

**COUR SUPÉRIEURE
(Chambre commerciale)**

**CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL**

N° : 500-11-062362-237

DANS L'AFFAIRE DE LA *Loi sur les arrangements avec les créanciers des compagnies*, LRC 1985, c. C-36 relative à :

DATE : Le 16 juin 2023

**ÉBÉNISTERIE ST-URBAIN LTÉE
WOODLORE INTERNATIONAL INC.
EURORITE CABINETS LTD.
Débitrices**

et

**RAYMOND CHABOT INC.
Contrôleur**

**ORDONNANCE D'APPROBATION DU PROCESSUS DE SOLlicitation
D'INVESTISSEMENT ET DE VENTE (PSIV)**

AYANT PRIS CONNAISSANCE de la *Requête pour l'émission d'une seconde ordonnance initiale amendée et reformulée afin de procéder à l'ajout d'une débitrice et dispositions connexes* (la « **Requête** ») en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*, LRC 1985, c C-36, telle qu'amendée (la « **LACC** »), produite par Ébénisterie St-Urbain Ltée, Woodlore International inc. et Eurorite Cabinets Ltd. (les « **Débitrices** ») et des pièces et la déclaration sous serment de M. Napoléon Boucher déposée au soutien de celle-ci;

CONSIDÉRANT les représentations des avocats et les témoignages rendus à l'audition portant sur la Requête;

CONSIDÉRANT les dispositions de l'ordonnance initiale émise le 12 mai 2023 (telle qu'amendée et reformulée le 24 mai 2023 et le 16 juin 2023, l' « **Ordonnance initiale** »);

CONSIDÉRANT le rapport du Contrôleur produit au soutien de la Requête;

CONSIDÉRANT les dispositions de la LACC;

POUR CES MOTIFS, LE TRIBUNAL :

[1] ACCORDE la Requête.

- [2] **DÉCLARE** que tous les termes en majuscules utilisés dans la présente Ordonnance (l' « **Ordonnance** ») et qui ne sont pas autrement définis ont la signification qui leur est donnée dans l'Ordonnance initiale;

NOTIFICATION

- [3] **ORDONNE** que tout délai préalable pour la présentation de la Requête soit, par les présentes, abrégé et accepté de façon à ce que celle-ci soit valablement présentable aujourd'hui.
- [4] **DÉCLARE** que les Débitrices ont donné un avis préalable suffisant de la présentation de la Requête aux parties intéressées.
- [5] **PERMET** la notification de l'Ordonnance à toute heure, en tout lieu et par tout moyen, incluant par courriel.

APPROBATION DU PROCESSUS DE SOLLICITATION D'INVESTISSEMENT ET DE VENTE (PSIV)

- [6] **APPROUVE** le processus de sollicitation d'investissement et de vente (le « **PSIV** ») selon les modalités et conditions prévues à l'Annexe A de la présente Ordonnance, intitulée *Procedures Investment and Sale Solicitation Process* (les « **Règles du PSIV** »).
- [7] **AUTORISE** et **ORDONNE** au Contrôleur, en consultation de la façon prévue au PSIV avec les Débitrices, l'Information Agent et les Consultation Parties (tels que ces termes sont définis aux Règles du PSIV), de mettre en œuvre le PSIV, de prendre toutes mesures et signer tous documents qui peuvent être nécessaires ou accessoires, le tout conformément et sujet aux Règles du PSIV.
- [8] **ORDONNE** et **DÉCLARE** que sous réserve des dispositions des Règles du PSIV, les droits et recours contractuels de tiers affectant et/ou limitant la mise en œuvre du PSIV de manière générale, la mise en œuvre de toute recapitalisation dans le contexte d'un investissement proposé dans le cadre du PSIV, ou toute autre circonstance dans le cadre des présentes procédures, y compris, mais sans s'y limiter, les dispositions relatives aux droits de premier refus, aux droits d'entraînement, aux droits de première offre, aux droits d'égaliser une offre, aux options d'achat, ou aux autres clauses restrictives (collectivement ci-après les « **Clauses restrictives** »), sont suspendus et inapplicables, ne peuvent pas être opposés à un soumissionnaire potentiel (défini comme un « **Prospective Bidder** » dans les Règles du PSIV et pour les fins de la présente Ordonnance, un « **Soumissionnaire potentiel** ») dans le contexte du PSIV, et ne peuvent en aucune façon ou compromettre ou limiter la capacité du Contrôleur ou des Débitrices à mettre en œuvre le PSIV ou toute transaction ou investissement dans le cadre de ce dernier.
- [9] **ORDONNE** que le Contrôleur et les Débitrices sont autorisés à mettre en marché et solliciter des offres aux termes du PSIV sans se conformer aux **Clauses restrictives**, conformément aux Règles du PSIV.
- [10] **ORDONNE** que le Contrôleur, les Débitrices et chacun de leurs parties affiliées, partenaires, administrateurs, dirigeants, employés, agents, mandataires, conseillers

juridiques et conseillers respectifs n'aient aucune responsabilité à l'égard de toutes pertes, réclamations, dommages ou responsabilités de quelque nature que ce soit à l'endroit de toute personne en relation ou résultant de la conduite du PSIV ou de l'exercice de leurs fonctions dans le cadre du PSIV, sauf dans la mesure où ces pertes, réclamations, dommages ou responsabilités résultent d'une négligence grossière ou d'une faute intentionnelle de l'une de ces personnes ou entités, selon le cas, tel que déterminé par le présent Tribunal et sous réserve des dispositions de l'Ordonnance initiale.

POUVOIRS ADDITIONNELS DU CONTRÔLEUR

- [11] **ORDONNE** qu'en plus des pouvoirs du Contrôleur énoncés dans l'Ordonnance initiale et sans en limiter la portée, le Contrôleur, en consultation avec les Débitrices, est par la présente autorisé et habilité, sous réserve des dispositions des Règles du PSIV :
- (a) prendre toutes les mesures nécessaires ou souhaitables pour mener à bien le PSIV;
 - (b) signer les documents qui peuvent être nécessaires dans le cadre du PSIV; et
 - (c) contracter toute obligation nécessaire ou accessoire à l'exercice des pouvoirs susmentionnés et à la mise en œuvre du PSIV.

AUTRES MESURES CONNEXES

- [12] **DÉCLARE** que le Contrôleur et les Débitrices puissent de temps à autre s'adresser à cette Cour pour obtenir des avis et des directives concernant le PSIV et l'exécution de leurs pouvoirs et devoirs respectifs en vertu des présentes ou des Règles du PSIV.
- [13] **DEMANDE** et **REQUIERT** l'aide et la reconnaissance de toute cour, de tout tribunal, de tout organisme réglementaire ou administratif dans toute province du Canada ou à l'étranger et de tout tribunal ou organisme administratif ailleurs, afin de donner effet à la présente ordonnance et d'aider le Contrôleur, les Débitrices et leurs mandataires respectifs à exécuter les conditions de la présente Ordonnance. Il est respectueusement demandé à tous les tribunaux, cours, organismes réglementaires et administratifs de rendre les ordonnances et d'accorder l'assistance nécessaire ou souhaitable au contrôleur et aux Débitrices pour donner effet à la présente Ordonnance, et d'agir à l'aide et en complément de la présente Cour, dans l'exécution des conditions de la présente Ordonnance;
- [14] **ORDONNE** l'exécution provisoire de la présente Ordonnance, sans nécessité de fournir un cautionnement.

LE TOUT SANS FRAIS DE JUSTICE.


L'HON. KAREN M. ROGERS, J.C.S.

McCarthy Tétrault s.e.n.c.r.l.

**COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR**


Personne désignée par le greffier


T. A. D. O. L. E. A. N. O. S. J. C. S.

Me Alain N. Tardif
Me Marc-Étienne Boucher
Me François Xavier Tremblay

Avocats des Débitrices

Annexe A

PROCEDURES OF THE SALE AND INVESTMENT SOLICITATION PROCESS

ÉBÉNISTERIE ST-URBAIN LTÉE, WOODLORE INTERNATIONAL INC. and EURORITE CABINETS LTD.

