

**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 LOYALTYONE, CO.

(the "**Applicant**")

**MOTION RECORD
(MOTION FOR DISTRIBUTION, STAY EXTENSION AND VESTING ORDERS)**

June 26, 2023

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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(as of June 23, 2023)

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(as of June 23, 2023)

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TAB 1

**ONTARIO
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NOTICE OF MOTION
(returnable July 5, 2023)

The Applicant will make a Motion before the Honourable Madam Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on Wednesday, July 5, 2023 at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard by video conference.

THE MOTION IS FOR

- (a) An order (the "**Stay Extension and Distribution Order**") substantially in the form attached at Tab 2 of the Applicant's Motion Record, *inter alia*:
 - (i) authorizing the Applicant, at such time or times as it determines appropriate, to make one or more distributions to the Credit Facility Agent (as defined below) of the Cash and Proceeds (as defined below) held by the Applicant, subject to the terms set out in the proposed order;

- (ii) providing that the Monitor shall not incur any liability in connection with the distributions contemplated in the proposed order, whether in its personal capacity or in its capacity as the Monitor;
 - (iii) reducing the Directors' Charge (as defined below) to \$2 million;
 - (iv) terminating the Employee Retention Plans Charge (as defined below);
 - (v) extending the Stay Period (as defined in the Amended and Restated Initial Order granted March 20, 2023 (the "**ARIO**")) until and including June 28, 2024, and directing the Monitor (as defined below) to report to the Court and the Applicant's stakeholders during the extended Stay Period no less frequently than every six months;
 - (vi) approving the Pre-Filing Report of the Proposed Monitor dated March 10, 2023 (the "**Pre-Filing Report**"), the First Report of the Monitor dated March 16, 2023 (the "**First Report**"), the Second Report of the Monitor dated April 27, 2023 (the "**Second Report**"), the Third Report of the Monitor dated May 8, 2023, (the "**Third Report**") and the Fourth Report of the Monitor, to be filed (the "**Fourth Report**"), and the activities and conduct of the Monitor set out in such reports; and
 - (vii) approving the fees and expenses of the Monitor (as defined below) and its legal counsel as set out in the Fourth Report, and the affidavits attached thereto;
- (b) An order (the "**Approval and Vesting Order (FF&E)**") substantially in the form attached at Tab 3 of the Applicant's Motion Record, approving the sale of certain

furniture, fixtures and equipment (the “**FF&E**”) previously used by the Applicant at its Toronto headquarters to the landlord, First Gulf KEC Development Limited (the “**Purchaser**”) and vesting all of the Applicant’s right, title and interest in and to the FF&E in the Purchaser free and clear of any encumbrances; and

- (c) Such further and other relief as to this Court may deem just.

THE GROUNDS FOR THE MOTION ARE

Overview

- (a) The Applicant and its former subsidiary historically operated the marketing program known as the AIR MILES[®] Reward Program (the “**AIR MILES[®] Reward Program**” or “**AIR MILES[®]**”). The Applicant’s most significant program partner (the largest participant in the program) was Bank of Montreal (“**BMO**”).
- (b) The Applicant has sold substantially all of its operating assets to two affiliates of BMO pursuant to an Asset Purchase Agreement (as defined below) approved by this Court on May 12, 2023, and which transaction closed on June 1, 2023. Consistent with an additional Order granted on that date (the “**Ancillary Relief Order**”), upon closing of the sale transaction, the Applicant’s directors and officers were deemed to have resigned (subject to certain limited exceptions) and the Monitor was authorized and empowered, but not required, to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicant to cause the Applicant, through the Applicant’s Assistants (as defined in the ARIO) (then engaged, if any), to take the actions described in the Ancillary Relief Order.

- (c) The next steps in this proceeding are the distribution of the Cash and Proceeds to the secured creditors and the realization on the Applicant's remaining assets. In furtherance of these efforts, the Applicant is seeking an order authorizing one or more distributions of the Cash and Proceeds on the terms set out in the proposed Stay Extension and Distribution Order and an extension of the Stay Period for 12 months in order to provide the Applicant with time to advance the realization of its remaining assets, the most substantial of which are litigation claims that will require significant time to evaluate and pursue (if appropriate). The Applicant is also seeking an order approving the sale of the FF&E on the terms set out in the proposed Approval and Vesting Order (FF&E).

