

**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 **JTI-MACDONALD CORP.**

**Applicant**

**MOTION RECORD  
Returnable April 4-5, 2019**

March 28, 2019

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

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**Applicant**

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**TAB 1**

**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 **JTI-MACDONALD CORP.**

**Applicant**

**NOTICE OF MOTION  
(Re: Stay Extension)  
(Returnable on April 4-5, 2019)**

The Applicant will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Thursday, April 4, 2019 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, in the City of Toronto.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) An Order substantially in the form attached to the Motion Record at Tab 3 (the “**Stay Extension Order**”):
- i. abridging the time for service of the Notice of Motion and the Motion Record herein and dispensing with further service thereof; and
  - ii. ordering that the Stay Period set out in paragraph 18 of the Initial Order granted in these proceedings on March 8, 2019 (the “**Initial Order**”) be extended to June 28, 2019.

- (b) An Amended and Restated Initial Order substantially in the form attached to the Motion Record at Tab 4 (the “**Amended and Restated Initial Order**”) that:
- i. amends the stay of proceedings set out in the Initial Order to permit the Applicant to file leave to appeal to the Supreme Court of Canada in respect of the QCA Judgment (as defined below) but not permit any further steps in such proceeding without further order of the Court; and
  - ii. confirms that the Charges shall not rank in priority to any cash collateral (A) deposited with a financial institution as at the date of the Initial Order, or (B) deposited with a financial institution after the date of the Initial Order with either the consent of the Monitor or further order of the Court; and
- (c) Such further and other relief as this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background of CCAA Proceedings**

1. On March 1, 2019, the Quebec Court of Appeal released its judgment (the “**QCA Judgment**”) against the Applicant, Imperial Tobacco Canada Limited (“**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”), which ordered the Applicant, Imperial and RBH to pay damages to the Quebec class action plaintiffs in the approximate amount of \$13.5 billion (including interest and an additional indemnity) on a solidary basis.
2. The Applicant also is the subject of significant health care cost recovery litigation by each of the ten provinces.

3. The Applicant obtained the Initial Order pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"). The Initial Order appointed Deloitte Restructuring Inc. to act as monitor (the "**Monitor**") and granted a stay of proceedings until April 5, 2019 (the "**Stay of Proceedings**").
4. All capitalized terms not otherwise defined herein have the meanings set forth in the Initial Order.
5. Since the date of the Initial Order, both Imperial and RBH have sought protection from their creditors under the CCAA.

### **Amended and Restated Initial Order**

#### *Amendment to Stay of Proceedings*

6. The Applicant seeks to amend the Stay of Proceedings to permit the Applicant to file leave to appeal to the Supreme Court of Canada in respect of the QCA Judgment but not permit any further steps in such proceeding without further order of the Court.
7. The consortium of Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan raised concerns about the Applicant's ability to continue with its application for leave to appeal the QCA Judgment to the Supreme Court of Canada.
8. As a result, the Applicant seeks to align the Stay of Proceedings, and ability to seek leave to appeal the QCA Judgment to the Supreme Court of Canada, with that afforded to RBH in its CCAA initial order.

*Amendment to priority of Charges*

9. The Initial Order provides that the Charges shall rank in priority to all security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, save and except for certain encumbrances.
10. The Applicant's intention was that the Charges would not encumber or rank in priority to the cash collateral pledged by the Applicant to Citibank, N.A., Canada Branch.
11. Accordingly, the Applicant seeks an amendment to the Initial Order to confirm the Charges do not rank in priority to any cash collateral (i) deposited with a financial institution as at the date of the Initial Order, or (ii) deposited with a financial institution after the date of the Initial Order with either the consent of the Monitor or further order of the Court.

**Stay Extension Order**

12. The Stay Period granted in the Initial Order will expire on April 5, 2019. The Applicant seeks an extension of the Stay Period until June 28, 2019.
13. The projected cash flow forecast, as prepared by the Applicant with the assistance of the Monitor, demonstrates that the Applicant has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay of Proceedings.
14. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while engaging in discussions to seek a collective resolution of the pending litigation claims as against the Applicant.



15. The Applicant has acted in good faith and with due diligence during the course of its CCAA proceedings since the date of the Initial Order.

16. The Applicant also relies on:

- i. the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court; and
- ii. such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Affidavit of Robert McMaster, sworn March 28, 2019;
- (b) the First Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

March 28, 2019

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**TO: THE ATTACHED SERVICE 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 **JTI-MACDONALD CORP.**

Court File No.: CV-19-615862-00CL

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

Proceedings commenced at Toronto

**NOTICE OF MOTION  
(Re: Stay Extension)  
(Returnable on April 4-5, 2019)**

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**ONTARIO  
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**Applicant**

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**TAB 2**

**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 JTI-MACDONALD CORP.

**Applicant**

**AFFIDAVIT OF ROBERT MCMASTER  
(sworn March 28, 2019)**

I, **ROBERT MCMASTER**, of the Town of Whitby, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a Chartered Professional Accountant (CPA, CA) and the Director, Taxation and Treasury for JTI-Macdonald Corp. (the "**Applicant**" or "**JTIM**") and as such have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I have obtained information from others, I have stated the source of the information and believe it to be true.

2. All capitalized terms used herein and not otherwise defined have the meanings set forth in the Order of Mr. Justice Hainey dated March 8, 2019 (the "**Initial Order**").