Recitals

- A. On May 12, 2023, Ébénisterie St-Urbain Ltée and Woodlore International inc. obtained an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "CCAA") (as amended and restated on May 24, 2023, June 16, 2023 and as it may be further amended, restated or supplemented from time to time, the "Initial Order") of the Superior Court of Québec (the "Court"). On June 16, 2023, Eurorite Cabinets Ltd. (collectively, with Ébénisterie St-Urbain Ltée and Woodlore International inc., the "Debtors") also obtained protection under the Initial Order.
- B. Pursuant to the Initial Order, Raymond Chabot Inc. was appointed by the Court as monitor (in its capacity as monitor and not in its personal capacity, the "Monitor") of the Debtors in the proceedings under the CCAA in Court file No. 500-11-062662-237 (the "CCAA Proceedings").
- C. Pursuant to the *Ordonnance d'approbation du processus de sollicitation d'investissement et de vente* dated June 16, 2023 (as it may be amended, restated or supplemented from time to time, the "SISP Approval Order"), the Court approved an investment and sale solicitation process to be conducted in respect of the business and/or assets of the Debtors (the "SISP"), in accordance with the procedures, terms and conditions set out herein (the "SISP Procedures").
- D. Pursuant to paragraphs 59 to 63.4 of the Initial Order, Ernst & Young inc. was appointed by the Court as information agent of HSBC Bank Canada (the "Information Agent"), and the Court ordered the Debtors to provide the Information Agent with certain documentation in respect of the SISP, the whole in accordance with paragraph 1.5 herein and with the terms of the Initial Order.
- E. The SISP Procedures set out the manner in which (i) proposals and bids for a broad range of executable transaction alternatives (including, without limitation, restructuring, recapitalization and/or refinancing) involving the business of the Debtors, as more particularly described in the Teaser Letter (the "Business"), and the property, assets and undertaking of the Debtors (the "Property"), whether *en bloc* or any portion(s) thereof, will be solicited from interested parties, (ii) any bids received will be negotiated, (iii) any Successful Bid(s) will be selected and, (iv) the Court's approval of any Successful Bid(s) will be sought.
- F. An investment in the Business may involve, among other things, a restructuring, recapitalization, or other forms of reorganization of the business and affairs of the Business or any part thereof, and such investment may be consummated pursuant to a plan of compromise or arrangement (a "Plan"), a reverse vesting order, an arrangement pursuant to the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 (respectively an "Arrangement" and the "CBCA") or otherwise.

- G. The SISP Approval Order, the SISP Procedures, and any other orders of the Court made in the CCAA Proceedings relating to the SISP shall exclusively govern the process for soliciting and selecting bids for an investment in the Business or sale of the Property pursuant to a broad range of executable transaction alternatives.
- H. Unless otherwise stated or unless the subject matter or context otherwise requires, the capitalized terms used in the SISP Procedures have the meaning ascribed to them at Schedule A hereof.

Section 1. Conduct of the SISP

- 1.1 Before the SISP is launched and before any documentation is communicated to potential bidders in the context of the SISP, the Monitor will provide the Debtors, the Information Agent and representatives of the Consultation Parties, where applicable, with copies of the documents which will be used, namely the Teaser Letter, the Contact List, the Confidential Information Memorandum, and the Confidentiality Agreement, the whole for meaningful consultation by the Information Agent and representatives of the Consultation Parties, where applicable, and approval by the Debtors.
- 1.2 The SISP will be carried out by the Monitor, in consultation with the Debtors. Unless otherwise provided for herein, and in accordance with the SISP Approval Order, the Monitor is wholly and exclusively authorized, empowered and directed to take any and all actions and steps pursuant to the SISP, subject to provisions of the SISP Approval Order and the terms and conditions contained herein.
- 1.3 The Monitor and the Debtors shall be responsible for contacting Prospective Bidders, communicating with Prospective Bidders and Bidders, negotiating with Bidders, providing them with the Teaser Letter, coordinating the execution of any Confidentiality Agreements executed by a Prospective Bidder pursuant to the SISP, managing the process of answering all reasonable inquiries from Prospective Bidders and Bidders and arranging for visits, when applicable, by Bidders.
- 1.4 The Monitor, in consultation with the Debtors, shall review and assess LOIs and Bids.
- 1.5 The Monitor will provide copies of LOIs and Bids to the Information Agent and to representatives of secured creditors other than HSBC for consultation purposes, and shall consult with said Consultation Parties as provided for herein, but only to the extent that (a) the Monitor determines that said secured creditor has an economic interest in the outcome of a given transaction; (b) said secured creditor has subscribed to a satisfactory confidentiality undertaking to preserve the confidentiality of the information shared; and (c) said secured creditor is not itself participating in the SISP as a Bidder (by way of a credit-bid or otherwise) (the "**Consultation Parties**").
- 1.6 At any time during the SISP, the Monitor may consult with the Debtors and any party as it considers appropriate in respect of the conduct of the SISP.
- 1.7 After the issuance of the SISP Approval Order, the Monitor may at any time and from time to time and in consultation with the Debtors and the Information Agent and representatives of the Consultation Parties, where applicable, modify, amend, vary or supplement the SISP or the SISP Procedures without the need for obtaining an order of the Court or providing notice to any Bidders, provided that the Monitor determines that such

modification, amendment, variation or supplement would not be materially prejudicial to the interests of the Prospective Bidders and Bidders and is necessary or useful to give effect to the substance of the SISP, the SISP Procedures or the SISP Approval Order. The Monitor shall post on the Monitor's website, as soon as possible, any such modification, amendment, variation or supplement to the SISP Procedures and inform Prospective Bidders and Bidders reasonably impacted by any such modification, amendment, variation or supplement to the SISP Procedures.

- 1.8 The Monitor, may, at any time and on notice to the service list in the CCAA Proceedings as posted on the Monitor's website, as it may be updated from time to time (the "**Service List**"), apply to the Court for directions in connection with the implementation of the SISP or the SISP Procedures.
- 1.9 The implementation of the SISP by the Monitor shall commence at the Commencement Date. In the event that the Monitor, in consultation with the Debtors, considers it necessary or appropriate to postpone the Commencement Date, it shall select a new Commencement Date to be published on the Monitor's website and notified forthwith to the Service List.
- 1.10 Notwithstanding any provision of these SISP Procedures, the Debtors, with the approval of the Monitor and in consultation with the Information Agent and representatives of the Consultation Parties, where applicable, shall have the right, at any moment and at any stage of the SISP, to interrupt the SISP so as to (a) seek approval of a Transaction which the Debtors, in consultation with the Monitor and their secured creditors where applicable, deem as being in the best interest of all their stakeholders, or (b) file one or more plan(s) of arrangement or compromise to their creditors and stakeholders whether prior to the LOI Deadline, the Qualification Deadline, the Bid Deadline, the Target Closing Date or otherwise.

Section 2. Sale or Investment Opportunities

- 2.1 Qualified Bidders will have the opportunity to submit a bid consisting in either an Investment Proposal or a Sale proposal. Investment Proposals and Sale Proposals may be in respect of all of the Property or the Business, and any such proposal will not be precluded from consideration as an acceptable Bid.
- 2.2 In the event of a Sale Proposal for any or all of the Property, all of the Debtors' relevant right, title and interest in and to the Property may be acquired pursuant to an approval and vesting order of the Court, including pursuant to a reverse vesting order, free and clear of all pledges, liens, security interests, charges, options, hypothecs, mortgages and interest thereon, except to the extent otherwise set forth in a definitive purchase agreement executed with a Successful Bidder.
- 2.3 In the event of an Investment Proposal for any or all of the Business, same can be implemented by way of a combined Plan and Arrangement.

Section 3. "As is, Where Is"

- 3.1 Any Investment Proposal or Sale Proposal (either being a "**Proposal**") shall be made on an "as is, where is" basis, without surviving representations or warranties of any kind or nature.

