

Clerk's stamp:



COURT / ESTATE FILE NUMBERS 24-2946872
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

APPLICANTS IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF DYNALEO INC. AND DYNALEO GROUP SERVICES INC.

DOCUMENT **AFFIDAVIT NO. 3 OF MICHAEL KRESTELL**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MILLER THOMSON LLP
Barristers and Solicitors
3000, 700 – 9th Avenue SW
Calgary, AB, Canada T2P 3V4

Attention: James W. Reid / Kyla Mahar
Phone: 403-298-2418 / 416-597-4303
E-mail: jwreid@millerthomson.com / kmahar@millerthomson.com

File No.: 0277934.0001

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AFFIDAVIT NO 3. OF MICHAEL KRESTELL

Sworn on August 14, 2023

I Michael Krestell, of the city of Thornhill, in the Province of Ontario, **MAKE OATH AND SAY THAT:**

1. This Affidavit is made in support of the application (the "**Application**") by Dynaleo Inc. ("**Dynaleo**") and Dynaleo Group Services Inc. ("**Dynaleo Services**") and together with Dynaleo, the "**Companies**") returnable August 22, 2023, before the Court of King's Bench of Alberta (the "**Court**").
2. I am the Executive Chairman and director of each of the Companies. As such, I have personal knowledge of the Companies and matters to which I depose in this Affidavit. Where I have relied on other sources for information, I have so stated and I believe them to be true.
3. I have previously sworn an affidavit in these proceedings on May 24, 2023 (the "**First Krestell Affidavit**") in support of the May 30, 2023 Order (as defined below) and on July 24, 2023 (the "**Second Krestell Affidavit**") in support of the July 31, 2023 Stay Extension Order (as defined below).
4. Unless otherwise stated, monetary figures in this Affidavit are expressed in Canadian dollars.

INTRODUCTION

5. As noted in the First Krestell Affidavit, on May 23, 2023, the Companies filed a notice of intention to make a proposal (the "**NOI**") under section 50.4(1) of *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). The NOI was filed in consultation with the Companies' professional advisors to attempt to restructure the Companies for the benefit of their stakeholders and after identifying no viable alternative process due to the Companies' insolvency.
6. Pursuant to section 50.4(8) of the BIA, the initial stay period under these proceedings was from May 23, 2023 to June 22, 2023.
7. On May 30, 2023, on application by the Companies, the Court granted an order (the "**May 30, 2023 Order**") that, among other things:



- (a) appointed Harris & Partners Inc. as the trustee in these proceedings (the "**Proposal Trustee**");
 - (b) approved a sale and investment solicitation process (the "**SISP**") described in the Proposal Trustee's First Report to the Court dated May 24, 2023 (the "**First Report**") and authorized and directed the Companies and the Proposal Trustee to carry out the SISP;
 - (c) granted a charge, not to exceed \$200,000, as security for the fees and costs of the Proposal Trustee, its independent legal counsel, and legal counsel to the Companies;
 - (d) granted a Directors' and Officers' Charge over the assets and property of Dynaleo only, to a maximum amount of \$75,000, in favour of the directors and officers of the Companies;
 - (e) extended the time for filing a proposal pursuant to section 50.4(9) of the BIA up to and including August 5, 2023; and
 - (f) consolidated, for procedural purposes only, the Court of King's Bench of Alberta Bankruptcy and Insolvency Estate Nos. 24-2946871 and 24-2946872 into Estate No. 24-2946872.
8. On July 31, 2023, on application by the Companies, the Court of King's Bench of Alberta granted an order (the "**July 31, 2023 Stay Extension Order**") that, among other things, extended the time for filing a proposal pursuant to section 50.4(9) of the BIA up to and including September 19, 2023, to allow the Companies to pursue bids that were submitted in respect of the SISP.
9. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the First Krestell Affidavit or the APA (defined below).

NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

10. This Affidavit is made in support of the Application for an order, among other things:
- (a) abridging the time for service of the Application and the supporting material, if necessary, and deeming service thereof to be good and sufficient;



- (b) extending the time by which the Companies may file proposals to their creditors pursuant to section 50.4(9) of the BIA for a 30-day period following the current deadline to do so;
- (c) approving the purchase and sale transaction contemplated in the draft asset purchase agreement (the “**APA**”) between the Companies, as vendors, and Radco Ventures Inc. or its nominee, as purchaser (the “**Purchaser**”), on the terms set forth in the APA;
- (d) authorizing the Companies to make an interim distribution from the net proceeds of the transaction pursuant to the APA for the payment of priority deemed trust portions of source deduction arrears owing to the Canada Revenue Agency;
- (e) if necessary, approving the assignment of the lease between Dynaleo and 1806949 Alberta Ltd. (the “**Landlord**”) dated June 1, 2019 (the “**Lease**”) to the Purchaser;
- (f) approving releases (“**Releases**”) in favour of (i) the current and former directors, officers, employees, legal counsel and advisors of the Companies, (ii) the Proposal Trustee and its legal counsel, and (iii) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (“**Released Parties**”);
- (g) sealing confidential appendices (the “**Confidential Appendices**”) to the Third Report of the Proposal Trustee (the “**Third Report**”); and
- (h) such further and other relief as counsel may request and this Honourable Court may deem appropriate;

(collectively, the “**Relief Sought**”).

- 11. I have been advised by the Proposal Trustee that it supports the Relief Sought in the Application.

BACKGROUND

Operations and Organization

- 12. As noted in the First Krestell Affidavit, the Companies are private companies in the business of producing and distributing cannabis infused gummies.



13. Dynaleo is incorporated pursuant to the *Business Corporations Act*, RSA 2000, c B-9. Its registered office is located at 2500-10175 101 Street NW, Edmonton, Alberta.
14. Dynaleo Services is incorporated pursuant to the *Canada Business Corporations Act*, RSC 1985, c C-44.
15. The Companies together are in the business of producing and distributing the highest quality cannabis-infused edible gummies (the “**Product**”).
16. Dynaleo Services manages the production of the Product and at its peak employed approximately 65 full-time employees.
17. Dynaleo owns the equipment and supplies necessary for the production of the Product. Dynaleo also holds the lease in which the Companies operate out of and is responsible for distribution of the Product to the Companies’ customers.
18. The Companies are insolvent and each filed a Notice of Intention to Make a Proposal with the Official Receiver on May 23, 2023 in order to restructure their affairs for the benefit of their stakeholders.

Employees

19. When its operations were in full production, Dynaleo Services had over 65 employees (the “**Employees**”), all of whom were based in Alberta, with the exception of four employees based in Ontario and one in British Columbia.
20. On May 9, 2023, after being informed by a critical customer of Dynaleo that this customer was going to reduce Product volume purchases, Dynaleo Services laid off 25 of its employees.
21. The remainder of the employees were terminated after filing the NOI. Five individuals have been retained on a contract basis to assist the Companies with carrying out the SISP and these proceedings.

The SISP

22. As set out in the First Krestell Affidavit beginning at paragraph 75, and the First Report beginning at paragraph 36, the Companies, with support of the Proposal Trustee, sought and obtained approval of the SISP to undergo a restructuring process and allow



all qualified and interested parties to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Companies' assets and business operations (the "Opportunity").

23. The Companies commenced the SISP in June of 2023. It was designed to be flexible, such that any proposed transaction structure would be considered, whether it be for shares, or assets of the Companies, or any combination of these transactions.
24. The SISP milestones were:

Milestone	Deadline
Proposal Trustee to create list of Known Potential Bidders and distribute Teaser Letters and NDAs to Known Potential Bidders	June 2, 2023
Phase 1 Bid Deadline	June 23, 2023
Phase 2 Bid Deadline	July 7, 2023
Transaction Approval Application Hearing	July 14, 2023
Closing Date Deadline	July 21, 2023

25. The Companies and Proposal Trustee worked together to prepare a list of Potential Bidders, including: (i) parties that have approached the Companies and/or the Proposal Trustee indicating an interest in the Opportunity, and (ii) strategic and financial parties who the Companies, in consultation with the Proposal Trustee, believe may be interested in purchasing all or part of the Business and Property or investing in the Companies pursuant to the SISP.

Results of the SISP

26. On or around June 2, 2023, the Proposal Trustee circulated to interested parties a process summary (the "Teaser Letter"), describing the Opportunity, the non-disclosure agreement, the process under the SISP, and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP. A copy of the correspondence providing the Teaser Letter, details of the SISP process, and the non-disclosure agreement is attached as **Exhibit "A"**.
27. Interested parties were requested to submit an executed NDA, a letter setting forth the required information as laid out in the SISP, and a form of financial disclosure and credit

quality support to enable the Companies and Proposal Trustee to understand the potential bidder's ability to consummate a potential transaction.

28. If the Companies, in consultation with the Proposal Trustee, determined that a potential bidder satisfied the requirements within the SISP procedure document, then the potential bidder was deemed to be a "**Phase 1 Qualified Bidder**".
29. A Phase 1 Qualified Bidder that wished to pursue the opportunity further was required to deliver a non-binding letter of intent (an "**LOI**") to the Proposal Trustee by 5:00 p.m. MST on June 23, 2023 (the "**Phase 1 Bid Deadline**").
30. It is my understanding that five Phase 1 Potential Bidders, including the Purchaser, submitted an LOI by the Phase 1 Bid Deadline.
31. Following the Phase 1 Bid Deadline, the Companies, in consultation with the Proposal Trustee, assessed the LOIs and selected certain parties (each a "**Phase 2 Qualified Bidder**") to proceed to Phase 2 of the SISP.
32. It is my understanding that two Phase 2 Qualified Bidders submitted binding offers by the bid deadline (each, a "**Binding Offer**"). Following receipt of the Binding Offers, the Companies, with the assistance of the Proposal Trustee determined that the Binding Offer submitted by the Purchaser provides the greatest recovery to stakeholders with the least closing risk.
33. Since the bid deadline, the Companies, with the assistance of the Proposal Trustee and their respective legal advisors have been negotiating the APA with the Purchaser for the Purchased Assets, subject to Court approval. I understand that a copy of the redacted APA, which is near final, will be attached as an appendix to the Third Report of the Proposal Trustee. A copy of the unredacted APA will be attached as a confidential appendix to the Third Report of the Proposal Trustee, to be filed.
34. On July 31, 2023, on application by the Companies, the Court of King's Bench of Alberta granted an order (the "**July 31, 2023 Stay Extension Order**") that, among other things, extended the time for filing a proposal pursuant to section 50.4(9) of the BIA up to and including September 19, 2023, to allow the Companies additional time to close the transaction contemplated by the APA and restructure their affairs.



RELIEF REQUESTED

Extension of Time to File a Proposal

35. An extension of time for the Companies to file a proposal or proposals is a material component of these proceedings to allow the Companies to restructure their affairs, including completing the transaction contemplated by the APA.
36. Since filing the NOI, the Companies have been diligently complying with the various requirements under the BIA, including:
 - (a) preparing and analyzing the list of creditors;
 - (b) providing the Proposal Trustee with access to the Companies' senior employees and books and records;
 - (c) completing a cash flow forecast to the week ending October 19, 2023; and
 - (d) working with the Proposal Trustee to review and analyse binding offers submitted in the SISP and to negotiate and enter into the APA.
37. The Companies are working in good faith and with a view to maximize value for the Companies' creditors and other stakeholders.
38. I understand that in order to continue to work toward the formulation and filing of a proposal or proposals, the Companies will require an extension of the time period within which they may file a proposal or proposals to their creditors. In this regard:
 - (a) the Companies have acted and are acting in good faith and with due diligence both in the period prior to and since filing of the NOI;
 - (b) an extension will enhance the Companies' abilities to make a viable proposal or proposals following the completion of the transaction under the APA; and
 - (c) an extension will also allow the Companies to carry out certain dispute resolution steps pursuant to a litigation scheduling order of this Court.
39. I do not believe that an extension will prejudice any of the creditors.



