Court File No. CV-25-00735458-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

# MOTION RECORD
**(Returnable March 27, 2025)**

**GOODMANS LLP**
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

**Robert J. Chadwick** LSO#35165K
rchadwick@goodmans.ca

**Christopher Armstrong** LSO# 55148B
carmstrong@goodmans.ca

**Erik Axell** LSO# 85345O
eaxell@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Applicants

Court File No. CV-25-00735458-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

## INDEX

Court File No. CV-25-00735458-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

# NOTICE OF MOTION

(Returnable March 27, 2025)

The Applicants will bring a motion under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") before the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 27, 2025, at 12:30 p.m. (Toronto time) or as soon thereafter as the motion can be heard.

**PROPOSED METHOD OF HEARING:**

☐ In writing under subrule 37.12.1 (1);

☐ In writing as an opposed motion under subrule 37.12.1(4);

☐ In person;

☐ By telephone conference;

☒ By video conference;

at a Zoom link to be made available by the Court and posted to CaseCentre in advance of the Hearing.

**THIS MOTION IS FOR:**[1]

1. An Order (the "**Expansion of Monitor's Powers and CCAA Termination Orde**r"), substantially in the form attached at Tab 3 of the Motion Record of the Applicants, among other things:

(a) authorizing and empowering the Monitor to exercise any powers which may be exercised by the board of directors or any officer of the Applicants, such power to become effective upon the service of a Monitor's certificate with the prior written consent of the Applicants and to be concurrent with the resignation of the Applicants' remaining directors and officers;

(b) terminating the CCAA proceedings effective as at the CCAA Termination Time (as defined in the Expansion of Monitor's Powers and CCAA Termination Order);

(c) providing for the discharge of A&M as the Monitor and Proposal Trustee as at the CCAA Termination Time and granting certain related relief;

(d) extending the Stay Period to the earlier of (i) the CCAA Termination Time, and (ii) such other date as the Court may order;

(e) releasing and terminating the KERP Charge and the DIP Lender's Charge;

(f) approving the second report of the Monitor (the "**Second Report"**) and the activities and conduct of the Monitor prior to or on the date of the Expansion of

[1] Capitalized terms used herein and not otherwise defined have the meanings given to them in the Affidavit of Michael G. Devon sworn March 21, 2025 (the "**Devon Affidavit**").

Monitor's Powers and CCAA Termination Order, including as described in the Second Report;

(g) approving the fees and disbursements of the Monitor, Proposal Trustee and their counsel for the periods described in the Second Report, as well as estimated amounts to be incurred through the completion of these CCAA proceedings; and

(h) providing certain other related and ancillary relief; and

2. Such further and other relief as counsel may advise, and this Court may deem just.

**THIS GROUNDS FOR THIS MOTION ARE:**

*Background*

3. Joriki TopCo Inc. ("**Joriki TopCo**"), its Canadian operating subsidiary, Joriki Inc. ("**Joriki Canada**") and its U.S. operating subsidiary, Joriki USA Inc. ("**Joriki USA**", and, collectively with Joriki TopCo and Joriki Canada, "**Joriki**" or the "**Company**") were, until very recently, in the business of manufacturing and packaging consumer beverages, including juices and plant-based beverages, for several large consumer packaged goods companies, and to a lesser extent, grocery retailers and independent brands. Joriki operated its business from three production facilities in Canada (the Toronto and Pickering facilities in Ontario, and the Delta facility in B.C.), and one in the United States (the Pittston facility in Pennsylvania).

4. As described in the Initial Affidavit, the Company experienced financial losses relating to a delay in the completion and commissioning of the Pittston facility and ongoing operational issues, as well as the Recall of certain products it produced for a customer in July 2024.

5. In August 2024, the Company engaged Goodmans and Alvarez & Marsal Canada ULC to assist in reviewing and assessing its strategic options and alternatives as a result of its financial and operational challenges. Following this review, the Company, with the assistance of the Financial Advisor, undertook the Sale Process.

6. Following the loss of a key customer and certain potential purchasers advising they would not be pursuing transactions under the Sale Process, the Company's Senior Lenders advised they were no longer prepared to fund the Company's business as a going concern.

7. Accordingly, the Company ceased active operations and, on December 31, 2024, terminated the employment of substantially all its employees save for a small group to assist in wind-down activities. Prior to this, Joriki Canada filed the NOI and Alvarez & Marsal Canada Inc.("**A&M**") was appointed as Proposal Trustee. On January 12, 2025, Joriki USA Inc., the Company's U.S. operating subsidiary, filed a petition under Chapter 7 of the United States Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware.

8. Notwithstanding the foregoing, the Applicants were still of the view that value maximizing turn-key transactions could be completed in respect of the Toronto and Delta facilities. Shortly prior to obtaining the Initial Order, Joriki Canada entered into LOIs for its Delta and Toronto facility assets.

9. On January 28, 2025, in order to provide the necessary breathing space and forum to advance the negotiation, finalization and implementation of the Transactions, the Applicants sought and obtained the Initial Order providing relief under the CCAA.

10. Following the granting of the Initial Order, Joriki Canada negotiated and finalized definitive transaction documentation, which resulted in Joriki Canada executing the Delta Facility

Purchase Agreement with Happy Planet and the Toronto Facility Purchase Agreement with Top Shelf.

11. On February 26, 2025, the Court granted: (a) an Approval and Vesting Order, among other things, approving the Delta Facility Transaction; (b) an Approval and Vesting Order approving, among other things, the Toronto Facility Transaction; and (c) an Ancillary Relief Order, among other things, extending the Stay Period to and including March 31, 2025.

12. After the Transactions were approved by the Court, the Company and its advisors, with the assistance of the Monitor, worked expeditiously to close the Transactions. The Toronto Facility Transaction closed on February 28, 2025, and the Delta Facility Transaction closed on March 7, 2025.

13. The core objective of these proceedings – the Transactions – has now been completed. The remaining activities of the Applicants include efforts to maximize the value of their remaining assets and to effect an orderly conclusion of these proceedings.

*Expansion of Monitor Powers*

14. With the Transactions now closed, it is anticipated that the Applicants remaining directors and officers will conclude their roles in the coming weeks.

15. As a result of the foregoing, effective upon the service of a Monitor's certificate with the prior written consent of the Applicants, the Expansion of Monitor's Powers and CCAA Termination Order provides that the Monitor shall be authorized and empowered, but not required, to exercise any powers which may be properly exercised by the board of directors or any officer of each of the Applicants.

16. The expansion of the Monitor's powers will assist in providing appropriate oversight of the Applicants' efforts to maximize the value of their remaining assets and assist in advancing these proceedings to an orderly and efficient conclusion.

*KERP Charge and DIP Lender's Charge*

17. With the closing of the Transactions, the Applicants will make payment of substantially all amounts owing under the KERP in the coming weeks. Regarding the DIP Loan, the Applicants ultimately never had to draw on it as they were able to fund their ongoing expenses from cash on hand and collections during the CCAA proceedings.

18. In light of the foregoing, the Applicants are seeking to have the KERP Charge and the DIP Lender's Charge released and terminated. The termination of the KERP Charge and DIP Charge is appropriate in the circumstances as the obligations secured thereby will have been satisfied or never incurred, respectively.

*Termination of the CCAA Proceedings, Discharge of the Monitor and Proposal Trustee, and Releases*

19. The core objective of these proceedings – the Transactions – has now been completed and the Applicants and the Monitor are working to complete the remaining activities described in the Devon Affidavit. Although it is possible the Applicants may require further assistance from the Court, it is also possible they are able to resolve all outstanding matters in the case without returning to Court. Accordingly, the Applicants seek customary relief to terminate these proceedings.

20. Pursuant to the proposed Expansion of Monitor's Powers and CCAA Termination Order, effective upon the Monitor certifying that all matters to be attended to in the CCAA proceedings

have been completed to the satisfaction of the Monitor, these CCAA proceedings will be terminated without any further act or formality; provided that, notwithstanding its discharge as Monitor and Proposal Trustee, A&M shall have the authority to carry out, complete or address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings or the NOI Proceeding following the CCAA Termination Time.

21. The Monitor and Proposal Trustee have duly and properly discharged and performed their duties and obligations in these CCAA proceedings and the NOI Proceeding in compliance and in accordance with the CCAA, the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c., B-3, as amended, and all orders of this Court made in these CCAA proceedings.

*Extension of the Stay Period*

22. The Stay Period currently expires on March 31, 2025.

23. The proposed Expansion of Monitor's Powers and CCAA Termination Order provides that the Stay Period shall be extended to and including the earlier of (a) the CCAA Termination Time, and (b) such other date as the Court may order.

24. The extension of the Stay Period will permit the Applicants and Monitor to continue wind-down activities as they work to realize on any residual assets for the benefit of stakeholders in advance of terminating these CCAA proceedings.

25. It is expected that the Applicants will have sufficient liquidity to complete the remaining matters in these CCAA proceeding.

26. The Applicants believe that the extension of the Stay Period is appropriate.

*General*

27. Such further and other grounds as set out in the Devon Affidavit.

28. The provisions of the CCAA, including sections 11.02(2) and 23(k), and this Court's equitable and statutory jurisdiction thereunder.

29. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, as amended.

30. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

31. The Devon Affidavit and the exhibits attached thereto;

32. The Second Report and the appendices thereto, to be filed; and

33. Such further and other materials as counsel may advise and this Court may permit.

Date: March 21, 2025

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

**Robert Chadwick** LSO#: 35165K
rchadwick@goodmans.ca

**Christopher Armstrong** LSO#: 55148B
carmstrong@goodmans.ca

**Erik Axell** LSO#: 85345O
eaxell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

Court File No. CV-25-00735458-00CL

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**NOTICE OF MOTION**
(Returnable March 27, 2025)

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

**Robert J. Chadwick** LSO# 35165K
rchadwick@goodmans.ca

**Christopher Armstrong** LSO# 55148B
carmstrong@goodmans.ca

**Erik Axell** LSO# 85345O
eaxell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants

Court File No. CV-25-00735458-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

# AFFIDAVIT OF MICHAEL G. DEVON

(sworn March 21, 2025)

## TABLE OF CONTENTS

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

**AFFIDAVIT OF MICHAEL G. DEVON**
(sworn March 21, 2025)

I, Michael G. Devon, of the City of North York, in the Province of Ontario, MAKE OATH AND SAY:

## I. INTRODUCTION

1. I am the Chief Financial Officer ("**CFO**") of Joriki TopCo Inc. ("**Joriki TopCo**" and, collectively with its affiliates, "**Joriki**" or the "**Company**") and its wholly-owned Canadian operating subsidiary, Joriki Inc. ("**Joriki Canada**"). I am responsible for overseeing the Company's finances and have been involved in considering and assessing its business challenges and restructuring options over the past nine months. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe it to be true. I do not, and do not intend to, waive privilege by any statement herein.

2. Capitalized terms used herein and not otherwise defined herein have the meanings given to them in my affidavit sworn January 22, 2025 (the "**Initial Affidavit**") or my affidavit sworn February 21, 2025 (the "**Second Affidavit**"). Copies of the Initial Affidavit and Second Affidavit

(each without exhibits) are attached hereto as Exhibit "A" and Exhibit "B". All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.

## II. ORDERS SOUGHT

3. This Affidavit is made in support of a motion by the Applicants for an Order (the "**Expansion of Monitor's Powers and CCAA Termination Order**"), among other things:

(a) authorizing and empowering the Monitor to exercise any powers which may be exercised by the board of directors or any officer of the Applicants, such power to become effective upon the service of a Monitor's certificate with the prior written consent of the Applicants and to be concurrent with the resignation of the Applicants' remaining directors and officers;

(b) terminating the CCAA proceedings effective as at the CCAA Termination Time (as defined in the Expansion of Monitor's Powers and CCAA Termination Order);

(c) providing for the discharge of A&M as the Monitor and Proposal Trustee as at the CCAA Termination Time and granting certain related relief;

(d) extending the Stay Period (as defined below) to the earlier of (i) the CCAA Termination Time, and (ii) such other date as the Court may order;

(e) releasing and terminating the KERP Charge and the DIP Lender's Charge;

(f) approving the second report of the Monitor (the "**Second Report**") and the activities and conduct of the Monitor prior to or on the date of the Expansion of

Monitor's Powers and CCAA Termination Order, including as described in the Second Report;

(g) approving the fees and disbursements of the Monitor, Proposal Trustee and their counsel for the periods described in the Second Report, as well as estimated amounts to be incurred through the completion of these CCAA proceedings; and

(h) providing certain other related and ancillary relief.

## III. BACKGROUND

4. The Company was, until very recently, in the business of manufacturing and packaging consumer beverages, including juices and plant-based beverages, for several large consumer packaged goods companies, and to a lesser extent, grocery retailers and independent brands. Joriki operated its business from three production facilities in Canada (the Toronto and Pickering facilities in Ontario, and the Delta facility in B.C.), and one in the United States (the Pittston facility in Pennsylvania).

5. As described in the Initial Affidavit, the Company experienced financial losses relating to a delay in the completion and commissioning of the Pittston facility and ongoing operational issues, as well as the Recall of certain products it produced for a customer in July 2024.

6. In August 2024, the Company engaged Goodmans and Alvarez & Marsal Canada ULC to assist in reviewing and assessing its strategic options and alternatives as a result of its financial and operational challenges. Following this review, the Company, with the assistance of the Financial Advisor, undertook the Sale Process

7. Following the loss of a key customer and certain potential purchasers advising they would

not be pursuing transactions under the Sale Process, the Company's Senior Lenders advised they were no longer prepared to fund the Company's business as a going concern.

8. Accordingly, the Company ceased active operations and, on December 31, 2024, terminated the employment of substantially all its employees save for a small group to assist in wind-down activities. Prior to this, Joriki Canada filed the NOI and Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as Proposal Trustee. On January 12, 2025, Joriki USA Inc., the Company's U.S. operating subsidiary, filed a petition under Chapter 7 of the United States Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware and Alfred T. Guiliano was appointed as trustee (the "**Chapter 7 Trustee**").

9. Notwithstanding the foregoing, the Applicants were still of the view that value maximizing turn-key transactions could be completed in respect of the Toronto and Delta facilities. Shortly prior to obtaining the Initial Order (as defined below), Joriki Canada entered into LOIs for its Delta and Toronto facility assets.

10. In order to provide the necessary breathing space and forum to advance the negotiation, finalization and implementation of the Transactions (as defined below), on January 28, 2025, the Applicants sought and obtained an order of this Court (the "**Initial Order**") providing relief under the CCAA. The Initial Order, among other things: (a) continued the NOI proceedings under the CCAA; (b) appointed A&M as the monitor (the "**Monitor**"); (c) granted a stay of proceedings up to and including February 28, 2025 (the "**Stay Period**"); (d) granted the following charges against the Property (as defined in the Initial Order), in the following priority: (i) the Administration Charge (to the maximum amount of $700,000); (ii) the Directors' Charge (to the maximum amount of $200,000); (iii) the KERP Charge (to the maximum amount of $487,500); and (iv) the DIP

Lender's Charge (to the maximum amount of $1,200,000, plus interest, fees and expenses); and (e) granted certain relief relating to the *Wage Earners Protection Program Act* (Canada).