**INTRODUCTION**

3. This affidavit is sworn in support of a motion for:



- (a) an Order extending the Stay Period to June 28, 2019;
- (b) an Order amending and restating the Initial Order (the “**Amended and Restated Initial Order**”) that:
  - (i) amends the Stay of Proceedings to permit the Applicant to file leave to appeal to the Supreme Court of Canada in respect of the QCA Judgment but not permit any further steps in such proceeding without further order of the Court, on the same terms as obtained by RBH in its initial order granted under the CCAA on March 22, 2019 (as each capitalized term is defined below); and
  - (ii) confirms that the Charges shall not rank in priority to any cash collateral (A) deposited with a financial institution as at the date of the Initial Order, or (B) deposited with a financial institution after the date of the Initial Order with either the consent of the Monitor or further order of the Court.

4. The Applicant, through its predecessor corporations and other related business entities, have been manufacturers of tobacco products in Canada since 1858. JTIM is a private company, headquartered in Mississauga, Ontario and is the third largest tobacco company defendant in the Quebec Class Actions, based on volume of sales in Canada.

5. As further described in my affidavit sworn on March 8, 2019 in support of the Initial Order (the “**Initial Affidavit**”), on March 1, 2019, the Quebec Court of Appeal released its judgment (the “**QCA Judgment**”), which substantially upheld the judgment of Mr. Justice Riordan of the Quebec Superior Court publicly released on June 1, 2015 (the “**Trial Judgment**”). The QCA Judgment ordered JTIM and the other defendants to pay damages to the Quebec class action

plaintiffs (the “**Class Action Plaintiffs**”) in the approximate amount of \$13.5 billion (including interest and an additional indemnity) on a solidary basis.

6. Additionally, and as also further described in the Initial Affidavit, the Applicant is the subject of significant health care cost recovery litigation (the “**HCCR Actions**”) by each of the ten provinces. Although the total potential quantum of damages claimed in the HCCR Actions is not yet known, I am advised by counsel to the Applicant that over \$500 billion has been claimed to be owing by all of the defendants in the five provinces where amounts have been specified in the claims or detailed in expert reports.

7. As a result of the QCA Judgment and the HCCR Actions, the Applicant sought the protections afforded under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) in order to (i) maintain the *status quo* of its operations, (ii) preserve going concern value, and (iii) provide the Applicant a period of stability within which it may attempt to find a collective resolution to all of the claims being made against it. But for the QCA Judgment and the other contingent litigation claims, the Applicant is a profitable and viable corporation.

8. On March 8, 2019 (the “**Filing Date**”), the Applicant was granted protection from its creditors under the CCAA pursuant to the Initial Order. A copy of the Initial Order is attached as **Exhibit “A”**.

9. Pursuant to the Initial Order, Deloitte Restructuring Inc. was appointed as the Monitor of the Applicant in these CCAA proceedings. In accordance with the terms of the Initial Order, parties affected thereby are entitled to object to the provisions of the Initial Order on the Comeback Motion scheduled to be heard on April 4-5, 2019.

10. The Initial Order provides for a Court-ordered stay of proceedings (the “**Stay of Proceedings**”), which expires on April 5, 2019. The Stay of Proceedings in the Initial Order currently extends to the Other Defendants, defined as any person named as a defendant or respondent in any of the Pending Litigation relating to a Tobacco Claim, including any affiliate of the Applicant and R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. (together, “**Reynolds**”).

#### **ACTIVITIES SINCE INITIAL ORDER**

11. I am advised by counsel to the Applicant that, since the date of the Initial Order, the Applicant’s legal counsel has initiated communication with counsel for (i) the Province of Ontario; (ii) the consortium (the “**Consortium**”) of the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan; (iii) the Province of Alberta; and (iv) the Class Action Plaintiffs, in an attempt to commence resolution discussions in respect of their respective claims as against the Applicant. The Applicant’s counsel has provided regular updates to the Monitor and its counsel in respect of such discussions. I am advised by the Applicant’s legal counsel that most of these initial discussions, although preliminary, have been productive with the exception of discussions with the Class Action Plaintiffs.

12. By letter to the Service List dated March 12, 2019 (the “**Service List Letter**”), the Applicant addressed the effect of the scope of the Stay of Proceedings granted in the Initial Order as against the Other Defendants. In the Service List Letter, the Applicant advised that the Stay of Proceedings was not intended to affect matters that do not affect the Applicant or its affiliates (including Reynolds). Further, in respect of such matters that do not affect the Applicant or its affiliates, the Stay of Proceedings could be lifted pursuant to paragraph 19 of the Initial Order with

the consent of the Applicant and the Monitor. As of today, no parties have requested such consent. A copy of the Service List Letter is attached hereto as **Exhibit “B”**.

13. On March 12, 2019, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (together, “**Imperial**”) filed for creditor protection under the CCAA. Imperial is also a defendant under both the QCA Judgment and the HCCR Actions.

14. By letter dated March 22, 2019 (the “**Class Action Plaintiffs Letter**”), the Class Action Plaintiffs advised the Quebec Court of Appeal that, although any proceeding against Imperial had been stayed, the same was not the case with respect to Rothmans, Benson & Hedges Inc. (“**RBH**”), the third defendant under the QCA Judgment. It was the position of the Class Action Plaintiffs that RBH could not rely on the Stay of Proceedings as against the Other Defendants granted in the Applicant’s Initial Order. However, the Class Action Plaintiffs sought an adjournment of their motion before the Quebec Court of Appeal returnable on March 25, 2019 to withdraw the security bond previously paid by RBH as ordered by the Quebec Court of Appeal as a result of the Trial Judgment. A copy of the Class Action Plaintiffs Letter (in French and without attachments), along with an unofficial English translation, are attached hereto as **Exhibit “C”**.