Background

- (d) The Applicant is an indirect subsidiary of Loyalty Ventures Inc. ("**LVI**"), a Delaware corporation. LVI is a holding company that was formed as part of a transaction (the "**Spinoff Transaction**") completed in November 2021 by Bread Financial Holdings, Inc. (formerly known as Alliance Data Systems Corporation) ("**Bread**").
- (e) Following the Spinoff Transaction, the Applicant struggled under the weight of substantial financial burdens imposed on it by Bread. Pursuant to the Spinoff Transaction, Bread: (i) required LVI to borrow and the Applicant, among others, to guarantee US\$675 million of senior secured debt pursuant to a senior secured credit agreement (the "**Credit Agreement**") and to transfer the proceeds thereof, after payment of the transaction costs, to Bread; and (ii) extracted US\$100 million of cash from the balance sheets of LVI's subsidiaries, including the Applicant. Bread also caused LVI to enter into a series of agreements through which Bread

would continue to provide operational services to LVI and its subsidiaries in exchange for a monthly fee.

- (f) In light of these financial pressures, in 2022, the Applicant began to engage in good faith negotiations with certain of the lenders under the Credit Agreement to identify a path forward that would permit the continued operation of the AIR MILES[®] Reward Program. In this regard, the Applicant also approached BMO as its major partner under the AIR MILES[®] Reward Program.
- (g) Following negotiations, the Applicant and BMO entered into an agreement (the “**Asset Purchase Agreement**”) to be used as a “stalking horse bid” in connection with a court-supervised sale and investment solicitation process (the “**SISP**”). The Asset Purchase Agreement contemplated a transaction whereby BMO, or its designees, for a cash purchase price of US\$160 million, subject to certain adjustments, would: (i) purchase all or substantially all of the operating assets of the Applicant; and (ii) assume certain liabilities associated with the continued operations of the AIR MILES[®] business on the terms set out therein, (collectively, the “**BMO Transaction**”). The Asset Purchase Agreement also contemplated both the SISP and BMO providing the Applicant with a post-filing debtor-in-possession financing facility of up to US\$70 million (the “**DIP Financing Facility**”) to finance these CCAA proceedings and the Chapter 11 Cases (defined below).

The CCAA and the SISP

- (h) On March 10, 2023, the Applicant was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order of the Court (the “**Initial Order**”). Pursuant to the Initial

Order, KSV Restructuring Inc. was appointed as monitor of the Applicant (in such capacity, the “**Monitor**”).

- (i) On that same day, LVI and three of its affiliates (the “**U.S. Debtors**”) commenced proceedings (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code before the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Bankruptcy Court**”). The Applicant is not a debtor in the Chapter 11 Cases.
- (j) On March 20, 2023, this Court granted the ARIO, which, among other things:
 - (i) authorized and empowered the Applicant to obtain and borrow under the DIP Financing Facility, in order to finance the Applicant’s working capital requirements, make intercompany loans to LVI (the “**Intercompany DIP Loan**”) and fund other general corporate purposes and capital expenditures;
 - (ii) authorized and empowered the Applicant to enter into a support agreement dated March 10, 2023 (the “**Transaction Support Agreement**”) with certain holders of the Applicant’s pre-filing secured debt and the agent (the “**Credit Facility Agent**”) under the Credit Agreement, *nunc pro tunc*;
 - (iii) approved two employee retention plans and granted a corresponding charge in the amount of \$5,350,000 (the “**Employee Retention Plans Charge**”);
 - (iv) increased the charge in favour of certain directors and officers (the “**Directors’ Charge**”) granted in the Initial Order to \$15,409,000; and

- (v) extended the Stay Period until May 18, 2023 (the “**Stay Period**”).

- (k) Also on March 20, 2023, the Court granted an order (the “**SISP Approval Order**”) which, among other things, approved the SISP, including the use of the Asset Purchase Agreement as the “stalking horse bid” in the SISP, authorized the Applicant to implement the SISP pursuant to its terms, and authorized and directed the Applicant, PJT Partners LP in its capacity as the financial advisor to the Applicant, and the Monitor to perform their respective obligations under the SISP.

- (l) On April 27, 2023, the U.S. Bankruptcy Court approved a plan of liquidation for the U.S. Debtors (the “**U.S. Plan**”). The U.S. Plan contemplates a liquidating trust that will pursue litigation claims for the benefit of the U.S. Debtors’ stakeholders, including the secured creditors.

- (m) Although the Applicant is not a debtor in the Chapter 11 Cases, the U.S. Plan contemplates certain actions by the Applicant, including the granting of releases and the continued funding of the U.S. Debtors pursuant to the Intercompany DIP Loan. The Applicant sought and obtained an order of this Court on May 1, 2023, permitting the Applicant to take actions contemplated by the U.S. Plan.

The BMO Transaction

- (n) The SISP was conducted in accordance with its terms and on April 28, 2023, the Applicant notified BMO that the Asset Purchase Agreement had been selected as the successful bid under the SISP.