11. Also on January 28, 2025, the Court granted an Order which authorized the liquidation of the Pickering facility and approved the auction and liquidation services agreement between Joriki Canada and Maynards Industries II Canada Ltd. (the "**Liquidator**") dated January 22, 2025.

12. Following the granting of the Initial Order, Joriki Canada negotiated and finalized definitive transaction documentation, which resulted in Joriki Canada executing (i) the Delta Facility Purchase Agreement with Happy Planet on January 31, 2025 (the "**Delta Facility Purchase Agreement**"), and (ii) the Toronto Facility Purchase Agreement with Top Shelf dated February 20, 2025 (the "**Toronto Facility Purchase Agreement**").

13. On February 26, 2025, the Court granted:

(a) an Approval and Vesting Order, among other things, approving the sale transaction (the "**Delta Facility Transaction**") contemplated by the Delta Facility Purchase Agreement;

(b) an Approval and Vesting Order, among other things, approving the sale transaction (the "**Toronto Facility Transaction**" and, together with the Delta Facility Transaction, the "**Transactions**") contemplated by the Toronto Facility Purchase Agreement; and

(c) an Ancillary Relief Order, among other things, (i) extending the Stay Period to and including March 31, 2025, and (ii) authorizing the Applicants and the Monitor to make certain distributions from the proceeds of the Transactions, the liquidation of

the Pickering facility and their remaining cash on hand to the Agent in respect of amounts outstanding under the Senior Credit Agreement.

14. As discussed in greater detail below, the Transactions have now closed. The remaining activities of the Applicants include efforts to maximize the value of their remaining assets, discussed in greater detail below, and to effect an orderly conclusion of these proceedings. Accordingly, the Applicants bring this motion seeking approval of the proposed Expansion of Monitor's Powers and CCAA Termination Order.

## IV. ACTIVITIES SINCE APPROVAL OF THE TRANSACTIONS

15. After the Transactions were approved by the Court, the Company and its advisors, with the assistance of the Monitor, worked expeditiously to close the Transactions. The Toronto Facility Transaction closed on February 28, 2025, and the Delta Facility Transaction closed on March 7, 2025, with gross total sale proceeds of approximately $11.1 million being received by the Monitor on behalf of the Applicants. In connection with the closing of the Transactions, the Applicants terminated the employment of most of their remaining employees, many of whom subsequently commenced employment with the relevant purchaser.

16. In accordance with the Ancillary Relief Order, on March 14, 2025, the Monitor, on behalf of the Applicants, made a distribution of approximately $10.6 million to the Agent in respect of amounts outstanding under the Senior Credit Agreement.

17. In addition to closing the Transactions, the Applicants have, among other things:

(a) continued to collect outstanding accounts receivables, and completed the sale of certain raw materials and packaging to customers;

(b) advanced the liquidation of the Pickering facility with the assistance of the Liquidator, which has resulted in gross proceeds of approximately $3.1 million to date. The liquidation of the Pickering facility is expected to be completed in April 2025; and

(c) pursuant to section 32 of the CCAA, delivered disclaimer notices in respect of (i) a warehouse lease, and (ii) a commercial equipment lease.

## V. REMAINING ACTIVITIES

18. With the closing of the Transactions, there are only certain limited remaining activities left to complete the realization of value from the Applicants' assets and the orderly wind down of their affairs, which are described in greater detail below.

### A. Customer Samples, Materials and Records

19. In connection with the closing of the Transactions, the Applicants, with the assistance of the Monitor, engaged in numerous discussions with their former customers regarding the delivery of product samples; the sale, return or destruction of raw materials and packaging; and the return of customer owned equipment. To the best of my knowledge, satisfactory arrangements were made with each of the former customers in this regard and I am not aware of any outstanding issues, although the Applicants still await payment for certain packaging and materials they agreed to release for the benefit of a customer and certain customer-owned equipment remains at the Pickering facility.

20. The Applicants, in consultation with the Monitor, are in the process of considering how their records, including those related to customer production, will be addressed following the conclusion of the CCAA proceedings. The Applicants have or will ship their hard copy production

records that were stored at their facilities to a third-party storage provider. The Applicants are engaged in ongoing discussions with certain of their former customers regarding production records and how they will be accessible to customers on a go-forward basis. The Applicants remain committed to working towards a satisfactory resolution in this regard that balances the interests of their former customers with the practical and economic realities of the circumstances at hand, including the Applicants' desire to minimize costs, collect outstanding accounts receivable and wind-down in the near term.

**B. Insurance Matters**

21. The Company maintains various insurance policies, including, among others, a recall liability policy, a commercial general liability policy and an excess liability policy, with certain insurance providers. As outlined in greater detail in my Initial Affidavit, the Recall had a severe negative impact on the Company's Canadian business, leading to significant costs addressing the Recall and the CFIA investigation, a class action lawsuit and the threat of additional litigation.

22. The Applicants, in consultation with the Monitor, are currently considering their options to pursue claims under the insurance polices for losses in connection with the Recall for the benefit of the Applicants' stakeholders.

**C. By-Law Proceeding**

23. In April 2024, Joriki Canada was charged with a provincial offence under the Regional Municipality of Durham Sewer Use By-Law #55-2013 for discharging water with an excess pH level (the "**By-Law Proceeding**"). The next court attendance in respect of the By-Law Proceeding is on March 24, 2025.

24. Joriki Canada, through its counsel, has advised the prosecutor in the By-Law Proceeding that it is of the view the By-Law Proceeding is stayed by the Initial Order and cannot be continued absent consent of the Applicants and the Monitor, or leave of the Court being obtained. The Applicants are currently attempting to engage in discussions with the prosecutor regarding a potential resolution of the By-Law Proceeding.

**D. Collection of Accounts Receivable and Other Amounts**

25. The Applicants, with the assistance of the Monitor, continue to work to collect outstanding accounts receivable owing by their customers as well as other sundry amounts, such as security deposits, prepayments and tax refunds. It is possible that the Applicants may need to seek relief from the Court with respect to these matters in the future if satisfactory resolutions cannot be negotiated with the relevant parties. In addition, the Applicants expect to receive additional amounts from the Liquidator in connection with the ongoing liquidation of the Pickering facility.

**E. Pickering Facility Matters**

26. The Applicants, with the assistance of the Monitor, remain in ongoing discussions with the landlord of the Pickering facility regarding matters pertaining to Joriki Canada's exit from the Pickering facility, including (among other issues) various repairs to the Pickering facility arising from the removal of equipment which the landlord asserts Joriki Canada is liable for. The Applicants expect to disclaim the Pickering lease in the coming days, to be effective at or about the conclusion of the liquidation of the Pickering facility in the April timeframe.

**F. Pittston Forklifts**

27. There are numerous forklifts and related equipment at the Pittston facility that are subject to a leasing equipment finance contract between Joriki Canada and the Bank of Nova Scotia. It

was initially anticipated that this equipment may be included in the sale of Joriki USA's assets at the Pittston facility by the Chapter 7 Trustee, but the Chapter 7 Trustee recently advised the Applicants that Joriki Canada should liquidate this equipment. The Applicants and the Monitor are in the process of considering next steps with respect to the sale or liquidation of this equipment.

### G. Additional Distribution(s) to Agent

28. As authorized by the Ancillary Relief Order, the Applicants, in consultation with the Monitor, expect to make one or more additional distributions from their remaining cash on hand and additional realizations to the Agent in respect of amounts outstanding under the Senior Credit Agreement. As previously advised, the Senior Lenders will not be repaid in full and there will be no recovery for any other creditor of the Applicants.

## VI. RELIEF SOUGHT

### A. Expansion of Monitor's Powers

29. With the Transactions now closed, it is anticipated that the Applicants remaining directors and officers will conclude their roles in the coming weeks. However, it is possible that the remaining workstreams outlined above could continue for several months (or longer) while the Applicants work to maximize the value of their residual assets and wind-down their affairs.

30. In light of the foregoing, the Expansion of Monitor's Powers and CCAA Termination Order provides for the enhancement of the Monitor's powers as they relate to the Applicants, effective upon the service of a Monitor's certificate with the prior written consent of the Applicants. In particular, the Expansion of Monitor's Powers and CCAA Termination Order provides that the Monitor shall be authorized and empowered, but not required, to exercise any powers which may be properly exercised by the board of directors or any officer of each of the

Applicants. I believe that the expansion of the Monitor's powers at the appropriate time will assist in advancing these proceedings and the wind-down of the Applicants' affairs to their conclusion on an efficient and effective basis. The Monitor has significant knowledge of the remaining issues to be addressed in these proceedings and has agreed to the proposed expansion of powers on the terms of the proposed order.

**B. Termination of KERP Charge and DIP Lender's Charge**

31. With the closing of the Transactions, the Applicants will make payment of substantially all amounts owing under the KERP on or about March 21, 2025, with one final KERP payment to a continuing employee expected to be made on April 4, 2025.

32. Regarding the DIP Loan, the Applicants ultimately never had to draw on it as they were able to fund their ongoing expenses from cash on hand and collections during the CCAA proceedings. The Applicants confirmed the termination of the DIP Loan with the DIP Lender on March 12, 2025.

33. In light of the foregoing, the Applicants are seeking to have the KERP Charge and the DIP Lender's Charge released and terminated. The release and discharge of the DIP Lender's Charge is contemplated to be effective immediately upon the granting of the Expansion of Monitor's Powers and CCAA Termination Order, while the release and termination of the KERP Charge will only become effective upon payment of all amounts secured thereby.

**C. Termination of the CCAA Proceedings and Discharge of the Monitor and Proposal Trustee**

34. The core objective of these proceedings – the Transactions – has now been completed and the Applicants and the Monitor are working to complete the remaining activities described above.

Although it is possible the Applicants may require further relief from the Court, it is also possible they are able to resolve all outstanding matters in the case without returning to Court. One of the goals of the Applicants in these proceedings has been to proceed in the most efficient manner possible. Consistent with this, the Applicants seek approval of the termination of the CCAA proceedings and related relief now, effective upon the Monitor certifying that all matters to be attended to in the CCAA proceedings have been completed to the satisfaction of the Monitor.

35. The Monitor and Proposal Trustee have duly and properly discharged and performed their duties and obligations in these CCAA proceedings and NOI proceeding in compliance and in accordance with the CCAA and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c., B-3, as amended, and all orders of this Court made in these CCAA proceedings. As such, I believe the requested relief regarding the discharge of the Monitor and Proposal Trustee is fair and reasonable in the circumstances.

**D. Stay Extension**

36. The Stay Period currently expires on March 31, 2025. The proposed Expansion of Monitor's Powers and CCAA Termination Order provides that the Stay Period shall be extended to and including the earlier of (a) the CCAA Termination Time, and (b) such other date as the Court may order.

37. I believe that the Applicants have acted and continue to act in good faith and with due diligence in these CCAA proceedings. The extension of the Stay Period will permit the Applicants and Monitor to continue wind-down activities as they work to realize on any residual assets for the benefit of stakeholders. I don't believe that the extension of the Stay Period will unduly prejudice any of the Applicants' creditors.

38. I understand that an updated cash flow forecast will be filed by the Monitor, and that this updated cash flow forecast will show that the Applicants are expected to have sufficient liquidity to complete the remaining matters in these CCAA proceedings. I understand that the Monitor is supportive of the proposed extension of the Stay Period.

## VII. CONCLUSION

39. For the reasons set forth herein, I believe that the relief sought by the Applicants on the motion is reasonable and appropriate in the circumstances.

SWORN before me by Michael G. Devon stated as being located in the City of North York in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on March 21, 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely

Erik Axell

A Commissioner for taking affidavits
Name: Erik Axell
LSO #: 85345O

Michael G. Devon

**MICHAEL G. DEVON**

**THIS IS EXHIBIT "A"**
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**
**SWORN BEFORE ME OVER VIDEOCONFERENCE**
**THIS 21st DAY OF MARCH, 2025**

Erik Axell
_____
Commissioner for Taking Affidavits

Court File No. CV-25-00735458-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

**AFFIDAVIT OF MICHAEL G. DEVON**
(sworn January 22, 2025)

## TABLE OF CONTENTS

30

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

**AFFIDAVIT OF MICHAEL G. DEVON**
(sworn January 22, 2025)

I, Michael G. Devon, of the City of North York, in the Province of Ontario, MAKE OATH AND SAY:

## I. INTRODUCTION

1. I am the Chief Financial Officer ("**CFO**") of Joriki TopCo Inc. ("**Joriki TopCo**") and its wholly-owned Canadian operating subsidiary, Joriki Inc. ("**Joriki Canada**"). I was also previously the CFO of Joriki USA Inc. ("**Joriki USA**", and, collectively with Joriki TopCo and Joriki Canada, "**Joriki**" or the "**Company**"), the Company's U.S. operating subsidiary. For clarity, Joriki USA is not an Applicant in these proceedings.[1]

2. My consulting company was engaged by Joriki in June 2024, to assist the Company with its finance functions and I subsequently commenced the CFO role on December 2, 2024, following the planned transition of the Company's prior CFO. I am responsible for overseeing the

[1] Capitalized terms used in this Introduction and not otherwise defined are defined later in my Affidavit.

Company's finances and have been involved in considering and assessing its business challenges and restructuring options over the past six months. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe it to be true. I do not, and do not intend to, waive privilege by any statement herein.

3. This affidavit is made in support of an application by the Applicants for an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). Unless otherwise indicated, all monetary references in this affidavit are to Canadian dollars.

4. Until very recently, Joriki manufactured and packaged consumer beverages, including juices and plant-based beverages for several large consumer packaged goods companies, and to a lesser extent, grocery retailers and independent brands. Joriki operated its business from three production facilities in Canada (the Toronto and Pickering facilities in Ontario, and the Delta facility in B.C.), and one in the United States (the Pittston facility in Pennsylvania).

5. Founded in 1991, Joriki historically operated a profitable business focused on its GTA operations, before expanding to British Columbia in 2010. Over the past several years, aided by investments from its controlling shareholder and secured debt financing, the Company sought to grow its operations, including expanding capabilities at its existing facilities and, in 2022, commencing the build-out of a new U.S. production facility in Pittston, Pennsylvania.

6. While the Company was very successful in growing its top line revenue, that growth, coupled with ongoing interest expense and various operational challenges, led to the Company suffering a net loss (albeit a relatively small one) in 2022. The Company's losses expanded significantly in 2023 as a result of a delay in the completion and commissioning of the Pittston facility and, thereafter, challenges reaching expected operational capacity and efficiencies there.

7. In response, the Company developed a comprehensive improvement plan for Pittston and, in early 2024, obtained additional financing from its controlling shareholder to fund necessary capital expenditures and negotiated covenant relief and other concessions from its lenders. Unfortunately, in light of subsequent events described below, the Company was unable to implement this plan, with the result that Pittston continued to experience ongoing operating losses, and the Company is now burdened by additional debt.

8. Amidst the turnaround efforts at Pittston, in July 2024 the Pickering facility was implicated in a Canada-wide recall of Silk® and Great Value® plant-based beverages as a result of a Listeria monocytogenes outbreak (the "**Recall**"). The Recall had a severe negative impact on the Company's Canadian business, leading to a shut-down of the Pickering facility (which in FY2024 was Joriki's largest production site by case volume), production pauses at other facilities, the loss of key customers, significantly reduced revenues, additional costs addressing the Recall and a related regulatory investigation, a class action lawsuit and the threat of additional litigation.