15. Subsequently, on March 22, 2019, RBH also filed for creditor protection under the CCAA. As a result, I am advised by counsel to the Applicant that there is currently a stay of proceedings as against all three defendants under the QCA Judgment, their affiliates and most of the defendants under the HCCR Actions.

## **AMENDED AND RESTATED INITIAL ORDER**

### *Stay of Proceedings*

16. JTIM continues to believe that the protections afforded under the CCAA are required in order to maintain the *status quo* of its operations and preserve going concern value while it seeks a collective solution for the benefit of all stakeholders.

17. I am advised by the Applicant's counsel that allowing any particular action to proceed while staying all other actions would needlessly distract JTIM from its goal of achieving a collective solution and would result in unnecessary and significant legal costs. Proceeding with any particular piece of litigation could also have a prejudicial effect on the other plaintiffs whose actions are stayed.

18. Additionally, I am advised by the Applicant's legal counsel that counsel to the Consortium raised concerns about JTIM's ability to continue with its application for leave to appeal the QCA Judgment to the Supreme Court of Canada while the HCCR Actions were stayed (which ability was afforded to JTIM under the Initial Order). As a result, the Applicant seeks to align its Stay of Proceedings, and ability to seek leave to appeal the QCA Judgment to the Supreme Court of Canada, with that afforded to RBH in its CCAA initial order. It is the Applicant's view that this provision gives more certainty to the Consortium in respect of the leave to appeal.

19. Further, I am advised by the Applicant's legal counsel that the preservation of the Applicant's ability to seek leave to appeal the QCA Judgment to the Supreme Court of Canada before the expiration of the applicable time period, as granted in the Initial Order, but restricting any further steps in such proceeding, is in the best interest of the Applicant and that of its

stakeholders as it ensures that the right to appeal is preserved while otherwise maintaining the *status quo* and allowing the Applicant to explore a collective solution.

20. For the foregoing reasons, the Applicant requests that the Initial Order be amended to permit the Applicant to file an application for leave to appeal to the Supreme Court of Canada in respect of the QCA Judgment, but not permit any further steps in such proceeding by the Applicant or any other Person without further order of the Court.

### *Charges*

21. Pursuant to the Initial Order, the Administration Charge, Directors' Charge and Sales and Excise Tax Charge (collectively the "**Charges**"), rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, save and except for certain encumbrances, including cash collateral deposited with a financial institution as security for letters of credit or bank guarantees issued by the financial institution at the request of the Applicant.

22. As described in the Initial Affidavit, JTIM pledged to Citibank, N.A., Canada Branch ("**Citibank**") \$900,000 as cash collateral in respect of central travel account card services and \$8 million in respect of certain cash management services that require the extension of credit by Citibank (together, the "**Citibank Cash Collateral**").

23. I am advised by the Applicant's legal counsel that Citibank expressed concern in respect of the potential priority of the Charges over the Citibank Cash Collateral. As it was always the Applicant's intention that the Charges would not encumber or rank in priority to the Citibank Cash Collateral, the Applicant agreed to seek the proposed amendment to the Initial Order. Accordingly,

the proposed Amended and Restated Initial Order confirms that the Charges do not rank in priority to any cash collateral (i) deposited with a financial institution as at the date of the Initial Order, or (ii) deposited with a financial institution after the date of the Initial Order with either the consent of the Monitor or further order of the Court.

24. A blackline of the Amended and Restated Initial Order to the Initial Order is attached hereto as **Exhibit “D”**.

### **EXTENSION OF THE STAY OF PROCEEDINGS**

25. The Applicant seeks an extension of the Stay Period until June 28, 2019. It is my understanding from counsel to the Applicant that Imperial and RBH are also seeking an extension of their respective stay periods until the same date. The Applicant believes that coordinating the stay periods at this stage in the proceedings is efficient and cost-effective.

26. JTIM, with the assistance of the Monitor, has prepared a forecast of the projected cash flows (the “**Cash Flow Statement**”), which demonstrates that JTIM has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay of Proceedings. I understand that the Cash Flow Statement will be appended to the Monitor’s next report to the Court, to be filed in connection with the Comeback Motion.

27. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while engaging in discussions to seek a collective resolution of the pending litigation claims as against the Applicant. The Applicant has acted in good faith and with due diligence during the course of its CCAA proceedings since the Filing Date.

**PURPOSE**

28. This affidavit is sworn in support of JTIM's motion for the extension of the Stay Period to June 28, 2019 and the granting of the Amended and Restated Initial Order and for no other or improper purpose.

**SWORN BEFORE ME** at the City of Mississauga, Province of Ontario, on March 28, 2019.

*Megna Rani*

Commissioner for Taking Affidavits

MEGNA RANI #P11052

A Commissioner etc.

for the Province of Ontario

while being a Licensed  
Paralegal.

