Court File No. CV-21-00669445-00CL

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 MCEWAN ENTERPRISES INC.

Applicant

MOTION RECORD
(Returnable December 21, 2021)

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NOTICE OF MOTION
(Returnable December 21, 2021)

McEwan Enterprises Inc. ("**MEI**", the "**McEwan Group**" or the "**Applicant**") will make a motion before Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on December 21, 2021, at 9:00 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

☐ 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 provided in advance of the hearing.

THE MOTION IS FOR:

1. An Order (the "**CCAA Termination Order**") pursuant to the *Companies' Creditors Protection Act* (the "**CCAA**"), substantially in the form attached at Tab 2 of the Applicant's Motion Record, among other things:

(a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof;

(b) extending the Stay Period (as defined in the Amended and Restated Initial Order granted by this Court in these CCAA proceedings on October 7, 2021 (as amended from time to time, the "**Amended and Restated Initial Order**") to the earlier of (i) the CCAA Termination Time (as defined below), or (ii) 11:59 p.m. on January 14, 2022;

(c) approving an increase to the Interim Transaction Funding (as defined in the Stay Extension and Interim Transaction Funding Approval Order granted by this Court in these CCAA proceedings on November 1, 2021 (the "**November 1 Order**", as amended by the Stay Extension and Interim Transaction Funding Approval Order granted by this Court in these CCAA proceedings on November 26, 2021 (the "**November 26 Order**")) up to the maximum amount of $2.0 million;

(d) approving the reports of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the Court-appointed Monitor of the Applicant (the "**Monitor**") filed in these CCAA proceedings and the activities and conduct of the Monitor described therein;

(e) approving the fees and disbursements of the Monitor and the Monitor's counsel;

(f) terminating these CCAA proceedings upon the service by the Monitor of an executed certificate in substantially the form attached as Schedule "A" to the

proposed CCAA Termination Order on the service list in these CCAA proceedings (the "**CCAA Termination Time**");

(g) releasing and discharging of the Charges (as defined in the Amended and Restated Initial Order) and the Interim Transaction Funding Charge (as defined in the November 1 Order) effective as of the CCAA Termination Time;

(h) from and after the CCAA Termination Time, waiving any and all defaults and events of default of the Applicant under agreements to which the Applicant is a party as a result of the insolvency of the Applicant, the commencement or continuation of these CCAA proceedings by the Applicant and/or the CCAA Termination Order or any other Orders of this Court in these CCAA proceedings (the "**Default Waiver**");

(i) effective as of the CCAA Termination Time, discharging A&M as the Monitor and granting a release of claims in favour of the Monitor, its counsel and their respective affiliates and officers, directors, partners, employees and agent; and

(j) such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION are as follows:

Background

2. Unless otherwise indicated or defined herein, capitalized terms have the meaning given to them in the Affidavit of Dennis Mark McEwan sworn September 27, 2021, filed in these CCAA proceedings.

3. The McEwan Group is recognized as one of Canada's premier hospitality companies with a portfolio of innovative, high-end restaurants, gourmet grocery stores, gourmet food halls and catering services (the "**Business**") operating primarily in the Greater Toronto Area. The Applicant operates six restaurants (collectively, the "**McEwan Restaurants**"), two food-hall locations and one gourmet grocery location (collectively with the McEwan Restaurants, the "**McEwan Locations**").

4. Many of the McEwan Locations have been historically successful and profitable; however, certain unprofitable and operationally expensive locations have been underperforming for a number of years, causing an overall significant strain on the Applicant's profitability and liquidity.

5. Commencing in March 2020, the significant and detrimental impacts of the COVID-19 pandemic greatly exacerbated the Applicant's pre-existing financial and liquidity challenges.

6. The Applicant implemented extensive cost-saving and cash conservation measures to address the COVID-19 challenges, negotiated various rent concessions, obtained various government subsidies and support, and obtained additional funding from its shareholders.

7. Commencing in the summer of 2021, the McEwan Group engaged legal counsel to assist it in reviewing and assessing its various potential options and alternatives, in light of the financial difficulties facing the McEwan Group.

8. The McEwan Group made extensive efforts, with the assistance of its advisors, to seek consensual arrangements with its landlords in respect of its leases, to improve lease terms and

reduce those lease obligations that are unsustainable and/or to exit certain locations, but was unable to achieve a comprehensive out-of-court resolution.

9. On September 28, 2021, the Applicant commenced these proceedings under the CCAA, and A&M was appointed as the Monitor of the Applicant.

10. The principal objectives of the Applicant's CCAA proceedings have been to ensure the ongoing operations of the McEwan Group for the benefit of its many stakeholders and to effectuate a restructuring of the Applicant and its Business in order to provide for a right-sized, sustainable Business going forward.

First Capital Settlement and CCAA Termination

11. The only opposing creditor during these CCAA proceedings has been First Capital Holdings (Ontario) Corporation ("**First Capital**"), MEI's landlord in respect of the McEwan Yonge & Bloor location. MEI has engaged in discussions with First Capital with respect to a potential consensual resolution of the disputed matters between MEI and First Capital in connection with the lease agreement entered into by MEI and First Capital for the McEwan Yonge & Bloor location (as amended, the "**Yonge & Bloor Lease**"), and on December 16, 2021, MEI and First Capital entered into a confidential binding settlement term sheet (the "**Settlement Term Sheet**"), pursuant to which MEI and First Capital reached a mutual resolution of the issues in dispute between the parties, including the consensual termination of the Yonge & Bloor Lease and mutual release of obligations between MEI and First Capital in respect of such lease, among certain other material settlement terms (the "**First Capital Settlement**"), subject to the satisfaction of certain conditions.

12. The terms and conditions of the Settlement Term Sheet and First Capital Settlement are confidential between the parties, and have also been disclosed to the Monitor on a confidential basis.

13. The Applicant is also working with the landlord parties (collectively, "**Cadillac Fairview**") in respect of the leases for the Bymark, Fabbrica TD, McEwan TD, Fabbrica Don Mills and McEwan Don Mills locations (collectively, the "**Cadillac Fairview Leases**") to finalize documentation with respect to amended terms for the Cadillac Fairview Leases on a consensual basis. The Applicant does not expect to seek amendments to the lease for the Fabbrica Thornbury location.

14. The consensual resolution of the Applicant's lease obligations is a significant positive development for the Applicant in these CCAA proceedings, as well as for its many stakeholders. The arrangements with its landlords will result in, among other things, the Applicant exiting its most challenged, burdensome and unsustainable locations, and proceeding with a right-sized Business going forward.

15. Given the positive and consensual result of the extensive and litigious dispute between the Applicant and First Capital, and the Applicant's current circumstances, the Applicant believes that it is appropriate and in the best interest of the McEwan Group and its many stakeholders to proceed to terminate these CCAA proceedings, including discharging A&M as the Monitor and releasing and discharging the Court-ordered charges granted in these CCAA proceedings.

16. The Applicant believes that the proposed limited releases in favour of the Monitor, its counsel, and each of their respective affiliates and officers, directors, partners, current and

former employees, legal counsel and agents, in connection with the termination these CCAA proceedings are appropriate in the circumstances.

17. The Applicant believes that the requested Default Waiver is reasonable and appropriate in the circumstances, important to protect the operations of the Business following the termination of these CCAA proceedings, and in the interests of the McEwan Group's stakeholders.

Extension of the Stay Period

18. The Stay Period currently expires on December 22, 2021. The Applicant is seeking an extension of the Stay Period to the earlier of the CCAA Termination Time or January 14, 2022.

19. The extension of the Stay Period is necessary in order to maintain continued stability for the Applicant while it works diligently and in good faith to further advance its efforts with its landlords on a consensual basis, satisfy the conditions to the First Capital Settlement and terminate these CCAA proceedings.

20. The Applicant is expected to have sufficient funding to operate the Business during the proposed extension of the Stay Period.

21. No creditor will suffer any material prejudice as a result of the extension of the Stay Period.

22. The Applicant has been and is continuing to act in good faith and with due diligence.

Additional Funding

23. Pursuant to the November 1 Order, the Applicant received approval of Interim Transaction Funding of up to a maximum amount of $600,000 to finance the Applicant's

working capital requirements, other general corporate purposes and capital expenditures, and the costs of these CCAA proceedings. Pursuant to the November 26 Order, the maximum amount of Interim Transaction Funding was increased to a maximum of $1.4 million.

24. The Applicant is seeking an increase to the Interim Transaction Funding up to a maximum amount of $2.0 million to provide the Applicant with sufficient funding through the proposed extension of the Stay Period. The increased Interim Transaction Funding would be secured pursuant to the Interim Transaction Funding Lender's Charge (as defined in the November 1 Order) granted pursuant to the November 1 Order.

25. There would be no material prejudice to any of the Applicant's creditors as a result of the increased Interim Transaction Funding Lender.

Monitor's Reports, Activities and Fees

26. The Monitor and its counsel have maintained records of their professional costs and time as will be detailed in the Fourth Report of the Monitor, and the affidavits attached thereto, to be filed.

General

27. The provisions of the CCAA and this Court's equitable and statutory jurisdiction thereunder.

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

29. Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media regarding Expanded Operations of Ontario Superior Court of Justice dated May 13, 2020, as amended.

30. Changes to Commercial List Operations in light of COVID-19 dated March 16, 2020.

31. 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:

32. the Affidavit of Dennis Mark McEwan sworn December 16, 2021 and the exhibits thereto, filed;

33. the Fourth Report of the Monitor and any appendices attached thereto, to be filed; and

34. such further and other materials as counsel may advise and this Court may permit.

Date: December 16, 2021

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

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Applicant

Court File No: CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE-
COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION

(Returnable December 21, 2021)

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Court File No. CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE CHIEF	**)**	TUESDAY, THE 21ST
	)	
JUSTICE MORAWETZ	**)**	DAY OF DECEMBER, 2021

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 MCEWAN ENTERPRISES INC.

Applicant

CCAA TERMINATION ORDER

THIS MOTION, made by McEwan Enterprises Inc. (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (this "**Order**"), among other things, (i) extending the Stay Period (as defined below), (ii) increasing the approved amount of the Interim Transaction Funding (as defined below), (iii) approving the reports of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the Court-appointed monitor of the Applicant (the "**Monitor**") filed in these CCAA proceedings, and the activities and conduct of the Monitor described therein, (iv) approving the fees and disbursements of the Monitor and the Monitor's legal counsel, as described in the Fourth Report of the Monitor dated December ●, 2021 (the "**Fourth Report**"), including the affidavits attached thereto and sworn in support thereof, (v) terminating these CCAA proceedings effective as at the CCAA Termination Time (as defined below), and (vi) terminating the Court-ordered charges approved in these CCAA proceedings effective as at the CCAA Termination Time, was heard this day via videoconference.

ON READING the Applicant's Notice of Motion dated December 16, 2021, the affidavit of Dennis Mark McEwan sworn December 16, 2021 and the exhibits thereto (the "**McEwan Affidavit**") and the Fourth Report and the appendices thereto, and on hearing the submissions of

counsel for the Applicant, counsel for the Monitor and such other counsel as were present, and on reading the affidavit of service, filed:

SERVICE

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

CAPITALIZED TERMS

2. THIS COURT ORDERS that, unless otherwise indicated or defined herein, capitalized terms used in this Order have the meaning given to them in the McEwan Affidavit.

EXTENSION OF THE STAY PERIOD

3. THIS COURT ORDERS that the Stay Period (as defined in the Amended and Restated Initial Order granted by this Court in these CCAA proceedings on October 7, 2021 (as amended from time to time, the "**Amended and Restated Initial Order**")) be and is hereby extended to the earlier of (i) the CCAA Termination Time, or (ii) 11:59 p.m. on January 14, 2022.

INTERIM TRANSACTION FUNDING

4. THIS COURT ORDERS that the Stay Extension and Interim Transaction Funding Approval Order granted by this Court in these CCAA proceedings on November 1, 2021, as amended by the Stay Extension and Interim Transaction Funding Approval Order granted by this Court in these CCAA proceedings on November 26, 2021 (collectively, the "**November 1 Order**"), is hereby further amended to provide that the Interim Transaction Funding (as defined in the November 1 Order) shall not exceed $2.0 million unless permitted by further Order of this Court. For certainty, the Interim Transaction Funding Lender's Charge (as defined in the November 1 Order) granted pursuant to the November 1 Order shall secure the full amount of the Interim Transaction Funding, as further amended by this Order.

APPROVAL OF MONITOR'S REPORTS, ACTIVITIES AND FEES

5. THIS COURT ORDERS that the First Report of the Monitor dated October 5, 2021, the Second Report of the Monitor dated October 14, 2021 (the "**Second Report**"), the Supplement to the Second Report dated November 1, 2021, the Second Supplement to the Second Report dated November 10, 2021, the Third Report of the Monitor dated November 24, 2021 (the "**Third Report**"), the Supplement to the Third Report dated December 2, 2021 and the Fourth Report, and the activities and conduct of the Monitor described therein, are hereby approved.

