. As a result of the severe and diverse impacts of Covid 19, the Debtor Group's turned to government wage support programs, Federal government loan guarantee programs (such as the EDC BCAP loan program) and were also supported by private loans. This is reflected in this filing with reference to the Mezzanine Debt (defined below).

8. The Debtor Group is faced with another material challenge with the increasing debt service costs occasioned by soaring interest rates and the material impacts of inflation, both

impacting their operations directly but likewise virtually all of their customers and suppliers. The monthly costs of supporting the government guaranteed loans obtained during the Covid 19 period, and the Debtor Groups ordinary course business loans with Bank of Montreal ("**BMO**"), have now increased up to approximately 167%, beyond any predictable interest rate levels that could have been contemplated when the loans were entered into by the Debtors.

9. As of the date of filing, the government guaranteed loans programs alone required the Debtor Group to pay very large principal payments and much heavier than expected payments of guarantee fees and interest.

10. In addition to the BMO facilities, the Debtor Group are indebted to certain mezzanine (the "**Mezzanine Lenders**"), represented by Wayne and Joan Myles as Collateral Agents for one or more lenders or their assignees (as determined from time to time), pursuant to a Loan Agreement (the "**Mezzanine Debt Credit Agreements**") between the Mezzanine Lenders, the Debtor Group and Lighthouse Capital Atlantic Inc. ("**LCAI**"). As of the date hereof, the amount owed to the Mezzanine Lenders is $1,938,652.28 (the "**Mezzanine Debt**").

11. In a written communication received on 21 June 2023 the Debtor Group was informed that BMO intended to serve demands and a notice of intention to enforce security pursuant to s. 244 of the BIA to TNOPFI and LCAI. At or about the same time, the Debtor Group was informed that BMO was cutting the available credit on the revolving facility by approximately $3,000,000.00 and that a temporary special accommodation facility of approximately $900,000.00 may not be continued beyond June 30, 2023. The Debtor Group was also advised that BMO would require TNOPFI, BEI and LCAI to enter into a forbearance agreement and to obtain various waivers and subordinations from other entities, including landlords, Mezzanine Lenders and the 3rd party mortgage lender of a landlord. While BMO was aware that various informal accommodations had been provided by landlords and the Mezzanine Lenders, they were previously informed that formal waivers and subordinations were not available, and yet they continued to impose that condition.

12. At a meeting with the Debtor Group and others on June 30, 2023, BMO again indicated they would issue the demands and notices on the next available business day (being 04 July 2023), would not reinstate the $3,000,000.00 reduction in the limit on the revolving credit

facility and would not continue the special credit facility of up to $900,000.00 beyond June 30, 2023.

13. The NOI proceedings were initiated by the Debtor Group on 03 July 2023 in response to threats made by BMO that they intended to enforce their security. Consistent with their threat to issue demands, BMO issued a formal demand letter to the guarantor, LCAI, on or about 04 July 2023.

14. As at the date of filing, the total BMO indebtedness was approximately $10.7 million.

C. CONTINUATION UNDER THE CCAA:

15. The Debtors are insolvent and seek to continue the NOI Proceedings under the CCAA pursuant to section 11.6 of the CCAA. The Debtors have demonstrated the viability of their going-concern business during the proposed CCAA Proceedings through the provision of a detailed thirteen (13) week cashflow, as presented. Under the circumstances, a bankruptcy and liquidation would not be commercially reasonable and would result in the complete cessation of the business and the loss of nearly 100 jobs.

16. BEI and TNOPFI are corporations to which the CCAA applies.

17. The Proposal Trustee supports the Debtor Groups motion to continue the NOI Proceedings under the CCAA and will file a report prior to the hearing.

18. The Debtor Group, with the assistance of the Proposed Monitor, has prepared a weekly projected cash flow forecast of the Debtors for the initial period of the CCAA filing, through a thirteen-week (13) period, up to 30 September 2023 (the "**CCAA Cash Flow Forecast**"). The CCAA Cash Flow Forecast will be appended to the First Report of the Proposal Trustee to be filed prior to the return date of this motion.

19. The CCAA Cash Flow Forecast will demonstrate that if the relief requested is granted on the terms described herein, the Debtor Group will have sufficient liquidity to meet its obligations during the initial period of the CCAA filing. As noted, the Debtor Group are considering whether DIP financing will be required to maintain normal course purchasing of

product and other expenses during the CCAA period.

D. OBJECTIVES OF THE CCAA PROCEEDINGS:

20. Prior to commencing the NOI proceedings, the Debtors undertook and were conducting a formal process by discretely soliciting and negotiating with known market participants who may be interested in acquiring an interest in the Business (the "**Formal Investment Process**"). The accounting firm of Noseworthy Chapman assisted the Debtor Group in this Formal Investment Process.

21. The Debtors' immediate objectives in this CCAA proceeding will be: (i) stabilize operations and ensure customers and suppliers are secured through a discussion and explanation of the CCAA proceeding; and (ii) to formally canvass the market for investors in or, if deemed most viable, purchasers of the Business (or some aspect thereof) as a going-concern, through a court-supervised continuation of the Formal Investment Process.