*Robert McMaster*

ROBERT MCMASTER



**EXHIBIT “A”**

This is Exhibit "A" referred to in the  
affidavit of Robert McMaster  
sworn before me, this 28<sup>th</sup>  
day of March 2019  
Megra Raw P11052  
A COMMISSIONER FOR TAKING AFFIDAVITS

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE

)

FRIDAY, THE 8TH

JUSTICE HAINEY

)

DAY OF MARCH, 2019

)

)



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 **JTI-MACDONALD CORP.**

**INITIAL ORDER**

**THIS APPLICATION**, made by JTI-Macdonald Corp. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** (i) the affidavit of Robert McMaster sworn March 8, 2019 and the exhibits thereto (the "**McMaster Affidavit**") and (ii) the pre-filing report dated March 8, 2019 (the "**Pre-Filing Report**") of Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as the proposed Monitor of the Applicant (the "**Monitor**") and on being advised that JTI-Macdonald TM Corp. and JT Canada LLC Inc., the secured creditors who are likely to be affected by the charges created herein (the "**Secured Creditors**") were given notice, and on hearing the submissions of counsel for the Applicant, the Secured Creditors, Deloitte and on reading the consent of Deloitte to act as the Monitor,

**SERVICE**

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

**APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

**DEFINITIONS**

4. **THIS COURT ORDERS** that for purposes of this Order:

- (a) "**JTI Group**" means entities related to or affiliated with the Applicant;
- (b) "**Pending Litigation**" means any and all actions, applications and other lawsuits existing at the time of this Order in which the Applicant is a named defendant or respondent (either individually or with other Persons (as defined below)), relating in any way whatsoever to a Tobacco Claim (as defined below), including, without limitation, the Quebec Class Actions (as defined below), the Additional Class Actions and the HCCR Actions (as each of those terms is defined in the McMaster Affidavit);
- (c) "**Quebec Class Actions**" means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI-Macdonald*

*Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings;

- (d) “**Sales & Excise Taxes**” means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (e) “**Tobacco Claim**” means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicant or any member of the JTI Group that has been advanced (including without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person or on behalf of a certified or proposed class or made or advanced as a government body or agency, insurer, employer or otherwise under or in connection with:
- (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (as defined below), the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products in Canada or, in the case of the Applicant, anywhere else in the world; or
  - (ii) the HCCR Legislation (as defined in the McMaster Affidavit),

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicant or any member of the JTI Group; and

- (f) **“Tobacco Products”** means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

#### **POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the **“Property”**). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the **“Business”**) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively **“Assistants”**) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the McMaster Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Pension Plans (as defined in the McMaster Affidavit), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance

and severance pay, all of which is payable to or in respect of employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course prior to, on or after the making of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of \$1 million or an aggregate of such expenditures in a calendar year in excess of \$10 million;
- (c) all interest due and payable on the Applicant's secured obligations; and
- (d) payment for goods or services supplied or to be supplied to the Applicant (including the payment of any royalties or shared services).



9. **THIS COURT ORDERS** that the Applicant is authorized to complete outstanding transactions and engage in new transactions with the members of the JTI Group and to continue, on and after the date hereof, to buy and sell goods and services, and to allocate, collect and pay costs, expenses and other amounts from and to the members of the JTI Group, including without limitation in relation to finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licences (collectively, all transactions and all inter-company policies and procedures between the Applicant and any member of the JTI Group, the “**Intercompany Transactions**”) in the ordinary course of business or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicant and any member of the JTI Group, including the provision of goods and services from any member of the JTI Group to the Applicant, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all Sales & Excise Taxes required to be remitted by the Applicant in connection with the Business; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that the Applicant is authorized to post and to continue to have posted cash collateral, letters of credit, performance bonds, payment bonds, surety bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding \$18 million (the “**Bonding Collateral**”), to satisfy regulatory or administrative requirements to provide security that have been imposed on it in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicant as such security, and the Applicant is authorized to post and to continue to have posted surety bonds with Chubb Insurance Company of Canada (f/k/a ACE INA Insurance) and any other issuers of Bonding Collateral as security therefor.

12. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes are hereby stayed during the Stay Period (as defined below) from requiring that any additional bonding or other security be posted by or on behalf of the Applicant in connection with Sales & Excise Taxes or any other matters for which such bonding or security may otherwise be required.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant or claims to which it is subject to any of its creditors as of this date and to post no security in respect of any such amounts or claims, including pursuant to any order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **RESTRUCTURING**

15. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$5 million in any one transaction or \$10 million in the aggregate;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

16. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time

of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **STAY OF PROCEEDINGS**

18. **THIS COURT ORDERS** that until and including April 5, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to the Pending Litigation and any other Proceeding in relation to a Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicant in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. **THIS COURT ORDERS** that during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons, the "**Other Defendants**"); and (ii) no Proceeding in Canada that relates in any way to a

Tobacco Claim or to the Applicant, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the JTI Group or R. J. Reynolds Tobacco Company or R. J. Reynolds Tobacco International, Inc.; except, in either case, with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants or any member of the JTI Group, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in this Order, the Applicant is authorized to continue, and the applicable Other Defendants are not stayed from continuing, to contest the Quebec Class Actions during the Stay Period (the “**Further Quebec Class Action Proceedings**”), including without limitation by way of an application for leave to appeal to the Supreme Court of Canada and an appeal on the merits to the Supreme Court of Canada if leave is granted. Nothing in this Order shall prevent any Person from responding to the Further Quebec Class Action Proceedings, provided that during the Stay Period this paragraph does not, without further order of this Court, permit the Applicant to post security or grant any security interest, or permit any Person to seek security from the Applicant in relation to the Further Quebec Class Action Proceedings.

21. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicant, any of the Other Defendants or any member of the JTI Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

**NO EXERCISE OF RIGHTS OR REMEDIES**

22. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property (including for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions or any enforcement process or other steps in respect of the Applicant or the JTI Group’s trademarks or other intellectual property used by the Applicant), are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or

services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services, or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **SALES AND EXCISE TAX CHARGE**

26. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes shall be entitled to the benefit of and are hereby granted a charge (the "**Sales and Excise Tax Charge**") on the Property, which charge shall not exceed an aggregate amount of



\$127 million, as security for all amounts owing by the Applicant in respect of Sales & Excise Taxes. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 41 and 43 herein.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

27. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

28. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

29. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$4.1 million, as security for the indemnity provided in paragraph 28 of this Order. The Directors' Charge shall have the priority set out in paragraphs 41 and 43 herein.

30. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 28 of this Order.

#### **CRO APPOINTMENT**

31. **THIS COURT ORDERS** that

- (a) the agreement dated as of April 23, 2018 pursuant to which the Applicant has engaged BlueTree Advisors Inc. ("**BlueTree**") to provide the services of William E. Aziz to act as chief restructuring officer to the Applicant (the "**CRO**"), a copy of which is attached as Confidential Exhibit "1" to the McMaster Affidavit (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;
- (b) the CRO shall not be or be deemed to be a director or employee of the Applicant;
- (c) neither BlueTree nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below);
- (d) BlueTree and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of BlueTree or the CRO;

- (e) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of BlueTree and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and
- (f) the obligations of the Applicant to BlueTree and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the *Bankruptcy and Insolvency Act*, R.S.C, 1985, c. B-3, as amended (the “BIA”) in respect of the Applicant.

#### **APPOINTMENT OF MONITOR**

32. **THIS COURT ORDERS** that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

33. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements, which information shall be reviewed with the Monitor;
- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) assist the Applicant, to the extent required by the Applicant, in its efforts to explore the potential for a resolution of any of the Tobacco Claims; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

34. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

35. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act* the *Quebec Environment Quality Act*, the *Quebec Act Respecting Occupational Health and Safety* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

36. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any

responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

37. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings and the CRO shall be paid its fees and expenses pursuant to the CRO Engagement Letter. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and the fees and expenses of the CRO pursuant to the CRO Engagement Letter.

39. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

40. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount

of \$3 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and the CRO, other than in respect of any success fee provided for in the CRO Engagement Letter. The Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

41. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "**Charges**" and each individually, a "**Charge**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$3 million);

Second — Directors' Charge (to the maximum amount of \$4.1 million); and

Third – Sales and Excise Tax Charge (to the maximum amount of \$127 million).

42. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

43. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property, save and except for

- (a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);
- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the Pension Plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract;
- (d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute; and
- (e) cash collateral deposited with a financial institution as security for letters of credit or bank guarantees issued by the financial institution at the request of the Applicant.

44. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “Chargees”), or further Order of this Court.

45. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency



made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **SERVICE AND NOTICE**

47. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below), (ii) within five days

after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor, except employees, who has a claim (contingent, disputed or otherwise) against the Applicant of more than \$5,000, except with respect to (I) plaintiffs in the Pending Litigation, in which cases the Monitor shall only send a notice to counsel of record as applicable, and (II) beneficiaries of the Pension Plans in which case the Monitor shall only send a notice to the trustees of each of the Pension Plans and the Financial Services Commission of Ontario and the Régie Des Rentes Du Québec as applicable, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced at subparagraph (C) above shall not include the names, addresses, or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

48. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL ‘ [www.insolvencies.deloitte.ca/en-ca/JTIM](http://www.insolvencies.deloitte.ca/en-ca/JTIM)’.

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. **THIS COURT ORDERS** that the Applicant is authorized to rely upon the notice provided in paragraph 47 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

51. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

52. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably

required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100-2-175 (SOR/DORS).

53. **THIS COURT ORDERS** that, subject to paragraph 54, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

54. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

55. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

56. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the “**Hearing Details**”). In the absence of any such determination, a hearing will be held in the ordinary course.

57. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

58. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the “**Interested Parties**”) to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the

Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

#### **SEALING**

59. **THIS COURT ORDERS** that the Confidential Exhibit "1" to the McMaster Affidavit be and is hereby sealed pending further Order of the Court and shall not form part of the public record.

#### **GENERAL**

60. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

61. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

62. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, 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 and 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.

63. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

64. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

65. **THIS COURT 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 (the “**Effective Time**”) and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicant or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property or the Business shall be deemed not to have been taken or given, as the case may be.



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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAR 08 2019

PER / PAR: 

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 JTI-MACDONALD CORP.

Court File No.: 19-CV-6156A-0001

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

Proceedings commenced at Toronto

**INITIAL ORDER**

**Thornton Groat Finnigan LLP**  
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Suite 3200  
TD West Tower, Toronto-Dominion Centre  
Toronto, ON M5K 1K7

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Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant



## **EXHIBIT “B”**

This is Exhibit "B" referred to in the  
affidavit of Robert McMaster  
sworn before me, this 28th  
day of March 2019  
Megan Row P11052  
A COMMISSIONER FOR TAKING AFFIDAVITS



Thornton Grout Finnigan LLP  
RESTRUCTURING + LITIGATION

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Robert I. Thornton  
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File No. 1671-001

March 12, 2019

**VIA EMAIL TO THE SERVICE LIST**

Dear Sirs/Madams:

**Re: In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald Corp. (the "Applicant") Court File No.: CV-19-615862-00CL (the "CCAA Proceeding")**

Since the commencement of the CCAA Proceeding on March 8, 2019, there have been a number of media reports questioning why the Initial Order dated March 8, 2019 (the "**Initial Order**") of the Ontario Superior Court of Justice suspends all legal proceedings against all three defendants to the Quebec class action proceedings until April 5, 2019, even though only the Applicant sought protection from its creditors pursuant to the *Companies' Creditors Arrangement Act*.

We note that the stay of proceedings granted in paragraphs 18 and 19 of the Initial Order is broad on an interim basis only. The reasons why the Initial Order was drafted that way were explained in submissions to the judge. The stay of proceedings is required to extend to matters involving the Applicant, certain entities related to or affiliated with the Applicant, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. (collectively, the "**JTI Defendants**"), including in the broader context of the health care cost recovery actions commenced across certain provinces.