6. THIS COURT ORDERS 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 the approvals set forth in paragraph 5 of this Order.

7. THIS COURT ORDERS that the fees and disbursements of the Monitor for the period from September 28, 2021 to December ●, 2021, inclusive, as set out in the affidavit of ● sworn December ●, 2021, be and are hereby approved.

8. THIS COURT ORDERS that the fees and disbursements of the Monitor's counsel, Bennett Jones LLP ("**Bennett Jones**"), for the period from September 28, 2021 to December ●, 2021, inclusive, as set out in the affidavit of Sean Zweig sworn December ●, 2021, be and are hereby approved.

9. THIS COURT ORDERS that the Monitor's fees and disbursements to complete its remaining duties in these CCAA proceedings and Bennett Jones' fees and disbursements in connection with the Monitor's completion of its remaining duties in these CCAA proceedings, as set out in the Fourth Report, be and are hereby approved.

TERMINATION OF CCAA PROCEEDINGS

10. THIS COURT ORDERS that upon service by the Monitor of an executed certificate in substantially the form attached as Schedule "A" hereto (the "**Monitor's Certificate**") on the service list in these CCAA proceedings (the "**Service List**") certifying that it has received the written consent of each of the Applicant, Royal Bank of Canada, Cadillac Fairview, First Capital, the Purchaser, Dennis Mark McEwan and the Monitor to the termination of these CCAA proceedings, these CCAA proceedings shall be terminated without any further act or formality

(the "**CCAA Termination Time**"), provided that nothing herein impacts the validity of any Orders made in these CCAA proceedings or any action or steps taken by any Person (as defined in the Amended and Restated Initial Order) pursuant thereto.

11. 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.

12. THIS COURT ORDERS that the Charges (as defined in the Amended and Restated Initial Order) and the Interim Transaction Funding Lender's Charge shall be and are hereby terminated, released and discharged effective as of the CCAA Termination Time without any further act or formality.

13. THIS COURT ORDERS that from and after the CCAA Termination Time, all Persons shall be deemed to have waived any and all defaults and events of default of the Applicant under any contracts, leases, licenses or other agreements to which the Applicant is a party, then existing or previously committed by the Applicant, or caused by the Applicant, as a result of the insolvency of the Applicant, the commencement or continuation of these CCAA proceedings by the Applicant and/or this Order or any other Orders of this Court in these CCAA proceedings, and any and all notices of default or any step or proceeding taken or commenced in connection therewith shall be deemed to have been rescinded and of no further force or effect.

DISCHARGE OF THE MONITOR

14. THIS COURT ORDERS that effective as at the CCAA Termination Time, A&M shall be discharged as the Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time; provided that, notwithstanding its discharge as Monitor, A&M shall have the authority from and after the CCAA Termination Time to complete or address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings, as may be required or appropriate.

15. THIS COURT ORDERS that, notwithstanding the Monitor's discharge, the termination of these CCAA proceedings or any other provision of this Order, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of, any

and all rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Amended and Restated Initial Order, any other Order of this Court granted in these CCAA proceedings or otherwise, all of which are expressly continued and confirmed from and after the CCAA Termination Time, including in connection with any actions that may be taken by the Monitor following the CCAA Termination Time with respect to the Applicant or these CCAA proceedings pursuant to paragraph 14 of this Order.

16. THIS COURT ORDERS that upon the CCAA Termination Time, the Monitor, its counsel, and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**" and each a "**Released Party**") shall be and are hereby released and discharged from any and all claims that any Person may have or be entitled to assert against the 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 existing or taking place on or prior to the CCAA Termination Time in any way relating to, arising out of, or in respect of, these CCAA proceedings or with respect to their respective conduct in these CCAA proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred, and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the applicable Released Party.

17. THIS COURT ORDERS that no action or other proceeding shall be commenced against any of the Released Parties in any way arising from or related to these CCAA proceedings, except with prior leave of this Court on not less than fifteen (15) days' prior written notice to the applicable Released Party and upon further order securing, as security for costs, the full indemnity costs of the applicable 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.

GENERAL

18. THIS COURT ORDERS that the Applicant or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

19. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

SCHEDULE "A"
FORM OF MONITOR'S CERTIFICATE

Court File No. CV-21-00669445-00CL

ONTARIO
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COMMERCIAL LIST

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Applicant

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 28, 2021 (as amended and restated by a further Order of the Court on October 7, 2021), Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as the Monitor of McEwan Enterprises Inc. (the "**Applicant**") in the within proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

B. Pursuant to an Order of this Court dated December 21, 2021 (the "**CCAA Termination Order**"), among other things, A&M shall be discharged as the Monitor and the Applicant's 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 CCAA Termination Order.

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

THE MONITOR CERTIFIES that it has received the written consent of each of the Applicant, Royal Bank of Canada, Cadillac Fairview, First Capital, the Purchaser, Dennis Mark McEwan and the Monitor to the termination of these CCAA proceedings.

DATED at Toronto, Ontario this _____ day of _____, 2021.

ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court-appointed Monitor of McEwan Enterprises Inc. 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

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Proceeding commenced at Toronto

CCAA TERMINATION ORDER

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Applicant

AFFIDAVIT OF DENNIS MARK MCEWAN
(sworn December 16, 2021)

I, Dennis Mark McEwan, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

I. INTRODUCTION

1. I am the President and Secretary of McEwan Enterprises Inc. ("**MEI**", the "**McEwan Group**" or the "**Company**"), a high-end, full-service restaurant, catering, gourmet grocery and events company (the "**Business**") based in the Greater Toronto Area ("**GTA**"). I am also the sole director of the Company. I have been involved in the restaurant business as chef and restaurant operator since approximately 1982. I am the founder of the McEwan Group, have been a director and officer of the Company (including predecessor entities thereof) since 1987, and currently hold a 45% equity interest in the Company. My personal name is associated with the Company and I lead the development, preparation and delivery of the culinary aspects of the Company's Business.

2. I have been actively engaged in discussions and negotiations surrounding the proposed restructuring of MEI. I have knowledge of the matters deposed to herein, and where I have relied upon other sources of information, I have stated the source of that information and believe such information to be true. The Company does not waive or intend to waive any applicable privilege by any statement herein.

3. This affidavit is sworn in support of a motion by the Company for an Order pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") substantially in the form to be attached as Tab "2" of the Company's Motion Record (the "**CCAA Termination Order**"), among other things:

a) extending the Stay Period (as defined in the Order granted by this Court dated September 28, 2021, as amended and restated pursuant to an Order of the Court dated October 7, 2021, and as further amended from time to time (the "**Amended and Restated Initial Order**")) to the earlier of: (i) the CCAA Termination Time (as defined below) and (ii) January 14, 2022;

b) increasing the Interim Transaction Funding (as defined in the Stay Extension and Interim Transaction Funding Approval Order granted by this Court dated November 1, 2021 (the "**November 1 Order**"), as amended by the Stay Extension and Interim Transaction Funding Approval Order granted by this Court dated November 26, 2021 (the "**November 26 Order**")) to a maximum amount of $2.0 million;

c) terminating these CCAA proceedings and releasing the Court-ordered charges granted in these CCAA proceedings, in each case effective as of the CCAA Termination Time; and

d) discharging and releasing Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the Court-appointed monitor of MEI (the "**Monitor**") in these CCAA proceedings effective as of the CCAA Termination Time, and granting certain releases in favour of the Released Parties (as defined below).

4. A detailed overview of the McEwan Group, the Business, the Company's financial challenges, the circumstances leading to the commencement of these CCAA proceedings and the Company's restructuring efforts to date is set out in my affidavit sworn September 27, 2021 (the "**Initial Affidavit**"), my affidavit sworn October 1, 2021, and my affidavit sworn November 12, 2021, and not repeated in detail herein.

5. Unless otherwise indicated, capitalized terms used in this affidavit that are not otherwise defined in this affidavit have the meanings given to such terms in the Initial Affidavit, a copy of which is attached, without exhibits, as Exhibit "A" hereto.

II. UPDATE SINCE PRIOR HEARING IN THESE CCAA PROCEEDINGS

6. At the last hearing in these CCAA proceedings held on December 8, 2021, MEI sought and obtained an Order, among other things: (i) approving the Company's sale procedures (the "**Sale Procedures**"); and (ii) authorizing the Company to implement the Sale Procedures, supervised by the Monitor. Pursuant to the Sale Procedures, the parties eligible to participate in the Sale Process are 2864785 Ontario Corp. (a company owned by MEI's current shareholders) (the

"**Purchaser**") and First Capital Holdings (Ontario) Corporation ("**First Capital**"), and the Bid Deadline (as defined in the Sale Procedures) is December 31, 2021.

7. As discussed in previously filed materials in these CCAA proceedings, the Company has engaged in discussions with First Capital with respect to a potential consensual resolution of the disputed matters between the Company and First Capital in connection with the lease agreement entered into by the Company and First Capital for the McEwan Yonge & Bloor location (as amended, the "**Yonge & Bloor Lease**"). The discussions between the Company and First Capital have continued on a confidential basis and the parties are subject to a confidentiality and non-disclosure agreement entered into on November 11, 2021.

8. On December 16, 2021, the Company and First Capital entered into a confidential binding settlement term sheet (the "**Settlement Term Sheet**"), pursuant to which the Company and First Capital reached a mutual resolution of the issues in dispute between the parties, including the consensual termination of the Yonge & Bloor Lease and mutual release of obligations between the Company and First Capital in respect of such lease, among certain other material settlement terms (the "**First Capital Settlement**"), subject to the satisfaction of certain conditions. The terms and conditions of the Settlement Term Sheet and the First Capital Settlement are confidential between the parties, and have also been disclosed to the Monitor on a confidential basis. No relief is being sought with respect to the Settlement Term Sheet or the First Capital Settlement under the CCAA Termination Order.

9. Given the positive and consensual result of the extensive and litigious dispute between the Company and First Capital, and the Company's current circumstances, as discussed below,

the Company believes that it is appropriate and in the best interest of the McEwan Group and its many stakeholders to proceed to terminate these CCAA proceedings.

10. The Settlement Term Sheet does not purport to affect the Bid Deadline prescribed by the Sale Procedures. Accordingly, if the First Capital Settlement is not completed for failure to satisfy the conditions precedent to its effectiveness or otherwise, I understand that the Monitor will file a report to Court setting out its recommendation in respect of the bids received in accordance with the Sale Procedures.

III. TERMINATION OF THESE CCAA PROCEEDINGS

11. As had been discussed in my prior affidavits filed in these CCAA proceedings, the McEwan Group has been facing extensive financial challenges as a result of certain underperforming and unsustainable locations, combined with the lengthy and ongoing impacts of the COVID-19 pandemic. The Company commenced these CCAA proceedings in September 2021 because it needed to take steps to protect the Business and its many stakeholders, obtain additional liquidity and work to implement a restructuring of the McEwan Group that would enable the Business to survive for the benefit of many stakeholders.

12. The principal objectives of these CCAA proceedings have been to ensure the ongoing operations of the McEwan Group for the benefit of its many stakeholders and to effectuate a restructuring of the Company and its Business that would provide for a right-sized, sustainable Business going forward.

13. Prior to the commencement of these CCAA proceedings, the Company made extensive efforts, with the assistance of its advisors, to seek consensual arrangements with its landlords in

respect of its leases, to improve lease terms and reduce those lease obligations that are unsustainable and/or to exit certain locations, but was unable to achieve a comprehensive out-of-court resolution. As such, the Company determined that it was necessary and in the best interests of the McEwan Group and its stakeholders to seek protection under the CCAA.

14. At this time, the Company has reached the First Capital Settlement with First Capital in connection with the Yonge & Bloor Lease (discussed above), and is working with the landlord parties (collectively, "**Cadillac Fairview**") in respect of the leases for the Bymark, Fabbrica TD, McEwan TD, Fabbrica Don Mills and McEwan Don Mills locations (collectively, the "**Cadillac Fairview Leases**") to finalize documentation with respect to amended terms for the Cadillac Fairview Leases on a consensual basis. The Company does not expect to seek amendments to the lease for the Fabbrica Thornbury location

15. Accordingly, having consensually resolved the key matters with its landlords, subject to certain remaining conditions precedent and finalizing definitive documentation, the Company believes it is appropriate and in the best interest of the McEwan Group to seek the CCAA Termination Order terminating these CCAA proceedings. Pursuant to the proposed CCAA Termination Order, the CCAA proceedings would be terminated effective upon the Monitor serving a certificate (the "**Monitor's Certificate**") on the service list in these proceedings certifying that the Monitor has received the written consent of each of the Company, First Capital, Royal Bank of Canada (the Company's secured lender), Cadillac Fairview (a secured creditor of the Company and landlord), the Purchaser (the provider of the interim financing to the Company, secured by a Court-ordered charge), myself (a beneficiary of the stay of proceedings granted in these proceedings and the Directors' Charge (as defined in the Amended and Restated Initial Order)) and the Monitor (collectively, the "**Required Consent Parties**").