- (o) Following the selection of the successful bid, the Asset Purchase Agreement was amended to (i) address certain immaterial drafting inconsistencies and defined

terms; (ii) attach a revised list of excluded contracts; (iii) provide for a revised process for the identification of additional excluded contracts; and (iv) include certain provisions relating to Transition Employees (as defined below). The amendment also provided for an increase to the consideration provided under the Asset Purchase Agreement from US\$160 million in cash to US\$160,259,861.40.

- (p) Pursuant to an order dated May 12, 2023 (the “**AVO**”), the Asset Purchase Agreement and the sale of the purchased assets to BMO’s designees under the Asset Purchase Agreement (the “**Buyers**”) was approved. The AVO also authorized certain relief related to the sale, including the repayment of the DIP Financing Facility. On that same date, the Court granted a contract assignment order under section 11.3 of the CCAA compelling the assignment of certain contracts to the Buyers for which consent to assignment was required but not obtained prior to the hearing.
- (q) To facilitate the BMO Transaction and advance this proceeding following the closing of the transaction, on May 12, 2023, the Applicant also sought and obtained an ancillary order which, among other things,
 - (i) provided that the directors and officers of the Applicant would be deemed to have resigned upon the closing of the BMO Transaction, subject to limited exceptions,
 - (ii) immediately following the deemed resignation of the directors and officers, expanded the powers of the Monitor to include the powers of a board of directors or any officer,

- (iii) removed LoyaltyOne Travel Services Co./Cie Des Voyages LoyaltyOne from the protections granted in the Initial Order (in light of the sale of the shares of that entity in connection with the BMO Transaction); and
- (iv) extended the Stay Period to July 14, 2023.

- (r) Immediately prior to the closing of the BMO Transaction, on May 31, 2023, the Applicant and BMO entered into a second amendment to the Asset Purchase Agreement, among other things, clarifying the ownership and use of certain intellectual property assets and confirming the process for the post-closing allocation of hard copy records between the Applicant and the Buyers.

- (s) The BMO Transaction closed on June 1, 2023. As will be described in detail in the Monitor's Fourth Report, the Applicant is now holding the proceeds of the BMO Transaction and cash that was agreed would remain with the Applicant following closing (collectively, the "**Cash and Proceeds**").

- (t) As contemplated in the Asset Purchase Agreement, in connection with the closing, the Applicant's employees were provided with offers of employment from BMO and, with the exception of 20 employees (as described below), were moved to positions with BMO effective on June 1, 2023. Two employees of the Applicant did not accept their offer of employment from BMO and were terminated effective on May 31, 2023. In addition, 20 employees of the Applicant continued to work for the Applicant until June 18, 2023, providing certain critical month-end accounting services, and were subsequently transitioned to employment with BMO effective on June 20, 2023 (the "**Transition Employees**").

- (u) Each former employee of the Applicant has been paid all amounts owing in respect of wages and vacation pay according to the Applicant's books and records, including all amounts secured under the Employee Retention Plans Charge.

- (v) The process for determination of the final purchase price is set out in the Asset Purchase Agreement and provides for the Buyers to deliver a draft closing statement setting forth the Buyers' calculation of certain purchase price adjustment components not later than 90 calendar days after the closing. To the extent the parties are unable to resolve any disputes relating to the proposed purchase price adjustments, the Asset Purchase Agreement provides for the resolution of disputes by the Monitor or, in certain circumstances, by an arbitrator. Under the terms of the Asset Purchase Agreement, the maximum amount of potential purchase price adjustment is US\$10 million. As such, at closing, the Buyer deposited US\$10 million into an escrow account maintained by the Monitor as security for any ultimate purchase price adjustments.

Next Steps in this Proceeding

- (w) Along with the post-closing matters related to the Asset Purchase Agreement, the Applicant, under the direction of the Monitor, has been working to disclaim any unnecessary agreements, liquidate any remaining physical assets (including redundant office furniture at the Toronto location) and to determine the best path forward to realize on its remaining assets. Among the remaining assets are litigation claims, including, a potential tax claim relating to a tax reassessment by the CRA of approximately \$100 million which the Applicant has appealed (the "**CRA Litigation**").

- (x) A trial in the CRA Litigation has been scheduled for the fall of 2024.