9. The Company worked to respond to the Recall and address the resulting impacts on its business, including securing incremental financing from, among others, The Bank of Nova Scotia and The Toronto Dominion Bank (the "**Senior Lenders**") and, with the assistance of its professional advisors, undertaking a strategic review of its operations, including conducting a sale process (the "**Sale Process**") to explore the possibility of a sale of some or all of its business.

10. While the Sale Process generated strong interest in various potential transactions, the Company's operating losses continued to mount. Following the loss of a key customer and certain potential purchasers advising the Company in late December 2024 they would not be pursuing transactions, the Senior Lenders advised they were no longer prepared to fund the business as a going concern.

11. Accordingly, the Company ceased active business operations and, on December 31, 2024, terminated the employment of substantially all its employees save for a small group to assist in wind-down activities. Prior to doing this, Joriki Canada filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (Canada) (the "**NOI**") and Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as proposal trustee. On January 12, 2025, Joriki USA filed a petition under Chapter 7 of the United States Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware and Alfred T. Giuliano was appointed as Chapter 7 trustee of Joriki USA (the "**Chapter 7 Trustee**").

12. Notwithstanding the cessation of active business operations, the Applicants, in consultation with their professional advisors, A&M and the Senior Lenders, continue to believe that one or more value maximizing "turn-key" transactions can still be completed in respect of the Toronto and Delta facilities, including the possibility of transactions that would preserve customer and supplier relationships and could include the possibility of some of Joriki Canada's remaining and former employees being offered employment by a purchaser. To this end, Joriki Canada has recently entered into a letter of intent ("**LOI**") with a prospective purchaser of its assets at the Delta facility and is in negotiations in respect of a transaction for the Toronto facility.

13. In light of the foregoing, the Applicants, with the support of the Senior Lenders, have commenced these proceedings in order to maintain the status quo while they pursue transactions for the Toronto and Delta facilities on an expedited timeframe, as well as a liquidation of the Pickering facility. The Applicants believe this course of action represents the best available option in the circumstances to maximize value and preserve the possibility of their Canadian business continuing in some fashion for the benefit of stakeholders.

## II. EVENTS LEADING TO THE CCAA FILING

### A. Pittston Challenges

14. Founded over 30 years ago, Joriki is a Canadian-headquartered contract manufacturer of beverages for some of the world's largest consumer brands.

15. Historically, the Company operated from its three Canadian production facilities and predominantly serviced the Canadian beverage contract packaging market. In 2019, the Company received an investment from a new controlling shareholder and began pursuing a strategy to accelerate growth with additional technical capabilities, customers and expansion of both its existing facilities and into the United States. While this strategy led to a significant increase in the Company's top-line revenue, it struggled to generate a profit in recent years, primarily driven by ongoing operating losses at its new production facility in Pittston.

16. As part of its growth strategy, in calendar year 2022, the Company began a build-out of a 403,000 sq.ft. seven-line beverage production facility in Pittston, Pennsylvania to service a major long-term contract with an anchor customer for the site in addition to two other customers who were subsequently onboarded. In addition to financing provided by its controlling shareholder, Joriki obtained approximately $150 million of additional financing from the Senior Lenders and Roynat Capital Inc. ("**Roynat**") to fund the start-up costs related to Pittston.

17. Joriki incurred significant delays and cost overruns on construction and commissioning of the Pittston site relative to initial projections. Further, the Company was unable to effectively scale production capacity at Pittston as a result of operational challenges. Pittston had only five operational production lines (of seven contemplated) which suffered from frequent unplanned downtime. As a result, the Company incurred significant operational losses at Pittston.

18. Notwithstanding these issues, Pittston had significant long-term potential (a plant in a strategically situated location, a number of long-term quality customer contracts and significant growth potential). As such, the Company devoted significant effort to address the challenges at Pittston and improve operations, including via further capital improvements and engaging a third-party operations consultant to assist in optimizing operations, with a goal of achieving full operational capacity on the five lines currently installed during calendar year 2025.

19. To facilitate these efforts, in early 2024 Joriki obtained additional financing from its controlling shareholder and various concessions from the Senior Lenders and Roynat with respect to financial covenants and interest payments under the Senior Credit Agreement and Subordinate Credit Agreement (each as defined below). With the resulting incremental capital and flexibility, in the spring of 2024, the Company, with the assistance of an operations consultant, began to implement a turnaround plan for Pittston. Unfortunately, implementation of this plan was derailed by the organizational and financial strain of the Recall, as discussed below.

**B. The Recall and its Impact**

20. On July 5, 2024, Joriki Canada was advised by the Canada Food Inspection Agency ("**CFIA**") that it was investigating a Listeriosis outbreak in Ontario in collaboration with its federal and provincial regulatory partners. CFIA disclosed that there were nine confirmed Listeriosis cases, of which six reported consumption of Danone Inc.'s ("**Danone**") Silk® product, with a date code that indicated it was produced at the Pickering facility. The CFIA required that Joriki Canada continue operating the relevant production line that produced this product until July 6, 2024, after which, the CFIA allowed Joriki Canada to shut it down.

21. On July 8, 2024, a food recall warning was issued for various Silk® and Great Value® brand plant-based refrigerated beverages due to possible Listeria monocytogenes contamination, *i.e.* the Recall. A copy of the Recall notice is attached hereto as Exhibit "A".

22. As a result of the information provided to it by the CFIA, the Company commenced a comprehensive investigation and review of its production protocols and operations in cooperation with CFIA and its customers. No determination has been made by the Company of the source of the Listeria monocytogenes or its liability, if any, in connection with the Recall.

23. The Public Health Agency of Canada ("**PHAC**") has reported that 20 laboratory-confirmed cases of Listeria monocytogenes illness were linked to this outbreak with 15 people hospitalized and three deaths. PHAC's investigation findings issued on October 11, 2024, identified Silk® and Great Value® plant-based refrigerated beverages as the likely source of the outbreak. A copy of PHAC's October 11, 2024, "Public Health Notice: Outbreak of Listeria infections linked to recalled plant-based refrigerated beverages" is attached hereto as Exhibit "B". On October 29, 2024, CFIA announced that it had concluded its investigation and confirmed that it was not able to confirm the primary source of the contamination within the Pickering facility. A copy of CFIA's "Statement on the conclusion of the food safety investigation related to the recall of various Silk and Great Value brand plant-based refrigerated beverages" dated October 29, 2024, is attached hereto as Exhibit "C".

24. On August 7, 2024, the CFIA released a public statement identifying Joriki Canada (and the Pickering facility in particular) as the third party manufacturer of the products implicated in the Recall. Certain customers subsequently suspended production at Pickering, and the facility was idled. Although Delta was not implicated in the Recall, various customers also paused production at that facility.

25. As a result of these production shutdowns and suspensions, the Company's run-rate production volumes in Canada fell by over half, resulting in significant negative net operating cash flow in Canada and associated liquidity constraints (previously Canadian operations had been a positive operating cash flow contributor to the business). The resulting losses were funded by additional shareholder loans and by obtaining short term funding from the Senior Lenders and a key customer. Notwithstanding the Company's efforts to obtain additional financing to support the business and sustain liquidity, amounts owing to many trade creditors became significantly past due.

26. Joriki Canada has been named as a defendant in a Quebec class action relating to the Recall, a copy of which is attached as Exhibit "D". A second class action relating to the Recall has been commenced in British Columbia, although to the best of my knowledge Joriki Canada has not been named as a defendant in that proceeding. Danone also delivered a letter providing notice of claims and potential claims against Joriki Canada, and to demand compensation and indemnity with respect to Danone's alleged damages, a copy of which is attached as Exhibit "E".

27. While the Recall had no direct impact on Pittston, management was required to divert its attention from the operational improvement plan there to supporting the Company's investigation and response to the Recall and, in light of its financial circumstances, the Company was unable to make many of the planned capital improvements at Pittston. As a result, Pittston's challenges continued, and its losses continued to mount. These losses were in part funded by weekly cash payments from a key customer, which payments concluded in late December 2024.

28. The impact of the Recall also led to defaults under the Senior Credit Agreement and the Subordinate Credit Agreement. The Company does not have the ability to repay the significant secured debt obligations outstanding thereunder, which total in excess of $209 million at present.

Given the amounts owing to the Senior Lenders relative to expected proceeds from realizations on the Applicants' assets, it is not expected that any value will be available for others creditors.

## C. Restructuring Efforts

29. In light of the mounting issues facing the Company, in August 2024 it engaged Goodmans LLP ("**Goodmans**"), as legal counsel, and A&M, the proposal trustee under the NOI and the proposed monitor in these proceedings (the "**Monitor**"), to assist in reviewing and assessing its strategic options and alternatives, in consultation with the Senior Lenders and their advisors.

30. Following this review, the Company, with the assistance and under the oversight of A&M, undertook the Sale Process to solicit interest in one or more sales or other value maximizing transactions in respect of the Company's business and assets.

31. The Sale Process identified a number of potential transactions for the Company's Canadian business, as well as a potential transaction for its U.S. business. Unfortunately, in late December 2024 certain potential purchasers advised they would not be pursuing transactions. In light of this development, the Senior Lenders advised they were no longer prepared to fund the Company's business as a going concern, with the result that the Company determined to cease operations and, in the case of Joriki Canada, to file the NOI. As noted previously, Joriki USA subsequently filed for Chapter 7 bankruptcy in the United States.

32. Notwithstanding that the Company has ceased active business operations, the Applicants still believe that turn-key transactions are possible for the Toronto and Delta facilities that would both maximize value and potentially preserve customer and supplier relationships and result in a purchaser offering employment to some of its current and former employees. As noted previously, the Company has recently entered into an LOI in respect of its assets at the Delta facility and is in

the process of negotiating definitive transaction documentation. It is also advancing a potential transaction for its assets at the Toronto facility. Accordingly, with the support of the Senior Lenders, the Applicants have commenced these CCAA proceedings to pursue these transactions on an expedited basis, as well as a liquidation of the Pickering facility.

33. Following filing of the NOI, the Applicants, with the assistance of A&M as proposal trustee, have worked to maximize collection of their outstanding accounts receivable, including by working to distribute finished goods and negotiating related accommodations with their customers. The Applicants currently have approximately $2 million of cash on hand. Depending on outstanding accounts receivable collections and the timing of the receipt of initial liquidation proceeds from Pickering, it is possible they may be able to finance these proceedings and ongoing expenses pending closing of transactions from their own assets. However, in order to ensure the they will have sufficient liquidity to do so, the Applicants also have been negotiating a back-stop debtor-in-possession ("**DIP**") financing facility (the "**DIP Loan**") with the Senior Lenders (in such capacity, collectively, the "**DIP Lender**"). The DIP Loan is discussed in greater detail below. The DIP Loan remains subject to credit committee approval of the DIP Lender, which is expected to be sought in advance of the hearing for the Initial Order. The Applicants or the proposed Monitor will update the Court on the status of the DIP Loan in advance of the hearing for the Initial Order.

34. Accordingly, the Applicants seek an Initial Order, providing for, among other relief: (a) a continuation of the NOI proceedings into these CCAA proceedings; (b) a stay of proceedings for an initial 30-day period (the "**Initial Stay Period**"); (c) authorization to enter into the DIP Term Sheet (as defined below) and borrow under the DIP Loan (if agreed to) in the maximum principal amount of $1,200,000; (d) the granting of the following priority charges (collectively, the "**Charges**") over the Applicants' Property (as defined in the Initial Order), listed in order of

priority: (i) the Administration Charge (as defined below) up to a maximum amount of $700,000; (ii) the Directors' Charge (as defined below) up to a maximum amount of $200,000; (iii) the KERP Charge (as defined below) up to a maximum amount of $487,500 (plus interest, fees and expenses); and (iv) the DIP Lender's Charge (as defined below) up to a maximum amount of $1,200,000 (plus interest, fees and expenses).

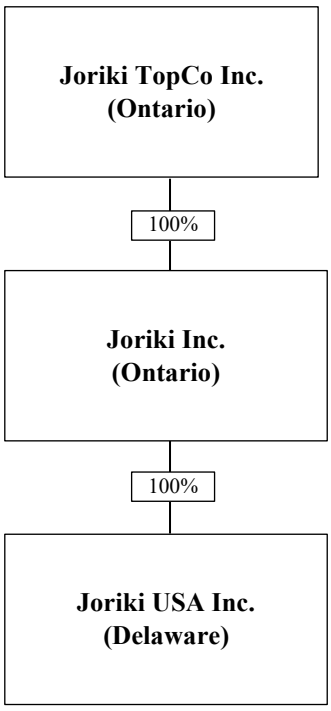
35. The CCAA proceedings and the relief outlined herein are in the best interests of the Applicants and their stakeholders and, in light of the Applicants' liquidity position and inability to repay their secured debt, represent the best means of pursuing value maximizing transactions for the benefit of stakeholders.

## III. BACKGROUND REGARDING THE COMPANY AND THE BUSINESS OF THE APPLICANTS

### A. Corporate Structure

*(i) Overview*

36. An organizational chart outlining the Company's corporate structure is set forth below.




*(ii) Joriki TopCo Inc.*

37. Joriki TopCo, the privately held parent company of the Applicants, is incorporated under the laws of Ontario with a registered head office located at 3431 McNicoll Avenue, Scarborough, Ontario (*i.e.* the Toronto facility, which also functions as the Company's headquarters). Joriki TopCo is a holding company, and its main asset is its 100% ownership interest in Joriki Canada.

38. As discussed further below, Joriki TopCo is a guarantor of Joriki Canada's obligations under the Senior Credit Agreement and the Subordinate Credit Agreement, and has granted security interests in the equity interests it holds in Joriki Canada to secure those obligations. Joriki TopCo is also the issuer of the Promissory Grid Notes (as defined below).

*(iii) Joriki Inc.*

39. Joriki Canada is a company incorporated under the laws of Ontario with its registered head office at the Toronto facility. Joriki Canada operated the Company's business in Canada, including

each of the Toronto, Pickering and Delta facilities. Joriki Canada is also the direct parent of Joriki USA.

40. As discussed further below, Joriki Canada is the borrower under the Senior Credit Agreement, the Subordinate Credit Agreement and the Intercompany Loan (as defined and discussed below), and has granted security interests in substantially all of its property to secure those obligations.

*(iv) Joriki USA Inc.*

41. Joriki USA is a company incorporated under the laws of Delaware and was the operating entity of the Company's business in the United States.

42. As noted previously, on January 12, 2025, Joriki USA filed a petition under Chapter 7 of the United States Bankruptcy Code. I understand the Chapter 7 Trustee will advance realization efforts in respect of Joriki USA's assets for the benefit of its creditors.

## B. The Business

*(i) Overview*

43. As referenced above, the Company is a Canadian headquartered contract manufacturer of beverages that offered production and packaging services for some of the world's largest consumer packaged goods companies, grocery retailers and independent brands. The Company provided end-to-end solutions to these customers, including: (i) bottle blow molding; (ii) recipe development support; (iii) plant trials; (iv) manufacturing; (v) quality inspection; and (vi) warehousing and shipping.