16. Pursuant to the proposed CCAA Termination Order, effective as of the CCAA Termination Time, the Court-ordered charges granted in these CCAA proceedings will be released and A&M will be discharged and released from its duties and obligations as the Monitor of MEI.

17. The consensual resolution of the Company's lease obligations is a significant positive development for the Company in these CCAA proceedings, as well as for its many stakeholders. The arrangements with its landlords will result in, among other things, the Company exiting its most challenged, burdensome and unsustainable locations, being Fabbrica Don Mills and McEwan Yonge & Bloor, and proceeding with a right-sized Business going forward.

18. No creditors or stakeholders will be prejudiced by the termination of these CCAA proceedings. During the course of these CCAA proceedings, the Company has been paying pre and post-filing amounts owed to its trade creditors in accordance with the terms of the Amended and Restated Initial Order. Currently, approximately $1.56 million, representing substantially all pre-filing amounts owed to trade creditors, have been satisfied by the Company, and the Company intends to continue to satisfy all of its obligations in the ordinary course following the termination of these CCAA proceedings.

19. The Company believes that given the progress it has made with its landlords and the resolutions achieved to date to right-size the Business, it no longer requires the benefit of the protections under the CCAA and can proceed to implement its lease amending arrangements with Cadillac Fairview and the First Capital Settlement with First Capital on a commercial basis outside of these CCAA proceedings. Terminating these CCAA proceedings will allow the Company to end the ongoing professional fees and costs associated with these proceedings, and

to focus all of its time and efforts on operating the Business for the benefit of MEI's stakeholders.

IV. LIMITED RELEASES IN FAVOUR OF THE RELEASED PARTIES

20. The proposed CCAA Termination Order contemplates that effective as of the CCAA Termination Time, the Monitor, counsel to the Monitor, and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**") will be released from the Released Claims (as defined in the proposed CCAA Termination Order). The Released Claims do not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the applicable Released Party.

21. The Released Parties have made substantial contributions to the Company's restructuring efforts and these CCAA proceedings, and the Company believes that the proposed releases are appropriate in the circumstances.

V. STAY EXTENSION

22. The Stay Period granted under the Amended and Restated Initial Order, as extended by further orders of the Court, currently expires on December 22, 2021. The Company is seeking an extension of the Stay Period to the earlier of the CCAA Termination Time or January 14, 2022.

23. Taking into account the proposed additional funding (discussed below), the Company is expected to have sufficient funding to operate the Business during the proposed extension of the Stay Period.

24. The extension of the Stay Period is necessary in order to maintain continued stability for the Company while it works diligently and in good faith to further advance its efforts with its landlords on a consensual basis, satisfy the conditions to the First Capital Settlement, and terminate these CCAA proceedings.

25. I do not believe that any creditor will suffer any material prejudice as a result of the extension of the Stay Period.

VI. INTERIM TRANSACTION FUNDING AND INTERIM TRANSACTION FUNDING LENDER'S CHARGE

26. Pursuant to the November 1 Order, the Company received approval of Interim Transaction Funding of up to a maximum amount of $600,000 to finance the Company's working capital requirements, other general corporate purposes and capital expenditures, and the costs of these CCAA proceedings. Pursuant to the November 26 Order, the maximum amount of Interim Transaction Funding was increased to a maximum of $1.4 million.

27. The Company is now seeking an increase to the Interim Transaction Funding up to a maximum amount of $2.0 million to provide the Company with sufficient funding through the proposed extension of the Stay Period.

28. Pursuant to the November 1 Order, the Interim Transaction Funding is secured by a charge (the "**Interim Transaction Funding Lender's Charge**") over the Property (as defined in the Amended and Restated Initial Order) of the Company to secure the repayment of the Interim Transaction Funding to the Purchaser. The Interim Transaction Funding Lender's Charge ranks behind the Administration Charge and the Directors' Charge (each as defined in the Amended and Restated Initial Order).

29. The Company believes there would be no material prejudice to any of its creditors as a result of the increased Interim Transaction Funding.

VII. CONCLUSION

30. The Company, in consultation with the Monitor, has been working diligently and in good faith in respect of all matters relating to these CCAA proceedings.

31. These CCAA proceedings have allowed the Company to work to solve its key financial issues with the benefit of a stay of proceedings under the CCAA. These CCAA proceedings provided the Company with breathing room while it engaged with its key stakeholders and worked to advance consensual arrangements with such parties.

32. Having reached the First Capital Settlement with First Capital, the only opposing creditor in these proceedings, and having otherwise substantially advanced its lease arrangements in respect of five McEwan Locations with Cadillac Fairview, the Company has addressed on a consensual basis with the applicable landlords the challenges relating to the McEwan Group's unsustainable lease obligations that caused it to need to seek CCAA relief.

33. The consensual resolution of the Company's lease obligations is a significant positive development for the Company in these CCAA proceedings, as well as for its many stakeholders.

34. Based on its arrangements with First Capital and Cadillac Fairview, the Company will have comprehensively addressed the material and unsustainable obligations that had been straining the Business. And while the COVID-19 pandemic continues to create a challenging environment for the McEwan Group and the restaurant industry as a whole, with the continued support of the Company's existing shareholders (me and Fairfax), I believe the McEwan Group

will be exiting these CCAA proceedings on solid financial footing with a positive path forward for the benefit of our many stakeholders.

35. For the reasons set out herein, the Company respectfully requests that this Court grant the requested relief pursuant to CCAA Termination Order.

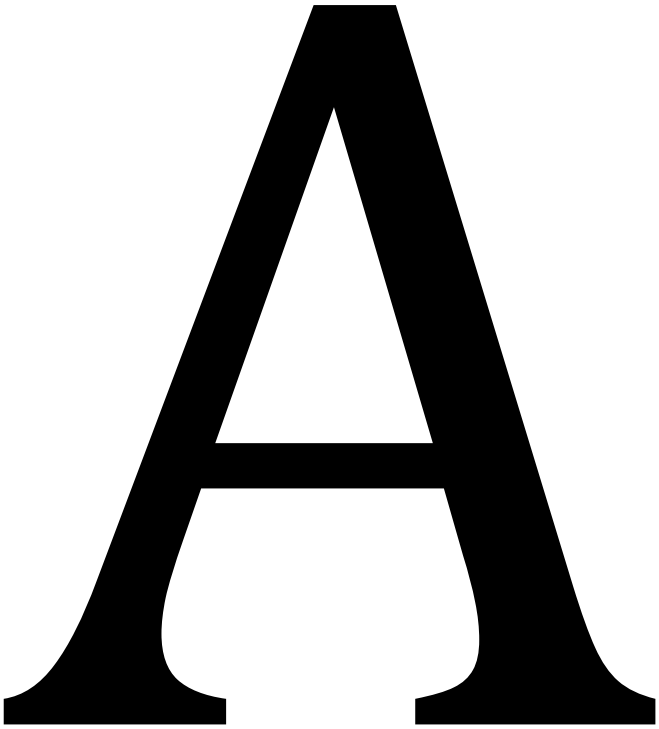
SWORN before me over videoconference by Dennis Mark McEwan stated as being located in the Village of Thornbury in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on December 16, 2021, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely

Caroline Descours

A Commissioner for taking affidavits

Dennis Mark McEwan

Caroline Descours LSO#: 58251A



THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF DENNIS MARK MCEWAN
SWORN BEFORE ME BY TWO-WAY VIDEOCONFERENCE
THIS 16th DAY OF DECEMBER, 2021

Caroline Descours

Commissioner for Taking Affidavits

Court File No. CV-21-00669445-00CL

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 MCEWAN ENTERPRISES INC.

Applicant

AFFIDAVIT OF DENNIS MARK MCEWAN
(sworn September 27, 2021)

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Applicant

AFFIDAVIT OF DENNIS MARK MCEWAN
(sworn September 27, 2021)

I, Dennis Mark McEwan, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

I. INTRODUCTION

1. I am the President and Secretary of McEwan Enterprises Inc. ("**MEI**", the "**McEwan Group**" or the "**Company**"), a high-end, full-service restaurant, catering, gourmet grocery and events company based in the Greater Toronto Area ("**GTA**"). I am also the sole director of the Company. I have been involved in the restaurant business as chef and restaurant operator since approximately 1982. I am the founder of the McEwan Group, have been a director and officer of the Company (including predecessor entities thereof) since 1987, and currently hold a 45% equity interest in the Company. My personal name is associated with the Company and I lead the development, preparation and delivery of the culinary aspects of the Company's business.

2. I have been actively engaged in discussions and negotiations surrounding the proposed restructuring of MEI. I have knowledge of the matters deposed to herein, and where I have

relied upon other sources of information, I have stated the source of that information and believe such information to be true. The Company does not waive or intend to waive any applicable privilege by any statement herein.

3. This Affidavit is sworn in support of an application for an initial order (the "**Initial Order**") in respect of the Company pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

4. The principal objectives of these CCAA proceedings are to ensure the ongoing operations of the McEwan Group for the benefit of its many stakeholders and to effectuate a restructuring of the Company and its Business (as defined below) in order to provide for a right-sized, sustainable Business going forward. As part of its restructuring efforts pursuant to these CCAA proceedings, the Company intends to seek to complete the sale and transfer of the restructured Business pursuant to the proposed Transaction (as defined and further described below). The proposed Transaction contemplates the transfer of substantially all of the assets and the assumption of substantially all of the liabilities of the Company, with the exception of certain excluded agreements and liabilities, to the current owners of MEI, being myself and Fairfax (as defined below).

5. The continuation of the McEwan Group under the ownership of its current shareholders is a critical aspect of any proposed restructuring. My continued involvement as chef and operator of the McEwan Locations (as defined below), which I believe to be fundamental to the value and success of the Business going forward, is premised on a continuation of my partnership with Fairfax as co-owners of the McEwan Group.

6. The Company has made extensive efforts, with the assistance of its advisors, to seek consensual arrangements with its landlords in respect of its leases, to improve lease terms and reduce those lease obligations that are unsustainable and/or to exit certain locations, but has been unable to achieve a comprehensive out-of-court resolution that would result in the long term viability of the McEwan Group and its Business.

7. The Company believes that the Transaction is the best executable transaction that would be available to the Company in the circumstances, and will create a sustainable Business for its key stakeholders, including its employees, suppliers, customers and other key stakeholders. The Company is not seeking Court-approval of the Transaction at this time. Should the initial CCAA relief be granted by the Court, MEI intends to bring a motion on a future date to be set by this Court to, among other things, seek Court approval of the Transaction (the "**Sale Approval Motion**").

II. OVERVIEW

8. The McEwan Group is recognized as one of Canada's premier hospitality companies with a portfolio of innovative, high-end restaurants, gourmet grocery stores, gourmet food-halls and catering services (the "**Business**") operating primarily in the GTA. The McEwan Group currently operates six restaurants (collectively, the "**McEwan Restaurants**"), two food-hall locations and one gourmet grocery location (collectively, the "**McEwan Grocery Locations**", and together with the McEwan Restaurants, the "**McEwan Locations**").

9. Many of the McEwan Locations have been historically successful and profitable; however, as discussed further below, certain locations have been underperforming for a number of years, causing an overall significant strain on the Company's profitability and liquidity. These

underperforming locations, even without taking into account the impacts of the COVID-19 pandemic (discussed below), have proven to not be sustainable based on their negative financial results. As a result of these financial challenges, in March 2020, the Company's shareholders provided approximately $1.1 million of equity financing to support the operations of the Business, which funding was determined to be required even prior to the impacts of the COVID-19 pandemic.

10. Commencing in March 2020, the significant and detrimental impacts of the COVID-19 pandemic on the restaurant industry in the GTA as a whole greatly exacerbated the Company's pre-existing financial and liquidity challenges. Due to various governmental declarations of emergency, stay-at-home orders and mandated restaurant closures, the McEwan Restaurants have been closed for approximately 10 cumulative months of the last approximately 18 months, and have otherwise operated at limited capacity for dine-in service, or outdoor dining only, for an extended period of time. The McEwan Grocery Locations have also been impacted by the COVID-19 pandemic, with two of the three McEwan Grocery Locations in particular being negatively affected by greatly reduced foot-traffic at their locations and much lower sales. As a result, the Business has experienced significantly reduced revenues for 2020 and 2021.