Proposed Distributions

- (y) The Applicant is seeking authority to make one or more distributions from the Cash and Proceeds to the Credit Facility Agent for the benefit of the secured lenders. The Credit Facility Agent is the first priority secured creditor in respect of the assets that were sold in the BMO Transaction, subject to the Charges (as defined in the ARIO).
- (z) The remaining Charges are:
 - (i) Administration Charge (to the maximum amount of \$3,000,000);
 - (ii) Directors' Charge (to the maximum amount of \$15,409,000 and which the Applicant is seeking to reduce to \$2,000,000); and
 - (iii) Employee Retention Plans Charge (to the maximum amount of \$5,350,000, which the Applicant is seeking to have released at this time).
- (aa) The Financial Advisor Charge and the DIP Lender's Charge (each as defined in the ARIO) and the Bid Protections Charge (as defined in the SISP Approval Order) have been discharged pursuant to the AVO.
- (bb) Pursuant to the Stay Extension and Distribution Order, if granted, the Applicant will be authorized to make distributions to the Credit Facility Agent up to the full amount of the Applicant's "Obligations" (as that term is defined in the Credit Agreement), provided that the Applicant will retain sufficient funds to pay (i) any amounts secured by the Charges and such other amounts as determined by the Applicant,

after consultation with the Requisite Consenting Lenders (as defined in the Transaction Support Agreement), and with the consent of the Monitor, or as otherwise ordered by the Court (collectively, the “**Priority Amounts**”) and (ii) such other amounts as the Applicant, with the consent of the Requisite Consenting Lenders or further Order of this Court, determines necessary, including to facilitate the ongoing administration of this CCAA proceeding and the activities of the Applicant.

- (cc) For certainty, the Applicant is only seeking authority at this time to make distributions of its Cash and Proceeds and is not seeking authority to make distributions of any of its other assets including the ultimate proceeds, if any, of the CRA Litigation.
- (dd) As will be further described in the Fourth Report, the Applicant has begun discussions with the CRA and the Department of Justice and is seeking certain confirmations from those agencies in order to facilitate the proposed distributions of the Cash and Proceeds.

Proposed Sale of FF&E

- (ee) In connection with the BMO Transaction, the Buyers acquired certain of the furniture and equipment at the Applicant’s Toronto headquarters. The remaining furniture, fixtures and equipment used at the Applicant's former headquarters, including the furniture that is being used by the subtenants, continues to be stored on site.

- (ff) The Applicant, with the Monitor's assistance, engaged an experienced liquidator to evaluate the remaining assets and develop a realization strategy. The liquidator's proposal provided for the conduct of an online auction and the removal of the assets from the leased space within 45 days. Under the proposal, the Applicant would have received a portion of the proceeds from the sale of each item.
- (gg) The Applicant has issued a disclaimer for the lease for the Toronto headquarters which will become effective July 10, 2023.
- (hh) In connection with the issuance of the disclaimer, the Applicant and the Purchaser entered into discussions regarding the remaining FF&E. The Applicant and the Purchaser reached an agreement to sell all of the Applicant's right, title and interest in all of the remaining FF&E to the Purchaser for \$360,000 plus HST. The parties negotiated a bill of sale (the "**Bill of Sale**") that contains no representations or warranties but provides that the Applicant will seek a vesting order from this Court. The transaction under the Bill of Sale allows the Applicant to avoid the administrative burdens of an auction and the removal of the FF&E from the leased premises prior to the effective date of the disclaimer and provides certainty with respect to realization on the FF&E.
- (ii) Pursuant to the ARIO, the Applicant has the authority to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction. Because the proposed purchase price exceeds the threshold set out in the ARIO and the

Purchaser is requiring a vesting order to complete the transaction, the Applicant is seeking the proposed Approval and Vesting Order (FF&E).

Proposed Stay Extension

- (jj) The Applicant requires additional time to (i) complete the purchase price adjustment process under the Asset Purchase Agreement, (ii) complete the realization of its remaining assets, including the current and potential litigation claims and (iii) pursue other remaining wind-up activities for the benefit of the Applicant's creditors.
- (kk) If the CRA Litigation proceeds to trial, the trial will not commence until the fall of 2024. Similarly, the other potential claims held by the Applicant will take significant time to assess, and, if appropriate, advance.
- (ll) As a result, the Applicant is seeking an extension of the Stay Period to June 28, 2024, at which point it will return to Court to seek a further extension, as necessary. In the interim, the Monitor will report to Court no less frequently than every 6 months in order to keep the Court and the Applicant's stakeholders apprised of any material developments.

Approval of the Monitor's Reports and Fees

- (mm) The proposed Stay Extension and Distribution Order seeks approval of the Pre-Filing Report, the First Report, the Second Report, the Third Report, and the Fourth Report, and the activities and conduct of the Monitor described in such reports.
- (nn) The Monitor and its counsel also seek approval of their fees and disbursements as set out in the Fourth Report, and the affidavits attached thereto.
- (oo) The Monitor and its counsel have maintained appropriately detailed records of their professional costs and time incurred, as set out in the Fourth Report and the affidavits attached thereto. The fees and disbursements charged by the Monitor and its counsel are consistent with market professional rates for significant commercial restructuring matters.
- (pp) The fees and disbursements incurred by the Monitor and its counsel, as described in the Fourth Report and the affidavits attached thereto, are reasonable in the circumstances and have been, and will be, validly incurred in accordance with the provisions of the Orders granted in this proceeding.