44. The production facilities are equipped with technology for blending, filling and packaging and the Company's core service capabilities included: (i) aseptic carton; (ii) aseptic bottle; (iii)

single and multi-serve hot-fill; and (iv) single and multi-serve chilled beverages. The facilities' production lines enabled the Company to run various flavours, configurations, pack sizes and formats, with flexible batching and blending systems for juices, electrolyte incorporation and plant-based proteins.

*(ii) Customers*

45. Joriki's contractual commitments with its customers are generally multi-year and are segmented into two categories:

(a) ***Turnkey*** - where the Company orders and purchases raw materials from certain customers' preferred vendors and passes through those costs (subject to certain periodic cost-price adjustments) to those customers, plus the Company's applicable fees or mark-up based on cases produced; and

(b) ***Tolling*** - where the Company charges fixed fees per case produced based on its services, allocable overhead costs and certain packaging and other costs incurred directly, but does not incur most raw material costs.

46. The contractual arrangements with the Company's customers specify what facility is to produce the products and how they are to be produced. As a result, production lines are configured to customers specific requirements and are not easily interchangeable.

47. The Company has a very high customer concentration. During FY24, three customers accounted for approximately 75% of case volume in Canada.

48. Many of the Company's customers are also highly dependent on Joriki and will have challenges replacing Joriki as a supplier in the near term. Accordingly, the Applicants believe that

pursuing turn-key transactions that would see a purchaser continue operating certain of its Canadian facilities could provide benefits to some of Joriki's Canadian customers.

*(iii) Headquarters and Canadian Production Facilities*

49. The Company serviced its customers from its four production facilities and managed the business from its corporate headquarters located at the Toronto facility.

(a) **Toronto Facility**

50. The Toronto facility is located in Scarborough, Ontario. It has five production lines in an approximately 65,000 square foot leased facility and a production capacity of approximately 219,000 cases per week. The production run-rate in FY24 was approximately 174,000 cases per week (79% of capacity) and the plant generated significant positive EBITDA for the Company. On November 15, 2024, the Company was given notice by its largest customer at Toronto (who represented approximately 40% of the case volume produced at this site) that they were terminating their contract effective January 2025.

(b) **Pickering Facility**

51. The Pickering facility is located at 885 Sandy Beach Road, Pickering, Ontario. It has five production lines in an approximately 118,000 square foot leased facility and a production capacity of approximately 302,000 cases per week. The production run-rate in FY24 was approximately 225,000 cases per week (75% of capacity) and the plant generated positive EBITDA for the Company prior to the Recall.

52. As discussed previously, the Pickering facility was idled following the Recall. The Pickering facility's two largest customers subsequently advised they had no plans to place any further orders for fulfillment from the Pickering facility and began the process of transitioning to

an alternative supplier. As no expressions of interest were received for Pickering in the Sale Process, the Applicants expect to proceed with an orderly liquidation of their assets there.

### (c) **Delta Facility**

53. The Delta facility is located at 695 Derwent Way, Delta, BC. It has three production lines in an approximately 54,000 square foot leased facility and a production capacity of approximately 114,000 cases per week. The production run-rate in FY24 was approximately 63,000 cases per week (55% of capacity) and the plant generated negative EBITDA.

### (d) **Regulatory Licenses**

54. Each Canadian production facility is required to have a Safe Food for Canadians License ("**SFC License**") under the *Safe Food For Canadians Regulations* (the "**SFCR**") in order to operate. The CFIA oversees and ensures that production facilities, such as the Company's, are operating in accordance with the SFCR.

55. As a result of the Recall and resulting inspections by CFIA at Pickering, on August 22, 2024, CFIA issued a written report of non-compliance to Joriki Canada under the SFCR, including outlining various corrective actions required to be taken to avoid a suspension of the Pickering SFC License. Further, on September 9, 2024, a CFIA inspector ordered that all persons employed by Joriki Canada were limited from access to anything at the Pickering facility to prevent product trial and product manufacturing with the intent of distributing. In light of the cessation of operations and the decision to liquidate Pickering, on December 31, 2024, Joriki Canada voluntarily surrendered the Pickering SFC License to the CFIA.

56. The SFC Licenses for the Toronto and Delta facilities remain in good standing and, to the knowledge of the Company, there is no pending regulatory action by CFIA in relation to those facilities.

*(iv) Employees*

57. As of December 30, 2024, the Company had approximately 565 full-time and temporary employees, approximately 337 of whom were employed by Joriki Canada.

58. As discussed previously, on December 31, 2024, the Company terminated the employment of substantially all of its employees save for certain employees retained to wind-down the Company's operations. Joriki Canada provided notice of group terminations to the Ontario Director of Employment Standards (Ministry of Labour, Immigration, Training and Skill Development) and to the B.C. Minister of Labour.

59. None of Joriki Canada's employees were unionized and the Applicants do not have any registered pension plans.

60. Joriki Canada is current on its payroll obligations, including all source deductions, and all accrued and outstanding vacation pay owing to its employees has been paid.

61. In light of the filing of the NOI and Joriki Canada's financial position, it is unable to make payment of any termination and/or severance pay that is owing to its former employees. As described in greater detail below, the Applicants are seeking a WEPP (as defined below) declaration as part of the relief sought on the Initial Order.

## IV. FINANCIAL POSITION

### A. Financial Statements

62. The fiscal year end of the Company is June 30. Copies of the Company's consolidated audited financial statements for the year ended June 30, 2023 (the "**2023 Financials**"), and unaudited internal financial statements for Joriki Canada for the year ended June 30, 2024 (the "**2024 Financials**") are attached hereto as Exhibits "F" and "G", respectively. Audited financial statements for 2024 were not completed owing to the financial position of the Company. A copy of Joriki Canada's most recent unaudited financial statements for the period ending December 31, 2024, are attached as Exhibit "H".

63. As at December 31, 2024, Joriki Canada's assets had an unaudited book value of approximately $287 million, and its liabilities had an unaudited book value of approximately $261 million. Joriki Canada's assets include approximately $215 million due from Joriki USA (reflecting Joriki Canada's investment in Joriki USA), which the Applicants expect no recovery on in light of Joriki USA's bankruptcy.

### B. Funded Debt Obligations

*(i) Overview*

64. Joriki Canada is party to two secured credit agreements, as well as a secured intercompany loan from Joriki TopCo, which are summarized in the following table and described in greater detail in the paragraphs that follow:

| Debt Obligation | Amount Outstanding as at Dec. 31, 2024 (approximately) | Maturity | Borrower(s) | Guarantor(s) | Secured |
|---|---|---|---|---|---|
| Senior Credit Agreement | $192,100,408 | September 20, 2026 | Joriki Canada | Joriki USA<br>Joriki TopCo | Yes |

| Debt Obligation | Amount Outstanding as at Dec. 31, 2024 (approximately) | Maturity | Borrower(s) | Guarantor(s) | Secured |
|---|---|---|---|---|---|
| | | | | | |
| Subordinate Credit Agreement | $17,341,510 | December 15, 2026 | Joriki Canada | Joriki USA<br>Joriki TopCo | Yes |
| Intercompany Loan | $40,000,000 (plus accrued interest) | June 30, 2027 | Joriki Canada | No | Yes |
| TopCo Promissory Grid Notes | $40,000,000 (plus accrued interest) | June 30, 2027 | Joriki TopCo | N/A | No |

*(ii) Senior Credit Agreement*

65. Joriki Canada, as borrower, Joriki USA and Joriki TopCo, as guarantors, Bank of Nova Scotia, as administrative agent (the "**Senior Agent**"), and the Senior Lenders, entered into a fourth amended and restated credit agreement dated March 11, 2024, as amended by (i) a first amendment to the fourth amended and restated credit agreement dated as of September 23, 2024, (ii) a second amendment to the fourth amended and restated credit agreement dated as of November 12, 2024, (iii) a third amendment to the fourth amended and restated credit agreement dated November 18, 2024, and (iv) a fourth amendment to the fourth amended and restated credit agreement dated December 4, 2024 (collectively, the "**Senior Credit Agreement**"). The Senior Credit Agreement amended and restated an earlier credit agreement with the Senior Lenders originally dating back to 2019. A copy of the current amended Senior Credit Agreement (excluding exhibits and schedules) is attached as Exhibit "I".[2]

[2] The names of the Company's customers have been redacted in the Senior Credit Agreement and the Subordinate Credit Agreement to preserve customer confidentiality.

66. Pursuant to the Senior Credit Agreement, the Senior Lenders made available to Joriki Canada: (i) various secured revolving credit facilities of up to $47 million; (ii) a secured non-revolving term loan facility in the aggregate principal amount of $18 million; and (iii) a non-revolving term loan facility in the aggregate principal amount of US$78,091,942 (collectively, the "**Senior Secured Facilities**" and each a "**Senior Secured Facility**").

67. Amounts outstanding under the Senior Secured Facilities bear interest at the applicable interest rate plus an applicable margin depending on the type of borrowing and Total Debt to EBITDA Ratio (as defined in the Senior Credit Agreement) of Joriki Canada at the time of the borrowing. The Senior Secured Facilities mature on September 20, 2026. As at December 31, 2024, there was approximately $192 million owing under the Senior Secured Facilities. There is no remaining availability under the Senior Secured Facilities.

68. As previously indicated, Joriki Canada is in default under the Senior Credit Agreement. Among other defaults, the Recall and its effects constitute a "Material Adverse Effect" under the Senior Credit Agreement, and the Company has also been unable to deliver audited financial statements for FY24 to the Agent in accordance with the Senior Credit Agreement. Notwithstanding these defaults, over the past several months the Senior Lenders extended additional credit to the Company in order to assist in addressing its liquidity needs while it assessed its strategic options; however, given the circumstances, the Senior Lenders have advised they are not prepared to advance any further funding without the benefit of a priority charge.

69. The Secured Facilities are secured by a security interest in substantially all of the assets and property of Joriki Canada (amongst other collateral). Attached as:

(a) Exhibit "J" is a copy of the *Personal Property Security Act* (Ontario) ("**ON PPSA**") registrations against Joriki Canada as at January 17, 2025. The ON PPSA searches show that the Senior Agent has a first in time registration against Joriki Canada in respect of all classes of collateral excluding consumer goods[3];

(b) Exhibit "K" is a copy of the *Personal Property Security Act* (B.C.) ("**BC PPSA**") registrations against Joriki Canada as at January 17, 2025. The BC PPSA searches show that the Senior Agent has a first in time registration against Joriki Canada in respect of all present and after acquired personal property of Joriki Canada; and

(c) Exhibit "L" is a copy of the ON PPSA registrations against Joriki TopCo as at January 17, 2025. The ON PPSA searches show that the Senior Agent has a first in time registration against Joriki TopCo in respect of "Accounts" and "Other".

70. The ON PPSA and BC PPSA registrations against Joriki Canada also reflect certain registrations relating to the lease of equipment (such as forklifts) that the Company utilized in its day to day operations.

*(iii) Subordinate Credit Agreement*

71. Joriki Canada, as borrower, Joriki USA and Joriki TopCo, as guarantors, and Roynat, as administrative agent and lender, entered into an amended and restated credit agreement dated March 11, 2024 (the "**Subordinate Credit Agreement**") pursuant to which Roynat made available to Joriki Canada a non-revolving loan in the aggregate principal amount of $15 million (the "**Roynat Term Loan**"). The Subordinate Credit Agreement amended and restated an earlier credit

[3] The Investor Agent (as defined below) has an earlier in time registration relating to purchased receivables under the Receivables Purchase Agreement (as defined below).

agreement with Roynat originally entered into in 2023. A copy of the Subordinate Credit Agreement (excluding exhibits and scheduled) is attached as Exhibit "M".

72. The Roynat Term Loan bears interest at 14%, payable monthly in cash or payment in kind interest (up to a maximum of 5% of the interest rate). The Roynat Term Loan matures on December 15, 2026.

73. As at December 31, 2024, the amount outstanding under the Roynat Term Loan was approximately $17.3 million. The Roynat Term Loan is secured by a security interest in substantially all of the assets and property of Joriki Canada (amongst other collateral). The ON PPSA and BC PPSA searches referenced above show that Roynat has security registrations against each of Joriki Canada and Joriki TopCo.

*(iv) TopCo Promissory Grid Notes and Intercompany Loan*

74. In connection with the early 2024 refinancing undertaken by the Company, the controlling shareholder agreed to loan $40 million to fund the Company's ongoing operations, and in particular the Pittston operational turnaround efforts. These loans were funded over the course of 2024, with the final advance being made in September 2024. The loans are evidenced by three promissory grid notes issued by Joriki TopCo to the controlling shareholder dated January 19, 2024 (the "**TopCo Promissory Grid Notes**"). The TopCo Promissory Grid Notes are unsecured, bear interest at 20% and mature on June 30, 2027.

75. The $40 million advanced under the TopCo Promissory Grid Notes was subsequently on-lent by Joriki TopCo to Joriki Canada (the "**Intercompany Loan**") as reflected in a promissory grid note issued by Joriki Canada to Joriki TopCo dated January 19, 2024. The Intercompany Loan bears interest at 20.05% and matures on June 30, 2027. As security for the Intercompany Loan,

Joriki Canada granted Joriki TopCo a security interest in substantially all of the assets and property of Joriki Canada. The ON PPSA and BC PPSA searches referenced above show that Joriki TopCo has security registrations against Joriki Canada.

76. On March 11, 2024, Joriki TopCo entered into subordination agreements with each of the Senior Agent and Roynat, pursuant to which Joriki TopCo agreed that payment of the Intercompany Loan is subordinated in right of payment to the prior payment in full of the obligations under the Senior Credit Agreement and Subordinate Credit Agreement.

*(v) Intercreditor Agreement*

77. The Senior Agent, Roynat, Joriki Canada, Joriki TopCo and Joriki USA are parties to an Intercreditor Agreement dated September 8, 2023 (the "**Intercreditor Agreement**"). Among other things, the Intercreditor Agreement provides that the payment and performance of the obligations owing to Roynat under the Subordinate Credit Agreement and the related security are deferred, postponed and subordinate in all respects to the prior final and irrevocable payment in full in cash of the obligations owing to the Senior Lenders under the Senior Credit Agreement. A copy of the Intercreditor Agreement is attached as Exhibit "N".

**C. Receivables Purchase Agreement**

78. Joriki Canada is a party to a receivables purchase agreement with JPMorgan Chase, N.A., as agent for certain investors (the "**Investor Agent**") dated September November 2, 2015 (the "**Receivables Purchase Agreement**"). Pursuant to the Receivables Purchase Agreement, Joriki Canada automatically offers to sell its receivables from a specified large customer (the "**Designated Receivables**") to the Investor Agent. If the Investor Agent accepts the applicable offer, it pays Joriki Canada a purchase price for the Designated Receivables pursuant to a

calculation outlined in the Receivables Purchase Agreement and Joriki Canada sells the Designated Receivables to the Investor Agent. The customer subsequently pays the purchased Designated Receivables directly to the Investor Agent. In light of the cessation of Joriki Canada's operations, it is no longer generating Designated Receivables.

**D. Trade Creditors**

79. Joriki Canada purchased goods and services in the normal course of business to facilitate the manufacturing of its products and the administration of the Company. Given liquidity constraints following the Recall, Joriki Canada was paying many vendors significantly in excess of usual payment terms and was unable to make payment of certain outstanding trade vendor invoices. Amounts owed to trade creditors by Joriki Canada total approximately $11.8 million.