11. The Company's extensive cost-saving and cash conservation measures implemented to address the COVID-19 challenges, landlord rent concessions, government subsidies and support programs (all discussed further below), the Company's existing Secured Credit Facilities (as defined below) and shareholder equity financing provided in early 2020 have been insufficient to address the Company's liquidity needs during the COVID-19 pandemic to date, and the Company has required additional funding in order to be able to satisfy its operational needs. As a result, the Company needed to obtain additional financing, which it was able to obtain from

one of its shareholders, Fairfax, by way of a number of unsecured loans provided in 2020 and 2021, further increasing the Company's overall debt obligations.

12. While the government-mandated restrictions on dining began to be eased most recently in June and July 2021, the McEwan Restaurants continue to operate at reduced capacity, and a number of the McEwan Locations continue to suffer from reduced foot-traffic and significantly lower sales compared to pre-pandemic levels. There remains much uncertainty with respect to the ongoing COVID-19 pandemic and its continued impact on the McEwan Group and the restaurant industry as a whole. The Company expects that it will require additional funding to continue operating until the COVID-19 related factors cease negatively impacting the Business and revenues improve more significantly.

13. Commencing in the summer of 2021, the Company engaged legal counsel to assist it in reviewing and assessing its various potential options and alternatives, in light of the financial difficulties facing the Company, including its liquidity issues and the ongoing challenges and impacts of the COVID-19 pandemic. The Company reviewed and considered various potential alternatives with the assistance of its legal counsel, including, among others, further negotiations with landlords, additional financing (debt or equity), reducing the size of the Business, a sale of the Business, and combinations thereof.

14. After extensive review and consideration of its circumstances, and its options and alternatives, and following efforts to reach consensual arrangements with its landlords, the Company determined that the best available alternative that could be implemented in the circumstances that would preserve the value of the Business for the benefit of the Company's many stakeholders, would be a sale of substantially all of the assets of the Business to the

McEwan Group's current shareholders pursuant to the proposed Transaction, and the continuation of the Business with a reduced number of McEwan Locations, to result in a right-sizing of the Business on a sustainable basis going forward.

15. Having regard to its financial circumstances and ongoing challenges, the Company has determined that it is necessary to seek protection under the CCAA in order to provide stability for the Business, while the Company advances its efforts to restructure and right-size the Business, including pursuing the proposed Transaction. As noted above, MEI intends to bring the Sale Approval Motion on a future date to be set by this Court to seek approval of the proposed Transaction.

16. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency.

III. BACKGROUND

(A) The Business

(i) Overview of the Business

17. As discussed above, the McEwan Group operates the Business – a high-end, full-service restaurant, catering, gourmet grocery and events company, primarily in the GTA. The McEwan Group conducts the Business out of six McEwan Restaurants and three McEwan Grocery Locations under the following brand names: (i) *Bymark,* (ii) *One Restaurant,* (iii) *Fabbrica,* (iv) *Diwan,* (v) *McEwan Fine Foods,* and (vi) *McEwan Catering.*

18. The McEwan Group currently operates the following six McEwan Restaurants:

a) ***Bymark***: Bymark, opened in 2001, is a 299-seat capacity (including patio capacity), high-end gourmet restaurant located in the atrium of the TD Towers in Toronto's financial district.

b) ***ONE Restaurant:*** ONE Restaurant, opened in 2007, is a 355-seat capacity (including patio capacity), contemporary restaurant located at the Hazelton Hotel, a luxury hotel in Yorkville. The McEwan Group, through a wholly-owned subsidiary, owns a 50% interest in the ONE Restaurant Partnership (as defined below) that owns the ONE Restaurant, as discussed further below, and I lead the operations of the ONE Restaurant. Profits from the ONE Restaurant are shared among MEI and its partners pursuant to the terms of the ONE Restaurant Partnership Agreements (as defined below).

c) ***Fabbrica Don Mills***: Fabbrica Don Mills, opened in 2010, is a 210-seat capacity (including patio capacity) Italian restaurant located at the Shops at Don Mills outdoor shopping mall. Fabbrica Don Mills was the first Fabbrica location.

d) ***Fabbrica TD***: Fabbrica TD, opened in 2018, is located in the concourse of the TD Towers in Toronto's financial district, offering a "grab & go" menu. It is the second Fabbrica location.

e) ***Fabbrica Thornbury***: Fabbrica Thornbury, opened in 2018, is a 136-seat capacity (including patio capacity) restaurant located in Thornbury, Ontario. It is the third Fabbrica location.

f) ***Diwan***: Diwan, is a 174-seat capacity (including patio capacity) restaurant located at the Aga Khan Museum, offering a wide-ranging menu including Middle Eastern, North African and South Asian cuisine. MEI began managing Diwan in 2015, which had previously been managed by another operator. MEI also operates a food kiosk and provides exclusive catering services for events held at the Aga Khan Museum. Profits from the Diwan restaurant and kiosk are divided between the McEwan Group and the Aga Khan Museum pursuant to the contractual arrangements between the parties, and the Company pays a commission to the Aga Khan Museum on catering sales.

19. The McEwan Group also operates the following three McEwan Grocery Locations:

a) ***McEwan Don Mills***: McEwan Don Mills, opened in 2009, is located at the Shops at Don Mills outdoor shopping mall and is the McEwan Group's flagship gourmet marketplace.

b) ***McEwan TD***: McEwan TD, opened in 2015, is located in the concourse of the TD Towers in Toronto's financial district.

c) ***McEwan Yonge & Bloor***: McEwan Yonge & Bloor is the newest addition to the McEwan Group, opening in 2019 and located in One Bloor. The store includes, among other things, an all-day café, on-site butcher, bakery, patisserie, deli, produce section, carving station, hot & cold tables, sandwich station and sushi bar.

20. The McEwan Group's catering business ("**McEwan Catering**"), provides catering services for special and corporate events, as well as virtual cooking demonstrations. The

McEwan Catering services are currently operated primarily out of McEwan Don Mills and McEwan Yonge & Bloor, and are a preferred or offered caterer in various locations in the GTA.

21. In addition, the McEwan Group also operates a gifts and floral business, including the sale of floral arrangements and gift baskets for special and corporate events.

22. Commencing in March 2020, the Company also launched its partnership with Goodfood Market Corp., one of the biggest Canadian subscription food-delivery services for the production of ready-to-eat meals, which partnership is ongoing.

23. Finally, the Company generates additional revenue from the "McEwan" brand, including my involvement with the Food Network (Top Chef Canada), media appearances, sponsorships and brand ambassador work.

(ii) Suppliers

24. The McEwan Group's key suppliers are comprised primarily of various produce, meat, seafood and other food suppliers. The Company has strong relationships with its many suppliers. Suppliers typically require payment terms of 20-30 days, and as at August 31, 2021, there was approximately $2.3 million of trade payables outstanding (for certainty, not taking into account the ONE Restaurant).

25. It is critical to the preservation of the Business that the McEwan Group is able to continue its relationships with key suppliers without disruption and on existing terms while the Company pursues its restructuring efforts pursuant to these proceedings, including the proposed Transaction. The proposed Initial Order authorizes the Company to pay pre-filing amounts to

suppliers, with the consent of the Monitor (as defined below), if such payments are necessary or desirable to prevent disruption to the operation of the Business.

(iii) Customers

26. Customers of the McEwan Group can pay for dining or catering services or purchase products using a number of payment methods, including payment by cash, credit card and gift cards. Customer credit card payments in respect of the Business are processed by Chase Paymentech, Fidelity Payment Services and Worldpay. The related credit card processing fees are charged to the Company monthly in arrears and are settled on the first business day of each month through the application of funds in the MEI bank accounts at RBC (as defined below). The proposed Initial Order authorizes the Company to make payments to providers of payment processing services (including credit card processing services) in respect of services supplied to the Company prior to the date of the Initial Order.

27. The McEwan Group uses the customer loyalty program "Five Stars" (the "**Customer Program**") at the McEwan Grocery Locations to generate sales revenue and maximize customer loyalty. The Customer Program is a points based program that provides certain discounts to customers based on the level of points obtained. The proposed Initial Order provides that the Company is authorized to continue to honour and fulfill its obligations in respect of the Customer Program during the CCAA proceedings, including those relating to the pre-filing period.

28. The McEwan Group also operates a prepaid gift card program. The gift cards are sold by the Company at the McEwan Locations and online through the McEwan Group's website. The gift cards are redeemable at the McEwan Locations. The proposed Initial Order provides that the

Company is authorized to honour its obligations in respect of gift cards issued prior to or after the granting of the Initial Order. The McEwan Group intends to continue selling gift cards following the commencement of these CCAA proceedings.

(iv) Employees

29. The McEwan Group currently employs approximately 268 employees across eight McEwan Locations (not including ONE Restaurant), with 213 on a full-time basis and 55 on a part- time basis. An additional 128 employees are employed at ONE Restaurant and are employees of the ONE Restaurant Partnership. A significant majority of the Company's employees are paid on an hourly basis, and the Company from time to time supplements its workforce with part-time and seasonal employees at peak times. None of the Company's employees are unionized.

30. During the COVID-19 pandemic, in aggregate approximately 200 employees, including 130 employees at ONE Restaurant and 70 employees at other McEwan Locations, were laid off as government mandated restaurant closures significantly reduced the operations of the Business over an extended period of time. To date, approximately 173 employees, including 118 employees at the ONE Restaurant and 55 employees at other McEwan Locations, have been re-hired as outdoor and dine-in services began to re-open in the GTA in June and July 2021, respectively.

31. The Company uses the services of Desjardins Employer Solutions, a payroll services provider, to manage payroll functions on behalf of the McEwan Group, including payroll processing and the collection and remittance of all related source deductions. The Company is current with respect to the remittance of employee source deductions.

32. The Company sponsors an employee benefit plan (including medical, dental and vision care and other benefits) for eligible employees. The benefit plan is administered by Manulife Financial. The McEwan Group does not maintain any pension plans.

33. The proposed Initial Order authorizes the Company to make all outstanding and future employee compensation and benefit payments in the ordinary course of business and consistent with existing compensation policies and arrangements.

(B) Corporate Structure

34. MEI is a private company incorporated under the laws of Ontario and is headquartered in Toronto with its registered and head office located at 38 Karl Fraser Road, Toronto, Ontario.

35. MEI is owned by Fairfax Financial Holdings Limited ("**Fairfax**"), through one of its subsidiaries, which holds a 55% equity interest in MEI, and by McEwan Holdco Inc. ("**McEwan Holdco**"), which owns a 45% equity interest in MEI. I am the sole shareholder of McEwan Holdco. Fairfax initially purchased a 45% equity interest in the McEwan Group in 2015, and has subsequently increased its ownership interest to 55%.

36. MEI was formed by the amalgamation of the following corporations on October 1, 2017 to continue as MEI: 2456570 Ontario Inc., 2004995 Ontario Limited, McEwan One Mark Inc., 2220223 Ontario Inc., 2416668 Ontario Inc.; 2481520 Ontario Inc., North 44 Inc. (which had previously amalgamated with 1285788 Ontario Limited on July 31, 2015, to continue as North 44 Inc.) and McEwan Enterprises Inc. (which had previously amalgamated with McEwan Restaurant Consultants Inc. on January 1, 2017, to continue as McEwan Enterprises Inc.).

37. MEI has one wholly-owned subsidiary, 2860117 Ontario Limited (the "**McEwan Subsidiary**"), whose sole assets are comprised of partnership interests in The Hazleton Food Services Partnership (the "**ONE Restaurant Partnership**"), a joint-venture established pursuant to a Partnership Agreement dated June 1, 2005 (the "**ONE Restaurant Partnership Agreement**"), for the purposes of providing food and beverage services at The Hazelton Hotel in Yorkville, and the McEwan Subsidiary's sole obligations are those relating to the ONE Restaurant Partnership. The McEwan Subsidiary holds a 50% interest in the ONE Restaurant Partnership and the other 50% interest is owned by Dawsco (Food Services) Limited, Starwood (Food Services) Limited and Yorkset (Food Services) Limited carrying on business under the firm name of DSY Food Services Partnership (the "**ONE Restaurant Partner**"). The McEwan Subsidiary assumed its interest in the ONE Restaurant Partnership from MEI in August 2021 with the consent of the ONE Restaurant Partner.

38. The McEwan Subsidiary is not an applicant in these proceedings. The Company is requesting that this Court exercise its discretion to extend the requested stay of proceedings (discussed further below) in favour of the McEwan Subsidiary pursuant to the proposed Initial Order.

(C) Financial Position of the Company

39. Copies of the Company's audited financial statements for the year ended December 31, 2020 (the "**2020 Year-End Financials**") and unaudited financial statements for the six-month period ended June 30, 2021 (the "**2021 6-Month Financials**") are attached hereto as Exhibits "A" and "B" respectively.