Approval of the Asset Purchase Agreement

40. The Companies seek approval of the transaction contemplated by the APA in the form of an Approval and Vesting Order.

41. The key terms of the APA are as follows:
 - (a) the Purchaser will acquire all of Companies' right, title and interest in and to the Purchased Assets from the Companies;
 - (b) the transaction is anticipated to close as soon as practicable, being five business days following the receipt of an Approval and Vesting Order or such other later date as may be determined between the parties, but in no event later than August 30, 2023 ("**Closing Date**");
 - (c) the Purchaser will acquire all of Companies' right, title, interest and obligation in and to the Companies' lease for the licensed facility as well as any other contracts of the Companies designated by the Purchaser prior to the Closing Date;
 - (d) the Purchaser may identify certain former employees of the Companies that it wishes to offer employment to following the Closing Date. The Purchaser shall bear any obligations or liabilities in relation to employees who accept the Purchaser's offer of employment following the Closing Date; and
 - (e) the Purchaser and Companies will enter into a post-closing storage agreement whereby the Purchaser will store certain assets of the Companies, if any, and as may be designated by the Companies or the Proposal Trustee, at no cost to the Companies (and provide all reasonable access to allow the Companies and the Proposal Trustee to access and remove such assets), and other terms as may be agreed between the Purchaser and Companies.

42. The Companies request that the Court approve the APA for the following reasons:
 - (a) the APA was submitted in compliance with the requirements of the Court-approved SISP;
 - (b) the APA is the result of extensive negotiations and represents the highest and best offer for the Purchased Assets in the present circumstances as well as having the highest likelihood of closing on an expedited timeline; and

(c) the APA will provide the potential for continued employment for some of the Companies' employees.

43. The Proposal Trustee was kept apprised of and was involved in the progress and status of the SISP and the subsequent negotiations of the APA, is supportive of the transaction contemplated by the APA, and is satisfied that sufficient effort was made to get the best price for the Purchased Assets and that further marketing efforts are not required.

Approval of the Assignment of the Lease

44. Dyanleo is the tenant under the Lease. The Landlord and the Tenant are currently negotiating terms for entering into a new lease arrangement for the premises upon which the Purchaser will operate, or alternatively, enter into a lease assignment agreement.

45. In the event that the Landlord and the Purchaser have not entered into an arrangement at the time of the Application, the parties are seeking an assignment of the Lease to the Purchaser.

46. It is expected that all amounts owing to the Landlord by Dynaleo under the Lease will be paid up in full prior to the Application.

Approval of the Disbursement for Source Deductions

47. Pursuant to an audit conducted by the Canada Revenue Agency (the "CRA") dated June 28, 2023, \$152,513.96 is owing for unpaid source deductions, inclusive of penalties and interest. The source deduction amounts relate to amounts owing pursuant to the Companies unpaid payroll remittances for the two pay periods prior to filing for creditor protection, being \$64,659.15 from April 6, 2023, and \$67,231.53, from May 5, 2023. Attached as **Exhibit "B"** is a copy of the statement of account for Dynaleo Services.

48. The source deduction amounts owing relate to deemed trust amounts that Dynaleo Services was required to withhold from its employees and remit to the CRA, plus penalties and interest. In early 2023, all the employees of Dynaleo were transferred to Dynaleo Services, however, Dynaleo Services never opened a bank account, and all payroll matters continued to be controlled and paid by Dynaleo. Further, no services

contract was entered into between Dynaleo Services and Dynaleo, so effectively, for all intents and purposes, the employees of Dynaleo Services continued to work for and be paid by Dynaleo.

49. As a result, both Companies are party to the APA, and the Companies are seeking approval to make a distribution to the CRA of the deemed trust portion of the source deduction amounts owing.
50. An interim distribution to the CRA for the deemed trust portion of the outstanding source deduction amounts owing will prevent further interest and penalties from accruing to the detriment of the estate.

Approval of the Releases

51. The Companies seek the approval of Releases in favour of the Released Parties.
52. The Released Parties have made material contributions to these proceedings. Leading up to, and since the initiation of the proceedings, the Released Parties have worked diligently towards, or otherwise facilitated, a going-concern transaction of the Purchased Assets. Such efforts resulted in a successful SISP, multiple offers, and the negotiated APA.
53. The Releases are also critical to the orderly wind-down of these proceedings, as they will facilitate further monetary distributions to the secured creditors, which would otherwise be held back for an expensive and unnecessary claims process. In this respect the Releases facilitate the release of the Court-ordered charges without requiring a reserve for potential claims.
54. The requested Releases are necessary to bring finality to the proceedings, and will allow for further distributions to creditors in any proposal the Companies intend to put to their creditors.
55. Throughout these proceedings, the Released Parties acted in good faith and with due diligence.
56. The Releases explicitly do not release or discharge any claim that is not permitted to be released, pursuant to BIA section 50(14), including claims that are based on



allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors.