- 3.2 The Debtors and the Monitor are not responsible for, and will have no liability with respect to, any information obtained by any Prospective Bidder or Bidder in connection with the Business or Property. The Debtors, the Monitor and their advisors, as applicable, do not make any representations or warranties whatsoever as to the information or the materials provided through the due diligence process or otherwise made available to any Prospective Bidder and Bidder, including any information contained in the Teaser Letter or Data Room.

Section 4. Solicitation of Interest

- 4.1 The Monitor shall, by no later than **5:00 p.m. (Montréal Time) on June 21, 2023**, or such later date or time as the Monitor, in accordance with the SISP Procedures, may determine appropriate (the "**Commencement Date**"):
- (a) compile a listing (the "**Contact List**") of prospective investors and purchasers (collectively, "**Prospective Bidders**"). The Monitor will use all reasonable commercial efforts to contact all parties identified in the Contact List as well as any additional parties identified as prospective investors or purchasers;
 - (b) post a copy of the SISP Approval Order and the SISP Procedures on the Monitor's website;
 - (c) determine the appropriate advertising to be directed at Prospective Bidders, which may include newspaper, trade publication, internet or other advertising;
 - (d) send to each Prospective Bidder teaser materials, including a solicitation letter summarizing the investment and acquisition opportunity with respect to the Business and Property (the "**Teaser Letter**");
 - (e) set up and update an electronic and virtual data room with confidential information in respect of the Business and Property (the "**Data Room**");
 - (f) send to each Prospective Bidder, upon request, a form of Confidentiality Agreement and written acknowledgement of receipt of the SISP Procedures wherein such Prospective Bidder agrees to accept and be bound by the provisions of the SISP Procedures (the "**Written Acknowledgement**"). The Prospective Bidders will be required, among other things, to sign a Confidentiality Agreement in order to gain access to confidential information (including access to the Data Room). For greater certainty, only Prospective Bidders who submit an executed Confidentiality Agreement and Written Acknowledgement shall have access to the Data Room and other confidential information and management presentations, if available;
 - (g) give access to the Data Room and coordinate the communication of information to each Prospective Bidder who has executed a Confidentiality Agreement and provided the Written Acknowledgement; and
 - (h) prepare the form of a template asset purchase agreement (the "**Template APA**") to be used by Prospective Bidders to submit a Sale Proposal and post same in the Data Room.

- 4.2 The Monitor, in consultation with the Debtors, reserves the right to limit any Prospective Bidder's or Bidder's access to any confidential information (including any information in the Data Room) and to customers and suppliers of the Debtors, where, in the Monitor's sole discretion, such access could negatively impact the SISP, the ability to maintain the confidentiality of the confidential information, the Business or the value of the Property.
- 4.3 Any and all requests for additional information are to be made in writing to the Monitor and the Debtors.

Section 5. Submission of Non-Binding Letters of Intent & Other Participation Requirements

- 5.1 Unless otherwise provided for herein, ordered by the Court or agreed to by the Monitor, in order to participate in the SISP and be considered for qualification as a Qualified Bidder, a Prospective Bidder must deliver to the Monitor, so as to be received by the Monitor no later than **5:00 p.m. (Montréal Time) on August 31, 2023**, or such later date or time as the Monitor, in consultation with the Debtors and in accordance with the SISP Procedures, may determine appropriate (the "LOI Deadline") the following:
- (a) an executed Confidentiality Agreement, which shall inure to the benefit of any purchaser of any part of the Property or any investor in the Debtors;
 - (b) an executed Written Acknowledgement;
 - (c) a non-binding letter of intent (a "LOI") which specifies whether the Prospective Bidder anticipates submitting an Investment Proposal or a Sale proposal and which complies with the requirements of paragraphs 5.2 and 5.3 or 5.4 below, as applicable; and
 - (d) a letter setting forth the identity of the Prospective Bidder, the contact information for such Prospective Bidder, and the contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction, and full disclosure of the direct and indirect owners of the Prospective Bidder and their principals, and a description of the Prospective Bidder's plans regarding the Business of the Debtors.
- 5.2 An LOI in respect of an Investment Proposal or a Sale proposal must include:
- (a) an acknowledgment that the Investment Proposal or Sale Proposal will be made on an "as is, where is" basis;
 - (b) a detailed description of any remaining due diligence required by the Prospective Bidder to be completed before seeking to make a Qualified Bid and an estimated timeline for the completion of such due diligence (including with respect to any environmental due diligence, as the case may be);
 - (c) any anticipated regulatory and other approvals required to close the proposed transaction and the anticipated time frame and any anticipated impediments for obtaining any such approvals;

- (d) all material conditions to closing that the Prospective Bidder may wish to impose, including any financing condition;
- (e) confirmation that the Prospective Bidder will be responsible for its own costs incurred in connection with its investigation of the Debtors and any transaction, including those of its advisors, attorneys, and agents;
- (f) the proposed target closing date and a timeline to closing with critical milestones;
- (g) an indication as to the steps to be undertaken by the Prospective Bidder to implement the proposed Investment Proposal or Sale Proposal;
- (h) any other terms and conditions which the Prospective Bidder believes are material to the proposed transaction;
- (i) that the LOI is governed by the laws of the Province of Quebec and the laws of Canada applicable therein; provided however that to the extent an LOI pertains exclusively to ERC, its business or its assets, such LOI shall be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein; and
- (j) such other information reasonably requested by the Monitor.

5.3 In addition to the requirements set out in paragraph 5.2 hereof, an LOI in respect of a Sale Proposal must include:

- (a) a detailed listing and description of the Property to be included in the Sale Proposal and a detailed listing of the Property to be excluded from the Sale Proposal;
- (b) the low and high range of the proposed purchase price for such Sale Proposal, the proposed allocation of the purchase price among the applicable Property (per Debtor) and an explanation of what contingencies and variables may influence the range in which the final purchase price will fall;
- (c) details as to the form of consideration for the Sale Proposal;
- (d) a list of the key material contracts and leases, if any, the Prospective Bidder wishes to acquire and the Prospective Bidder's proposed treatment of any related "cure costs";
- (e) the structure and financing of the transaction, including sources and uses analysis; and
- (f) a description of any liabilities to be assumed by the Prospective Bidder and the Prospective Bidder's estimated value of such assumed liabilities.

5.4 In addition to the requirements set out in paragraph 5.2 hereof, an LOI in respect of an Investment Proposal must include:

- (a) a description of the structure of the Investment Proposal;

- (b) a description of the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors and shareholders of the Debtors;
 - (c) the proposed treatment of the Debtors' other stakeholders;
 - (d) the structure and financing of the transaction, including sources and uses analysis; and
 - (e) a description of any liabilities to be assumed by the Prospective Bidder and the Prospective Bidder's estimated value of such assumed liabilities.
- 5.5 For greater certainty, the Monitor shall be entitled, either prior to or following the LOI Deadline, to seek to clarify the terms of an LOI or with respect to any of the other requirements of paragraphs 5.1, 5.2 and 5.3 or 5.4 above, and the Monitor may accept a revised and/or clarified LOI, provided that the initial LOI was received prior to the LOI Deadline. The Monitor may grant extensions to the LOI Deadline with respect to the Business or Property.
- 5.6 The Monitor, after consulting the Debtors, may waive compliance with any of the requirements specified in paragraphs 5.1, 5.2 and 5.3 or 5.4 and deem any non-compliant LOI to be a qualifying LOI.