40. Based on the Company's 2020 Year-End Financials, its assets as at December 31, 2020, had a stated book value of approximately $24.3 million, including (all amounts approximate): $0.5 million cash; $0.7 million of trade and other receivables; $0.2 million of prepaid expenses; $1.2 million of inventory; $2.2 million of deferred tax assets; $6.7 million of property and equipment; $11.8 million of right-of-use assets; and $1.0 million of investment in joint venture.

41. Based on the Company's 2020 Year-End Financials, as at December 31, 2020, the Company had total liabilities of approximately $25.1 million, comprised of (all amounts approximate): (a) $7.7 million of current liabilities, including: $3.1 million of trade and other payables; $0.5 million of deferred revenue; $1.8 million of borrowings; and $2.4 million of lease liabilities (including capital and real property lease obligations); and (b) $17.4 million of long-term liabilities, including: $1.1 million of borrowings and $16.3 million of lease liabilities (including capital and real property lease obligations). The aggregate lease liabilities of $18.7 million are comprised of $1.9 million of capital lease liabilities and $16.7 million of real property lease obligations.

42. The Company's 2020 Year-End Financials included a going concern note by the auditor, noting the "existence of material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern." The 2020 Year-End Financials note that:

> In March 2020, the outbreak of the novel coronavirus, COVID-19, resulted in governments worldwide enacting emergency measures to combat the spread of the virus. These measures, which include the implementation of travel bans, self-imposed quarantine periods, lockdowns and social distancing, have caused material disruption to businesses globally, including the Company, resulting in an economic slowdown. Due to these recent developments, the Company temporary suspended operations for restaurants and catering services on March 18, 2020.

> As a result of these developments, there are material uncertainties associated with the resolution of the liquidity challenges currently facing the Company that may cause significant doubt as to the ability of the Company to meet its obligations as they come due. Currently, the impact on the restaurant, food retail and food service industries if COVID-19 persists for an extend period is unknown. The Company's ability to continue as a going concern is dependent on its ability to return to normal operations, to generate positive cash flows from operations and to obtain financing…

The Company's audited financial statements for the year ended December 31, 2019, also included a similar note.

43. Based on the Company's 2021 6-Month Financials, its assets as at June 30, 2021, had a stated book value of approximately $22.5 million, including (all amounts approximate): $0.3 million of cash; $0.4 million of trade and other receivables; $0.1 million of prepaid expenses; $1.2 million of inventory; $2.4 million of deferred tax assets; $6.1 million of property and equipment; $10.9 million of right-of-use assets; and $1.0 million of investment in joint venture.

44. Based on the Company's 2021 6-Month Financials, as at June 30, 2021, the Company had total liabilities of approximately $25.4 million, comprised of (all amounts approximate): $8.3 million of current liabilities, including $3.6 million of trade and other payables; $0.5 million of deferred revenue; $2.5 million of borrowings and $1.7 million of lease liabilities (including capital and real property lease obligations); and (b) $17.1 million of long-term liabilities, including: $1.3 million of borrowings and $15.9 million of lease liabilities (including capital and real property lease obligations). The aggregate lease liabilities of $17.6 million are comprised of $1.7 million of capital lease liabilities and $15.9 million of real property lease obligations.

(D) Liabilities and Obligations

45. The Company's principal liabilities and obligations are summarized and described in the section below.

46. As at December 31, 2020, based on the Company's audited 2020 Year-End Financials, MEI had (all amounts approximate) $4.7 million of total borrowings on the balance sheet categorized as either current or long-term liabilities, which included: (a) the RBC Mortgages (as defined below) of $1.0 million, comprised of the current liability portion of $0.1 million and the long-term liability portion of $0.9 million; (b) Fairfax Loans (as defined below) of $1.6 million; (c) the Don Mills Fixtures Loan (as defined below) of $0.24 million, comprised of the current liability portion of $0.06 million and the long-term liability portion of $0.19 million; (d) the CEBA Loan (as defined below) of $0.04 million; and (e) $1.9 million of lease liabilities related to the RBC Equipment Leases (as defined below), which were included in total borrowings (as set forth in Note 12 of the 2020 Year-End Financials). The balance of the Company's aggregate short and long-term lease liabilities were comprised of rental lease liabilities, excluded from total borrowings.

47. In aggregate, as at August 31, 2021, the Company had the following liabilities outstanding (all amounts approximate) as discussed in further detail below:

Type of Liabilities	Approximate Amount Outstanding as date hereof	Paragraph reference below
Secured Loans:		
Secured Credit Facilities (including the revolving facilities and credit cards, but excluding undrawn letter of credit) (with RBC)	$239,000	Paragraph 53
Secured Capital Lease Obligations (with RBC)	$1,726,000	Paragraph 64
Don Mills Fixtures Loan	$198,000	Paragraph 61
HASCAP Loan (with RBC)	$250,000	Paragraph 73
Unsecured Loans:		
RBC Mortgages	$899,000	Paragraph 55
Fairfax Loans	$2,314,000	Paragraph 71
CEBA Loan	$60,000	Paragraph 72
Operating/Other Liabilities:		
Overdue and/or Deferred Rent	$539,000	Paragraph 67
Trade Accounts	$2,330,000	Paragraph 76
Customer Gift Cards	$488,000	Paragraph 76
Accruals and vacation payable	$1,207,000	Paragraph 77

48. As discussed herein, the proposed Transaction provides for the assumption of substantially all of the liabilities and obligations of the Company, with the exception of certain

liabilities or agreements excluded pursuant to the Purchase Agreement (as defined below), as discussed further below. It is currently estimated that approximately $11 million of outstanding liabilities would be assumed pursuant to the proposed Transaction (calculated based on amounts outstanding as at August 31, 2021, and taking into account additional amounts expected to be incurred and additional funding requirements anticipated until the closing of the Transaction, based on a closing date of October 31, 2021).

(i) Secured Credit Facility

49. The Company has obtained financing from Royal Bank of Canada ("**RBC**") under certain senior secured revolving credit facilities (collectively, the "**Secured Credit Facilities**") for the working capital and general corporate requirements of the Business. The Secured Credit Facilities are provided pursuant to a Loan Agreement dated August 28, 2018 and entered into on October 2, 2018 among RBC, as lender (in such capacity, the "**Secured Lender**"), and MEI, as borrower, as amended pursuant to an amending agreement dated December 24, 2018 and entered into on February 26, 2019, between the Secured Lender and MEI, and an amending agreement dated August 27, 2020 and entered into on September 1, 2020, between the Secured Lender and MEI (as may be further amended from time to time, the "**Secured Loan Agreement**").

50. The outstanding Secured Credit Facilities are currently comprised of: (a) eight revolving demand facilities with cumulative maximum availability of $850,000; (b) a $90,000 letter of credit; and (c) credit cards with cumulative maximum availability of $360,000. As at the date hereof, the Company is not in compliance with certain covenants under the Secured Loan Agreement, which may impact its ability to access the Secured Credit Facilities.

51. Pursuant to the terms of the Secured Loan Agreement, the Company maintains a general bank account at RBC in respect of each Secured Credit Facility that is a revolving demand facility.

52. The Company's obligations under the Secured Credit Facilities are secured by a security interest granted in favour of the Secured Lender over all of the present and after-acquired personal property of the Company.

53. The total outstanding obligations under the Secured Credit Facilities, not including accrued and unpaid interest, are currently approximately $239,000 (not including the $90,000 undrawn letter of credit). RBC has advised the Company that the Secured Credit Facilities would remain available to the Company notwithstanding the commencement of these CCAA proceedings.

54. In addition to the Secured Credit Facilities, the Company also obtained from RBC the $250,000 secured HASCAP Loan (as defined below) as part of the government programs made available during the COVID-19 pandemic, as well as the RBC Equipment Leases (as defined below), each discussed further below.

55. Furthermore, in 2012, certain previously outstanding equipment loans of the Company were refinanced with RBC. In order to obtain such refinancing, I mortgaged certain real property I personally own pursuant to three separate mortgage agreements (the "**RBC Mortgages**"). Currently, there is approximately $0.9 million in principal amount outstanding under the RBC Mortgages, one of which bears an interest rate of 2.94% per annum and matures in August 2022, and two which bear an interest of 1.84% per annum and mature in September

2023. While secured against my property, these obligations are those of the Company, and payments due under the RBC Mortgages are made by the Company.

56. It is my understanding that pursuant to priority agreements entered into from time to time by RBC and the applicable Cadillac Fairview Entities (as defined below), the parties agreed that the security granted by the Company and me in favour of RBC would rank in priority to any security granted in favour of the applicable Cadillac Fairview Entities.

57. The Company intends to continue making its scheduled payments to RBC during the course of the CCAA proceedings, as contemplated pursuant to the proposed Initial Order, and for its obligations to RBC to be generally unaffected as part of these CCAA proceedings. As discussed further below, it is proposed that the Company's obligations to RBC would be assumed in full pursuant to the proposed Transaction.

(ii) Don Mills Fixtures Loan

58. The Company obtained a loan (the "**Don Mills Fixtures Loan**") from its landlord (one of the Cadillac Fairview Entities) in respect of the McEwan Grocery Location at Don Mills pursuant to a loan agreement dated August 6, 2008, as amended pursuant to an amending agreement entered into as of December 15, 2008 (as may be further amended from time to time, the "**Don Mills Fixtures Loan Agreement**"), to finance the leasehold improvements and fixtures at such location. The Don Mills Fixtures Loan has an interest rate of prime plus 2% and matures upon the end of the term of the lease for McEwan Don Mills, currently July 31, 2023.

59. MEI's obligations pursuant to the Don Mills Fixtures Loan are secured over the assets of the Company pursuant to general security agreements, subject to the prior ranking security granted in favour of the Secured Lender.

60. Pursuant to an indemnity agreement dated as of June 28, 2007, and the Don Mills Fixtures Loan Agreement, I also agreed to be personally liable for the Don Mills Fixtures Loan until such loan is fully repaid. My indemnity obligations in respect of the Don Mills Fixtures Loan are secured over my property pursuant to a general security agreement.

61. Currently, there is approximately $198,000 of principal outstanding under the Don Mills Fixtures Loan.

(iii) Secured Equipment Lease Obligations

62. The other secured creditors of the Company include lessors of various restaurant and catering equipment, office equipment and motor vehicles.

63. The Company's restaurant and catering equipment leasing arrangements are with RBC, governed pursuant to a commitment letter dated November 28, 2018, under which the following lease agreements have been entered into by the Company and RBC:

a) lease agreement between the Company and RBC dated October 18, 2017, as amended by an amending agreement dated April 21, 2021 (the "**Bymark Equipment Lease**"). The equipment leased pursuant to the Bymark Equipment Lease has a carrying value of approximately $206,000 as at June 30, 2021, and the Company has the option to acquire the leased equipment for $1.00 on the day prior to expiry of the lease, being October 24, 2022. The Company's obligations

under the Bymark Equipment Lease are secured obligations and bear interest at approximately 4.5% per annum;

b) lease agreement between the Company and RBC dated as of June 1, 2018, as amended by an amending agreement dated April 21, 2021 (the "**Fabbrica Equipment Lease**"). The equipment leased pursuant to the Fabbrica Equipment Lease has a carrying value of approximately $159,000 as at June 30, 2021, and the Company has the option to acquire the leased equipment for $1.00 on the day prior to expiry of the lease, being May 31, 2023. The Company's obligations under the Fabbrica Equipment Lease are secured obligations and bear interest at approximately 4.0% per annum; and

c) a lease agreement between the Company and RBC dated January 28, 2019, as amended by an amending agreement dated April 21, 2021 (the "**McEwan Yonge & Bloor Equipment Lease**", and collectively with the Bymark Equipment Lease and the Fabbrica Equipment Lease, the "**RBC Equipment Leases**"). The equipment leased pursuant to the McEwan Yonge & Bloor Equipment Lease has a carrying value of approximately $1.35 million as at June 30, 2021, and the Company has the option to acquire the leased equipment for $1.00 on the day prior to expiry of the lease, being January 27, 2024. The Company's obligations under the McEwan Yonge & Bloor Equipment Lease are secured obligations and bear interest at approximately 4.61% per annum.

64. In aggregate, there is currently approximately $1.7 million of secured obligations outstanding under the RBC Equipment Leases, and the Company's equipment lease payment

obligations are approximately $52,000 per month. As at the date hereof, the Company is current on all such obligations, subject to agreements entered into with RBC to defer the payment of the principal portions of such obligations for the six-month period between May and October 2021.

65. The Company also has certain limited lease obligations with respect to photocopiers and certain motor vehicles used in connection with the Business.