**E. Leased Real Property**

80. Joriki Canada leases all of its production facilities. Each of the Canadian facility leases expire on September 30, 2029. Joriki Canada also leases warehouse space in the GTA. Joriki Canada is current on its monthly lease payments to its landlords, although certain small amounts outstanding for the pre-NOI period have recently been identified following discussions with the landlord of the production facilities.

**F. Litigation**

81. As noted previously, Joriki Canada has been named as a defendant, along with Danone and Walmart, in a class action that has been filed in Quebec in relation to the Recall (the "**Quebec Class Action**"). The Quebec Class action seeks compensation for "all persons in Canada who purchased the various Silk and Great Value brand plant based refrigerated beverages recalled due to Listeria monocytogenes." The Quebec Class Action has not been certified and the next

scheduled step is a judicial mediation in February 2025. The Applicants do not intend to participate in that mediation although understand their insurers may choose to do so.

82. A separate class action relating to the Recall has been commenced against Danone and Walmart in British Columbia. As of the date hereof, to the best of my knowledge Joriki Canada has not been named as a defendant in that proceeding.

83. Elopak Canada Inc., a vendor of Joriki Canada, has also filed an application with the Ontario Superior Court of Justice seeking damages against Joriki Canada in an approximate amount of $1 million dollars in relation to unpaid invoices and a failure to take delivery of finished goods (the "**Elopak Claim**"). A hearing date for the Elopak Claim had yet to be scheduled when the NOI was filed.

84. In the weeks prior to the filing of the NOI, certain other trade creditors indicated they intended to commence legal action against Joriki Canada to recover amounts owing to them, although to my knowledge Joriki Canada has not been served with any additional statements of claim or other originating document.

## V. ASSESSMENT OF STRATEGIC ALTERNATIVES AND THE SALE PROCESS

85. In August 2024, Joriki engaged Goodmans and A&M to assist it in reviewing and assessing its potential options and alternatives in light of the financial difficulties facing the Company. As part of these efforts, the Company engaged in continuing discussions and negotiations with various stakeholders, including the Senior Lenders and key customers, to discuss the potential options available to the Company.

86. To provide the Company with the liquidity and runway necessary to review its options and continue operations, the Senior Lenders and a key customer provided the Company with additional financing and funding over the course of the past several months.

87. Following this strategic review, the Company, in consultation with the Senior Lenders and their advisors, determined that the best available alternative was to pursue the Sale Process for the Company's business with the assistance of A&M.

88. The Sale Process was initially focused on a potential transaction involving Pittston but was subsequently expanded to include the Canadian operations. Marketing outreach commenced in early November 2024 and indications of interest ("**IOIs**") were received in late November 2024. Following review of the IOIs and in consultation with the Company's advisors and the Senior Lenders, a limited number of interested parties were invited to submit LOIs for a transaction by December 18, 2024. While the Company received LOIs for transactions involving various portions of the Canadian business, certain participants, including a potential purchaser of the U.S. business, ultimately advised the Company they did not intend to pursue a transaction.

89. Following the filing of the NOI, the Applicants, with the assistance of A&M, have continued to engage with potential purchasers of their assets at the Canadian facilities and, as described previously, have entered into an LOI in respect of the Delta facility and are pursuing a transaction in respect of the Toronto facility. Potential purchasers have expressed an interest in hiring some of Joriki Canada's remaining employees and former employees, and, in some cases, re-commencing production for customers. The Applicants intend to advance the negotiation and finalization of definitive transaction documentation with prospective purchasers and return to Court as quickly as possible to seek approval of transactions.

## VI. LIQUIDATION OF PICKERING

90. While the Applicants expect to enter into turn-key or other value maximizing transactions for the Delta and Toronto facilities, they believe that the best available option for Pickering is to proceed with an orderly liquidation. No offers were received for the Pickering facility in the Sale Process and the go-forward viability of this site has been impacted by the Recall and the loss of key customers. To that end, the Applicants, with the assistance of a liquidator, intend to proceed with an orderly liquidation of the inventory and equipment at the Pickering facility. A copy of the auction and liquidation services agreement between Joriki Canada and Maynards Industries II Canada Ltd. (the proposed liquidator) dated January 22, 2025, is attached hereto as Exhibit "O".

## VII. RELIEF SOUGHT ON THE CCAA APPLICATION

### A. The Applicants are Insolvent

91. Since the Recall, the Applicants have been facing, and continue to face, an ongoing liquidity crisis. The Company is also in default under the Senior Credit Agreement and Subordinate Credit Agreement and is not in a position to repay the obligations outstanding thereunder. While the Senior Lenders have provided various accommodations and additional extensions of credit to the Company over the past several months, they have confirmed that any additional funding (*i.e.* the potential DIP Loan) is conditional on commencing these proceedings and entering into and completing the transactions and an orderly liquidation of Pickering on an expedited basis. Accordingly, the Applicants are insolvent.

### B. Stay of Proceedings

92. The current NOI stay expires on January 30, 2024. In light of their financial circumstances, pending and threatened litigation and the possibility of creditors and contractual counterparties

taking adverse action, the Applicants require a continuing stay of proceedings and other protective relief under the proposed Initial Order in order to preserve the status quo and provide breathing space while they work to complete and implement turn-key transactions and an orderly liquidation of Pickering.

93. The Applicants are therefore requesting a stay of proceedings for the Initial Stay Period, and expect to seek an extension of the stay through the implementation of any transactions and the liquidation of Pickering.

## C. Cash Flow Forecast and DIP Financing

94. The Applicants' principal use of cash during these CCAA proceedings will consist of restructuring expenses, rent and utility payments and payroll expenses for Joriki Canada's remaining employees. As noted previously, it is possible the Applicants may be able to fund these proceedings and their ongoing expenses from cash on hand and realizations on certain of their assets (*e.g.*, outstanding accounts receivable and initial liquidation proceeds from Pickering). However, the quantum, timing and collectability of these receipts is uncertain at present and, as reflected in the cash flow forecast that I understand will be filed by A&M as proposed Monitor (the "**Cash Flow Forecast**"), it is possible that incremental financing may be required by the Applicants.

95. Accordingly, the Applicants, as borrower, have negotiated a term sheet (the "**DIP Term Sheet**") with the DIP Lender which contemplates a DIP Loan in a maximum principal amount of $1,200,000, to be secured by a super-priority DIP financing charge (the "**DIP Lender's Charge**"). Based on the Cash Flow Forecast, the DIP Loan is expected to provide the Applicants with sufficient liquidity to fund their current obligations in the ordinary course during these CCAA

proceedings while they work towards entering into and implementing the transactions and an orderly liquidation of Pickering.

96. As noted, although the DIP Term Sheet is in an agreed final form, the DIP Loan remains subject to credit committee approval from the DIP Lender, which is expected to be sought in advance of the hearing for the Initial Order. The Applicants or the proposed Monitor will update the Court in advance of the hearing for the Initial Order on the status of the DIP Loan.

**D. Continued Use of Cash Management System**

97. In the ordinary course of its business, the Applicants use a centralized cash management system (the "**Cash Management System**"). As part of the Cash Management System, the Applicants have multiple operating bank accounts in Canada which are used for all day-to-day and corporate operating transactions, including the collection of receipts. The Applicants are seeking the authority to continue to use the Cash Management System. The continued operation of the existing Cash Management System will minimize disruptions and avoid the need to negotiate and implement alternative banking arrangements. The current Cash Management System includes the necessary accounting controls to enable the Applicants and the proposed Monitor to trace funds and ensure that all transactions are adequately ascertainable. As such, the proposed Initial Order authorizes the continuation of the current Cash Management System.

**E. The Proposed Monitor**

98. The Applicants are seeking the appointment of A&M as the Monitor in these CCAA proceedings. A&M is the proposal trustee of Joriki Canada and has consented to act as the Monitor, subject to Court approval. I understand a copy of the Consent to Act as Monitor provided by A&M

will be included in the Application Record filed in connection with the application for the proposed Initial Order.

99. I understand from Alan J. Hutchens of A&M that A&M is a trustee within the meaning of Section 2 of the *Bankruptcy and Insolvency Act* (Canada), as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in Section 11.7(2) of the CCAA.

100. A&M became involved with the Company in August 2024 to assist the Company in its review of financial and restructuring matters and in contemplation of serving as a Court officer if formal restructuring proceedings were commenced. During the course of its mandate, A&M has assisted in reviewing and analyzing the Company's financial and liquidity position (including the Cash Flow Forecast) and restructuring options, including overseeing the Sale Process.

101. The professionals at A&M who will have carriage of this matter have acquired significant knowledge of the Company, its business and financial circumstances, and the overall restructuring efforts of the Company undertaken to date. I believe that A&M is in a position to assist the Applicants with their restructuring efforts in these CCAA proceedings.

## F. KERP

102. Following the Recall, a number of the Company's employees resigned, creating ongoing challenges in ensuring the continuation of normal course operations and resulting in an increased workload for many of the Company's remaining employees. To address this, in early December 2024, the Company, with the consent of the Senior Lenders, implemented a key employee retention program designed to incentivize certain employees who were critical to the ongoing operations of business to remain with the Company (the "**Pre-Filing KERP**").

103. The Pre-Filing KERP remains of vital importance to the Applicants to ensure that the participating employees stay through the conclusion of the Sale Process, any transactions that are entered into, and the final wind-down of the Applicants' business. The Pre-Filing KERP entitles the key employees to a lump sum cash payment (based on a percentage of their target annual compensation), provided that such key employee remains in the employment of Joriki Canada through the earlier of completion of a transaction, and a specified date.

104. The Applicants' remaining senior management were not participants under the Pre-Filing KERP. In connection with commencing these proceedings, the Applicants are seeking authorization to establish a key employee retention program for senior management structured in a manner consistent with the Pre-Filing KERP (the "**Senior Management KERP**" and, together with the Pre-Filing KERP, the "**KERP**"). As with the Pre-Filing KERP participants, the Applicants believe it is critical that the remaining senior management team be incentivized to remain in their roles pending completion of the Sale Process and any transactions that are entered into. Of note, the Company's CEO resigned in December 2024 and the Company's controller recently resigned with the result that the remaining senior management team has had to assume a greater set of responsibilities (on top of the increased responsibilities they had already been dealing with in light of the Company's operational and financial challenges as detailed herein). In addition, given the departure of the CEO, the former CFO and the controller, the remaining senior management team has critical institutional knowledge that is not replaceable.

105. In the Initial Order, the Applicants are seeking: (i) authorization to make the retention payments owing by Joriki Canada under the Pre-Filing KERP; (ii) approval of the KERP; and (iii) the granting of a priority charge (the "**KERP Charge**") to secure the maximum amount that could be owing under the KERP (*i.e.* under both the Pre-Filing KERP and the Senior Management

KERP), which is $487,500. Given the Pre-Filing KERP has already been approved and implemented by the Company, with the consent of the Senior Lenders, I believe it is critical and appropriate for these authorizations and protections to be granted now so there is no potential uncertainty regarding the status of the Pre-Filing KERP, and so that all participants in the KERP have the same protections.

106. I understand that A&M is supportive of the relief sought relating to the KERP and will be providing additional information on the KERP in its pre-filing report.

**G. Administration Charge**

107. The proposed Initial Order contemplates that a Court-ordered charge over the property will be granted in favour of the proposed Monitor (A&M), counsel to the proposed Monitor (Osler, Hoskin & Harcourt LLP) and counsel to the Applicants (Goodmans) to secure the payment of their respective fees and disbursements up to a maximum of $700,000 for the Initial Stay Period (the "**Administration Charge**"). The Administration Charge is proposed to have first ranking priority over all security interests, trusts (including deemed trusts), liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") on the Property.

108. The Applicants require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA proceedings. Each of the beneficiaries of the Administration Charge will have distinct roles in the CCAA proceedings, and will contribute to the Applicants' restructuring efforts.

109. The quantum of the proposed Administration Charge was estimated by the Applicants, with the assistance of the proposed Monitor. I believe that the Administration Charge is fair and

reasonable in the circumstances. I understand that the proposed Monitor and the Senior Lenders are also supportive of the Administration Charge.

## H. Directors and Officers Indemnity and Charge

110. I am advised by Chris Armstrong of Goodmans, counsel to the Applicants, and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid wages and vacation pay, together with unremitted sales, goods and services, and harmonized sales taxes.

111. The Company maintains an insurance policy in respect of the potential liability of its directors and officers, as well as those of its subsidiaries (the "**D&O Policy**"). While the D&O Policy insures directors and officers for certain claims that may arise against them in their capacity as directors and/or officers of the Applicants, that coverage is not absolute. Rather, it is subject to several exclusions and limitations, which may result in there being no coverage or insufficient coverage for potential liabilities.

112. The remaining directors and officers of the Applicants have expressed a desire for certainty with respect to their potential personal liability if they continue in their current roles in the CCAA proceedings.

113. Each of the remaining directors and officers has considerable experience with, and knowledge of, the Applicants' business. The Applicants require, and stakeholders will benefit from, the active involvement of their directors and officers during the CCAA proceedings, including the continuation of the Sale Process and the implementation of any transactions that are entered into. Given the uncertainty surrounding insurance and available indemnities, the Applicants' directors and officers have indicated that their continued service and involvement in

the CCAA proceedings is conditional upon the granting of a Court-ordered charge on the Property (the "**Directors' Charge**") in the amount of $200,000 to secure the indemnity provided to the directors and officers in the proposed Initial Order in respect of liabilities they may incur during the CCAA proceedings in their capacities as such. The Directors' Charge would be subordinate to the proposed Administration Charge but will rank in priority to all other Encumbrances.

114. The Applicants believe that the Directors' Charge is reasonable in the circumstances, especially in light of the aforementioned risks. I understand that the proposed Monitor and the Senior Lenders are supportive of the Directors' Charge and its quantum. The amount of the Directors' Charge has been calculated with the assistance of A&M based on the estimated potential exposure of the directors and officers and has been reviewed with me. I understand that A&M will provide further information to the Court on the calculation of the Directors' Charge in its pre-filing report. The proposed Directors' Charge would apply only to the extent that the directors and officers do not have coverage under the D&O Policy.

## I. Priorities of Charges

115. It is contemplated that the priorities of the various Court-ordered Charges granted pursuant to the Initial Order, as among them, will be as follows:

(a) Administration Charge: up to a maximum of $700,000;

(b) Directors' Charge: up to a maximum of $200,000;

(c) KERP Charge: up to a maximum amount of $487,500; and

(d) DIP Lender's Charge: up to a maximum of $1,200,000, plus interest, fees and expenses.

116. The proposed Initial Order provides for the Charges to rank in priority to all Encumbrances in favour of any person. I understand that notice of the CCAA application will be provided to the Applicants' secured creditors, and that the Senior Lenders are supportive of the proposed Charges.

**J. WEPP Relief**

117. I am advised by Chris Armstrong of Goodmans that, in the context of proceedings under the CCAA, section 5(5) of the *Wage Earners Protection Program Act* ("**WEPP**") provides that "on application by any person, a court may, in proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act*, determine that the former employer meets the criteria prescribed by regulation." Pursuant to Section 3.2 of the *Wage Earner Protection Program Regulations*, "for the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations."