The stay of proceedings was never intended to affect matters that do not, in the interim before the comeback hearing, affect the JTI Defendants. In respect of such matters, the stay of proceedings can be lifted pursuant to paragraph 19 of the Initial Order with the consent of the Applicant and the Monitor. As of today's date, no parties have requested such consent.

The comeback hearing has been set for April 4, 2019. Any parties wishing to make submissions at the comeback hearing should serve a Notice of Appearance on the Service List.

Yours truly,

**Thornton Grout Finnigan LLP**

Robert I. Thornton

RIT

cc: Harvey Chaiton, *Chaitons LLP*  
Avram Fishman, *Fishman Flanz Meland and Paquin LLP*

## **EXHIBIT “C”**

This is Exhibit "C" referred to in the  
affidavit of Robert McMaster  
sworn before me, this 25th  
day of March, 2019  
Megan Raw P11052  
A COMMISSIONER FOR TAKING AFFIDAVITS



TRUDEL JOHNSTON & LESPÉRANCE

Avocats – Barristers & Solicitors

Bruce W. Johnston  
Téléphone: 514 871-0885  
Courriel: bruce@tjl.quebec

Le 22 mars 2019

**PAR COURRIEL**

**L'honorable Stéphane Sansfaçon, j.c.a.**

Cour d'appel du Québec  
100 Notre-Dame Est  
Montréal (Qc) H2Y 1B6

**OBJET:** *Conseil Québécois sur le Tabac et la Santé et Cécilia Létourneau c. Imperial Tobacco Ltée (« ITL »), Rothmans Benson & Hedges (« RBH ») et JTI-MacDonald Corp. (« JTI »)*  
C.A.M. : 500-09-025387-150, 500-09-025385-154 & 500-09-025386-152

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Monsieur le juge,

Dans les dossiers mentionnés en rubrique la Cour est présentement saisie d'une requête des intimés pour retrait des cautionnements versés par ITL et RBH ainsi que de requêtes d'ITL et de RBH demandant un sursis d'exécution du jugement de la Cour rendu le 1er mars dernier.

Considérant l'ordonnance initiale rendue en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (« LAAC ») par le juge McEwen de la Cour supérieure de l'Ontario le 12 mars en faveur d'ITL, les intimés ont accepté de suspendre, temporairement et contre ITL seulement, leur requête pour retrait des cautionnements. Le consentement à cette suspension ne constitue pas une admission selon laquelle la Cour d'appel du Québec serait privée de sa compétence pour entendre cette requête. La Cour d'appel demeure quant à nous saisie des requêtes vis-à-vis d'ITL.

La situation juridique en ce qui a trait à RBH est différente, car celle-ci n'a pas déposé de demande en vertu de la LAAC. Les procureurs de RBH nous ont avisés qu'ils invoquent une suspension de procédures émanant d'une ordonnance du juge Hainey de la Cour supérieure de l'Ontario rendue le 8 mars, dont copie est jointe. Cette ordonnance, rendue ex parte suite à une demande initiale de JTI, suspend certaines procédures non seulement contre JTI, mais également contre RBH et ITL.

Cette suspension a toutefois été accordée par erreur. En effet, le procureur du contrôleur de JTI en vertu de la LAAC nous a avisé par lettre dont copie est jointe que l'intention de JTI n'était pas de suspendre les procédures contre ITL ou RBH.

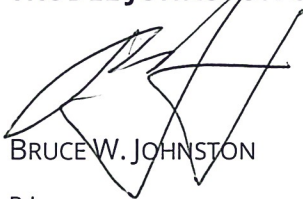
Par ailleurs, dans la mesure où RBH entendait se fier au langage de l'ordonnance du juge McEwen rendue dans le dossier d'ITL, les procureurs d'ITL nous ont confirmé qu'ITL n'a jamais voulu accorder à RBH une protection en vertu de la LAAC.

Conformément aux règles de courtoisie qui incombent aux Tribunaux, nous entendons donc demander au juge McEwen les 4 et 5 avril prochain d'amender les ordonnances initiales des 8 et 12 mars afin de spécifier qu'elles ne visent pas RBH.

Dans les circonstances, le 25 mars prochain nous entendons vous demander de reporter l'audition de la requête de RBH en suspension d'instance et celle des intimés en retrait du cautionnement versé par RBH. En ce qui a trait à ITL, nous verrons à envoyer un nouvel avis de présentation, le cas échéant.

Veuillez agréer l'expression de nos sentiments les meilleurs.

**TRUDEL JOHNSTON & LESPÉRANCE**



BRUCE W. JOHNSTON

P.J.

c.c. : Mes Simon V. Potter, Michael Feder et Deborah Templer, *McCarthy Tétrault*  
Mes Deborah Glendinning, Craig Lockwood et Alexandre Fallon, *Osler, Hoskin & Harcourt*  
Mes François Grondin et Patrick Plante, *Borden Ladner Gervais*  
Me Catherine McKenzie, *Irving, Mitchell, Kalichman*  
Mes Gordon Kugler et Pierre Boivin, *Kugler Kandestin*  
Me Marc Beauchemin, *De Grandpré Chait*  
Mes Avram Fishman et Marc Meland, *Fishman Flanz Meland Paquin LLP*





**RE:** Letter from Class Action Plaintiffs to the Quebec Court of Appeal dated March 22, 2019 – Unofficial English Translation

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In the cases mentioned above, the Court is currently seized of an application by [intimates] for withdrawal of the [security] paid by ITL and RBH, as well as applications by ITL and RBH seeking a stay of execution of the judgment of the Court rendered on March 1, 2019.