(iv) Real Property Lease Obligations

66. MEI does not own any real property and all of its locations are leased. MEI is currently party to seven leases in respect of its McEwan Locations, including: (i) five leases with certain related landlord parties (the "**Cadillac Fairview Entities**") in respect of Bymark, Fabbrica TD, McEwan TD, Fabbrica Don Mills and McEwan Don Mills (collectively, the "**Cadillac Fairview Leases**"); (ii) one lease with one landlord party in respect of Fabbrica Thornbury (the "**Fabbrica Thornbury Lease**"); and (iii) one lease with one landlord party in respect of the McEwan Yonge & Bloor (the "**Yonge & Bloor Lease**"). The lease agreement in respect of the ONE Restaurant is entered into by the ONE Restaurant Partnership, as tenant, and there is no lease arrangement or rent charged by the Aga Khan Museum in respect of Diwan.

67. The Company's real property lease obligations form a substantial part of the operating costs of the Business. As discussed in further below, the Company obtained certain concessions to the payment terms under its leases during the COVID-19 pandemic. As at August 31, 2021, the Company's aggregate arrears and deferrals under its leases are estimated at approximately $0.5 million, based on the Company's financial statements and taking into account certain amended terms (discussed further below), which amount may vary based on discussions and arrangements with the applicable landlords.

68. The Company has entered into general security agreements in respect of certain of the Cadillac Fairview Leases. The obligations under the Fabbrica Thornbury Lease and the Yonge & Bloor Lease are unsecured.

(v) Fairfax Loans

69. The Company obtained a $400,000 unsecured loan from a subsidiary of Fairfax pursuant to a debenture issued on October 31, 2018 (as amended, the "**2018 Fairfax Loan**"). The 2018 Fairfax Loan has an interest rate of 5% per annum and matures on the earlier of December 31, 2021, on demand by the holder or the occurrence of an event of default pursuant to the terms of the debenture.

70. During the COVID-19 pandemic, as a result of the requirement for additional funding for its operations, the Company obtained additional loans of approximately $1.72 million from the Fairfax subsidiary pursuant to debentures dated March 18, 2020, August 5, 2020, and March 22, 2021 (collectively, the "**Additional Fairfax Loans**", in each case as may have been amended, and together with the 2018 Fairfax Loan, the "**Fairfax Loans**"). The Additional Fairfax Loans have an interest rate of either 5% or 9% per annum, with interest accrued and compounded on an annual basis. The first Additional Fairfax Loan matures on the earlier of March 18, 2022, on demand by the holder or the occurrence of an event of default pursuant to the terms of the debenture; the second Additional Fairfax Loan matures on the earlier of December 31, 2021, on demand by the holder or the occurrence of an event of default pursuant to the terms of the debenture; and the third Additional Fairfax Loan matures on the earlier of March 22, 2022, on demand by the holder or the occurrence of an event of default pursuant to the terms of the debenture.

71. As at August 31, 2021, the aggregate amount outstanding under the Fairfax Loans, including accrued interest, is approximately $2.3 million.

(vi) Government / Government-Assisted Loans

(a) CEBA Loan

72. On April 24, 2020, the Company received a $40,000 unsecured loan (the "**CEBA Loan**") from the Canada Emergency Benefit Account ("**CEBA**") program funded by the Government of Canada. The CEBA Loan is interest-free until January 2023, and thereafter has an interest rate of 5% per annum. On January 4, 2021, the Company received an additional $20,000 under its CEBA Loan. The CEBA Loan matures on December 31, 2025, provided that repaying the balance of the CEBA Loan on or before December 31, 2022, will result in a loan forgiveness of 33% (up to $20,000).

(b) HASCAP Loan

73. Pursuant to a loan agreement entered into on March 30, 2021, by the Company and the Secured Lender, the Company obtained a $250,000 non-revolving term loan (the "**HASCAP Loan**") from the Secured Lender under the Business Development Bank of Canada's ("**BDC**") Highly Affected Sectors Credit Availability Program ("**HASCAP**"). The HASCAP Loan has an interest rate of 4% per annum, and has a five-year term expiring on or about March 31, 2026.

74. The Company's obligations under the HASCAP Loan are secured by the security interest granted in favour of the Secured Lender over all personal property of the Company, and a specific security interest granted in favour of the Secured Lender in the equipment financed.

(vii) Employee, Trade and Customer Obligations

75. As at the date hereof, the Company remains current on its employee wage and salary obligations, as well as all related source deductions.

76. As at August 31, 2021, the Company had approximately $2.3 million of trade obligations outstanding with respect to its various suppliers and service providers, and approximately $488,000 of issued and outstanding customer gift cards. The Company also has nominal obligations in respect of its Customer Program of approximately $9,500.

77. In addition, the Company has approximately $1.2 million of accruals and vacation payable accrued on its balance sheet.

78. To the extent permitted under the proposed Initial Order, the Company intends to honour its obligations in respect of its employees, suppliers and service providers, as well as in respect of its customer gift cards and the Customer Program. Pursuant to the proposed Transaction, any and all outstanding amounts owing in respect of the Company's employee, trade or customer obligations will be assumed by the Purchaser (as defined below) upon implementation of the Transaction, if approved.

(viii) Litigation

79. The Company is aware of one litigation action commenced against it in December 2016, alleging wrongful termination, which the Company believes is without merit and in respect of which the Company served its Statement of Defence in 2017. No steps have been taken or communication exchanged by the parties in respect of this matter since 2017.

IV. INDUSTRY, BUSINESS AND FINANCIAL CHALLENGES

(A) Challenges Prior to the COVID-19 Pandemic

80. Prior to the COVID-19 pandemic, a number of the McEwan Locations were successful and generated positive financial results for an extended period of time. However, as a result of certain unprofitable and operationally expensive McEwan Locations, the McEwan Group as a whole has not been profitable since 2017 (prior to taking into account the recent additional challenges caused by the COVID-19 pandemic).

81. Specifically, Fabbrica Don Mills and McEwan Don Mills have been significantly underperforming over an extended period of time, and even prior to the COVID-19 pandemic were not generating a positive EBITDA. While during the COVID-19 pandemic, McEwan Don Mills has seen some improved performance from pre-pandemic levels, this location has not been generating an annual profit without the benefit of government subsidies.

82. More recently, following the opening of the McEwan Grocery Location at Yonge and Bloor in 2019, this location has created significant strain on the Company's liquidity. With an extensive footprint and significant lease and operational costs, combined with disappointing sales results, McEwan Yonge & Bloor has had the most detrimental impact on the Company's overall financial performance. With the benefit of hindsight, the Company would not have entered into operations at this location based on the existing lease terms. McEwan Yonge & Bloor has been a significant challenge since its opening and currently remains a material issue for the Company.

83. As a result of these underperforming locations, even prior to taking into account the impacts of the COVID-19 pandemic, the McEwan Group was facing financial challenges and a need to improve its financial performance and liquidity position.

(B) Additional Challenges Due to the COVID-19 Pandemic

84. The implementation of COVID-19-related lockdown measures commencing in March 2020 in the GTA resulted in immediate and significant negative impacts on the financial performance of the Business, and resulted in significant losses throughout 2020 and 2021.

85. On or about March 17, 2020, the Government of Ontario declared a provincial state of emergency under the *Emergency Management and Civil Protection Act*, and all restaurants were ordered to close for an undetermined period of time, with a limited carve-out to allow restaurants to provide takeout and delivery services (the "**March Shutdown Order**").

86. Pursuant to the March Shutdown Order, MEI closed all six McEwan Restaurants on March 17, 2020. The McEwan Grocery Locations (other than McEwan TD which temporarily closed from March to the end of May 2020) remained open as grocery stores were deemed an essential service pursuant to the March Shutdown Order and were permitted to remain open. Notwithstanding remaining open, the McEwan Grocery Locations nonetheless experienced a significant reduction in revenues at the outset of the pandemic given the government-mandated closure of all non-essential businesses and encouragement of individuals to stay home, resulting in a significant reduction of in-store shopping, particularly in high-traffic areas such as the Shops at Don Mills, Yonge and Bloor, and Toronto's financial district. In addition, the McEwan Catering sales were effectively entirely eliminated since the commencement of the pandemic.

87. From March 2020 to late June 2020, MEI's restaurant operations were restricted to a limited takeout and delivery business operated out of two of the six McEwan Restaurants (namely ONE Restaurant commencing in March and Fabbrica Thornbury commencing in April). The McEwan Group's takeout and delivery business did not generate significant revenue.

88. As part of Ontario's first reopening plan that commenced in June 2020, restaurants were permitted to open for outdoor dining on patios in late June 2020, and for limited dine-in service, subject to limitations on capacity, at the end of July 2020. With these reduced restrictions, the McEwan Group was able to open five of the six McEwan Restaurants for outdoor and/or dine-in service. Fabbrica Don Mills has remained closed during this time as a result of the poor financial performance of the restaurant even prior to the COVID-19 pandemic.

89. On or about October 10, 2020, due to a surge in COVID-19 pandemic cases, the Government of Ontario re-implemented a general ban on dine-in service in the GTA.

90. On November 3, 2021, the Government of Ontario announced a new response framework (the "**Response Framework**"), a five-tier system of public health measures designed to adjust and tighten or loosen public health measures depending on the status of public health indicators. By November 23, 2020, the Government of Ontario placed the GTA under lockdown, the highest level of the Response Framework (the "**Lockdown**"). Pursuant to the Lockdown, all restaurants and bars in the GTA were forced to cease outdoor dining service. During the Lockdown, the ONE Restaurant and Fabbrica Thornbury continued their takeout services, and Bymark began offering takeout services in February 2021.

91. The Lockdown continued in the GTA until Ontario entered Step 1 in the Province's Roadmap to Reopen on June 11, 2021, which allowed for the resumption of outdoor dining with

limited capacity. On June 30, 2021, Ontario entered Step 2 in the Roadmap to Reopen, allowing for slightly increased capacity for outdoor dining, and on July 16, 2021, Ontario entered Step 3 in the Roadmap to Reopen, permitting restaurants and bars to offer dine-in service at a limited capacity.

92. As at the date hereof, five of the McEwan Restaurants are open for outdoor and/or indoor dining. As noted above, Fabbrica Don Mills has remained closed due to the poor financial performance of the restaurant. Unfortunately, the ongoing COVID-19 pandemic continues to negatively impact the McEwan Group given that, among other things, the McEwan Restaurants that have re-opened continue to operate at limited capacity, the McEwan Grocery Locations (with the exception of the Don Mills location) continue to have significantly reduced sales compared to the pre-pandemic period due to lessened foot-traffic in the previously high-traffic areas, and the McEwan Restaurants located in the financial district continue to suffer from the slow rollout of back-to-office plans and limited occupancy in the office towers of the financial district. In addition, McEwan Catering has not yet rebounded with limited sales at this time.

93. As noted above, there remains much uncertainty with respect to the ongoing COVID-19 pandemic and its continued impact on the McEwan Group and the restaurant industry as a whole. The Company expects that the Business will continue to face negative impacts of the COVID-19 pandemic for an extended period of time, and will require additional funding to continue operating until the COVID-19 related factors cease negatively impacting the Business and revenues improve more significantly.

(C) Cash Conservation Efforts and Additional Sources of Funding

94. To minimize the detrimental effects caused by the COVID-19 pandemic on the Business, including the severe impact of the government mandated measures on the Business' ability to generate revenue, the McEwan Group undertook a number of measures to conserve cash and limit overhead and operating expenses. Among other things, the McEwan Group:

a) temporarily laid off 200 employees, including 130 employees at the ONE Restaurant and 70 employees at other McEwan Locations (173 of whom have since been re-hired to date, including 118 employees at the ONE Restaurant and 55 employees at other McEwan Locations);

b) negotiated, where possible, rent abatements, deferrals and other accommodations from landlords in respect of certain of the Company's existing lease arrangements;

c) negotiated deferrals of principal payments under its equipment lease obligations in 2020 and 2021;

d) pivoted certain of its restaurant and food-hall operations to a takeout and delivery model, preserving employment where possible and creating some new revenue streams in an effort to partially offset otherwise drastically reduced revenues; and

e) increased its efforts to promote its e-commerce sites for catering and grocery, and launched grocery delivery in July 2020, in further efforts to mitigate lost revenues and create some additional revenue streams.

95. The McEwan Group also obtained the benefit of certain government subsidies and support programs during the COVID-19 pandemic to subsidize rent and wage costs and provide the Business with some additional liquidity, including:

a) Canada Emergency Rent Subsidy ("**CERS**"): The Company has received approximately $300,000 in subsidies under CERS (for certainty, not taking into account subsidies received in respect of the ONE Restaurant), used to subsidize its rent obligations.

b) Canada Emergency Wage Subsidy ("**CEWS**"): The Company has received approximately $3.3 million in subsidies under CEWS (for certainty, not taking into account subsidies received in respect of the ONE Restaurant), used to subsidize employee wages and salaries.

c) CEBA: As discussed above, MEI received a small business loan as part of CEBA program in the amount of $60,000.

d) HASCAP: As discussed above, MEI received a HASCAP Loan in the amount of $250,000.