- 57. With respect to the Releases being sought in favour of the directors and officers of the Companies, which include only myself and Peter Guo, it is important to note that both Mr. Guo and I are significant investors that, like other investors, have lost our investments in Dynaleo.

Sealing Order

- 58. I understand that the confidential appendices to the Third Report contain confidential and commercially sensitive information.
- 59. An order sealing the confidential appendices is appropriate given the commercially sensitive information contained therein and the potential negative impact that disclosure of such information may have on these proceedings and a future sale process in the event that the transaction contemplated in the APA does not close.

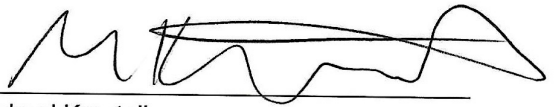
CONCLUSION

- 60. I swear this Affidavit in support of the Application and any other proper purpose in connection with these proceedings.
- 61. I was not physically present before the commissioner when swearing this Affidavit but was linked with the commissioner utilizing video technology and that the protocol described in the Alberta Court of King’s Bench Notice to the Profession and Public dated March 25, 2020 with respect to remote commissioning of Affidavits was followed.

SWORN BEFORE me at the City of Thornhill, in the Province of Ontario, this 14th day of August, 2023.

A Commissioner for Oaths in and for the Province of Alberta.

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Michael Krestell



This is Exhibit "A" referred to in the Affidavit of Michael Krestell sworn before me this 14th day of August 2023

A COMMISSIONER FOR OATHS IN AND FOR ALBERTA



From: Jill Strueby <jill@harrispartners.ca>
Sent: Friday, June 2, 2023 2:12 PM
To: Jill Strueby
Subject: Dynaleo - Investment or Purchase Opportunity
Attachments: SISP Procedures.pdf; Non-Disclosure Agreement for SISP - Dynaleo NOI.pdf; Dynaleo - Teaser.pdf

Good afternoon,

We thought this investment or acquisition opportunity might be of interest to you. We have attached a Teaser, the SISP Procedures and a Non-Disclosure Agreement and would be happy to set up a call to discuss the SISP process in more detail.

The Investment or Purchase Opportunity and Process

On May 23, 2023, Dynaleo Inc. ("**Dynaleo**") and Dynaleo Group Services Inc. ("**Dynaleo Services**" and together with Dynaleo, the "**Companies**") filed a Notice of Intention to Make a Proposal ("**NOI**"). On May 30, 2023, the Honourable D.B. Nixon of the Court of King's Bench of Alberta (the "**Court**") granted an Order (the "**SISP Order**") in the NOI Proceedings, among other things, authorizing the Companies, with the assistance of the Proposal Trustee, to pursue all avenues of sale of or investment in of their assets or business, in whole or in part, subject to prior approval of the Court before any material sale or refinancing.

Pursuant to the SISP, interested parties who wish to pursue a potential investment or acquisition are required to execute a Non-Disclosure Agreement to receive access to the data room.

The Proposal Trustee is accepting non-binding bids until **5:00pm Calgary Time on June 23, 2023 (Phase I Bid Deadline)**.

Additional information is available on the Proposal Trustee's website: www.hpiadvisory.com/dynaleo.

We look forward to hearing from you.

Sincerely,



Jill Strueby CPA, CA, CIRP

Partner | Licensed Insolvency Trustee

T: 403-800-1574 | M: 403-629-9848 | F: 905-479-2346

W: www.harrispartnersadvisory.ca



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A handwritten signature in blue ink, appearing to be "Jill Strueby".

Attachment One to Email

MS

Sale and Investment Solicitation Process

Introduction

1. On May 23, 2023, each of Dynaleo Inc. ("**Dynaleo**") and Dynaleo Group Services Inc. ("**Dynaleo Services**") and collectively, the "**Companies**") filed a Notice of Intention to Make a Proposal (each, an "**NOI**") pursuant s. 50.4 of the *Bankruptcy and Insolvency Act* (the "**BIA**") in Estate Nos 24-2946871 and 24-2946872 (the "**NOI Proceedings**").
2. Harris & Partners Inc. is the proposal trustee of each of the Companies in the NOI Proceedings (in such capacity, the "**Proposal Trustee**").
3. On May 30, 2023, the Honourable D.B. Nixon of the Court of King's Bench of Alberta (the "**Court**") granted an Order (the "**SISP Order**") in the NOI Proceedings, among other things, authorizing the Companies, with the assistance of the Proposal Trustee, to pursue all avenues of sale of or investment in their assets or business, in whole or in part, subject to prior approval of the Court before any material sale or refinancing.
4. In this regard, the Proposal Trustee will conduct the sale and investment solicitation process (the "**SISP**") described herein, with the assistance of the Companies and with the approval of the Court pursuant to the SISP Order.
5. The SISP is intended to solicit interest in an acquisition or refinancing of the business or a sale of the assets and/or the Business (as defined herein) of the Companies by way of sale, merger, reorganization, recapitalization, equity issuance or other similar transaction. The Companies intend to provide all qualified interested parties with an opportunity to participate in the SISP.
6. This document (the "**SISP Procedure**") outlines the SISP, which is comprised of two phases ("**Phase 1**" and "**Phase 2**", respectively).
7. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency. Unless otherwise indicated herein, any event that occurs on a day that is not a business day in the Province of Alberta (each, a "**Business Day**") shall be deemed to occur on the next Business Day.

Opportunity

8. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Companies' assets and business operations (the "**Opportunity**"). The Opportunity may include one or more of a restructuring, recapitalization or other form or reorganization of the business and affairs of the Companies as a going concern, or a sale of all, substantially all, or one or more components of the Companies' assets (the "**Property**") and business operations (the "**Business**") as a going concern or otherwise.
9. Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as defined herein), any sale of the Property or investment in the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Proposal Trustee, the Companies, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Companies in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders,

to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.

Timeline

10. The following table sets out the key milestones under the SISP:

Milestone	Deadline
Proposal Trustee to create list of Known Potential Bidders and distribute Teaser Letters and NDAs to Known Potential Bidders	June 2, 2023
Phase 1 Bid Deadline	June 23, 2023
Phase 2 Bid Deadline	July 7, 2023
Transaction Approval Application Hearing	July 14, 2023
Closing Date Deadline	July 21, 2023

The dates set out in the SISP may be extended by the Proposal Trustee.

SOLICITATION OF INTEREST: NOTICE OF THE SISP

11. As soon as reasonably practicable, but in any event by no later than June 2, 2023:
- (a) the Companies, in consultation with the Proposal Trustee, will prepare a list of Potential Bidders (as defined herein), including:
 - (i) parties that have approached the Companies or the Proposal Trustee indicating an interest in the Opportunity; and
 - (ii) local and international strategic and financial parties who the Companies, in consultation with the Proposal Trustee, believe may be interested in purchasing all or part of the Business and Property or investing in the Companies pursuant to the SISP,
 (collectively, "**Known Potential Bidders**");
 - (b) the Proposal Trustee will arrange for a notice of the SISP (and such other relevant information which the Proposal Trustee, in consultation with the Companies, considers appropriate) (the "**Notice**") to be published in Insolvency Insider and any industry publication, website, newspaper or journal as the Proposal Trustee, in consultation with the Companies, considers appropriate, if any; and
 - (c) the Companies, in consultation with the Proposal Trustee, will prepare:
 - (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and
 - (ii) a non-disclosure agreement in form and substance satisfactory to the Companies and the Proposal Trustee, and their respective counsel (an "**NDA**").

12. The Proposal Trustee shall send the Teaser Letter and NDA to each Known Potential Bidder by no later than June 2, 2022, and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Companies or the Proposal Trustee as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

PHASE 1: NON-BINDING LOIS

Qualified Bidders

13. Any party who wishes to participate in the SISP (each, a “**Potential Bidder**”) must deliver to the Companies and the Proposal Trustee, unless the Proposal Trustee confirms to such Potential Bidder that the below documents were already provided to the satisfaction of, or are already available to, the Companies and the Proposal Trustee:

- (a) an executed NDA which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof. If the Potential Bidder has previously delivered an NDA and letter of this nature to the Companies or Proposal Trustee and the NDA remains in effect, the Potential Bidder is not required to deliver a new NDA or letter pursuant to this section unless otherwise requested by the Proposal Trustee;
- (b) a letter setting forth the Potential Bidder's (i) identity, (ii) contact information and (iii) full disclosure of its direct and indirect principals; and
- (c) a form of financial disclosure and credit quality support or enhancement that allows the Companies and the Proposal Trustee to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate a Sale Proposal or Investment Proposal (as each is defined herein), as applicable.