Other Grounds

- (qq) In addition to the other grounds discussed in this Notice of Motion, the Applicant relies on:
 - (i) The provisions of the CCAA, including ss. 11 and 36, and the inherent and equitable jurisdiction of this Honourable Court;

- (ii) Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- (iii) Such further and other grounds as the lawyers may advise.

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

- (a) The Fourth Report of the Monitor and the exhibits attached thereto (including the fee affidavits), to be filed; and
- (b) Such further and other evidence as the lawyers may advise and this Court may permit.

June 26, 2023

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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 LOYALTYONE, CO.

Court File No. CV-23-00696017-00CL

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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TAB 2

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

THE HONOURABLE) WEDNESDAY, THE 5th
)
JUSTICE STEELE) DAY OF JULY, 2023
)

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 LOYALTYONE, CO.

(the "**Applicant**")

STAY EXTENSION AND DISTRIBUTION ORDER

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*: (i) approving an extension of the Stay Period; (ii) authorizing and empowering the Applicant to make one or more distributions to the Credit Facility Agent; (iii) reducing the Directors' Charge and terminating the Employee Retention Plans Charge; (iv) approving certain reports filed in this CCAA Proceeding by KSV Restructuring Inc., in its capacity as Monitor of the Applicant (in such capacity, the "**Monitor**"), and the activities and conduct of the Monitor described therein; (v) approving the fees and disbursements of the Monitor and its counsel, as described in the Fourth Report of the Monitor dated June ●, 2023 (the "**Fourth Report**"), and the affidavits attached thereto sworn in support thereof; and (vi) granting certain related relief, was heard this day by Zoom videoconference.

ON READING the Notice of Motion of the Applicant, the Fourth Report of the Monitor, filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the Consenting Stakeholders, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Alec Hoy, filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated March 20, 2023 or the Fourth Report, as applicable.

EXTENSION OF THE STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including June 28, 2024. During the Stay Period, as extended pursuant to this paragraph 3, the Monitor shall report to the Court and the Applicant's stakeholders no less frequently than every six months by preparing a report that will be served on the Service List, filed with this Court and posted on the Monitor's case website for this CCAA Proceeding.

DISTRIBUTIONS

4. **THIS COURT ORDERS** that the Applicant is hereby authorized, at such time or times as it determines appropriate, to make one or more distributions to the Credit Facility Agent of Cash and Proceeds held by the Applicant (or held by the Monitor on behalf of the Applicant) from time to time, provided that (i) the aggregate of all such distributions, together with any other recoveries received by the Credit Facility Agent or the Credit Agreement Lenders, at the date of such distribution, shall not exceed the full amount of the Applicant's "Obligations" (as that term is defined in the Credit Agreement); and (ii) the Applicant shall retain sufficient funds to satisfy any Priority Amounts and such other amounts as the Applicant, with the consent of the Requisite Consenting Lenders or further Order of this Court, determines necessary, including to facilitate the ongoing administration of this CCAA Proceeding and the activities of the Applicant. Such distributions shall be free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing: (i) any

encumbrances or charges created by the Initial Order, the ARIO, the SISP Approval Order of this Court dated March 20, 2023, or any other orders made in this CCAA proceeding; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system in any province or territory in Canada or the Civil Code of Quebec.

5. **THIS COURT ORDERS** that distributions on account of claims arising under the Credit Agreement shall be made by the Applicant to the Credit Facility Agent for application by the Credit Facility Agent (i) in accordance with the provisions of the Credit Agreement (including the payment of all fees, expenses, charges, and all other amounts payable to the Credit Facility Agent in its capacity as such) and applicable law and (ii) in order to enable the Credit Facility Agent to provide the necessary funding to fund the LVI Chapter 11 Litigation Trust as is contemplated by, and in accordance with, the LVI Chapter 11 Plan.

6. **THIS COURT ORDERS AND DECLARES** that the Credit Facility Agent be and is hereby authorized to make the distributions contemplated in paragraph 5 hereof, and that no further order, or other direction or authorization shall be required in order to effect such distributions from any funds received by the Credit Facility Agent, and the Credit Facility Agent is authorized to take any further steps that it deems necessary or desirable to make the distributions contemplated in paragraph 5 hereof.