96. Unfortunately, the cost saving measures instituted by the Company, the landlord concessions, the government support, the Company's existing Secured Credit Facilities and the equity financing provided by the Company's shareholders in early 2020 remained insufficient to address the Company's financial challenges and to fund its cash requirements during the pandemic. As such, in order to meet the Company's urgent cash needs during the ongoing pandemic, the McEwan Group also obtained debt financing from Fairfax in the aggregate

amount of $1.72 million pursuant to the Fairfax Loans (discussed above). The additional debt incurred pursuant to the Fairfax Loans, while necessary to address the Company's liquidity needs, has resulted in an increase of borrowings by approximately 87% over the course of the COVID-19 pandemic. The Company also believes that it will need further funding in order to continue operations while the negative effects of the COVID-19 pandemic on the Business persist.

(D) Discussions with Landlords

97. As discussed above, at the outset of the COVID-19 pandemic, the McEwan Group was required to close all of its McEwan Restaurants in late March 2020, pursuant to applicable local government lock-down measures for an extended period of time, resulting in a cessation or significant reduction of revenues during the shut-down period at such leased locations, and was facing dramatically reduced sales at its McEwan Grocery Locations. As noted above, the Company's lease obligations are one of its primary operating expenses and uses of cash. Accordingly, the Company engaged in discussions with its landlords in the early stages of the COVID-19 pandemic in connection with its significant lease obligations.

98. Pursuant to consensual written lease amending agreements entered into with its landlords, the Company obtained various lease concessions, including rent abatements, rate deferrals and/or reduced minimum rent amounts. The Company has continued to honour its lease payment obligations, on the amended terms, pursuant to such lease amendments. Certain of such written lease amending agreements have expired pursuant to their terms, and the Company has continued to make payments in respect of such leases pursuant to the amended terms. As at August 31, 2021, the Company had approximately $0.5 million of estimated rent arrears and deferrals

outstanding (based on the Company's current financial statements, which amount may vary based on discussions and arrangements with the applicable landlords, as noted above).

99. Throughout the COVID-19 pandemic period, the Company has continued to engage with its landlords to seek arrangements on a consensual basis that would allow the Business to continue until the effects of the COVID-19 pandemic pass and the Company can seek to return the Business to pre-pandemic performance. In addition, recognizing that certain of the McEwan Locations are not sustainable, without taking into account the negative impacts of the COVID-19 pandemic, the Company has also engaged in discussions with its landlords in respect of such locations to seek amended terms or to otherwise seek to exit such locations on a consensual, mutually agreeable basis. Over a period of several months, the Company engaged in discussions with its landlords and presented proposed amendments and revised terms to certain lease arrangements.

100. Following such efforts and discussions with its landlords over an extended period of time, the Company has not been able to reach satisfactory agreements with its landlords that would allow the Business to continue on a sustainable basis going forward. At this time, the Company is continuing ongoing discussions with the Cadillac Fairview Entities with respect to amended terms for the Cadillac Fairview Leases and the parties are working to finalize satisfactory arrangements on a consensual basis.

(E) Strategic Review Efforts and the Transaction

101. In the summer of 2021, the Company engaged legal counsel to assist it in reviewing and assessing its various potential options and alternatives, in light of the financial difficulties facing the Company, including its liquidity issues and the ongoing challenges and impacts of the

COVID-19 pandemic. The Company reviewed and considered various potential alternatives with the assistance of its legal counsel, including, among others, negotiations with landlords, additional financing (debt or equity), reducing the size of the Business, a sale of the Business, and combinations thereof.

102. After extensive review and consideration of its circumstances, and its options and alternatives, and following efforts to reach consensual arrangements with landlords (discussed above), the Company determined that the best available alternative that could be implemented in the circumstances that would preserve the value of the Business for the benefit of the Company's many stakeholders, would be a sale of substantially all of the McEwan Group's assets and the Business (the "**Transaction**") to 2864785 Ontario Corp. (the "**Purchaser**"), a newly formed company owned by the Company's current shareholders, and the continuation of the Business with a reduced number of McEwan Locations, to result in a right-sizing of the Business on a sustainable basis going forward.

103. On September 27, 2021, the Company entered into an asset purchase agreement with the Purchaser, pursuant to which, subject to Court approval, the parties would complete the Transaction (the "**Purchase Agreement**"), a copy of which is attached hereto as Exhibit "C".

104. The Transaction includes, among other things:

a) the transfer of substantially all of the assets of the Company to the Purchaser;

b) the assumption by the Purchaser of substantially all of the Company's obligations, excluding the Excluded Liabilities (as defined and described below), currently estimated to total approximately $11 million, resulting in, among other things, all

secured and unsecured loans, all trade payables and go-forward supply arrangements, and five of the Company's seven leased locations being assumed by the Purchaser;

c) an offer of employment by the Purchaser to all of the Company's approximately 268 employees; and

d) a cash reserve in an amount as may be agreed to by the Company and the Purchaser, with the consent of the Monitor (the "**Cash Reserve**") to remain with the Company following the closing of the Transaction, to fund the costs of completing these CCAA proceedings, with any remaining balance of the Cash Reserve upon completion of the CCAA proceedings to be returned to the Purchaser.

105. Under the Transaction, the Purchaser will not assume certain limited obligations of the Company (the "**Excluded Liabilities**"), comprised of: (a) lease obligations relating to those locations not being assumed by the Purchaser as part of the Transaction (the "**Excluded Locations**"), and (b) the expenses incurred by the Company in connection with these CCAA proceedings, to be funded out of the Cash Reserve. At this time, the Excluded Locations are comprised of Fabbrica Don Mills and McEwan Yonge & Bloor.

106. Pursuant to the Transaction, the Purchaser may, at any time up to the day prior to the closing of the Transaction, elect to acquire any additional assets, properties, and rights of the Company (and any such additional assets, properties, and rights shall be Purchased Assets (as defined in the Purchase Agreement)) or to not acquire any assets, properties, and rights of the

Company (and any such assets, properties, and rights shall be Purchased Assets shall be Excluded Assets (as defined in the Purchase Agreement)).

107. The aggregate consideration for the Purchased Assets pursuant to the Transaction is: (a) the assumption of the Assumed Obligations (as defined in the Purchase Agreement) by the Purchaser and/or, as applicable, one or more designees of the Purchaser, which as at the date hereof are estimated to be approximately $11 million (calculated based on amounts outstanding as at August 31, 2021, and taking into account additional amounts expected to be incurred and additional funding requirements anticipated until the closing of the Transaction, based on a closing date of October 31, 2021), and (b) a cash payment in an amount equal to the sum of (i) $520,000 (the "**Base Purchase Price**"), and (ii) an amount equal to the Cure Costs (as defined in the Purchase Agreement).

108. I am advised by counsel to the Company that the Base Purchase Price was calculated based on an amount equal to the damages in respect of the lease relating to the McEwan Yonge & Bloor Excluded Location as determined pursuant to the formula set forth in section 136(1)(f) of the *Bankruptcy and Insolvency Act* (the "**BIA**"). As discussed above, the Company and the Cadillac Fairview Entities are continuing their ongoing discussions to reach mutually satisfactory arrangements in respect of the Cadillac Fairview Leases, and thus there is no claim amount included in respect of the Fabbrica Don Mills Excluded Location as part of the purchase price under the proposed Transaction.

109. Pursuant to the Purchase Agreement, the Purchaser has also agreed to fund a deposit of up to $2.25 million (the "**Transaction Deposit**") to the Company, to be provided in multiple tranches for use by the Company to fund its operations and the costs incurred in connection with

these CCAA proceedings until the closing of the Transaction. The funding of the Transaction Deposit by the Purchaser is subject to obtaining Court approval of the Transaction and a Court-ordered charge to secure the repayment of the Transaction Deposit to the Purchaser in the event the Transaction is not completed. If the Transaction is completed, the obligation to repay the Transaction Deposit would be assumed by the Purchaser pursuant to the Transaction, and there is no adjustment to the cash purchase price as a result thereof. If the Purchase Agreement is terminated, the Company will be required to repay the Transaction Deposit to the Purchaser.

110. The Company believes that the Purchase Agreement provides fair and reasonable consideration for the Purchased Assets in the circumstances. After due consideration of the circumstances of the McEwan Group, the status of the Business and the benefits of the Transaction to the McEwan Group's stakeholders, the Company determined that proceeding with the Transaction under the terms and conditions of the Purchase Agreement is in the best interests of the McEwan Group and its stakeholders.

111. The Company did not complete a third-party sale process to canvass potential interest from third parties in respect of acquiring the Company or the Business, and believes there is no prejudice to stakeholders from not having completed a third-party sale process based on all of the current circumstances. As discussed above, the Purchaser is acquiring and assuming substantially all of the assets and liabilities of the Company, with the exception of the Excluded Locations, and the Base Purchase Price provides for a cash amount in respect of the non-terminated Excluded Location based on the formula provided under the BIA.

112. I believe that there would be a significant benefit to the stakeholders of the Business from the completion of the proposed Transaction as outlined in the Purchase Agreement as, without

the support of myself, the Company's management team and Fairfax, there is a significant risk that many parties could be negatively impacted both on a financial and overall business basis. The Business, without the support of myself, the Company's management team and Fairfax, would not be the same business and the interests of, and recoveries to, stakeholders could be materially negatively affected.

113. As noted above, my continued involvement as chef and operator of the Business, which I believe to be fundamental to the success of the Business going forward, is premised on a continuation of my partnership with Fairfax as co-owners of the McEwan Group. I do not anticipate that I would remain with the Business if it were to be sold to a third party purchaser. The Company and its shareholders do not believe that a third party purchaser would be in a position to acquire the assets of the Business, without my continued involvement in the Business, for a similar or higher price.

114. The Transaction represents a transaction that will right-size the Company's Business, reduce the Company's material and unsustainable lease obligations and provide stability to the McEwan Group in a process that is fair and reasonable to all stakeholders. The Company believes that the implementation of the Transaction will result in a sustainable Business going forward for the benefit of the Company's many stakeholders, including its 268 employees whose jobs will be preserved, its secured creditors whose obligations will be unaffected and assumed by the Purchaser, and its many suppliers and service providers whose contracts and obligations will also all be assumed.

115. The Transaction is subject to customary conditions and receipt of requisite approvals, including approval by this Court.

116. As noted above, the Company intends to seek approval of the Transaction at the Sale Approval Motion. Additional details with respect to the Transaction will be set out in the materials filed in support of the Sale Approval Motion.

V. CCAA PROCEEDINGS

117. MEI is the sole applicant in these CCAA proceedings. For the reasons discussed in this Affidavit, the Company believes that it is appropriate for this Court to exercise its jurisdiction to grant the Initial Order in respect of the Company.

(A) The Company is Insolvent for the Purposes of the CCAA

118. Despite the Company's efforts to address its financial difficulties and the challenges relating to its unsustainable lease obligations on a consensual basis, MEI has been unable to find an out-of-court solution that would enable it to sufficiently restructure and right-size its business operations.

119. As discussed above, the challenges resulting from closures of and/or operating limitations on the McEwan Locations over an extended period of time due to the COVID-19 pandemic and the corresponding loss of revenues, have resulted in significant additional liquidity challenges for the Business, and have further exacerbated the financial challenges already being faced by the McEwan Group prior to the COVID-19 pandemic.

120. The Company has significant secured debt outstanding compared to its negative EBITDA for the twelve-month period ended December 31, 2020, and for the six-month period ended June 30, 2021, as well as significant unsecured obligations, including the Fairfax Loans provided in 2020 and 2021 that were required primarily to fund the Company's operations during the

challenging times over the course of the COVID-19 pandemic. The Company has also accumulated extensive rent arrears and deferral obligations over the course of the COVID-19 pandemic.

121. While the Business has begun to experience some improved performance following the recent permitted re-openings of restaurants in Toronto, a number of the McEwan Locations remain unsustainable based on the costs of operating such locations and their poor sales results. Such locations have continued to place increased liquidity pressure on the remaining Business.

122. Absent additional funding and the reduction of its unsustainable lease obligations, the Company is facing an imminent liquidity crisis and will be unable to satisfy its liabilities as they become due, and there is no reasonable expectation that the Company's financial condition will improve absent these restructuring proceedings. The Company is insolvent.

123. MEI has thoroughly considered the circumstances and the alternatives available to the Company in the present circumstances. In the exercise of its business judgment and with the assistance of the Company's legal advisors, MEI determined that it is in the best interests of the Company and its stakeholders for the Company to file for protection under the CCAA in order to preserve the value of the Business and continue as a going concern while seeking to implement a restructuring of the Business, including the proposed Transaction. By pursuing the implementation of the Transaction under the CCAA at this time, the Company can continue as a going concern while substantially all of the Company's assets and many of its obligations are transferred to and assumed by the Purchaser.