118. As outlined herein, Joriki Canada has terminated the employment of all of its employees in Canada other than those retained to wind down its business operations. I understand from Mr. Armstrong that WEPP may provide payments in respect of amounts that may be owing to Joriki Canada's former employees, such as termination and severance pay. Accordingly, the Applicants have determined that it is appropriate to seek a declaration that WEPP is applicable to the Applicants in order to enable the former employees to timely access any benefits to which they may be entitled to under WEPP.

## VIII. CONCLUSION

119. The Applicants, with the assistance of their professional advisors and in consultation with the Senior Lenders and their advisors, are commencing these CCAA proceedings to facilitate the completion of the Sale Process and, ultimately, value maximizing transactions that may also provide benefits to their current and former employees, customers and suppliers. The Applicants believe that the relief sought pursuant to the proposed Initial Order is appropriate and necessary in the circumstances in order to facilitate these continuing efforts, and respectfully requests that the Court grant the proposed Initial Order.

SWORN before me by Michael G. Devon stated as being located in the City of North York in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on January 22, 2025, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

Madeline Cummings
A Commissioner for taking affidavits

**Madeline Morgan Cummings, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires May 31, 2026.**

Michael G. Devon
**MICHAEL G. DEVON**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC., JORIKI INC., AND JORIKI USA INC.**

Applicants

Court File No. CV-25-00735458-00CL

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**AFFIDAVIT OF MICHAEL G. DEVON**
(sworn January 22, 2025)

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

**Robert J. Chadwick** LSO# 35165K
rchadwick@goodmans.ca

**Christopher Armstrong** LSO# 55148B
carmstrong@goodmans.ca

**Erik Axell** LSO# 85345O
eaxell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants

**THIS IS EXHIBIT "B"**
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**
**SWORN BEFORE ME OVER VIDEOCONFERENCE**
**THIS 21st DAY OF MARCH, 2025**

Erik Axell
_____
Commissioner for Taking Affidavits

Court File No. CV-25-00735458-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

# AFFIDAVIT OF MICHAEL G. DEVON

(sworn February 21, 2025)

## TABLE OF CONTENTS

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

**AFFIDAVIT OF MICHAEL G. DEVON**
(sworn February 21, 2025)

I, Michael G. Devon, of the City of North York, in the Province of Ontario, MAKE OATH AND SAY:

## I. INTRODUCTION

1. I am the Chief Financial Officer ("**CFO**") of Joriki TopCo Inc. ("**Joriki TopCo**" and, collectively with its affiliates, "**Joriki**" or the "**Company**") and its wholly-owned Canadian operating subsidiary, Joriki Inc. ("**Joriki Canada**"). I am responsible for overseeing the Company's finances and have been involved in considering and assessing its business challenges and restructuring options over the past eight months. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe it to be true. I do not, and do not intend to, waive privilege by any statement herein.

2. Capitalized terms used herein and not otherwise defined herein have the meaning given to them in my affidavit sworn January 22, 2025 (the "**Initial Affidavit**"). A copy of the Initial

Affidavit (without exhibits) is attached hereto as Exhibit "A". All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.

## II. ORDERS SOUGHT

3. This Affidavit is made in support of a motion by the Applicants for the following three Orders:

(a) an Approval and Vesting Order, among other things, approving the transaction (the "**Delta Facility Transaction**") contemplated by the Asset Purchase Agreement dated as of January 31, 2025 (the "**Delta Facility Purchase Agreement**"), between Happy Planet Foods, Inc. ("**Happy Planet**"), as buyer, and Joriki Canada, as seller, which, subject to the approval of this Court and satisfaction of the other closing conditions, will see Happy Planet acquire substantially all of Joriki Canada's assets located at the Delta facility;

(b) an Approval and Vesting Order, among other things, approving the transaction (the "**Toronto Facility Transaction**" and, together with the Delta Facility Transaction, the "**Transactions**") contemplated by the Asset Purchase Agreement dated as of February 20, 2025 (the "**Toronto Facility Purchase Agreement**"), between Top Shelf Food and Beverage Corp. ("**Top Shelf**"), as buyer, and Joriki Canada, as seller, which, subject to the approval of this Court and satisfaction of the other closing conditions, will see Top Shelf acquire substantially all of Joriki Canada's assets located at the Toronto Facility; and

(c) an Order (the "**Ancillary Relief Order**"), among other things, (i) granting an extension of the stay of proceedings to and including March 31, 2025, (ii) making

certain amendments to the Initial Order (as defined below) requested by the Canada Revenue Agency ("**CRA**"), and (iii) authorizing the Applicants to make distributions to the Agent for the Senior Lenders in respect of the Applicants' obligations under the Senior Credit Agreement.

4. The proposed Transactions, which are supported by both the Monitor and the Senior Lenders, are a culmination of the Sale Process which began in early November 2024. They contemplate turn-key transactions that, in addition to maximizing value, provide incremental benefits to certain of the Applicants' employees, former employees, customers, suppliers and their landlord. Importantly, I understand from counsel that the purchasers have advised they expect to offer employment to nearly 100 current and former employees of Joriki Canada (and potentially more), representing a significant portion of the Company's pre-filing Canadian workforce. Further, I understand that the buyer of the Toronto facility assets will re-commence production for a number of Joriki Canada's customers. Subject to obtaining Court approval, the Applicants expect the Transactions to close in the late February/early March 2025 timeframe.

## III. BACKGROUND

5. As discussed in my Initial Affidavit, the Company was, until very recently, in the business of manufacturing and packaging consumer beverages, including juices and plant-based beverages, for several large consumer packaged goods companies, and to a lesser extent, grocery retailers and independent brands. Joriki operated its business from three production facilities in Canada (the Toronto and Pickering facilities in Ontario, and the Delta facility in B.C.), and one in the United States (the Pittston facility in Pennsylvania).

6. The Company began experiencing losses in 2022 as a result of ongoing interest expense and operational challenges. The Company's losses expanded significantly in 2023 as a result of a delay in the completion and commissioning of the Pittston facility and, thereafter, challenges reaching expected operational capacity and efficiencies there. In response, the Company developed a turnaround plan for Pittston.

7. Amidst these turnaround efforts, in July 2024, the Pickering facility was implicated in the Recall. The Recall had a severe negative impact on the Company's business, leading to, among other things, a shut-down of the Pickering facility, significantly reduced revenues, a class action lawsuit, and defaults under its credit facilities.

8. In August 2024, the Company engaged Goodmans and Alvarez & Marsal Canada ULC to assist in reviewing and assessing its strategic options and alternatives. Following this review, the Company, with the assistance of Alvarez & Marsal Canada Securities ULC (the "**Financial Advisor**"), undertook the Sale Process to solicit interest in one or more sales or other value maximizing transactions in respect of its business, and secured incremental financing from the Senior Lenders and a customer to finance these efforts and provide incremental liquidity to sustain operations.

9. While the Sale Process generated strong interest in various potential transactions for the Company's Canadian business, as well as a potential transaction for its U.S. business, operating losses continued to mount. Following the loss of a key customer and certain potential purchasers

advising they would not be pursuing transactions, the Senior Lenders advised they were no longer prepared to fund the Company's business as a going concern.

10. Accordingly, the Company ceased active operations and, on December 31, 2024, terminated the employment of substantially all its employees save for a small group to assist in wind-down activities. Prior to this, Joriki Canada filed the NOI and Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as Proposal Trustee. On January 12, 2025, Joriki USA Inc., the Company's U.S. operating subsidiary, filed a petition under Chapter 7 of the United States Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware.

11. Notwithstanding the foregoing, the Applicants, in consultation with their professional advisors, the Proposal Trustee and the Senior Lenders, were still of the view that value maximizing turn-key transactions could be completed in respect of the Toronto and Delta facilities. To this end, shortly prior to obtaining the Initial Order (as defined below), Joriki Canada entered into LOIs for its Delta and Toronto facility assets with affiliates of the proposed buyers.

12. In order to provide the necessary breathing space and forum to advance the negotiation, finalization and implementation of the Transactions, on January 28, 2025, the Applicants sought and obtained an order of this Court (the "**Initial Order**") providing relief under the CCAA. The Initial Order, among other things: (a) continued the NOI proceedings under the CCAA; (b) appointed A&M as the monitor (the "**Monitor**"); (c) granted a stay of proceedings up to and including February 28, 2025 (the "**Stay Period**"); (d) authorized the Applicants to enter into the DIP Term Sheet with the Senior Lenders, providing for borrowings of up to a maximum principal amount of $1,200,000; (e) approved the KERP; (f) granted the following charges against the Property (as defined in the Initial Order), in the following priority: (i) the Administration Charge (to the maximum amount of $700,000); (ii) the Directors' Charge (to the maximum amount of

$200,000); (iii) the KERP Charge (to the maximum amount of $487,500); and (iv) the DIP Lender's Charge (to the maximum amount of $1,200,000, plus interest, fees and expenses); and (g) granted certain relief relating to the *Wage Earners Protection Program Act* (Canada).

13. Also on January 28, 2025, the Court granted an Order which authorized the liquidation of the Pickering facility and approved the auction and liquidation services agreement between Joriki Canada and Maynards Industries II Canada Ltd. (the "**Liquidator**") dated January 22, 2025.

14. Since the granting of the Initial Order, the Applicants, in consultation with the Monitor, the Senior Lenders and their respective advisors have worked with the proposed buyers under the Transactions to negotiate and finalize definitive transaction documentation, which has now culminated in Joriki Canada executing the Purchase Agreements. In addition to finalizing and executing the Purchase Agreements, the Applicants have continued to collect accounts receivables, negotiate and complete the sale of certain raw materials and packaging to customers, advance the liquidation of the Pickering facility with the assistance of the Liquidator, address requests from their customers and otherwise worked to advance the wind-down of their business in an orderly fashion.

## IV. SALE PROCESS

### A. Overview of the Sale Process

15. In August 2024, Joriki engaged Goodmans and Alvarez & Marsal Canada ULC to assist it in reviewing and assessing its potential options and alternatives in light of the financial difficulties facing the Company. As part of these efforts, the Company engaged in continuing discussions and negotiations with various stakeholders, including the Senior Lenders and key customers, to discuss the potential options available to the Company.

16. Following this strategic review, the Company, in consultation with the Senior Lenders and their advisors, determined that the best available alternative was to pursue the Sale Process for the Company's business with the assistance of the Financial Advisor.

17. The Sale Process was designed by the Company, in consultation with the Financial Advisor and the Senior Lenders and their advisors, to be a flexible process that would enable the Company to identify the highest or otherwise best offer for one or more transactions involving their business and/or assets. The Sale Process was initially focused on a potential transaction involving Pittston, but was subsequently expanded to include the Company's Canadian operations.

18. The Sale Process for Joriki Canada's business and assets involved the following:

(a) On November 7, 2024, the Financial Advisor initiated outreach to a carefully selected group of potential acquirers, including industry participants and financial sponsors that were assessed to have both the financial capacity and strategic interest to engage in a potential transaction. In total, 34 parties were identified and contacted regarding the opportunity and each of these parties were provided with a form of non-disclosure agreement ("**NDA**");

(b) Twenty-four (24) parties entered into an NDA with Joriki Canada to receive confidential information in connection with the Sale Process. These parties were then provided with access to a confidential virtual data room (the "**Data Room**") containing non-public information regarding the Company, including financial and operational data, employee information, material contracts, agreements, and other due diligence materials. All of the parties that signed an NDA accessed the Data Room;

(c) The Company requested that interested parties submit indications of interest ("**IOIs**") by November 26, 2024 (the "**IOI Submission Date**");

(d) In the lead up to the IOI Submission Date, the Company and the Financial Advisor worked with the parties who accessed the Data Room to facilitate additional diligence requests, respond to inquiries and to otherwise ensure that such parties had the information necessary to submit an IOI by the IOI Submission Date;

(e) Four parties submitted an IOI on or about the IOI Submission Date (including Happy Planet's parent). The IOIs contemplated potential transactions for (i) both the Delta and Toronto facilities, (ii) one of the Delta or Toronto facilities on a standalone basis, and (iii) a combination of assets from the two aforementioned facilities. No IOIs were received that contemplated a transaction involving the Pickering facility;

(f) Following review of the IOIs and consultation with the Applicants' advisors and the Senior Lenders and their advisors, all four of the interested parties were invited by the Financial Advisor to submit binding letters of intent ("**LOIs**") for a transaction on or before December 18, 2024 (the "**LOI Submission Date**");

(g) In the lead up to the LOI Submission Date, the Applicants and the Financial Advisor worked with the four parties who had submitted IOIs to assist with continuing diligence efforts, including facility tours and management presentations;

(h) The Applicants received two LOIs by the LOI Submission Date, with one for the Delta facility and the other for both the Delta and Toronto facilities;

(i) On January 7, 2025 (following the filing of the NOI), the Financial Advisor received an unsolicited inquiry from an industry participant (Top Shelf's parent company) expressing interest in acquiring the Toronto facility. Following an expedited due diligence process, the participant submitted an LOI on January 15, 2025. An additional LOI was also received for certain assets at the Toronto facility on January 10, 2025; and

(j) Following a review of all of the LOIs received and consultation with the Applicants' advisors and the Senior Lenders and their advisors, it was determined that the LOIs submitted by the affiliates of Happy Planet and Top Shelf represented the best available bids, including based on value, certainty of execution and the additional benefits that could be derived for stakeholders through turn-key transactions for the Delta and Toronto facilities.

**B. Outcome of the Sale Process**

19. While the Applicants received two LOIs for transactions involving various portions of the Canadian business by the LOI Submission Date, certain participants in the Sale Process (including a potential purchaser of the U.S. business) ultimately advised the Company they did not intend to pursue a transaction. As described in my Initial Affidavit, in light of this development, and compounded by the loss of a key customer, the Senior Lenders advised they were no longer prepared to fund the Company's business as a going concern, with the result that the Company determined to cease operations and, in the case of Joriki Canada, to file the NOI.

20. Notwithstanding the foregoing, the Applicants, in consultation with their professional advisors, the Proposal Trustee and the Senior Lenders, remained of the view that value maximizing

turn-key transactions could still be completed in respect of the Toronto and Delta facilities, including transactions that would result in some of Joriki Canada's remaining and former employees being offered employment and that would preserve certain customer and supplier relationships. As such, they continued to pursue the Sale Process as outlined above, ultimately entering into LOIs for their Delta and Toronto facility assets shortly prior to commencing these CCAA proceedings.

21. Since obtaining the Initial Order, the Company, in consultation with the Monitor and the Senior Lenders and their respective advisors, have advanced the negotiation of definitive transaction documentation with Happy Planet and Top Shelf, which led to Joriki Canada executing the Purchase Agreements in recent days.

22. The Purchase Agreements represent the culmination of an extensive Sale Process and neither the Applicants nor the Monitor believe that further marketing efforts for the Applicants' assets would yield better results. Additionally, the Applicants do not have the liquidity to pursue further marketing efforts.

23. The Financial Advisor has led the Sale Process on behalf of the Applicants. The Monitor is supportive of the proposed Transactions. The Senior Lenders (who are expected to suffer a significant shortfall) have been consulted throughout the Sale Process and support the Transactions.