Section 6. Identification of Qualified Bidders

- 6.1 The Monitor and the Debtors, in consultation with the Information Agent and representatives of the Consultation Parties, where applicable, shall review and consider each LOI and the other materials submitted by a Prospective Bidder pursuant to paragraph 5.1, and if (a) the LOI meets requirements specified in paragraphs 5.1, 5.2 and 5.3 or 5.4, (b) it is determined that it will be in the best interests of the Debtors and its stakeholders to permit the Prospective Bidder to continue to participate in the SISP based upon the terms set out in the applicable LOI and (c) such Prospective Bidder's financial information and credit support or enhancement demonstrate to the satisfaction of the Monitor the capability of such Prospective Bidder to consummate a transaction and that such Prospective Bidder is likely (based on experience, availability of financing and other considerations) to consummate either an Investment Proposal or a Sale proposal, such Prospective Bidder shall be a "**Qualified Bidder**". For greater certainty, an LOI may be in respect of only a part or parts of the Business or Property.
- 6.2 The determination by the Debtors and the Monitor, in consultation with the Information Agent and representatives of the Consultation Parties, where applicable, as to whether a Prospective Bidder is a Qualified Bidder will be made as promptly as practicable after such Prospective Bidder has satisfied the requirements described in paragraphs 5.1, 5.2 and 5.3 or 5.4, as applicable (subject to any waiver thereof under paragraph 5.6), and any clarification that may be sought by the Monitor pursuant to paragraph 5.6 and in any event at the latest on **September 14, 2023** (the "**Qualification Deadline**"). If it is determined that a Prospective Bidder is a Qualified Bidder, the Monitor will promptly notify the Prospective Bidder that it is a Qualified Bidder.
- 6.3 If at any point before or after the LOI Deadline, the Debtors and the Monitor, in consultation with the Information Agent and representatives of the Consultation Parties, where

applicable, determine that there are or will be no Qualified Bidders with respect to the Business or Property, or that it will not be in the best interests of the Debtors and its stakeholders to continue with the SISP with respect to all or any of the Business or Property, the Debtors as soon as reasonably practicable file a motion with the Court on notice to the Service List for advice and directions with respect to the modification, suspension or termination of the SISP in respect of the Business or Property.

Section 7. Due diligence

- 7.1 Subject to compliance with the terms set forth herein, each Qualified Bidder shall have such access to due diligence materials and information relating to the Business and Property and the debt and equity interests in the Debtors, as the Monitor, in consultation with the Debtors, deems appropriate. At the request of a Qualified Bidder, such confidential due diligence information shall also be provided to a proposed lender of such Qualified Bidder that is reasonably acceptable to the Monitor, with the Debtors' consent.
- 7.2 At the discretion of the Monitor, in consultation with the Debtors, due diligence access may include presentations (as may be scheduled by the Monitor), access to physical and secure online electronic data rooms, on-site inspections and such other matters as a Qualified Bidder may reasonably request and as to which the Monitor, in its reasonable business judgment, deems appropriate. The Monitor shall not be obligated to provide any due diligence materials or information after the Bid Deadline.
- 7.3 Unless otherwise agreed in writing by the Monitor, with the consent of the Debtors, no Prospective Bidder or Bidder shall be permitted to have any discussions with any counterparty to any contract with the Debtors or any other Prospective Bidder or Bidder in connection with any bid submitted in accordance with the terms hereof or in contemplation thereof.

Section 8. Submission of Qualified Bids

- 8.1 In order to continue to participate in the SISP, a Qualified Bidder must deliver a Qualified Investment Bid or Qualified Purchase Bid to the Monitor, and such bids must be received by the Monitor by no later than **5:00 p.m. (Montréal Time) on September 29, 2023**, or at such later date or time as the Monitor, in consultation with the Debtors, the Information Agent and representatives of the Consultation Parties, where applicable, and in accordance with the SISP Procedures, may determine appropriate (the "**Bid Deadline**").
- 8.2 An Investment Proposal submitted by a Qualified Bidder will be considered a "**Qualified Investment Bid**" only if the Investment Proposal complies with all of the following:
 - (a) it includes a letter stating that the Investment Proposal is irrevocable for a period of 45 Business Days following the Bid Deadline; provided, however, that if such Investment Proposal is selected as the Successful Bid or the Backup Bid, it shall remain irrevocable until the earlier of (i) the closing of the Successful Bid or the Backup Bid, as the case may be, and (ii) the outside date stipulated in the Successful Bid or the Backup Bid, as applicable;
 - (b) it includes duly authorized and executed definitive binding documentation setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and/or debt investment and details regarding the

proposed equity and/or debt structure of the Debtors, if applicable, following completion of the proposed transaction (a "**Definitive Investment Agreement**");

- (c) it includes, on a per Debtor basis, a description of the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors and shareholders of the Debtors;
- (d) it does not include a request or entitlement to a break-fee, expense reimbursement or any other similar type of payment. Further, by submitting an Investment Proposal, the Qualified Bidder shall be deemed to waive its right to pursue a substantial contribution claim in any way related to the submission of its Investment Proposal or the SISP;
- (e) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction or other evidence satisfactory to the Monitor in its sole discretion to allow the Monitor to make a reasonable determination as to the Qualified Bidder's financial, technical, operational and other capabilities to consummate the transaction contemplated by the Investment Proposal and operate the Debtors' operations;
- (f) it is not conditioned on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct any and all required due diligence prior to making its Investment Proposal;
- (g) it fully discloses the identity of each entity that is bidding or that is sponsoring or participating in the Investment Proposal, including the identification of the Qualified Bidder's direct and indirect owners and their principals and the complete terms of any such participation;
- (h) it includes an acknowledgement and representation that the Qualified Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its Investment Proposal; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise), regarding the Business of the Debtors or the completeness of any information provided in connection therewith, including by the Debtors and the Monitor, except as expressly stated in the Definitive Investment Agreement; (iii) is a sophisticated party capable of making its own assessments in respect of making its Investment Proposal; and (iv) has had the benefit of independent legal advice in connection with its Investment Proposal;
- (i) it includes a waiver of all claims against the Debtors, its current officers, directors or employees and the Monitor, and its advisors in respect of any present and past activities of the Debtors or any use or durability of the Debtors' assets, their quality, value, or sustainability;
- (j) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the Qualified Bidder's board of directors (or

comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Investment Proposal;

- (k) it is accompanied by a Deposit in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of *Raymond Chabot Inc.*, in trust, in an amount equal to the greater of : (a) \$ 100,000; or (b) 5% of the total proposed investment, to be held and dealt with in accordance with the SISP Procedures;
- (l) it provides for closing of the Qualified Investment Bid by no later than the Target Closing Date;
- (m) if the Qualified Bidder is an entity newly formed for the purpose of the transaction, the Investment Proposal shall contain an equity or debt commitment letter from the parent entity or sponsor, satisfactory to the Monitor, that names the Debtors as third-party beneficiaries of any such commitment letter with recourse by the Debtors and the Monitor against such parent entity or sponsor;
- (n) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval), the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (o) it contains other information reasonably requested by the Monitor;
- (p) it is governed by the laws of the Province of Quebec and the laws of Canada applicable therein; provided however that to the extent it pertains exclusively to ERC, its business or its assets, it shall be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein; and
- (q) it is received by no later than the Bid Deadline.

8.3 A Sale Proposal submitted by a Qualified Bidder will be considered a "**Qualified Purchase Bid**" only if the Sale Proposal complies with all of the following:

- (a) it includes a letter stating that the Sale Proposal is irrevocable until 45 Business Days following the Bid Deadline; provided, however, that if such Sale Proposal is selected as the Successful Bid or the Backup Bid, it shall remain irrevocable until the closing of the Successful Bid or the Backup Bid, as the case may be;
- (b) it includes a duly authorized and executed purchase and sale agreement, together with a markup outlining and highlighting all proposed changes from the Template APA, specifying the purchase price (on a per Debtor basis), expressed in Canadian dollars, including the cash component thereof and/or the liabilities to be assumed by the Bidder (or the combination of both - the "**Purchase Price**"), together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements) and such ancillary agreements;

- (c) it contains a detailed listing and description of the Property on a per Debtor basis to be included in the Sale Proposal or a detailed listing of the Property to be excluded from the Sale Proposal, as well as the value and breakdown of the allocation of the Purchase Price;
- (d) it does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment. Further, by submitting a Sale Proposal, a Qualified Bidder shall be deemed to waive its right to pursue a substantial contribution claim in any way related to the submissions of its Sale Proposal or the SISP;
- (e) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Monitor in its sole discretion, to allow the Monitor to make a reasonable determination as to the Qualified Bidder's financial, technical, operational and other capabilities to consummate the transaction contemplated by the Sale Proposal and operate the Debtors' operations;
- (f) it is not conditioned on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct any and all required due diligence prior to making its Sale Proposal;
- (g) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Sale Proposal, including the identification of the Qualified Bidder's direct and indirect owners and their principals and the complete terms of any such participation;
- (h) it includes an acknowledgement and representation that the Qualified Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Sale Proposal; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Debtors or the Monitor, except as expressly stated in the purchase and sale agreement submitted by it; (iii) is a sophisticated party capable of making its own assessments in respect of making its Sale Proposal; and (iv) has had the benefit of independent legal advice in connection with its Sale Proposal;
- (i) it includes a waiver of all claims against the Debtors, its current officers, directors or employees, the Monitor, or its advisors in respect of any present and past activities of the Debtors or any use or durability of the Debtors' assets, their quality, value, or sustainability;
- (j) it includes evidence, in form and substance reasonably satisfactory to the Monitor of authorization and approval from the Qualified Bidder's board of directors (or

comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Sale Proposal;

- (k) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of **Raymond Chabot Inc. in trust**, in an amount equal to the greater of: (a) \$ 100,000; or (b) an amount equal to 5% of the proposed gross purchase price, to be held and dealt with in accordance with the SISP Procedures;
- (l) it contains full details of the proposed number of employees of the Debtors who will become employees of the Qualified Bidder, the proposed terms and conditions of employment to be offered to those employees, as well as any employee-related liabilities to be assumed by the Qualified Bidders;
- (m) it includes an acknowledgement and representation that the Qualified Bidder will assume the obligations of the Debtors under executory contracts, unexpired leases, and licences proposed to be assigned (or identifies clearly the particular contracts, leases, and licenses of the Debtors, as applicable, that the Qualified Bidder wishes not to assume, or alternatively wishes to assume), contains full details of the Qualified Bidder's proposal for the treatment of related cure costs; and which the assumption of which is a condition of closing;
- (n) to the extent not addressed elsewhere, it includes the proposed treatment of stakeholders;
- (o) it provides for closing of the Qualified Purchase Bid by no later than October 15, 2023, or such later date or time as the Monitor, in accordance with the SISP Procedures, may determine appropriate (the "**Target Closing Date**");
- (p) if the Qualified Bidder is an entity newly formed for the purpose of the transaction, the bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Monitor that names the Debtors as a third-party beneficiary of any such commitment letter with recourse by the Debtors and the Monitor against such parent entity or sponsor;
- (q) it includes evidence, in form and substance reasonably satisfactory to the Monitor of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval), the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (r) it contains other information reasonably requested by the Monitor and the Debtors;
- (s) it is governed by the laws of the Province of Quebec and the laws of Canada applicable therein, provided however that to the extent it pertains exclusively to ERC, its business or its assets, it shall be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein; and
- (t) it is received by no later than the Bid Deadline.

- 8.4 For greater certainty, Investment Proposals and Sale Proposals may be in respect of only a part or parts of the Business or Property, and such proposal shall constitute a **"Qualified Portion Bid"** if it satisfies the requirements in paragraph 8.3 or 8.2 hereof, as applicable, in respect of the Business or Property subject to such proposal. In such case, such bidder shall constitute a **"Qualified Portion Bidder"**. Each Qualified Portion Bid shall be deemed to be a Qualified Bid, and each Qualified Portion Bidder shall be deemed to be a Qualified Bidder, for all purposes of the SISP.

Section 9. Qualified Bid

- 9.1 Qualified Investment Bids and Qualified Purchase Bids shall hereinafter be referred to as **"Qualified Bids"** and each a **"Qualified Bid"** and each bidder who has submitted a Qualified Bid shall hereinafter be referred to as an **"Authorized Bidder"**.
- 9.2 Notwithstanding paragraph 8.3 and paragraph 8.2, the Monitor, in consultation with the Debtors, the Information Agent and representatives of the Consultation Parties, where applicable, may waive compliance with any one or more of the Qualified Bid requirements specified herein and deem such non-compliant bids to be Qualified Purchase Bids or Qualified Investment Bids, as the case may be.

Section 10. Assessment of Qualified Bids

- 10.1 The Monitor and the Debtors, in consultation with the Information Agent and representatives of the Consultation Parties, where applicable, will review and assess the Qualified Bids in respect of an Investment Proposal, and in making such assessment, will consider, among other things, the following (the **"Investment Proposal Bid Criteria"**):
- (a) the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors and shareholders of the Debtors and the planned treatment of such persons under the proposed Investment Proposal;
 - (b) the firm, irrevocable commitment for financing the investment or other evidence of ability to consummate the Investment Proposal;
 - (c) the counterparties to the proposed Investment Proposal;
 - (d) the cost, risks and timing associated with obtaining the approval of the requisite majority of creditors and approval of the Court in respect of a Plan, if needed;
 - (e) the estimated number of employees of the Debtors that will be offered post-closing employment by the Bidder and any proposed measures associated with their continued employment;
 - (f) the transition services required from the Debtors post-closing and any related costs;
 - (g) the planned treatment of stakeholders; and
 - (h) other factors affecting the speed, certainty and value of the Investment Proposal (including any regulatory approval and other conditions required to close the Investment Proposal by the applicable Target Closing Date), including the

likelihood of closing the Investment Proposal on or before the applicable Target Closing Date.

- 10.2 The Monitor and the Debtors, in consultation with the Information Agent and representatives of the Consultation Parties, where applicable, will review and assess the Qualified Bids in respect of a Sale Proposal, and in making such assessment, will consider, among other things, the following (the “**Sale Proposal Bid Criteria**”):
- (a) the purchase price and net value (including all assumed liabilities and other obligations to be performed by the Qualified Bidder) provided by such Qualified Bid and the proposed allocation of the purchase price among the applicable Property;
 - (b) the firm, irrevocable commitment for financing the transaction or other evidence of ability to consummate the Sale Proposal;
 - (c) the claims, if any, likely to be created against the Debtors by the transaction contemplated by the Sale Proposal relative to alternatives available to the Debtors;
 - (d) the nature and amount of debt and other liabilities to be assumed or acquired by the Qualified Bidder;
 - (e) the counterparties to the Sale Proposal;
 - (f) the proposed revisions to the Template APA and the terms of the proposed sale transaction documents;
 - (g) the assets included in or excluded from the Sale Proposal and the transaction costs and risks associated with closing multiple transactions versus a single sale transaction for all or substantially all of the Property;
 - (h) any transition services required from the Debtors post-closing and any related restructuring costs;
 - (i) the planned treatment of stakeholders; and
 - (j) other factors affecting the speed, certainty and value of the Sale Proposal (including any regulatory approvals and other conditions required to close the Sale Proposal by the applicable Target Closing Date), including the likelihood of closing the Sale Proposal on or before the applicable Target Closing Date.
- 10.3 For greater certainty, the Monitor, in consultation with the Debtors and the Information Agent and representatives of the Consultation Parties, where applicable, shall be entitled, either prior to or following the Bid Deadline, to seek to clarify the terms of Qualified Bid, and the Monitor may accept a revised and/or clarified Qualified Bid provided that the initial Qualified Bid was received prior to the Bid Deadline.
- 10.4 The Monitor, in consultation with the Debtors and the Information Agent and representatives of the Consultation Parties, where applicable, may waive compliance with any one or more of the requirements specified in paragraph 8.3 and paragraph 8.2, as applicable and deem any non-compliant Bid to be a Qualified Bid.