14. If the Companies, in consultation with the Proposal Trustee, determine that a Potential Bidder has:

- (a) delivered the documents contemplated in paragraph 13 above; and
- (b) the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP,

then such Potential Bidder will be deemed to be a “**Phase 1 Qualified Bidder**”. For greater certainty, no Potential Bidder shall be deemed to be a Phase 1 Qualified Bidder without the approval of the Proposal Trustee, in consultation with the Companies.

15. At any time during Phase 1 of the SISP, the Companies may, in their reasonable business judgment and after consultation with the Proposal Trustee and with the consent of the Proposal Trustee, eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP and will no longer be a Phase 1 Qualified Bidder for the purposes of the SISP.
16. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Companies.

Due Diligence

17. The Proposal Trustee, in consultation with the Companies, shall in its reasonable business judgment and subject to competitive and other business considerations, afford each Phase 1 Qualified Bidder such access to due diligence material and information relating to the Property and Business as they or the Proposal Trustee deem appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Phase 1 Qualified Bidder may reasonably request and as to which the Companies, in their reasonable business judgment and after consulting with the Proposal Trustee, may agree.
18. The Proposal Trustee shall designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated. Neither the Companies nor the Proposal Trustee shall be obligated to furnish any information relating to the Property or Business to any person other than to Phase 1 Qualified Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 1 Qualified Bidders if the Companies, in consultation with and with the approval of the Proposal Trustee, determine such information to represent proprietary or sensitive competitive information.

Non-Binding Letters of Intent from Phase 1 Qualified Bidders

19. A Phase 1 Qualified Bidder that wishes to pursue the Opportunity further must deliver a non-binding letter of intent (an “**LOI**”) to the Companies and the Proposal Trustee at the addresses specified in Schedule “1” hereto (including by e-mail), so as to be received by them not later than 5:00 PM (Calgary Time) on June 23, 2023 (the “**Phase 1 Bid Deadline**”).
20. Subject to paragraph 45, an LOI will only be considered a qualified LOI (a “**Qualified LOI**”) if:
- (a) it is submitted on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;
 - (b) it contains an indication of whether the Phase 1 Qualified Bidder is offering to:
 - (i) acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”); or
 - (ii) make an investment in, restructure, reorganize or refinance the Business or the Companies (an “**Investment Proposal**”);
 - (c) in the case of a Sale Proposal, it identifies or contains the following:
 - (i) the Purchase Price or price range in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
 - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - (iii) a specific indication of the financial capability of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction;
 - (iv) a description of the conditions and approvals required for a final and binding offer;

- (v) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
 - (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (d) in the case of an Investment Proposal, it identifies or contains the following:
- (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Companies in Canadian dollars;
 - (iii) the underlying assumptions regarding the *pro forma* capital structure;
 - (iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;
 - (v) a description of the conditions and approvals required for a final and binding offer;
 - (vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
 - (vii) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and
 - (viii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction; and
- (e) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Proposal Trustee or the Companies.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

21. Following the Phase 1 Bid Deadline, the Companies, in consultation with the Proposal Trustee, will assess the Qualified LOIs and, if it is determined that a Phase 1 Qualified Bidder that has submitted a Qualified LOI:
- (a) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and
 - (b) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided;

then such Phase 1 Qualified Bidder will be deemed a “**Phase 2 Qualified Bidder**”, provided that the Companies may, in their reasonable business judgment and after consultation with the Proposal Trustee and with the approval of the Proposal Trustee, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some bidders from the process) taking into account the factors identified in paragraph 22 hereof and any material adverse impact on the operations and performance of the Companies. Only Phase 2 Qualified Bidders shall be permitted to proceed to

Phase 2 of the SISP. No Phase 1 Qualified Bidder that has submitted a Qualified LOI shall be deemed not to be a Phase 2 Qualified Bidder without the approval of the Proposal Trustee.