## V. THE DELTA FACILITY TRANSACTION

24. The terms of the Delta Facility Transaction are set forth in the Delta Facility Purchase Agreement between Happy Planet, as buyer, and Joriki Canada, as seller, a redacted copy of which

is attached as Exhibit "B" to my Affidavit.[1] Happy Planet is a subsidiary of Agrifoods International Cooperative Ltd., a federal cooperative that has been in business, in one form or another, for over a century that specializes in innovative premium quality dairy and food products and related services with over 550 employees across Canada.

25. The principal terms of the Delta Facility Purchase Agreement are summarized below. Capitalized terms used in the below table that are not otherwise defined herein have the meaning given to such terms in the Delta Facility Purchase Agreement. The following constitutes a summary only; reference should be made to the Delta Facility Purchase Agreement for a complete understanding of its terms.

| Term | Details |
|---|---|
| **Seller** | Joriki Canada, as Seller. |
| **Buyer** | Happy Planet, as Buyer. |
| **Purchase Price** | All Cash Purchase Price payable in full on Closing. Buyer has provided a Deposit equal to 15% of the Cash Purchase Price. The Purchase Price shall be increased by an amount equal to any amount of rent that is prepaid by the Seller under the Delta Facility Lease for the period from and after the Closing Time. |
| **Transaction Structure** | Asset purchase pursuant to Approval and Vesting Order. |
| **Purchased Assets** | Buyer will acquire from the Seller (i) all Machinery and Equipment owned by the Seller and located at the Delta Facility, (ii) the Transferred Contracts (being the Delta Facility Lease), (iii) the equipment records, and (iv) the Warranty Rights. |
| **Excluded Assets** | All assets that are not Purchased Assets, including, among others (i) all cash and all bank accounts, (ii) accounts receivable, (iii) prepaid expenses, (iv) inventory, (v) intellectual property, (vi) the Customer Owned Assets, and (vii) all Contracts other than the Transferred Contracts. |

[1] The purchase price and deposits payable under both Transactions has been redacted in the Purchase Agreements exhibited to my affidavit and will be provided to the Court in confidential appendices to be filed by the Monitor. As discussed in greater detail below, the Applicants are seeking a sealing order in respect of the confidential appendices. Certain customer related information has also been redacted in the Purchase Agreements to preserve customer confidentiality.

| Term | Details |
|---|---|
| **Assumed Liabilities** | Buyer will assume (i) all liabilities under Transferred Contracts (being the Delta Facility Lease) in respect of the period from and after the Closing Date, and (ii) all liabilities pertaining to the ownership or use of the Purchased Assets from and after the Closing Time. |
| **Excluded Liabilities** | All of the Seller's debts, obligations, Contracts and liabilities, of any kind or nature, that are not expressly assumed. |
| **"As is, where is"** | The Transaction is on an "as is, where is" basis without any surviving representations or warranties. |
| **Key Closing Conditions** | The Approval and Vesting Order shall have been issued and entered on or before March 7, 2025.<br>The consent of the landlord under the Delta Facility Lease shall have been obtained to assign the Delta Facility Lease to the Buyer or a Court Order under Section 11.3 of the CCAA shall have been obtained directing the assignment of the Delta Facility Lease to the Buyer. |
| **Closing Date** | Five (5) Business Days after Court Approval, or such other date as the Parties, with the consent of the Monitor, may agree. |

## VI. THE TORONTO FACILITY TRANSACTION

26. The terms of the Toronto Facility Transaction are set forth in the Toronto Facility Purchase Agreement between Top Shelf, as buyer, and Joriki Canada, as seller, a redacted copy of which is attached as Exhibit "C" to my Affidavit. Top Shelf is a subsidiary of Highbury Canco Corporation, a Canadian industry leader in food and beverage manufacturing and third-party logistics that produces many of Canada's favourite products as well as its own brands from its 1.6 million square foot facility in Leamington, Ontario.

27. The principal terms of the Toronto Facility Purchase Agreement are summarized below. Capitalized terms used in the below table that are not otherwise defined herein have the meaning given to such terms in the Toronto Facility Purchase Agreement. The following constitutes a

summary only; reference should be made to the Toronto Facility Purchase Agreement for a complete understanding of its terms.

| Term | Details |
|---|---|
| **Seller** | Joriki Canada, as Seller. |
| **Buyer** | Top Shelf, as Buyer.<br>The obligations of the Buyer to the Seller under the Toronto Facility Purchase Agreement are guaranteed by the Buyer's parent, Highbury Canco Corporation. |
| **Purchase Price** | An all Cash Purchase Price payable in full on Closing. Buyer has provided a deposit equal to approximately 15% of the Cash Purchase Price. The Purchase Price shall be increased by an amount equal to any amount of rent that is prepaid by the Seller under the Toronto Facility Lease for the period from and after the Closing Time, up to a maximum of one (1) month's rent. |
| **Transaction Structure** | Asset sale pursuant to Approval and Vesting Order. |
| **Purchased Assets** | Buyer will acquire from the Seller, (i) all Machinery and Equipment owned by the Seller and located at the Toronto Facility, (ii) the Toronto Facility Lease, (iii) the equipment records, (iv) the Warranty Rights, and (v) all remaining Inventory situated at the Toronto Facility (but excluding any Customer Proprietary Inventory unless consented to by the relevant customer). |
| **Excluded Assets** | All assets that are not Purchased Assets, including, among others (i) all cash and all bank accounts, (ii) accounts receivable, (iii) prepaid expenses, (iv) most intellectual property, (v) the Customer Owned Assets, and (vi) all Contracts other than the Toronto Facility Lease. |
| **Assumed Liabilities** | Buyer will assume, among others, all liabilities under the Toronto Facility Lease. |
| **Excluded Liabilities** | All of the Seller's debts, obligations, Contracts and liabilities, of any kind or nature, that are not expressly assumed. |
| **"As is, where is"** | The Transaction is on an "as is, where is" basis without any surviving representations or warranties. |
| **Key Closing Conditions** | The Approval and Vesting Order shall have been issued and entered on or before March 7, 2025.<br>The consent of the landlord under the Toronto Facility Lease shall have been obtained to assign the Toronto Facility Lease to the Buyer or a Court Order under Section 11.3 of the CCAA shall have been obtained directing the assignment of the Toronto Facility Lease to the Buyer. |
| **Closing Date** | Two (2) Business Days after Court Approval, or such other date as the Parties, with the consent of the Monitor, may agree. |

28. I believe the proposed Transactions represent the best available option for the Applicants to maximize the value of their assets and will deliver additional benefits to their stakeholders, including certain current and former employees, customers, suppliers and their landlord. While the Purchase Agreements do not expressly require the buyers to offer employment to any current or former employees of Joriki Canada, as described previously I understand they expect to offer employment to nearly 100 current and former employees in connection with the closings, and are considering additional hires following the re-start of production at the facilities.

29. I understand from counsel that subsection 36(7) of the CCAA imposes restrictions on asset sale approvals relating to the payment of certain employee and pension related amounts. As described in my Initial Affidavit, upon the commencement of the CCAA proceedings, Joriki Canada was (and remains) current on its payroll obligations, including all source deductions, and all accrued and outstanding vacation pay owing to its current and former employees to date has been paid. Further, Joriki Canada does not maintain any registered pension plans. As such, I do not believe these restrictions are relevant in the circumstances.

## VII. ADDITIONAL RELIEF SOUGHT

*(i) Lease Assignments*

30. A key component of the Transactions is that they are "turn-key". As such, both Transactions contemplate the assignment of the relevant facility lease to the buyer, including as a condition to closing in favour of the buyer. The assignment of the leases is integral to both Transactions given, among other things: (i) the key machinery and equipment being sold pursuant to the Transactions is large scale commercial beverage manufacturing equipment (including fillers, palletizers and case packers) that are set-up in specific configurations and would be challenging, time consuming and expensive to remove; (ii) the buyers intend to offer employment to a

significant portion of Joriki Canada's current and former employees (who, generally speaking, live in communities near the facilities); and (iii) the buyers intend to restart production at the facilities as quickly as possible following closing.

31. The landlord at each of the Canadian facilities is a company owned by Joriki's prior owner. Joriki Canada is current on its rent payments under each of the Delta and Toronto facility leases and expects to remain current through closing of the Transactions. Certain additional rent items (such as property taxes that have only recently been invoiced by the relevant municipal authorities) are in the process of being reviewed and reconciled by the parties.

32. Both the Applicants and the Monitor have kept the landlord apprised of the status of the proposed Transactions and facilitated discussions between the landlord and representatives of the respective buyers regarding the assignment of the leases. I understand from the Monitor and counsel that as part of these discussions, the landlord requested, and the buyers have provided, their financial information to the landlord on a confidential basis.

33. The Applicants, through counsel, requested the landlord's consent to the assignment of the Delta facility lease to Happy Planet on February 7, 2025, and the landlord's consent to the assignment of the Toronto facility lease to Top Shelf on February 13, 2025 (in each case, subject to closing of the relevant Transaction). The landlord has consented to the assignment of the Toronto facility lease. I understand from counsel that the landlord's counsel has advised the landlord is in continuing discussions with Happy Planet regarding the assignment of the Delta facility lease.

34. While the Applicants remain optimistic that a consent for the assignment of the Delta facility lease will be obtained from the landlord prior to the hearing for Court approval of the

Transactions, should that not occur the relief sought on the motion includes a request that the Court direct the assignment of the Delta facility lease to Happy Planet pursuant to section 11.3 of the CCAA. I understand the Monitor supports the Applicants' request in this regard to the extent necessary. The Applicants or the Monitor will update the Court in advance of the hearing regarding the status of the landlord's consent.

*(ii) Stay Extension*

35. The Stay Period under the Initial Order will expire on February 28, 2025. Additional time is required to complete the Transactions, if approved by this Court, and to advance next steps in these proceedings, including completion of the Pickering liquidation and other remaining efforts to maximize the value of the Applicants' assets and pursue an orderly wind-down of their affairs. An extension of the Stay Period is necessary to provide the Applicants with the stability needed during that time. The Applicants are therefore seeking an extension of the Stay Period to and including March 31, 2025.

36. I believe that the Applicants have acted in good faith in these CCAA proceedings by pursuing the Transactions and other efforts to maximize the value of their assets for the benefit of stakeholders and that the extension of the Stay Period will not unduly prejudice any of their creditors. Furthermore, circumstances exist that make the extension of the Stay Period appropriate as the extension will permit the Applicants to close the Transactions for the benefit of stakeholders, distribute proceeds, continue to advance the liquidation of the Pickering facility, and continue wind-down activities as they work to realize on any residual assets.

37. I understand that an updated cash flow forecast will be filed by the Monitor in connection with its First Report to the Court, and that this updated cash flow forecast will show that the Applicants are expected to have sufficient liquidity to continue these CCAA proceedings

throughout the proposed extension of the Stay Period. Of note, as anticipated, the Applicants have been able to fund their activities from cash on hand and the collection of accounts receivable and have not had to draw on the DIP Loan to date. I understand that the Monitor and the Senior Lenders are supportive of the proposed extension of the Stay Period.

*(iii) Distributions*

38. The Applicants are requesting authority from the Court for the Applicants and the Monitor to make distributions from time to time of the net proceeds resulting from the closing of the Transactions, the proceeds of the Pickering liquidation and their remaining cash on hand to to the Agent in respect of the obligations outstanding under the Senior Credit Agreement, subject to retaining sufficient funds to satisfy obligations secured by the priority Charges and amounts necessary to facilitate the ongoing administration of these CCAA proceedings and the remaining activities of the Applicants.

39. I understand from the Monitor that counsel to the Monitor has reviewed the security granted by Joriki Canada in favour of the Agent, and found its security to be valid and enforceable, subject to customary assumptions and qualifications.

40. I believe that the proposed distribution relief is reasonable and appropriate at this time and will assist in advancing these proceedings.

*(iv) Amendment to Initial Order Requested by CRA*

41. In the lead up to the hearing for the Initial Order, the Department of Justice, in its capacity as counsel to the CRA, contacted the Applicants' counsel to request certain amendments to the form of the Initial Order as relates to the Applicants' obligation to remit employment related deductions and contributions to the CRA in the post-filing period. Following discussions amongst

counsel, the parties have agreed to amended language in this regard as reflected in the proposed Ancillary Relief Order. I understand from counsel that similar modifications have been requested by the CRA in other recent CCAA cases. For clarity, the Applicants are current, and expect to remain current, on all post-filing employee related remittances.

*(v) Sealing*

42. The Applicants are seeking an order sealing the confidential appendices to the Monitor's First Report that includes the purchase price payable under both Transactions. I believe that public disclosure of the purchase prices prior to closing of the Transactions would be harmful to the integrity of the Sale Process as well as the Applicants efforts to maximize value for stakeholders should either of the Transactions fail to close and the Applicants be required to pursue alternative transactions.

## VIII. CONCLUSION

43. The Applicants, with the assistance and under the oversight of the Monitor, have undertaken extensive efforts through the Sale Process to identify transactions that maximize value and provide additional benefits to their stakeholders. These efforts have resulted in the Applicants entering into the Purchase Agreements, the approval of which is supported by the Monitor and the Senior Lenders.

44. For the reasons set forth herein, I believe that the relief sought by the Applicants on the motion is reasonable and appropriate in the circumstances.

SWORN before me by Michael G. Devon stated as being located in the City of North York in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on February 21, 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely

Erik Axell

A Commissioner for taking affidavits
Name: Erik Axell
LSO: 85345O

Michael G. Devon

**MICHAEL G. DEVON**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Court File No. CV-25-00735458-00CL

Applicants

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**AFFIDAVIT OF MICHAEL G. DEVON**
(Sworn February 21, 2025)

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

**Robert J. Chadwick** LSO#: 35165K
rchadwick@goodmans.ca

**Christopher Armstrong** LSO# 55148B
carmstrong@goodmans.ca

**Erik Axell** LSO# 85345O
eaxell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Court File No. CV-25-00735458-00CL

Applicants

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**AFFIDAVIT OF MICHAEL G. DEVON**
(Sworn March 21, 2025)

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

**Robert J. Chadwick** LSO#: 35165K
rchadwick@goodmans.ca

**Christopher Armstrong** LSO# 55148B
carmstrong@goodmans.ca

**Erik Axell** LSO# 85345O
eaxell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants

Court File No. CV-25-00735458-00CL

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

| | | |
|---|---|---|
| THE HONOURABLE | ) | THURSDAY, THE 27TH |
| | ) | |
| JUSTICE OSBORNE | ) | DAY OF MARCH, 2025 |

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

**EXPANSION OF MONITOR'S POWERS AND CCAA TERMINATION ORDER**

**THIS MOTION**, made by Joriki TopCo Inc and Joriki Inc. (collectively, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things: (a) expanding the powers of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") to permit the orderly wind-down of these CCAA proceedings; (b) terminating these CCAA proceedings upon service of the CCAA Termination Certificate (as defined below) upon the service list in these CCAA proceedings (the "**Service List**"); (c) discharging A&M as the Monitor and Proposal Trustee upon service of the CCAA Termination Certificate on the Service List and granting certain related relief; (d) extending the Stay Period until the CCAA Termination Time (each as defined below); (e) terminating and releasing certain Court-ordered priority charges; (f) approving the fees and disbursements of the Proposal Trustee and the Monitor and its their legal counsel as described in the second report of the Monitor dated March ●, 2025 (the "**Second Report**") and the affidavits sworn in support thereof; (g) removing the sealing of certain appendices previously sealed in these CCAA proceedings; and (h) granting certain other related relief, was heard this day by videoconference via Zoom in Toronto, Ontario.