7. **THIS COURT ORDERS** that all distributions by the Applicant to the Credit Facility Agent pursuant to paragraph 4 hereof shall be made in U.S. dollars or Canadian dollars to the extent requested by the Credit Facility Agent.

8. **THIS COURT ORDERS** that the Applicant shall be entitled to deduct and withhold from any such distribution to the Credit Facility Agent such amounts as may be required to be deducted or withheld under any applicable law, and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such person as the remainder of the distribution in respect of which such withholding or deduction was made.

9. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered to cause the Applicant to make the distributions contemplated hereby and take any further steps that it deems necessary or desirable to complete the distributions described in this Order.

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

- (a) the pendency of this proceeding or the termination of this proceeding;
- (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”) in respect of the Applicant or its Property and any bankruptcy or receivership order issued pursuant to any such application; or;
- (c) any assignment in bankruptcy made in respect of the Applicant,

any distributions made pursuant to this Order are final and irreversible and shall be binding upon any trustee in bankruptcy or receiver that may be appointed in respect of the Applicant or its Property, and shall not be void or voidable by creditors of the Applicant, nor shall any such distributions constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers-at-undervalue or other reviewable transactions under the BIA or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the Applicant or its Property.

CHARGES

11. **THIS COURT ORDERS** that the Directors’ Charge shall be and is hereby reduced to the amount of \$2 million.

12. **THIS COURT ORDERS** that the Employee Retention Plans Charge shall be and is hereby terminated, released and discharged.

THE MONITOR

13. **THIS COURT ORDERS** that the Monitor shall not incur any liability in connection with the distributions contemplated herein, whether in its personal capacity or in its capacity as the Monitor.

14. **THIS COURT ORDERS** that in carrying out the terms of this Order, the Monitor, whether in its personal capacity or in its capacity as the Monitor:

- (a) shall have all the protections provided to it as an officer of this Court or otherwise at law, including the protections granted pursuant to the CCAA and other orders granted in this CCAA Proceeding, including the stay of proceedings; and
- (b) shall incur no liability or obligation as a result of carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

15. **THIS COURT ORDERS AND DECLARES** that the distributions contemplated herein shall not constitute a “distribution” by the Monitor and the Monitor shall not constitute a “legal representative”, “representative” or “responsible representative” of the Applicant or “other person” for the purposes of Section 159 of the *Income Tax Act* (Canada), section 117 of the *Taxation Act, 2007* (Ontario), Section 270 of the *Excise Tax Act* (Canada), Sections 46 and 86 of the *Employment Insurance Act* (Canada), Section 22 of the *Retail Sales Tax Act* (Ontario), Section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Statutes**”), and the Monitor in causing or assisting the Applicant to make any distribution in accordance with this Order is not “distributing”, nor shall it be considered to have “distributed”, such funds for the purposes of the Statutes.

APPROVAL OF MONITOR’S ACTIVITIES

16. **THIS COURT ORDERS** that the Pre-Filing Report of the Proposed Monitor dated March 10, 2023, the First Report of the Monitor dated March 16, 2023, the Second Report of the Monitor dated April 27, 2023, the Third Report of the Monitor dated May 8, 2023, and the Fourth Report are each hereby approved, and the activities and conduct of the Monitor prior to or on the date hereof in relation to the Applicant and this CCAA Proceeding (including as described in each of the foregoing reports) are hereby ratified and approved; provided, however, that only the Monitor,

in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR AND ITS COUNSEL

17. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from March 10, 2023 to May 31, 2023, all as set out in the affidavit of Noah Goldstein sworn June [27], 2023, are hereby approved.

18. **THIS COURT ORDERS** that the fees and disbursements of Goodmans LLP, in its capacity as counsel to the Monitor, for the period from March 10, 2023 to June 6, 2023, all as set out in the affidavit of Christopher Armstrong sworn June [27], 2023, are hereby approved.

GENERAL

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, 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 to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are each hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

Steele, J.

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 LOYALTYONE, CO.

Court File No. CV-23-00696017-00CL

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

PROCEEDING COMMENCED AT
TORONTO

STAY EXTENSION AND DISTRIBUTION ORDER

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Lawyers for the Applicant

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 5TH
)
JUSTICE STEELE) DAY OF JULY, 2023
)

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 LOYALTYONE, CO.

(the "**Applicant**")

APPROVAL AND VESTING ORDER

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order approving the sale of the FF&E (as defined below) contemplated by a bill of sale between the Applicant and First Gulf KEC Development Limited (the "**Purchaser**"), dated June 16, 2023 (the "**Bill of Sale**") and appended as Appendix "**●**" to the Fourth Report of the Monitor dated June **●**, 2023 (the "**Fourth Report**"), and vesting in the Purchaser the Applicant's right, title, and interest in and to the FF&E was heard this day by Zoom videoconference.