22. As part of the assessment of Qualified LOIs and the determination of the process subsequent thereto, the Companies, in consultation with the Proposal Trustee, shall determine the process and timing to be followed in pursuing Qualified LOIs based on such factors and circumstances as they consider appropriate in the circumstances including, but not limited to:
- (a) the number of Qualified LOIs received;
 - (b) the extent to which the Qualified LOIs relate to the same Property or Business or involve Investment Proposals predicated on certain Property or Business;
 - (c) the scope of the Property or Business to which any Qualified LOIs may relate; and
 - (d) whether to proceed by way of sealed bid or auction with respect to some or all of the Property.
23. If the Proposal Trustee is not satisfied with the number or terms of the Qualified LOIs, the Proposal Trustee, in consultation with the Companies, may either terminate this SISP, or extend the Phase 1 Bid Deadline without further Court approval and, unless otherwise provided for by the Proposal Trustee, the Phase 2 Bid Deadline (as defined herein), and any other deadlines or timeframes hereunder, shall not apply, or may be extended by the Proposal Trustee as it deems necessary in consultation with the Companies.
24. If the Proposal Trustee, in consultation with the Companies, is of the view there is only one Qualified LOI worth the Company pursuing a transaction with, the Proposal Trustee, in consultation with the Companies, may terminate this SISP and bypass the steps set out in Phase 2 of this SISP, and the Companies, in consultation with the Proposal Trustee, may enter into exclusive negotiations with such Phase 1 Qualified Bidder for a transaction. In such circumstances, any finalized and binding bid by the Phase 1 Qualified Bidder may be selected as the Successful Bid (defined below), and the Phase 1 Qualified Bidder as the Successful Bidder (defined below), for the purposes of the Transaction Approval Application (defined below).
25. If the Proposal Trustee, in consultation with the Companies, elect to bypass Phase 2, the timelines set out in these SISP Procedures shall be proportionally accelerated.
26. Subject to paragraphs 24 and 25 above, following the determination of the manner in which to proceed to Phase 2 of the SISP in accordance with paragraphs 21 and 22 hereof, the Companies, in consultation with the Proposal Trustee and with the approval of the Proposal Trustee, may prepare a bid process letter for Phase 2 (the "Bid Process Letter") to be (a) sent by the Proposal Trustee to all Phase 2 Qualified Bidders as soon as practically possible following the Phase 1 Bid Deadline, and (b) posted by the Proposal Trustee on the website the Proposal Trustee maintains in respect of the NOI Proceedings.

PHASE 2: FORMAL OFFERS AND SELECTION OF SUCCESSFUL BIDDER

27. Paragraphs 28 to 34 below and the conduct of Phase 2 are subject to paragraphs 21 to 26, above, any adjustments made to Phase 2 in accordance with the Bid Process Letter, and any further Court order regarding the SISP.

Formal Binding Offers

28. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Companies or their Property or Business shall submit a binding offer (a "**Phase 2 Bid**") that complies with all of the following requirements to Companies and the Proposal Trustee at the addresses specified in Schedule "1" hereto (including by e-mail), so as to be received by them not later than 5:00 PM (Calgary Time) on July 7, 2023, or as may be modified in the Bid Process Letter (the "**Phase 2 Bid Deadline**"):
- (a) the bid shall comply with all of the requirements set forth in paragraph 20 above in respect of Phase 1 Qualified LOIs;
 - (b) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Companies or their Property or Business and is consistent with any necessary terms and conditions established by the Companies and the Proposal Trustee and communicated to Phase 2 Qualified Bidders;
 - (c) the bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined herein), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
 - (d) the bid includes duly authorized and executed transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;
 - (e) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Companies and the Proposal Trustee to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
 - (f) the bid is not conditioned on (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 1 from the Phase 2 Qualified Bidder, or (ii) obtaining financing, but may be conditioned upon the Companies receiving the required approvals or amendments relating to the licences required to operate the Business, if necessary;
 - (g) the bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;
 - (h) for a Sale Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a non-refundable deposit in the form of a wire transfer to a trust account specified by the Proposal Trustee (a "**Deposit**") in the amount of not less than 15% of the Purchase Price offered upon the Phase 2 Qualified Bidder being selected as the Successful Bidder;
 - (i) for an Investment Proposal, the bid includes a Deposit in the amount of not less than 15% of the total new investment contemplated in the bid upon the Phase 2 Qualified Bidder being selected as the Successful Bidder;