- 10.5 The Monitor and the Debtors shall apply the Investment Proposal Bid Criteria and Sale Proposal Bid Criteria, as applicable, and consider each Qualified Bid upon its submission for determination. Such determination will be made as promptly as practicable after the Bid Deadline.
- 10.6 If the Debtors, in consultation with the Monitor, the Information Agent and representatives of the Consultation Parties, where applicable, determine that any Qualified Bid was received that is in the best interests of the Debtors' stakeholders (or any combination of non-overlapping Qualified Portion Bids was received that is in the best interests of the Debtors' stakeholders), the Debtors, in consultation with the Monitor, the Information Agent and representatives of the Consultation Parties, where applicable, may choose to accept such Qualified Bid (in which case, such Qualified Bid shall be a "Successful Bid" and the Qualified Bidder making the Successful Bid shall be a "Successful Bidder") and take such steps as are necessary to finalize and complete an agreement for the Successful Bid with the Successful Bidder. For greater certainty, the Debtors, in consultation with the Monitor, the Information Agent, and representatives of the Consultation Parties, where applicable, may accept a combination of non-overlapping Qualified Portion Bids (collectively, an "Aggregated Bid") to create one Successful Bid. In such case, the applicable Authorized Bidders will become "Successful Bidders".
- 10.7 If the Debtors, in consultation with the Monitor, the Information Agent and representatives of the Consultation Parties, where applicable, determine that more than one Qualified Bid (and/or more than one Aggregated Bid) should be considered, then the Monitor may, without being obligated to do so, conduct an auction (the "Auction"), to determine the highest and/or best Investment Proposal or Sale Proposal or Aggregated Bid. In the event that an Auction is to be held, all Authorized Bidders who submitted a Qualified Bid that the Debtors, in consultation with the Monitor, the Information Agent and representatives of the Consultation Parties, where applicable, entitles such Authorized Bidder to participate in the Auction (each, an "Auction Bidder"), will be advised by the Monitor of such determination.
- 10.8 An Authorized Bidder that is not identified as an Auction Bidder will no longer be able to participate in the SISP or any Auction. In the event an Authorized Bidder is selected as an Auction Bidder, such Auction Bidder's Qualified Bid shall remain binding, irrevocable and open for acceptance until the acceptance of a Successful Bid in accordance with section 11.2(j) and, where applicable, the selection of the Backup Bid further to the Auction. For greater certainty, if such Auction Bidder's Bid is accepted as the Successful Bid or selected as the Backup Bid, it shall remain binding and irrevocable and dealt with as such in accordance with the SISP Procedures.
- 10.9 The Monitor and the Debtors may, in consultation with the Information Agent and representatives of the Consultation Parties, where applicable, at any time (including prior to or during an Auction), (a) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the CCAA, the SISP Procedures or any orders of the Court applicable to the Debtors; (b) in accordance with the terms hereof, accept Bids not in conformity with the SISP Procedures that is more favourable; (c) in accordance with the terms hereof, extend the Bid Deadline, and/or change the Auction Date; and/or (d) reject all Bids. For greater certainty, the Debtors shall be under no obligation to accept the highest or best offer, and the selection of the Successful Bid shall be entirely in the discretion of the Debtors, in consultation with the Monitor, the Information Agent and representatives of the Consultation Parties, where applicable.

Section 11. Auction

- 11.1 If the Auction is to be conducted pursuant to paragraph 10.7, the Auction shall commence on the date that the Monitor, with the approval of the Debtors, may deem appropriate (the "Auction Date"). All Auctions shall be conducted virtually through a platform determined by the Monitor, at the offices of *Raymond Chabot Inc.* or such other location as the Monitor may determine. Notice of the platform or place, date and time of the Auction will be delivered to all Auction Bidders by the Monitor no less than three (3) Business Days before the date of the Auction.
- 11.2 If there is an Auction, the Auction shall be conducted according to the following procedures:
- (a) At least one (1) Business Day prior to the Auction, each Auction Bidder who has been notified that it has qualified as an Auction Bidder must inform the Monitor whether it intends to attend and participate in the Auction provided that, for greater certainty, such Auction Bidder's Qualified Bid shall remain binding, irrevocable and open for acceptance until the acceptance of a Successful Bid in accordance with section 11.2(j) and, where applicable, the selection of the Backup Bid further to the Auction.
 - (b) The Monitor shall direct and preside over the Auction. Only Auction Bidders are eligible to participate in the Auction. Only the authorized representatives (including legal counsel and other advisors) of each of the Auction Bidders, the Debtors, the Monitor, the Information Agent and representatives of the Consultation Parties, where applicable, shall be permitted to attend the Auction.
 - (c) Each Auction Bidder shall be required to confirm that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Investment Proposal or Sale Proposal. If such Auction Bidder is a special purpose vehicle, each of the direct or indirect equity holders of such Auction Bidder shall be required to confirm that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Investment Proposal or Sale Proposal, such confirmation, in each case, in form and substance satisfactory to the Monitor in its sole discretion.
 - (d) Bidding at an Auction shall be conducted in rounds. In each round, an Auction Bidder may submit no more than one Overbid. If at the end of any round of bidding, an Auction Bidder (other than the Auction Bidder who submitted the "Opening Bid" for such round and any Qualified Portion Bidder who is an Auction Bidder) did not submit an Overbid, then such Auction Bidder shall be barred from participating in any further round of bidding at the Auction. Any Auction Bidder who submits an Overbid in a round, as well as the Auction Bidder who submitted the Opening Bid for such round and any Qualified Portion Bidder who is an Auction Bidder, shall be entitled to participate in the next round of bidding at the Auction.
 - (e) The Debtors, in consultation with the Monitor, the Information Agent and representatives of the Consultation Parties, where applicable, shall apply the Investment Proposal Bid Criteria and Sale Proposal Bid Criteria, as applicable, to determine which Qualified Bid is the highest and/or best bid received by the Bid Deadline, which shall constitute the Opening Bid for the first round of an Auction. The Debtors shall follow the same process to determine the highest and/or best

Overbid submitted in each round of an Auction, which shall constitute the Opening Bid for the following round. For greater certainty, an Aggregated Bid may be determined to be the "Opening Bid" for any round. As soon as practicable prior to the start of the Auction, the Monitor shall distribute a copy of the Opening Bid for the first round to all Auction Bidders eligible to participate in the applicable Auction.

- (f) All bids made at an Auction shall be Overbids and shall be made and received on an open, non-confidential basis and the identity of each Auction Bidder and all material terms of each Overbid shall be fully disclosed to all other Auction Bidders participating in the applicable round of the applicable Auction. The Monitor shall maintain a transcript of the Opening Bids, and all Overbids made and announced at an Auction.
- (g) An Investment Proposal or Sale Proposal submitted at an Auction will be considered an "Overbid" only if it complies with the following requirements:
 - (i) *Minimum Consideration.* Subject to subparagraph (l) below in respect of Qualified Portion Bids, the amount of the purchase price (in the case of a Sale Proposal), or the amount of the consideration to be allocated to secured creditors, unsecured creditors and shareholders of the Debtors (in the case of an Investment Proposal) shall not be less than the purchase price or consideration of the Opening Bid of the applicable round of such Auction, plus an amount (the "Minimum Overbid Increment") to be set by the Monitor; and
 - (ii) *Qualified Bid Criteria.* Except as modified herein, an Overbid shall comply with all requirements for a Qualified Bid as set forth in paragraph 8.3 in the case of Sale Proposals, or paragraph 8.2 in the case of Investment Proposals, (in each case including in respect of its binding and irrevocable nature, and being open for acceptance until the acceptance of a Successful Bid in accordance with section 11.2(j) and, where applicable, the selection of the Backup Bid further to the Auction) provided, however, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits during the Auction.
- (h) At the end of each round of bidding, the Monitor shall (i) review each Overbid made in such round, (ii) identify the highest and/or best such Overbid in accordance with subparagraph (e), and (iii) announce to all Auction Bidders entitled to participate in the next round of bidding the terms of the highest and/or best Overbid and the identity of the Auction Bidder who submitted such Overbid. Such highest and/or best Overbid shall be the Opening Bid for the next round of such Auction.
- (i) The Monitor, with the approval of the Debtors, and in consultation with the Information Agent and representatives of the Consultation Parties, where applicable, reserves the right to make one or more adjournments in an Auction to, among other things: (i) allow individual Auction Bidders to consider how they wish to proceed; (ii) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (iii) give Auction Bidders the opportunity to provide the Monitor with such additional evidence as it may require to show that the Auction Bidder's bid complies with the requirements of an Overbid (including in respect of the required internal corporate or credit committee

approvals and evidence of sufficient funding commitments or other financial capabilities to consummate the proposed transaction).