ON READING the Fourth Report, and the Appendices thereto, and such further materials as counsel may advise, and on hearing the submissions of counsel to the Applicant, counsel to the Monitor, [counsel to the Purchaser] and the other parties listed on the counsel slip, no one else appearing for any other party on the Service List although duly served as appears from the affidavit of service of Alec Hoy sworn June **●**, 2023, filed.

SERVICE

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

APPROVAL OF THE FF&E SALE

2. **THIS COURT ORDERS AND DECLARES** that the sale of the Applicant's right, title and interest in and to all remaining furniture, fixtures and equipment located on the whole of the second to seventh floors (inclusive) in the building municipally known as 351 King Street East, Toronto, Ontario, and which is listed on **Schedule "A"** to the Bill of Sale (collectively, the "**FF&E**"), to the Purchaser (the "**FF&E Sale**") is hereby approved, and the execution by the Applicant of the Bill of Sale is hereby authorized and approved *nunc pro tunc*, with such minor amendments as the Applicant and the Monitor may deem necessary. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the FF&E Sale and for the conveyance of the FF&E to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Applicant to proceed with the FF&E Sale and that no shareholder or other approvals shall be required in connection therewith.

4. **THIS COURT ORDERS** that the Applicant is authorized and directed to perform its obligations under the Bill of Sale and any ancillary documents related thereto.

5. **THIS COURT ORDERS AND DECLARES** that all of the Applicant's right, title and interest in and to the FF&E shall, upon receipt by the Applicant of the FF&E Payment (as defined in the Bill of Sale), vest absolutely in the Purchaser, free and clear from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges (including any court ordered charges made in the within proceedings), or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by any Orders of this Court in the Applicant's proceeding under the *Companies' Creditors Arrangement Act*; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to

as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the FF&E are hereby expunged and discharged as against the FF&E.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of the Claims, the net proceeds from the sale of the FF&E shall stand in the place and stead of the FF&E, and that from and after the entry of this Order all Claims and Encumbrances shall attach to the net proceeds from the sale of the FF&E with the same priority as they had with respect to the FF&E immediately prior to the sale, as if the FF&E had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

- (a) the pendency of this proceeding or the termination of this proceeding;
- (b) any applications for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”) or other applicable legislation, in respect of the Applicant, and any bankruptcy or receivership order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of the Applicant;

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

GENERAL

8. **THIS COURT ORDERS AND DECLARES** that the Applicant, the Monitor or the Purchaser may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

9. **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 Monitor and its 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 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.

10. **THIS COURTS ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for filing or entry.

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 LOYALTYONE, CO.

Court File No. CV-23-00696017-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for the Applicant

TAB 4

Court File No. ~~CV-23-00696017-00CL~~

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ~~—~~
JUSTICE ~~—~~ STEELE

)
)
)

~~WEEKDAY~~ WEDNESDA
Y, THE # 5TH
DAY OF ~~MONTH~~ JULY,
~~20YR~~ 2023

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 LOYALTYONE, CO.

(the "Applicant")

~~BETWEEN:~~

~~PLAINTIFF~~

~~Plaintiff~~

~~—and—~~

~~DEFENDANT~~

~~Defendant~~

APPROVAL AND VESTING ORDER

THIS MOTION made by the Applicant, pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, for an order approving the sale of the FF&E (as defined below) contemplated by a bill of sale between the Applicant and First Gulf KEK Development Limited (the "Purchaser"), dated June 16, 2023 (the "Bill of Sale") and appended as Appendix "●" to the Fourth Report of the Monitor dated June [●], 2023 (the

"Fourth Report"), and vesting in the Purchaser the Applicant's right, title, and interest in and to the FF&E was heard this day by Zoom videoconference.

~~THIS MOTION, made by [RECEIVER'S NAME] in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") dated [DATE] and appended to the Report of the Receiver dated [DATE] (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.~~

ON READING the Fourth Report, and the Appendices thereto, and such further materials as counsel may advise, and on hearing the submissions of counsel ~~for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one~~ to the Applicant, counsel to the Monitor, [counsel to the Purchaser] and the other parties listed on the counsel slip, no one else appearing for any other ~~person~~ party on the ~~service list,~~ Service List although ~~properly~~ duly served as appears from the affidavit of ~~[NAME]~~ service of Alec Hoy sworn ~~[DATE]~~ June [●], 2023, filed[†].