**ON READING** the Motion Record of the Applicants, including the affidavit of Michael G. Devon sworn March 21, 2025 (the "**Devon Affidavit**"), the Second Report, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for The Bank of Nova Scotia, in its capacity as administrative agent (in such capacity, the "**Agent**") for the Senior Lenders of the Applicants, and counsel for the other parties listed on the counsel slip and such other counsel as were present, no one else appearing although duly served.

**SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein 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 in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Devon Affidavit or the Initial Order of this Court dated January 28, 2025 (the "**Initial Order**").

**DIRECTORS AND OFFICERS RESIGNATION**

3. **THIS COURTS ORDERS** that concurrent with service of the Monitor's Certificate (as defined below) on the Service List, all then current Directors and Officers of the Applicants shall be deemed to have resigned from their positions as directors or officers of the Applicants without any further act or formality.

**MONITOR'S ENHANCED POWERS**

4. **THIS COURT ORDERS** that upon service by the Monitor, with the prior written consent of the Applicants and following the termination of all remaining employees by the Applicants, of an executed certificate in substantially the form attached hereto as Schedule "A" (the "**Monitor's Certificate**") on the Service List in these CCAA proceedings (the "**Effective Time**"), in addition

to the powers and duties of the Monitor set out in the Initial Order, any other Order of this Court granted in these CCAA proceedings, the CCAA and applicable law, and without altering in any way the obligations of the Applicants in these CCAA proceedings, the Monitor be and is hereby authorized and empowered, but not required, to exercise any powers which may be properly exercised by the board of directors or any officer of each of the Applicants, including, without limitation, to cause the Applicants to:

(a) take any and all actions and steps, and execute all agreements, documents and writings, on behalf of, and in the name of, the Applicants, in order to facilitate the performance of any of their powers or obligations, or the exercise of any of their rights, including, without limitation, in connection with the Delta Facility Transaction, the Toronto Facility Transaction, the Pickering facility liquidation, any Order of this Court or any agreement or instrument to which an Applicant is party;

(b) engage, retain or terminate the services of, or cause the Applicants to engage, retain, or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other Person or entities, all under the supervision and direction of the Monitor, as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of its powers and duties;

(c) perform such other functions or duties, and enter into any agreements or incur any obligations on behalf of the Applicants, as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down or liquidation of the Applicants, the realization and/or sale of the Applicants' remaining assets and

undertakings, the distribution of the proceeds of their Property, or any other related activities;

(d) maintain the Applicants' bank accounts into which all funds, monies, cheques, instruments and other forms of payment held by or payable to the Applicants shall be deposited to from any source whatsoever and to operate and control as applicable, on behalf of the Applicants, such accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties, including, without limitation, to transfer any funds on deposit therein to the Monitor's trust account from time to time;

(e) commence, conduct, supervise and direct any proceeding or other effort to recover any Property of the Applicants (including any accounts receivable, insurance proceeds, refund or other amount due to the Applicants), including initiating, prosecuting and/or continuing the prosecution of any and all proceedings in the name of or on behalf of the Applicants;

(f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Applicants (including any governmental authority) in the name of or on behalf of the Applicants, including with respect to any litigation or regulatory proceedings to which any of the Applicants are a party;

(g) assert all insurance claims of the Applicants and claim any and all insurance refunds or tax refunds to which the Applicants are entitled;

(h) have access to all books and records that are the Property of or in the possession or control of the Applicants (the "**Books and Records**") or any service provider engaged by the Applicants or Monitor to assist with the retention of the Books and Records;

(i) retain the Books and Records in accordance with the *Safe Food for Canadians Regulations* (SOR2018-108) or other applicable Canadian safety foods standards regulations, as applicable;

(j) provide access to the Applicants' former customers of Books and Records relating to the production of products for such former customers on such terms as the Monitor shall consider appropriate, including with respect to confidentiality and cost reimbursement;

(k) facilitate or assist the Applicants with accounting, tax and financial reporting functions, including the preparation of cash flow forecasts, tax returns, employee-related remittances, T4 statements and records of employment, in each case based solely upon the information in the Applicants' books and records and on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such reporting, remittances, statements, records or other documents;

(l) exercise any shareholder rights of the Applicants;

(m) assign any of the Applicants, or cause any of the Applicants to be assigned, into bankruptcy, and A&M shall hereby be entitled but not obligated to act as a trustee in bankruptcy of any of the Applicants;

(n) act as an authorized representative of the Applicants in respect of dealings with the Canada Revenue Agency (the "**CRA**") or any other taxation authority, and the Monitor shall hereby be entitled to execute any appointment or authorization form on behalf of the Applicants that the CRA or any other taxation authority may require in order to confirm the Monitor's appointment as an authorized representative for such purposes;

(o) apply to this Court for advice and directions or any further orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court, including for advice and directions with respect to any matter; and

(p) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

5. **THIS COURT ORDERS** that the Monitor is hereby directed to file a copy of the Monitor's Certificate with the Court as soon as practicable following service thereof on the Service List.

6. **THIS COURT ORDERS** that, following the Effective Time, the banks and/or financial institutions which maintain the Cash Management System of each of the Applicants (which includes, for the avoidance of doubt, each of the Applicants' bank accounts) are, if and when requested by the Monitor, directed to recognize and permit the Monitor and its representatives to complete any and all transactions on behalf of the Applicants in connection with such Cash Management System and for such purpose, the Monitor and its representatives are empowered and shall be permitted to execute agreements and other documents for, or on behalf of and in the name

of the Applicants, and shall be empowered and permitted to add and remove persons having signing authority with respect to the Cash Management System of the Applicants. The financial institutions maintaining such Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor for and on behalf of the Applicants, and/or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any Person.

7. **THIS COURT ORDERS** that, notwithstanding anything contained in this Order, the Monitor is not, and shall not be or be deemed to be, a director, officer or employee of any of the Applicants.

8. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, the Applicants shall remain in possession and control of their respective Property and Business and the Monitor shall not take, or be deemed to have taken, possession or control of such Property or the Business, or any part thereof.

9. **THIS COURT ORDERS** that the Monitor shall be entitled to rely on the Books and Records without independent investigation.

10. **THIS COURT ORDERS** that the Monitor shall not be liable for any employee-related liabilities of the Applicants, if any, other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee-related liabilities of the Applicants, including wages, severance pay, termination pay,

vacation pay, and pension or benefit amounts, or amounts, in each case whether arising under statute, contract, common law or otherwise.

11. **THIS COURT ORDERS** that: (i) in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court, and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in carrying out of the provisions of this Order and exercising any powers granted to it hereunder; and (ii) the Monitor shall incur no liability or obligation as a result of exercising any powers granted to it hereunder, save and except for any gross negligence or wilful misconduct on its part and the Monitor shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on its part.

12. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Applicants within the meaning of any relevant legislation and that any distributions to creditors of the Applicants by the Monitor will be deemed to have been made by the Applicants.

13. **THIS COURT ORDERS** that the powers and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Applicants with respect to such matters and, in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

**TERMINATION OF CCAA PROCEEDINGS**

14. **THIS COURT ORDERS** that upon service by the Monitor of an executed certificate in substantially the form attached hereto as Schedule "B" (the "**CCAA Termination Certificate**") on the Service List, these CCAA proceedings shall be terminated without any further act or formality (the "**CCAA Termination Time**"), save and except as provided in this Order, and provided that nothing herein impacts the validity of any orders made in these CCAA proceedings or any action or steps taken by any Person in accordance therewith.

15. **THIS COURT ORDERS** that the Monitor is hereby directed to file a copy of the CCAA Termination Certificate with the Court as soon as practicable following service thereof on the Service List.

**DISCHARGE OF THE MONITOR, PROPOSAL TRUSTEE AND RELATED RELIEF**

16. **THIS COURT ORDERS** that, effective at the CCAA Termination Time, A&M shall be and is hereby discharged from its duties as the Monitor and as Proposal Trustee, and shall have no further duties, obligations or responsibilities as Monitor or Proposal Trustee from and after the CCAA Termination Time, provided that, notwithstanding its discharge as Monitor and Proposal Trustee, A&M shall have the authority to carry out, complete or address any matters in its role as Monitor and Proposal Trustee that are ancillary or incidental to these CCAA proceedings or the NOI Proceeding following the CCAA Termination Time, as may be required or appropriate ("**Monitor/Proposal Trustee Incidental Matters**").

17. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor's and Proposal Trustee's discharge or the termination of these CCAA proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and Proposal Trustee shall

continue to have the benefit of, all of the rights, approvals, releases and protections in favour of the Monitor or the Proposal Trustee at law or pursuant to the CCAA, the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c., B-3, as amended, the Initial Order, any other order of this Court in these CCAA proceedings or otherwise, all of which are expressly continued and confirmed following the CCAA Termination Time, including in connection with any Monitor/Proposal Trustee Incidental Matters and any other actions taken by the Monitor or Proposal Trustee following the CCAA Termination Time with respect to the Applicants or these CCAA proceedings.

18. **THIS COURT ORDERS** that upon the CCAA Termination Time, the Proposal Trustee, Monitor and their affiliates, officers, directors, employees, legal counsel and agents (collectively, the "**Proposal Trustee/Monitor Released Parties**" and each a "**Proposal Trustee/Monitor Released Party**") shall be and are hereby forever released and discharged from any and all claims that any Person may have or be entitled to assert against any of the Proposal Trustee/Monitor Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence in any way relating to, arising out of, or in respect of, the NOI Proceeding and these CCAA proceedings or with respect to their respective conduct in the NO Proceeding and these CCAA proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby irrevocably and forever released, stayed, extinguished and forever barred, and the Proposal Trustee/Monitor Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability that is finally determined by a court of competent jurisdiction to have constituted gross negligence or wilful misconduct on the part of the applicable Proposal Trustee/Monitor Released Party.

19. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any of the Proposal Trustee/Monitor Released Parties relating to a Released Claim except with prior leave of this Court on not less than fifteen (15) days prior written notice to the applicable Proposal Trustee/Monitor Released Party and the Monitor and upon further order securing, as security for costs, the full indemnity costs of the applicable Proposal Trustee/Monitor Released Party in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

**EXTENSION OF THE STAY PERIOD**

20. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

**TERMINATION OF KERP CHARGE AND DIP LENDER'S CHARGE**

21. **THIS COURT ORDERS** that, following payment to the participants in the KERP of all amounts payable thereunder in accordance with its terms and conditions, the KERP Charge shall be automatically released and terminated without any further action.

22. **THIS COURT ORDERS** that the DIP Lender's Charge be and is hereby released and terminated.

**APPROVAL OF THE MONITOR'S REPORT, ACTIVITIES AND FEES, AND THE PROPOSAL TRUSTEE'S FEES**

23. **THIS COURT ORDERS** that the Second Report of the Monitor and the activities and conduct of the Monitor up to and including the date hereof in relation to the Applicants and these CCAA proceedings (including as described in the Second Report) are hereby ratified and

approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

24. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, the Proposal Trustee and Osler, Hoskin & Harcourt LLP ("**Osler**") as set out in the Second Report, be and are hereby approved.

25. **THIS COURT ORDERS** that the fees and disbursements of the Monitor to complete its remaining duties in these CCAA proceedings and Osler's fees and disbursements in connection with the Monitor's completion of its remaining duties in these CCAA proceedings, estimated not to exceed $● and $● (in each case, excluding applicable taxes), respectively, are hereby approved.

**SEALED EXHIBITS**

26. **THIS COURT ORDERS** that the Confidential Appendices (being Appendices "C" and "D") to the First Report of the Monitor dated February 25, 2025, shall no longer be sealed from the public record.

**GENERAL**

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies having jurisdiction in Canada, the United States or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants and the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary

or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date hereof and is enforceable without any need for entry and filing.

_____

**SCHEDULE "A"**

**FORM OF MONITOR'S CERTIFICATE**

Court File No. CV-25-00735458-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

**MONITOR'S CERTIFICATE**

**RECITALS**

A. Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as the Monitor of Joriki TopCo Inc. and Joriki Inc. (collectively, the "**Applicants**") in the within proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 28, 2025 (as amended and restated, the "**Initial Order**").

B. Pursuant to an Expansion of Monitor's Power and CCAA Termination Order of this Court dated March 27, 2025 (the "**Order**"), among other things, the Monitor is authorized and empowered, but not required, to exercise any powers which may be properly exercised by the board of directors of any of the Applicants upon the service of this Monitor's Certificate on the Service List with the prior written consent of the Applicants.

C. Unless otherwise indicated herein, capitalized terms used in this Monitor's Certificate shall have the meaning given to them in the Initial Order or the Order, as applicable.

**THE MONITOR CERTIFIES** that the Applicants have consented to the filing of this Monitor's Certificate in accordance with the terms of the Order.

**DATED** at Toronto, Ontario this _____ day of _____, 2025.

**ALVAREZ & MARSAL CANADA INC.**, in its capacity as Court-appointed Monitor of the Applicants, and not in its personal or corporate capacity

Per: _____

Name:

Title:

**SCHEDULE "B"**

**FORM OF CCAA TERMINATION CERTIFICATE**

Court File No. CV-25-00735458-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

**CCAA TERMINATION CERTIFICATE**

**RECITALS**

A. Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as the Monitor of Joriki TopCo Inc. and Joriki Inc. (collectively, the "**Applicants**") in the within proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 28, 2025 (as amended and restated, the "**Initial Order**").

B. Pursuant to an Expansion of Monitor's Power and CCAA Termination Order of this Court dated March 27, 2025 (the "**Order**"), among other things, A&M will be discharged as the Monitor and the CCAA proceedings shall be terminated upon the service of this Monitor's Certificate on the Service List, all in accordance with the terms of the Order.

C. Unless otherwise indicated herein, capitalized terms used in this Monitor's Certificate shall have the meaning given to them in the Initial Order or the CCAA Termination Order, as applicable.

**THE MONITOR CERTIFIES** that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings (Court File No. CV-25-00735458-00CL), have been completed to the satisfaction of the Monitor.

**DATED** at Toronto, Ontario this _____ day of _____, 2025.

**ALVAREZ & MARSAL CANADA INC.**, in its capacity as Court-appointed Monitor of the Applicants, and not in its personal or corporate capacity

Per: _____

Name:

Title:

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

Court File No. CV-25-00735458-00CL

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

Proceeding commenced at Toronto

**EXPANSION OF MONITOR'S POWERS AND CCAA TERMINATION ORDER**

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

**Robert J. Chadwick** LSO# 35165K
rchadwick@goodmans.ca

**Christopher Armstrong** LSO# 55148B
carmstrong@goodmans.ca

**Erik Axell** LSO# 85345O
eaxell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

Court File No. CV-25-00735458-00CL

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**MOTION RECORD**
(Returnable March 27, 2025)

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

**Robert J. Chadwick** LSO# 35165K
rchadwick@goodmans.ca

**Christopher Armstrong** LSO# 55148B
carmstrong@goodmans.ca

**Erik Axell** LSO# 85345O
eaxell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants