

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED, OF WHYTE'S FOODS INC.**

Applicant

THE HONOURABLE MR.

)

FRIDAY, THE 6TH

)

JUSTICE CAVANAGH

)

DAY OF OCTOBER, 2023



**ORDER
(ST. LOUIS SALE APPROVAL, STAY EXTENSION AND SEALING)**

THIS MOTION, made by Whyte's Foods Inc. ("**Whyte's**" or the "**Vendor**") for an order pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"): (a) approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale dated September 29, 2023 (the "**St. Louis Purchase Agreement**") between the Vendor and 9498-8995 Québec Inc. and 9498-8938 Québec Inc. (collectively, the "**Purchasers**") and vesting in the Purchasers, all of the Vendor's right, title and interest in and to the Purchased Assets, as defined in the St. Louis Purchase Agreement (the "**Purchased Assets**", which include the immovable properties (the "**Immovable Properties**") described in Schedule "B" hereto); and (b) extending the time for Whyte's to file a proposal, and the corresponding stay of proceedings, until and including October 13, 2023, was heard this day by judicial videoconference via Zoom.

ON READING the Affidavit of Elizabeth Kawaja sworn October 2, 2023 and the Exhibits thereto, the Second Report of Alvarez & Marsal Canada Inc. dated October 4, 2023 (the "**Second Report**"), in its capacity as Proposal Trustee ("**A&M**" or the "**Proposal Trustee**"), and on hearing the submissions of counsel for Whyte's, counsel for the Proposal Trustee, and such other parties as listed on the Participant Information Form, with no one else appearing although properly served as appears from the affidavit of service of Natasha Rambaran, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the St. Louis Purchase Agreement.

SALE APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the St. Louis Purchase Agreement by the Vendor is hereby authorized and approved, with such minor amendments as the Vendor and the Purchasers, with the approval of the Proposal Trustee, may deem necessary. The Vendor and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a certificate by the Proposal Trustee to the Vendor and the Purchasers substantially in the form attached as Schedule "A" hereto (the "**Proposal Trustee's Certificate**"), all of the Vendor's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchasers, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated August 31, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Civil Code of Québec*, or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** the Land Registrar of the Land Registry Office for the Registration Division of Richelieu, upon presentation of the Proposal Trustee's Certificate and a true or certified translated copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to: (a) publish this Order; and (b) cancel the following Encumbrances on the Immovable Properties:

Nature of Security Registration	Publication No. (Registration)	Date of Publication	Secured Party
Hypothec on the universality of immovables	25 379 545	2020-05-15	FARM CREDIT CANADA / FINANCEMENT AGRICOLE CANADA
Hypothec on the universality of immovables	27 960 011	2023-04-17	FINANCEMENT AGRICOLE CANADA
Hypothec	27 990 530	2023-05-02	EJJ CAPITAL INC.
Prior notice of the exercise of a hypothecary right (sale by judicial authority)	28 131 192 (ref. 25 379 545, 27 960 011)	2023-07-04	FINANCEMENT AGRICOLE CANADA
Legal hypothec (judgement)	28 134 377	2023-07-05	7992009 Canada Inc.
Hypothec	10 186 770	2002-12-11	Caisse Populaire Desjardins du Fleurdelisé

6. **THIS COURT ORDERS** the registrar of the Québec Register of Personal and Movable Real Rights, upon presentation of the Proposal Trustee's Certificate and a true or certified translated copy of this Order, to reduce the scope and effect of the following Encumbrances in order to allow the transfer to the Purchasers of the Purchased Assets free and clear of such registrations:

Nature of Security Registration	Publication No. (Registration)	Date of Publication	Secured Party
Conventional hypothec without delivery	23-0434377-0002	2023-04-18	Farm Credit Canada
Conventional hypothec without delivery	22-1125895-0001	2022-10-12	Wells Fargo Capital Finance Corporation Canada
Conventional hypothec without delivery	20-0690365-0002	2020-07-20	Farm Credit Canada
Conventional hypothec without delivery	20-0415557-0004	2020-05-15	Farm Credit Canada
Conventional hypothec without delivery	13-0235482-0001	2013-03-28	Investissement Québec
Lease	21-1048447-0001	2021-09-28	Constant International
Conventional hypothec without delivery	23-0445873-0001	2023-04-19	EJJ Capital Inc.

7. **THIS COURT ORDERS** that upon the issuance of the Proposal Trustee's Certificate, any of the Vendor, the Purchasers or the Proposal Trustee, shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including the Immovable Properties (including by filing such financing change statements in the Ontario Personal Property Registry ("**OPPR**") as may be necessary) provided that the Vendor, the Purchasers and the Proposal Trustee shall not be authorized to effect any discharge that would have the effect of releasing any Encumbrances against any property other than the Purchased Assets.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets

immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

10. **THIS COURT ORDERS** that the Proposal Trustee may rely on written notice from the Vendor and the Purchasers regarding fulfillment of the conditions to Closing under the St. Louis Purchase Agreement and shall incur no liability with respect to the delivery of the Proposal Trustee's Certificate.