SERVICE

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

APPROVAL OF THE FF&E SALE

1. THIS COURT ORDERS AND DECLARES that the ~~Transaction~~ sale of the Applicant's right, title and interest in and to all remaining furniture, fixtures and equipment located on the whole of the second to seventh floors (inclusive) in the building municipally known as 351 King

[†] ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

Street East, Toronto, Ontario, and which is listed on Schedule "A" to the Bill of Sale (collectively, the "FF&E"), to the Purchaser (the "FF&E Sale") is hereby approved,² and the execution ~~of the Sale Agreement by the Receiver~~³ is by the Applicant of the Bill of Sale is hereby authorized and approved nunc pro tunc, with such minor amendments as the ~~Receiver~~Applicant and the Monitor may deem necessary. The ~~Receiver~~Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the ~~Transaction~~FF&E Sale and for the conveyance of the ~~Purchased Assets~~FF&E to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that this Order shall constitute the only authorization required by the Applicant to proceed with the FF&E Sale and that no shareholder or other approvals shall be required in connection therewith.

4. THIS COURT ORDERS that the Applicant is authorized and directed to perform its obligations under the Bill of Sale and any ancillary documents related thereto.

5. ~~2.~~ THIS COURT ORDERS AND DECLARES that ~~upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's~~all of the Applicant's right, title and interest in and to the ~~Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]~~⁴shall FF&E shall, upon receipt by the Applicant of the FF&E Payment (as defined in the Bill of Sale), vest absolutely in the Purchaser, free and clear ~~of and~~ from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges (including any court ordered charges made in the within proceedings), or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether

²~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

secured, unsecured or otherwise (collectively, the "Claims"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by ~~the Order of the Honourable Justice [NAME] dated [DATE]; any Orders of this Court in the Applicant's proceeding under the Companies' Creditors Arrangement Act, and~~ (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; ~~and (iii) those Claims listed on Schedule C hereto~~ (all of which are collectively referred to as the "Encumbrances", ~~which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the ~~Purchased Assets~~FF&E are hereby expunged and discharged as against the ~~Purchased Assets~~FF&E.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

6. ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of the Claims, the net proceeds⁷ from the sale of the ~~Purchased Assets~~FF&E shall stand in the place and stead of the ~~Purchased Assets~~FF&E, and that from and after the ~~delivery of the~~

⁵The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

⁶Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

~~Receiver's Certificate~~entry of this Order all Claims and Encumbrances shall attach to the net proceeds from the sale of the ~~Purchased Assets~~FF&E with the same priority as they had with respect to the ~~Purchased Assets~~FF&E immediately prior to the sale⁸, as if the ~~Purchased Assets~~FF&E had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

~~5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.~~

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

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

- (a) the pendency of ~~these proceedings~~this proceeding or the termination of this proceeding;
- (b) any applications for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985 c. B-3, as amended (the "BIA") or other applicable legislation, in respect of the ~~Debtor~~Applicant, and any bankruptcy or receivership order issued pursuant to any such applications; ~~and~~or

~~⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

(c) any assignment in bankruptcy made in respect of the ~~Debtor~~Applicant;

the entering into of the Bill of Sale and the vesting of the ~~Purchased Assets~~FF&E in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicant and shall not be void or voidable by creditors of the ~~Debtor~~Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the ~~Bankruptcy and Insolvency Act (Canada)~~BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

8. **THIS COURT ORDERS AND DECLARES** that the ~~Transaction is exempt from the application of the Bulk Sales Act (Ontario)~~Applicant, the Monitor or the Purchaser may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

9. **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 ~~Receiver~~Monitor and its 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 ~~Receiver~~Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver and its~~Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

10. **THIS COURTS ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for filing or entry.

~~Schedule A—Form of Receiver's Certificate~~

Court File No. _____

~~ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST~~

~~BETWEEN:~~

~~PLAINTIFF~~

~~Plaintiff~~

~~—and—~~

~~DEFENDANT~~

~~Defendant~~

~~RECEIVER'S CERTIFICATE~~

~~RECITALS~~

~~A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").~~

~~B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.~~

~~C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.~~

~~THE RECEIVER CERTIFIES the following:~~

- ~~1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;~~
- ~~2. The conditions to Closing as set out in section 1 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and~~
- ~~3. The Transaction has been completed to the satisfaction of the Receiver.~~
- ~~4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].~~

~~[NAME OF RECEIVER], in its capacity as Receiver of the undertaking, property and assets of [DEBTOR], and not in its personal capacity~~

~~Per: _____~~

~~Name: _____~~

~~Title: _____~~

UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

Court File No. CV-23-006960

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Schedule B—Purchased Assets

~~Schedule C—Claims to be deleted and expunged from title to Real Property~~

**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

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 LOYALTYONE, CO.

Court File No. CV-23-00696017-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD
(MOTION FOR DISTRIBUTION, STAY EXTENSION AND
VESTING ORDERS)**

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