(B) Stay of Proceedings under the CCAA

124. The Company is concerned that in light of its financial circumstances, there could be an erosion of value to the detriment of all stakeholders. In particular, the Company is concerned about the following risks:

a) secured creditors trying to take steps to enforce on their security;

b) potential termination of contracts by key suppliers and service providers; and

c) potential termination of leases and related enforcement steps that could be taken by landlords.

125. Having regard to the circumstances, and in an effort to preserve the value of the Business, the commencement of the within CCAA proceedings and the granting of a stay of proceedings in order to permit the Company to restructure its affairs and implement the Transaction are in the best interests of the Company and its stakeholders.

126. I am advised by Goodmans LLP, counsel to the Company, that the maximum stay period that may be granted on an initial application under the CCAA is ten days. The Company anticipates seeking an extension of the initial ten-day stay period to and including December 17, 2021, at the Comeback Hearing (as defined below).

127. The Company is also requesting that this Court exercise its discretion to extend the stay of proceedings in respect of the personal guarantees, indemnities and security that I granted in my personal capacity in connection with certain of MEI's obligations, discussed above, as well as in favour of the McEwan Subsidiary.

(C) The Monitor

128. Alvarez & Marsal Canada ULC was retained to, among other things, prepare for the role of proposed monitor in these CCAA proceedings. Alvarez & Marsal Canada Inc. ("**A&M**"), an affiliate of Alvarez & Marsal Canada ULC, has consented to act as the monitor of the Company in the within proceedings (in such capacity, the "**Monitor**"), subject to Court approval. A copy of A&M's consent is to be attached as Tab "5" to the Application Record.

129. The professionals of A&M who have carriage of this matter, and who will have carriage of this matter for A&M if it is appointed as the Monitor, have acquired considerable knowledge of the Company and its business. A&M is in a position to immediately assist the Company with its restructuring process.

130. In connection with A&M's appointment as the Monitor, it is contemplated that a Court-ordered charge over the assets and property of the Company would be granted in favour of the Monitor, its counsel and the Company's counsel in respect of their fees and disbursements incurred prior to and following the commencement of these proceeding at their standard rates and charges (the "**Administration Charge**"). The Company is seeking an Administration Charge in an aggregate amount of $225,000 at this time, which reflects approximately the costs of these proceedings incurred and not paid to date and the estimated costs to be incurred in the period up to the next hearing to be scheduled in these CCAA proceedings (the "**Comeback Hearing**"), as set out in the Cash Flow Forecast (as defined below). The Company anticipates requesting at the Comeback Hearing that the Administration Charge be increased to $350,000.

131. The Administration Charge is to have the priority described in Section V(G) of this Affidavit.

132. All of the beneficiaries of the Administration Charge have contributed, and continue to contribute, to the restructuring efforts of the Company.

133. The proposed Monitor and counsel to the proposed Monitor each hold a retainer provided by the Company prior to the commencement of these proceedings, with such retainers totalling $100,000.

(D) Funding of the Company

(i) Cash Flow Forecast

134. As at August 31, 2021, the Company had a cash balance of approximately $1.0 million. A copy of the cash flow forecast prepared by the Company with the assistance of the proposed Monitor is attached hereto as Exhibit "D" (the "**Cash Flow Forecast**").

135. As set out in the Cash Flow Forecast, with the remaining availability under the Secured Credit Facilities and the funding from the Transaction Deposit (if approved by the Court), the Company is expected to have sufficient funding through the period of the Cash Flow Forecast. The principal uses of cash during the next 13-week period will consist of ongoing payments made in the ordinary course in respect of employee compensation, rent, suppliers, inventory and other ordinary course business obligations (as discussed further below), and professional fees, expenses and disbursements incurred in connection with these CCAA proceedings.

136. As noted above, upon completion of the Transaction, which remains subject to, among other things, approval by this Court, substantially all of the assets of the Company, including the Company's cash, will be transferred to the Purchaser. Under the Purchase Agreement, the parties have agreed to the Cash Reserve to remain with the Company, with any remaining funds

to be provided to the Purchaser on the earlier of six months from the completion of the Transaction or the wind-down of the Company.

(ii) Cash Management System

137. The Company has a banking relationship with RBC, and its cash management system (the "**Cash Management System**") is operated through the various accounts held by the Company at RBC in Toronto. The Company has 10 bank accounts and maintains 11 business credit cards with RBC pursuant to the Secured Credit Facilities.

138. As discussed above, pursuant to the terms of the Secured Loan Agreement, the Company is required to maintain a general bank account at RBC in respect of each Secured Credit Facility that is a revolving demand facility, making up eight of the 10 bank accounts at RBC. The Company also has one bank account in respect of its "brand" business and one bank account for payments received from the ONE Restaurant Partnership.

139. The Company is seeking the authority to continue to use the existing Cash Management System and to maintain the banking arrangements already in place. The continued operation of the existing Cash Management System will minimize disruption to the Company's operations and avoid the need to negotiate and implement alternative banking arrangements. The current Cash Management System includes the necessary accounting controls to enable the Company and the proposed Monitor to trace funds and ensure that all transactions are adequately ascertainable. As such, the proposed Initial Order authorizes a continuation of the current Cash Management System.

(E) Payments during the CCAA Proceedings

140. During the course of these CCAA proceedings, the Company also intends to pay all reasonable post-filing expenses incurred by it in carrying on the Business in the ordinary course including, without limitation, its rent obligations pursuant to the terms of the proposed Initial Order, all expenses and capital expenditures reasonably necessary for the preservation of its property and the Business, and payment for goods or services actually supplied to the Company post-filing.

141. The Company is also seeking authority to make ongoing payments in respect of certain obligations, whether such obligations are incurred pre-filing or post-filing, including:

a) all employee obligations owing to employees in the ordinary course;

b) advisor fees and disbursements incurred at their standard rates and charges;

c) all outstanding and future amounts related to honouring gift cards and the Customer Program;

d) amounts owing to providers of credit, debit, gift card or other payment process services; and

e) with the consent of the Monitor, amounts owing for goods or services supplied to the Company prior to the Initial Order if, in the opinion of the Company, such supplier is a critical supplier of the Business or such payment is otherwise necessary to maintain the uninterrupted operations of the Business or the Company during the CCAA proceedings.

142. The authority to make the foregoing payments is necessary for the continued operation of the Business and in connection with these CCAA proceedings, the completion of the Transaction and the restructuring of the McEwan Group. The Company believes that it is in the best interests of its stakeholders that it have the authority to continue to pay these expenses in the normal course, regardless of whether such expenses were incurred prior to, on or after the date of the Initial Order. The Company is concerned that in the absence of these parties being paid in the ordinary course, they may discontinue providing ongoing goods or services to the detriment of the Company. Preserving these goods and services on an uninterrupted basis is essential to the Company's ongoing operations, as discontinuance could have an adverse impact on the operation of the Company's Business.

(F) Director and Officer Protections

143. The director and officers of the Company (collectively, the "**Directors and Officers**") have been actively involved in efforts to address the current circumstances of the Company, including the review and consideration of the Company's financial circumstances, efforts to manage and address the Company's challenging liquidity position, overseeing the Company's negotiations with landlords, the pursuit of restructuring alternatives, including the proposed Transaction, and the preparation for and commencement of these CCAA proceedings. The Directors and Officers have been mindful of their duties with respect to their supervision and guidance of the Company in advance of these CCAA proceedings.

144. It is my understanding, as advised by Goodmans LLP, counsel to the Company, that in certain circumstances, directors and officers can be held personally liable for certain of a company's obligations to the federal and provincial governments, including in connection with

payroll remittances, harmonized sales taxes, goods and services taxes, workers compensation remittances, among others. Furthermore, I understand it may be possible for directors and officers of a company to be held personally liable for certain wage-related obligations to employees.

145. The Company maintains a directors and officers insurance policy with Northbridge Insurance (the "**D&O Policy**") for the Directors and Officers which currently expires on December 31, 2021. The D&O Policy provides $3 million of coverage. The D&O Policy also includes certain additional coverage for the Directors and Officers of up to $1 million in excess of coverage otherwise provided by the D&O Policy.

146. The D&O Policy insures the Directors and Officers for certain claims that may arise against them in their capacity as directors and/or officers of the Company. However, the D&O Policy contains several exclusions and limitations to the coverage provided. Further, there is the potential for coverage limits to be exhausted and for there to be insufficient coverage in respect of the potential directors' and officers' liabilities for which the Directors and/or Officers may be found to be responsible.

147. The Company requires the active and committed involvement of the Directors and Officers during the CCAA proceedings as it seeks to complete a successful restructuring, including the Transaction, for the benefit of the Company and its stakeholders.

148. Accordingly, the Company is requesting a Court-ordered charge (the "**Directors' Charge**") over the assets and property of the Company to secure the indemnity of the Directors and Officers pursuant to the proposed Initial Order in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers.

149. The Company is requesting the Directors' Charge in an amount of $600,000 at this time, and anticipates requesting at the Comeback Hearing that the Directors' Charge be increased to $1.45 million. The proposed amounts of the Directors' Charge have been calculated by the Company based on the estimated potential exposure of the Directors and Officers and have been reviewed with the proposed Monitor.

150. The proposed Directors' Charge would apply only to the extent that the Directors and Officers do not have coverage under the D&O Policy. The Directors' Charge is to have the priority described in Section V(G) of this Affidavit.

(G) <u>Priorities of Charges</u>

151. It is contemplated that the priorities of the Court-ordered charges discussed above (collectively, the "**Charges**"), as among them, would be as follows:

a) First – the Administration Charge (to a maximum of $225,000); and

b) Second – the Directors' Charge (to a maximum of $600,000).

152. Pursuant to the proposed Initial Order, the Charges on the assets and property of the Company would rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, notwithstanding the order of perfection or attachment, except for any secured creditor of the Company who does not receive notice of the application for the Initial Order The proposed Initial Order authorizes the Company to seek an Order granting priority of the Charges ahead of all or certain additional Encumbrances on a subsequent motion on notice to those persons likely to be affected thereby. At the Comeback

Hearing, the Company intends to seek an Order granting priority of the Charges ahead of all Encumbrances of those secured creditors given notice of the Comeback Hearing, other than the Encumbrances granted by the Company in favour of RBC.

153. The Company believes the amounts of the Charges are fair and reasonable in the circumstances for the period until the Comeback Hearing. As noted above, the Company expects to seek to increase the amounts of the Administration Charge and the Directors' Charge at the Comeback Hearing.

VI. CONCLUSION

154. The Company, with the assistance of its advisors, has reviewed and considered its potential options and alternatives that may be available in the circumstances, taking into account the Company's unsustainable locations, liquidity issues and the ongoing challenges and impacts of the COVID-19 pandemic.

155. The Company is not able to continue in the status quo with its significant fixed obligations and based on the financial performance of the Business. There is no reasonable expectation that the Company's financial condition will improve absent these restructuring proceedings.

156. Despite the Company's efforts to address its financial difficulties and the challenges relating to its unsustainable lease obligations on a consensual basis, it has been unable to find an out-of-court solution that would enable it to sufficiently restructure and right-size its business operations.

157. After extensive review and consideration of its circumstances, and its options and alternatives, and following efforts to reach consensual arrangements with its landlords, the Company determined that the best available alternative that could be implemented in the circumstances that would preserve the value of the Business for the benefit of the Company's many stakeholders, would be a sale of substantially all of the assets of the Business pursuant to the proposed Transaction, and the continuation of the Business with a reduced number of McEwan Locations, to result in a right-sizing of the Business on a sustainable basis going forward.

158. The Transaction represents a transaction that will right-size the Company's Business, reduce the Company's material and unsustainable lease obligations and provide stability to the McEwan Group in a process that is fair and reasonable to all stakeholders. The Company believes that the implementation of the Transaction will result in a sustainable Business going forward for the benefit of the Company's many stakeholders, including its 268 employees whose jobs will be preserved, its secured creditors whose obligations will be unaffected and assumed by the Purchaser, and its many suppliers and service providers whose contracts and obligations will also all be assumed.

159. The Company believes that it is necessary and important to commence these CCAA proceedings at this time in order to protect and provide stability to the Business for the benefit of the Company's numerous stakeholders, while the Company pursues its restructuring efforts.

160. The Company believes that the relief sought pursuant to the proposed Initial Order is appropriate and necessary in the circumstances, and respectfully request that the Court grant the proposed Initial Order.

SWORN before me over videoconference by Dennis Mark McEwan stated as being located in the City of Toronto in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on September 27, 2021, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely

Caroline Descours

A Commissioner for taking affidavits

Caroline Descours LSO#: 58251A

Dennis Mark McEwan

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 MCEWAN ENTERPRISES INC.

Applicant

Court File No: CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE-
COMMERCIAL LIST

Proceeding commenced at Toronto

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Proceeding commenced at Toronto

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ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

MOTION RECORD
(Returnable December 21, 2021)

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