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

12. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Vendor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Vendor;

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

STAY EXTENSION

13. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for Whyte's to file a proposal, and the corresponding stay of proceedings provided for in Section 69 of the BIA, be and is hereby extended until and including October 13, 2023.

SEALING

14. **THIS COURT ORDERS** that Confidential Appendix "1" to the Second Report is hereby sealed pending further order of the Court and shall not form part of the public record.

GENERAL

15. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

16. **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 Whyte's and the Proposal Trustee and their 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 Whyte's and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist Whyte's and the Proposal Trustee and their agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that each of Whyte's and the Proposal Trustee be at liberty and are 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.

SCHEDULE "A"
Form of Proposal Trustee's Certificate

Court File No. 23-02978830-0031
Estate No. 31-2978830

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED,
OF WHYTE'S FOODS INC.**

Applicant

PROPOSAL TRUSTEE'S CERTIFICATE

RECITALS

A. On August 23, 2023, Whyte's Foods Inc. ("**Whyte's**" or the "**Vendor**") filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").

B. Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as Proposal Trustee of Whyte's (the "**Proposal Trustee**").

C. Pursuant to an Order of the Court dated October 6, 2023 (the "**Approval and Vesting Order**"), the Court approved an Agreement of Purchase and Sale dated September 29, 2023 (the "**St. Louis Purchase Agreement**") between the Vendor and 9498-8995 Québec Inc. and 9498-8938 Québec Inc., as purchasers (collectively, the "**Purchasers**"), and provided for the vesting in the Purchasers of the Vendor's right, title and interest in and to the Purchased Assets (the "**Transaction**"), which vesting is to be effective with respect to the Purchased Assets upon the Proposal Trustee's delivery to the Purchasers of a certificate confirming: (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the St. Louis Purchase Agreement have been satisfied or waived by the Vendor and the Purchasers, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

D. Pursuant to the Approval and Vesting Order, the Proposal Trustee may rely on written notice from the Vendor and the Purchasers regarding fulfillment of conditions to closing under the St. Louis Purchase Agreement.

E. Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the St. Louis Purchase Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchasers have paid the Purchase Price for the Purchased Assets pursuant to the St. Louis Purchase Agreement.

2. The Vendor and the Purchasers have each delivered written notice to the Proposal Trustee that the conditions to Closing under the St. Louis Purchase Agreement have been satisfied and/or waived, as applicable.

3. The Transaction has been completed to the satisfaction of the Proposal Trustee.

4. This Certificate was delivered by the Proposal Trustee at _____[TIME] on _____[DATE].

**ALVAREZ & MARSAL CANADA INC. in its
capacity as Proposal Trustee of Whyte's
Foods Inc. and not in its personal capacity**

Per: _____

Name:

Title:

SCHEDULE “B”

Description of Immovable Properties

An emplacement situated in the Municipality of Saint-Louis, Province of Québec, known and designated as being lot number THREE MILLION TWO HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED FIFTY-ONE (3 218 551) of the Cadastre du Québec, Registration Division of Richelieu.

With all the buildings and other structures thereon erected and, more particularly, the building bearing civic number 196 Saint-Martin Street, in the Municipality of Saint-Louis, Province of Québec, JOG 1K0, circumstances and dependencies.

SCHEDULE "C"

Registrations to be deleted and expunged from title to the Immovable Property

Nature of Security Registration	Publication No. (Registration)	Date of Publication	Secured Party
Hypothec on the universality of immovables	25 379 545	2020-05-15	FARM CREDIT CANADA / FINANCEMENT AGRICOLE CANADA
Hypothec on the universality of immovables	27 960 011	2023-04-17	FINANCEMENT AGRICOLE CANADA
Hypothec	27 990 530	2023-05-02	EJJ CAPITAL INC.
Prior notice of the exercise of a hypothecary right (sale by judicial authority)	28 131 192 (ref. 25 379 545, 27 960 011)	2023-07-04	FINANCEMENT AGRICOLE CANADA
Legal hypothec (judgement)	28 134 377	2023-07-05	7992009 Canada Inc.
Hypothec	10 186 770	2002-12-11	Caisse Populaire Desjardins du Fleurdelisé

SCHEDULE "D"

Permitted Encumbrances (Unaffected by the Vesting Order)

- (i) Servitudes and other restrictions which are published on or prior to the Closing Date (including servitudes for public utilities), as well as encroachments and other imperfections in title, provided that they do not, in the aggregate, materially impair the value or marketability of the Purchased Assets or its continued use after the Closing Date on substantially the same basis as the Purchased Assets is currently being used.
- (ii) Any subsisting restrictions, exceptions, reservations, limitations, provisos and conditions (including, without limitation, royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown.

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Court File No. 23-02978830-0031
Estate File No. 31-2978830

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

PROCEEDINGS COMMENCED AT
TORONTO

**ORDER
(ST. LOUIS SALE APPROVAL
AND STAY EXTENSION)**

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