22. The Debtors seek to continue the restructuring efforts initiated through these NOI proceedings pursuant to s. 11.6 of the CCAA. The continuation of this proceeding under the CCAA will, among other things:

    (a) permit the Debtors to continue carrying on their respective Business operations and to continue formally canvass the market for investors in or, if deemed most viable, purchasers of the Business (or some aspect thereof) as a going-concern, through a court-supervised continuation of the Formal Investment Process;

    (b) avoid the devastating effects of bankruptcy and liquidation, which is avoidable if the proceedings are permitted to continue under the CCAA. The value in each Business is derived from purchasing and sales contracts and going-concern nature of the operations. A bankruptcy or liquidation would destroy significant value for stakeholders and result in a material loss of employment for the Debtors' employees; and

    (c) preserve the *status quo* while attempts are made to maximize value for stakeholders.

23. The CCAA will allow the Debtor Group the flexibility to deal with its restructuring without a strict 6-month timeline.

E. PRIORITY CHARGES:

24. The Debtors are seeking an Administration Charge up to a maximum of $300,000 to secure the fees and disbursements of the professional advisors of the Debtors, Proposed Monitor and Proposed Monitor's counsel.

F. FURTHER GROUNDS:

25. It is just and appropriate under the circumstances to grant the relief sought in the Initial Order. At the hearing of this matter, the Debtor Group will rely on the following:

    (a) The provisions of the BIA, including section 50.4(9);
    (b) The provisions of the CCAA, including section 11.2 and 11.6;
    (c) The statutory, inherent, and equitable jurisdiction of this Honourable Court; and
    (d) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

26. The Affidavit of William Barlett, to be sworn, with Exhibits attached thereto;
27. The consent of Grant Thornton Ltd. to act as Monitor in the CCAA proceedings;
28. The First Report of the Proposal Trustee, to be filed; and,
29. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated this 11th day of July, 2023.

O'KEEFE & SULLIVAN

DARREN D. O'KEEFE
Counsel for Big Erics Inc. and
Terra Nova Old Port Foods Inc.
Whose address for service is:
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A1A 1W7
Attn: Darren D. O'Keefe
dokeefe@okeefesullivan.com

TO:

Honourable Supreme Court Registry
Supreme Court of Newfoundland and Labrador
223 Duckworth Street,
St. John's, NL
A1C 1G9

SCHEDULE "A"
INITIAL ORDER

2023 01G
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**");

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Court Nos.	24543 (Terra Nova Old Port Foods Inc.) 24544 (Big Erics Inc.)

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 ___ day of July, 2023.

ON READING the affidavit of Bill Barlett sworn ___ July, 2023, and the Exhibits thereto (the "**Barlett Affidavit**"), the First Report, dated ___ July, 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, the Proposal Trustee and Bank of Montreal ("**BMO**"), as well as any person listed on the affidavit of service of Darren D. O'Keefe filed with this application, and further upon reading the consent of GTL to act as the monitor (the "**Monitor**").

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application 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 2023, the Applicants' proposal proceedings (the "**Proposal Proceedings**") commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (as amended) (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.

4. **THIS COURT ORDERS** that the First Report and the activities of the Proposal Trustee, as described therein, be and are hereby approved.

5. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to take all necessary steps in furtherance of its discharge as Proposal Trustee in the Proposal Proceedings, including the taxation of its fees and disbursements and those of its counsel.

PLAN OF ARRANGEMENT

6. **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

7. **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 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, directors, 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.

8. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place with BMO, as described in the Barlett Affidavit (as may be altered with the consent of BMO), or replace it with another substantially similar central cash management system with a present or future bank (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.

9. **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.

10. **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; and

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

11. **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, (iii) Quebec 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.

12. **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.

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 its Business or operations, and to dispose of redundant or non-material assets not exceeding $300,000 in any one transaction or $500,000 in the aggregate;

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

(c) pursue all avenues of refinancing of its 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 30 September 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 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 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 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 its 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.

APPOINTMENT OF MONITOR

22. **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 its 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.

23. **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' 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.

24. **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.

25. **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.

26. **THIS COURT ORDERS** that the Monitor is hereby relieved of any obligation to publish a notice to creditors as prescribed in Section 23(1)(a)(i) of the CCAA.

27. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and any debtor in possession ("**DIP**") lender 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 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.

28. **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.

29. **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.

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

31. **THIS COURT ORDERS** the imposition of an "**Administration Charge**" in favour of the Monitor and Monitor's counsel, Company counsel, and Noseworthy Chapman against the Applicants Estate, which shall hold a first priority over the security interest of BMO and the Mezzanine Lenders against the Applicants (the "**Existing Security**") and any security interest, lien or statutory deemed trust that, as a result of the operation of law, is in priority to the Existing Security.

32. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property of Big Erics Inc. and Terra Nova Old Port Foods Inc. and 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.

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

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

INVESTMENT OR SALE PROCESS

35. **THIS COURT ORDERS** that the Applicants, Monitor and their respective financial advisors are hereby authorized and empowered to take such steps as are necessary or desirable to carry out, perform or complete an Investment or Sale Process for the assets and/or undertaking of the Applicants, provided that any definitive agreement to be executed by the Applicants in respect of the sale of all or part of the assets, rights, undertakings and properties of the Applicants, of every nature and kind whatsoever, and wherever situated, including all proceeds thereof shall require further approval of the Court.

36. **THIS COURT ORDERS** that the Applicants, Monitor and their respective financial advisors shall incur no liability or obligation as a result of assisting with the carrying out of the Investment or Sale Process or the provisions of this Order, save and except for gross negligence or willful misconduct on its part.

SERVICE AND NOTICE

37. **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.

38. **THIS COURT ORDERS** that the Monitor is 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

39. **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.

40. **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.

41. **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.

42. **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.

43. **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.

44. **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.