- (j) If, in any round of bidding, no new Overbid is made, such Auction shall be closed, and the Monitor shall declare the last Opening Bid as a "**Successful Bid**" and the Auction Bidder submitting such Successful Bid a "**Successful Bidder**" and advise such Successful Bidder of such determination and all other applicable Auction Bidders that they are not a Successful Bidder.
- (k) To the extent not already provided, the Successful Bidder shall, within two (2) Business Days of the conclusion of the Auction, provide the Monitor with an additional Deposit to increase its original Deposit to equal the greater of: (a) \$ 100,000; or (b) 5% of the total cash purchase price or investment contemplated by the Successful Bid.
- (l) Each Qualified Portion Bidder that is an Auction Bidder shall be entitled to submit Overbids at the applicable Auction (in a minimum increment to be determined by the Monitor) with respect to the portion of the Business or Property it is bidding on and is not individually subject to the full Minimum Overbid Increment; provided that one or more Qualified Portion Bids forming an Aggregated Bid in any round of the Auction shall collectively be subject to the full Minimum Overbid Increment. For greater certainty, the Monitor may accept an Aggregated Bid as a "Successful Bid", and in such case, the applicable Auction Bidders will become "Successful Bidders".
- (m) For greater certainty, the Monitor and the Debtors shall be entitled, during an Auction, to discuss and clarify the terms of all Overbids and accept a revised, clarified Overbid, provided it is submitted before the end of the applicable round of bidding. The Monitor, with the approval of the Debtors and in consultation with the Information Agent and representatives of the Consultation Parties, where applicable, may waive compliance with any one or more of the requirements specified in subparagraph (g), and deem any non-compliant Overbid to be a qualifying Overbid.
- (n) The Monitor, in consultation with the Information Agent and representatives of the Consultation Parties, where applicable, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the SISP Procedures or the SISP Approval Order; provided that no such rules may change the requirement that all Overbids shall be made and received on an open, non-confidential basis, and all Auction Bidders entitled to participate in a further round of bidding shall be entitled to be present for all such bidding.

Section 12. Backup Bid

- 12.1 In the event a Successful Bid is accepted in accordance with section 10.6 or further to an Auction in accordance with section 11.2(j), the Monitor, with the approval of the Debtors, may also select any Qualified Bid, Aggregated Bid or Overbid, as the case may be, as the "**Backup Bid**" and take such steps as are necessary to finalize and complete an agreement for the Backup Bid with the Backup Bidder. In the event the closing of the Successful Bid accepted in accordance with sections 10.6 or 11.2(j), as the case may be,

does not occur, the Backup Bid shall, upon confirmation of the Monitor, become the Successful Bid and be dealt with as such in accordance with the SISP Procedures.

Section 13. Approval Motion

- 13.1 After a definitive agreement(s) in respect of a Successful Bid has been finalized in accordance with the SISP Procedures, if such a Successful Bid relates to the Business or Property, the Debtors shall apply to the Court as soon as reasonably practicable for an order approving such Successful Bid and authorizing the Debtors to enter into any and all necessary agreements with respect to such Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to such Successful Bid, including for the approval of any Plan(s) pursuant to the CCAA or Arrangement pursuant to the CBCA, as applicable (an "Approval Motion").
- 13.2 An Approval Motion will be held on a date to be scheduled by the Court and to be heard as soon as possible. The Debtors reserve their right, as may be necessary or appropriate, to seek to proceed on an expedited basis and abridge any notice period provided for in any Order. An Approval Motion may be adjourned or rescheduled by the Debtors by announcing the adjourned date at an Approval Motion or by notice to the Service List; no further notice shall be required.
- 13.3 All Bids (other than the Successful Bid and the Backup Bid, as the case may be) will be deemed rejected at 11:59 p.m. (Montréal Time) on the Business Day after the acceptance of the Successful Bid relating to the same Business and/or Property, without the need to send a notice of such rejection.
- 13.4 For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

Section 14. Treatment of Deposit

- 14.1 If there is a Successful Bid, the Deposit (plus accrued interest) paid by a Successful Bidder whose bid is approved by the Court will be released by the Monitor and applied to the purchase price to be paid, or investment to be made, by such Successful Bidder upon closing of the approved transaction or as otherwise set out in the definitive agreement.
- 14.2 The Deposits of Bidders not selected as a Successful Bidder, will be returned to such Bidders within ten (10) Business Days of the date of closing of the Successful Bid. If there is no Successful Bid with respect to the Business or the Property, subject to the following paragraph 14.3, all Deposits with respect to such Business or Property will be returned to all Bidders with respect to that Business or Property, within ten (10) Business Days of the date on which the SISP with respect to that Business or Property is terminated in accordance with the SISP.
- 14.3 If (i) a Successful Bidder breaches any of its obligations under the terms of the SISP Procedures or any definitive transaction documentation; (ii) a Bidder fails to complete the transaction contemplated by its Bid if required by the Monitor to complete such transaction; or (iii) a Bidder fails to provide proof of its ability to complete the transaction to the Monitor (other than with respect to conditions provided explicitly in its Bid), within five (5) Business Days of a request to that effect from the Monitor, then, in each case, such Bidder's Deposit

will be forfeited to the Debtors as liquidated damages and not as a penalty. The Debtors shall apply and use any forfeited Deposit in a manner agreed upon by the Monitor, provided, however, that the forfeiture of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Debtors and the Monitor have or may have against such breaching entity.

Section 15. Reservation of Rights and Conduct of the SISP

- 15.1 The SISP does not and will not be interpreted to create any contractual or other legal relationship between the Debtors or the Monitor and any Prospective Bidder and Bidder, other than as specifically set forth in a definitive agreement that any such Bidder may enter into with the Monitor.
- 15.2 The Monitor and the Debtors may (a) reject, at any time any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the SISP Procedures, or (iii) contrary to the best interests of the Debtors, its estate, and stakeholders as determined by the Debtors and the Monitor; (b) in accordance with the terms hereof accept bids not in conformity with the SISP Procedures to the extent that the Debtors and the Monitor determine, in their reasonable business judgment, that doing so would benefit the Debtors, its estate, and stakeholders; and (c) reject all Bids. The Debtors shall not be required to accept the highest Bid.
- 15.3 The Monitor, in its reasonable discretion and with the approval of the Debtors, may shorten the dates provided for herein or terminate the SISP if there are no credible opportunities for the conclusion of a Transaction in the process.
- 15.4 Where consultation with the Information Agent and representatives of the Consultation Parties, where applicable, is provided for in this SISP, the Monitor and Debtors, as applicable, shall use their best efforts to engage in such consultation sufficiently in advance of any subsequent deadlines to allow for meaningful consultation with such stakeholder(s).

Section 16. Credit Bidding

- 16.1 HSBC Bank Canada, or any of its affiliates (collectively, "HSBC"), shall be entitled to participate in the SISP in accordance the SISP Procedures, and submit a bid consisting of, or including, a credit bid up to the maximum amount of its secured claim (a "Credit Bid") on any part of the Property subject to its security. Notwithstanding anything contained in the SISP Procedures, if HSBC submits a Credit Bid, it shall not be required to make any deposit whatsoever.
- 16.2 HSBC shall notify the Monitor and the Debtors, in writing, of its intention to make a Credit Bid no later than ten (10) days before the LOI Deadline. Notwithstanding anything in these SISP Procedures or the SISP Order to the contrary, if the Monitor and the Debtors do not receive, within such ten (10) days period noted above, a written notice by HSBC confirming that it does not intend to submit a Credit Bid, HSBC's and the Information Agent's consultation rights set out in these SISP Procedures shall be suspended until HSBC provides such written notice to the Monitor and the Debtors that it shall not submit a Credit Bid. If the Monitor and the Debtors receive such written notice by HSBC confirming that it intends to submit a Credit Bid, HSBC's and the Information Agent's consultation rights set out in these SISP Procedures shall be immediately terminated.

Section 17. Participation of the Debtors' Shareholders, Directors or Officers

- 17.1 If any of the Debtors' shareholders, directors and officers, or any person related thereto, intends to act as a Prospective Bidder, such person shall notify the Monitor, the Debtors and the Information Agent, in writing, no later than ten (10) days before the LOI Deadline, failing which it shall not be permitted to participate in the SISP. Upon receipt of such notice, the Debtors and its shareholders, directors and officers, and any person related thereto, shall no longer be entitled to receive any information regarding the conduct of the SISP (including without limitation any information regarding the LOIs, the Qualified Investment Bids and the Qualified Purchase Bids received), the Debtors' consultation rights set out in these SISP Procedures shall be immediately terminated and the Monitor shall be authorized to take any action or make decision pursuant to these SISP Procedures that would otherwise be taken or made by, or with the authorization of, the Debtors.

Section 18. Notice to the Debtors and the Monitor

- 18.1 Any notice or other communication to be given to the Debtors in connection with this SISF shall be given in writing and shall be given by registered mail or courier, or by electronic communication addressed to the Debtors as follows:

McCarthy Tétrault LLP

1000 De La Gauchetière Street West, MZ400
Montréal, Québec, H3B 0A2

Attention:

Alain N. Tardif

atardif@mccarthy.ca

Marc-Étienne Boucher

meboucher@mccarthy.ca

François Xavier Tremblay

fxtrremblay@mccarthy.ca

- 18.2 Any notice or other communication to be given to the Monitor in connection with this SISF shall be given in writing and shall be given by registered mail or courier, or by electronic communication addressed to the Monitor as follows:

Raymond Chabot inc.

2000-600 rue de la Gauchetière Ouest
Montréal, QC H3B 1S6
Canada

Attention:

Dominic Deslandes

deslandes.dominic@rcgt.ca

Philippe Daneau

Daneau.Philippe@rcgt.com

Saki Tzanidis

Tzanidis.Saki@rcgt.com

With a copy to :

Stikeman Elliott LLP

1155 boul. René-Lévesque, 41st floor
Montréal QC H3B 3V2
Canada

Attention:

Guy P. Martel

gmartel@stikeman.com

Joseph Reynaud

jreynaud@stikeman.com

Khaoula Bansaccal

kbansaccal@stikeman.com

**SCHEDULE A
DEFINED TERMS**

"Aggregated Bid" has the meaning ascribed to it in paragraph 10.6.

"Approval Motion" has the meaning ascribed to it in paragraph 13.1.

"Arrangement" has the meaning ascribed to it in Recital F.

"Debtors" has the meaning described thereto in Recital A.

"Auction" has the meaning ascribed to it in paragraph 10.7.

"Auction Bidder" has the meaning ascribed to it in paragraph 10.7.

"Auction Date" has the meaning ascribed to it in paragraph 11.1.

"Authorized Bidder" means each bidder who has submitted a Qualified Bid.

"Backup Bid" has the meaning ascribed to it in paragraph 12.1.

"Backup Bidder" means any Bidder whose Bid is selected as the Backup Bid.

"Bid Deadline" has the meaning ascribed to it in paragraph 8.1.

"Bidders" means collectively Qualified Bidders, Authorized Bidders, Auction Bidders, Backup Bidder and Successful Bidder, each a **"Bidder"**.

"Bids" mean collectively Qualified Bids, Aggregated Bids, Backup Bids and Successful Bids, each a **"Bid"**.

"Business" has the meaning ascribed to it in Recital E.

"Business Day" means any day other than (i) a Saturday or a Sunday or (ii) a day which is a statutory holiday in Halifax, Montreal.

"CBCA" has the meaning ascribed to it in Recital F.

"CCAA" has the meaning ascribed to it in Recital A.

"CCAA Proceedings" has the meaning ascribed to it in Recital B.

"Commencement Date" has the meaning ascribed to it in paragraph 4.1.

"Confidentiality Agreement" means a form of confidentiality agreement satisfactory to the Monitor.

"Consultation Parties" has the meaning ascribed to in subparagraph 1.5.

"Contact List" has the meaning ascribed to it in subparagraph 4.1(a).

"Court" has the meaning ascribed to it in Recital A.

"Credit Bid" has the meaning ascribed to it in paragraph 16.1.

"Credit Bidder" has the meaning ascribed to it in paragraph 16.1.

"Data Room" has the meaning ascribed to it in subparagraph 4.1(e).

"Definitive Investment Agreement" has the meaning ascribed to it in subparagraph 8.2(b).

"Deposit" has the meaning ascribed to it in subparagraph 8.3(k).

"HSBC" has the meaning ascribed to it in paragraph 16.1.

"Initial Order" has the meaning ascribed to it in Recital A.

"Investment Proposal" means an offer for a broad range of executable transaction alternatives (restructuring, recapitalization and/or refinancing) involving an investment in the Debtors.

"Investment Proposal Bid Criteria" has the meaning ascribed to it in paragraph 10.1.

"LOI" has the meaning ascribed to it in paragraph 5.1(b).

"LOI Deadline" has the meaning ascribed to it in paragraph 5.1.

"Minimum Overbid Increments" has the meaning ascribed to it in subparagraph 11.2(g)(i).

"Monitor" has the meaning ascribed to it in Recital B.

"Opening Bid" has the meaning ascribed to it in subparagraph 11.2(d).

"Overbid" has the meaning ascribed to it in subparagraph 11.2(g).

"Plan" has the meaning described thereto in Recital F.

"Property" has the meaning ascribed to it in Recital E.

"Proposal" means any Investment Proposal or Sale Proposal.

"Prospective Bidders" has the meaning ascribed to it in subparagraph 4.1(a).

"Purchase Price" has the meaning ascribed to it in subparagraph 8.3(b).

"Qualification Deadline" has the meaning ascribed to it in paragraph 6.2.

"Qualified Bids" means Qualified Purchase Bids and Qualified Investment Bids, each a Qualified Bid. A Qualified Portion Bid shall be deemed a Qualified Bid.

"Qualified Bidder" has the meaning ascribed to it in paragraph 6.1.

"Qualified Investment Bid" has the meaning ascribed to it in paragraph 8.2.

"Qualified Portion Bid" has the meaning ascribed to it in paragraph 8.3.

"Qualified Portion Bidder" has the meaning ascribed to it in paragraph 8.3.

"Qualified Purchase Bid" has the meaning ascribed to it in paragraph 8.3.

"Sale Proposal" means an offer to acquire all or part of the Property.

"Sale Proposal Bid Criteria" has the meaning ascribed to it in paragraph 10.2

"Service List" has the meaning ascribed to it in paragraph 1.8.

"SISP" has the meaning ascribed to it in Recital C.

"SISP Approval Order" has the meaning ascribed to it in Recital C.

"SISP Procedures" has the meaning ascribed to it in Recital C.

"Successful Bid" has the meaning ascribed to it in paragraph 10.6.

"Successful Bidder" means the Qualified Bidder making the Successful Bid.

"Target Closing Date" has the meaning ascribed to it in subparagraph 8.3(o).

"Teaser Letter" means a solicitation letter summarizing the investment and acquisition opportunity with respect to the Property and the Business.

"Written Acknowledgement" has the meaning ascribed to it in subparagraph 4.1(f).

"Template APA" has the meaning ascribed to it in subparagraph 4.1(h).