Considering the initial order made under the Companies' Creditors Arrangement Act ("CCAA") by McEwen J. of the Ontario Superior Court on March 12 in favor of ITL, the [intimate] members agreed to suspend, temporarily and against ITL only, their request for withdrawal of surety bonds. Consent to this suspension does not constitute an admission that the Quebec Court of Appeal would be deprived of jurisdiction to hear this motion. The Court of Appeal remains seized of applications to ITL.

The legal situation with respect to RBH is different because it does not file an application under CCAA. RBH attorneys have advised us that they invoke a suspension of proceedings arising from an order of Hainey J. of the Ontario Superior Court of Justice, dated March 8, a copy of which is attached. This order, made *ex parte* following an initial request from JTI, suspend certain procedures not only against JTI, but also against RBH and ITL.

This suspension was, however, granted in error. In fact, the JTI Counsel under the CCCAA informed us by letter, a copy of which is attached, that JTI's intention was not to stay the proceedings against ITL or RBH.

Moreover, to the extent that RBH intended to rely on the language of Justice McEwen's order in ITL's case, ITL's attorneys confirmed to us that ITL did not want to grant RBH protection under the CCAA.

In accordance with the Courts' rules of comity, we therefore intend to ask Judge McEwen on April 4 and 5 to amend the initial orders of March 8 and 12 to specify that they do not apply to RBH.

Under the circumstances, on March 25, we will ask you to postpone the hearing of RBH's motion for a stay of proceedings and that of the intimate partners withdrawing the bond paid by RBH. Regarding ITL, we will see to send a new notice presentation, where appropriate.

Please accept the expression of our best feelings.

## **EXHIBIT “D”**

This is Exhibit "D" referred to in the  
affidavit of Robert McMaster  
sworn before me, this 28<sup>th</sup>  
day of March 2019  
Megraha P11052  
A COMMISSIONER FOR TAKING AFFIDAVITS

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

THE HONOURABLE )  
 )  
JUSTICE ~~HAINES~~MCEWEN )  
 )  
 )  
 )

FRIDAY, THE 8TH  
DAY OF MARCH, 2019

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 **JTI-MACDONALD CORP.**

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by JTI-Macdonald Corp. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** (i) the affidavit of Robert McMaster sworn March 8, 2019 and the exhibits thereto (the “**McMaster Affidavit**”) ~~and (ii) the affidavit of Robert McMaster sworn March 28, 2019 and the exhibits thereto;~~ (ii) the affidavit of Robert McMaster sworn March 28, 2019 and the exhibits thereto; (iii) the pre-filing report dated March 8, 2019 (the “**Pre-Filing Report**”) of Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as the proposed Monitor of the Applicant (the “**Monitor**”); and (iv) the first report of the Monitor dated March 28, 2019 and on being advised that JTI-Macdonald TM Corp. and JT Canada LLC Inc., the secured creditors who are likely to be affected by the charges created herein (the “**Secured Creditors**”) were given notice, and on hearing the submissions of counsel for the Applicant, the Secured Creditors, Deloitte and on reading the consent of Deloitte to act as the Monitor,

**SERVICE**

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

**APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

**DEFINITIONS**

4. **THIS COURT ORDERS** that for purposes of this Order:

- (a) “**JTI Group**” means entities related to or affiliated with the Applicant;
- (b) “**Pending Litigation**” means any and all actions, applications and other lawsuits existing at the time of this Order in which the Applicant is a named defendant or respondent (either individually or with other Persons (as defined below)), relating in any way whatsoever to a Tobacco Claim (as defined below), including, without limitation, the Quebec Class Actions (as defined below), the Additional Class Actions and the HCCR Actions (as each of those terms is defined in the McMaster Affidavit);
- (c) “**Quebec Class Actions**” means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI-Macdonald*

*Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings;

- (d) “**Sales & Excise Taxes**” means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (e) “**Tobacco Claim**” means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicant or any member of the JTI Group that has been advanced (including without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person or on behalf of a certified or proposed class or made or advanced as a government body or agency, insurer, employer or otherwise under or in connection with:
- (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (as defined below), the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products in Canada or, in the case of the Applicant, anywhere else in the world; or
  - (ii) the HCCR Legislation (as defined in the McMaster Affidavit),

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicant or any member of the JTI Group; and

- (f) “**Tobacco Products**” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

#### **POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.



6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the McMaster Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Pension Plans (as defined in the McMaster Affidavit), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance

and severance pay, all of which is payable to or in respect of employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course prior to, on or after the making of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of \$1 million or an aggregate of such expenditures in a calendar year in excess of \$10 million;
- (c) all interest due and payable on the Applicant's secured obligations; and
- (d) payment for goods or services supplied or to be supplied to the Applicant (including the payment of any royalties or shared services).

9. **THIS COURT ORDERS** that the Applicant is authorized to complete outstanding transactions and engage in new transactions with the members of the JTI Group and to continue, on and after the date hereof, to buy and sell goods and services, and to allocate, collect and pay costs, expenses and other amounts from and to the members of the JTI Group, including without limitation in relation to finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licences (collectively, all transactions and all inter-company policies and procedures between the Applicant and any member of the JTI Group, the “**Intercompany Transactions**”) in the ordinary course of business or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicant and any member of the JTI Group, including the provision of goods and services from any member of the JTI Group to the Applicant, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all Sales & Excise Taxes required to be remitted by the Applicant in connection with the Business; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that the Applicant is authorized to post and to continue to have posted cash collateral, letters of credit, performance bonds, payment bonds, surety bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding \$18 million (the “**Bonding Collateral**”), to satisfy regulatory or administrative requirements to provide security that have been imposed on it in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicant as such security, and the Applicant is authorized to post and to continue to have posted surety bonds with Chubb Insurance Company of Canada (f/k/a ACE INA Insurance) and any other issuers of Bonding Collateral as security therefor.

12. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes are hereby stayed during the Stay Period (as defined below) from requiring that any additional bonding or other security be posted by or on behalf of the Applicant in connection with Sales & Excise Taxes or any other matters for which such bonding or security may otherwise be required.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant or claims to which it is subject to any of its creditors as of this date and to post no security in respect of any such amounts or claims, including pursuant to any order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### **RESTRUCTURING**

15. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$5 million in any one transaction or \$10 million in the aggregate;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

16. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time

of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

### **STAY OF PROCEEDINGS**

18. **THIS COURT ORDERS** that until and including April 5, 2019, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), including but not limited to the Pending Litigation and any other Proceeding in relation to a Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicant in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. **THIS COURT ORDERS** that during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons, the “**Other Defendants**”); and (ii) no Proceeding in Canada that relates in any way to a

Tobacco Claim or to the Applicant, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the JTI Group or R. J. Reynolds Tobacco Company or R. J. Reynolds Tobacco International, Inc.; except, in either case, with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants or any member of the JTI Group, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in this Order, the Applicant is authorized to ~~continue, and the applicable Other Defendants are not stayed from continuing, to contest the Quebec Class Actions during the Stay Period (the “Further Quebec Class Action Proceedings”)~~, including without limitation by way of serve and file an application for leave to appeal the Quebec Class Actions to the Supreme Court of Canada ~~and an appeal on the merits to the Supreme Court of Canada if leave is granted. Nothing in this Order shall prevent any Person from responding to the Further Quebec Class Action Proceedings, provided that,~~ but no further step or proceeding shall be taken by the Applicant or any other Person in respect of such application without further order of this Court. Further, during the Stay Period this paragraph does not, without further order of this Court, permit the Applicant to post security or grant any security interest, or permit any Person to seek security from the Applicant in relation to ~~the Further Quebec Class Action Proceedings~~ such appeal.

21. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicant, any of the Other Defendants or any member of the JTI Group that is stayed pursuant to this Order may expire, the term of such



prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

22. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property (including for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions or any enforcement process or other steps in respect of the Applicant or the JTI Group’s trademarks or other intellectual property used by the Applicant), are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services, or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **SALES AND EXCISE TAX CHARGE**

26. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicant in respect of Sales &

Excise Taxes shall be entitled to the benefit of and are hereby granted a charge (the “**Sales and Excise Tax Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$127 million, as security for all amounts owing by the Applicant in respect of Sales & Excise Taxes. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 41 and 43 herein.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

27. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

#### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

28. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

29. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$4.1 million, as security for the indemnity

provided in paragraph 28 of this Order. The Directors' Charge shall have the priority set out in paragraphs 41 and 43 herein.

30. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 28 of this Order.

#### **CRO APPOINTMENT**

31. **THIS COURT ORDERS** that

- (a) the agreement dated as of April 23, 2018 pursuant to which the Applicant has engaged BlueTree Advisors Inc. ("**BlueTree**") to provide the services of William E. Aziz to act as chief restructuring officer to the Applicant (the "**CRO**"), a copy of which is attached as Confidential Exhibit "1" to the McMaster Affidavit (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;
- (b) the CRO shall not be or be deemed to be a director or employee of the Applicant;
- (c) neither BlueTree nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below);

- (d) BlueTree and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of BlueTree or the CRO;
- (e) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of BlueTree and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and
- (f) the obligations of the Applicant to BlueTree and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the *Bankruptcy and Insolvency Act*, R.S.C, 1985, c. B-3, as amended (the “BIA”) in respect of the Applicant.

#### **APPOINTMENT OF MONITOR**

32. **THIS COURT ORDERS** that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide

the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

33. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements, which information shall be reviewed with the Monitor;
- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (h) assist the Applicant, to the extent required by the Applicant, in its efforts to explore the potential for a resolution of any of the Tobacco Claims; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

34. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

35. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act* the *Quebec Environment Quality Act*, the *Quebec Act Respecting Occupational Health and Safety* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

36. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

37. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings and the CRO shall be paid its fees and expenses pursuant to the CRO Engagement Letter. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and the fees and expenses of the CRO pursuant to the CRO Engagement Letter.

39. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.



40. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$3 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and the CRO, other than in respect of any success fee provided for in the CRO Engagement Letter. The Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

41. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge, and the Sales and Excise Tax Charge (collectively, the “**Charges**” and each individually, a “**Charge**”), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$3 million);

Second — Directors’ Charge (to the maximum amount of \$4.1 million); and

Third – Sales and Excise Tax Charge (to the maximum amount of \$127 million).

42. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

43. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens,

charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any Person in respect of such Property, save and except for

- (a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);
- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the Pension Plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract;
- (d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute; and
- (e) cash collateral (i) deposited with a financial institution as ~~security for letters of credit or bank guarantees issued by~~ ~~the~~ at the date of this Order, or (ii) deposited with a financial institution ~~at the request of the Applicant~~ after the date of this Order with either the consent of the Monitor or further order of the Court.

44. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “**Chargees**”), or further Order of this Court.

45. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **SERVICE AND NOTICE**

47. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below), (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor, except employees, who has a claim (contingent, disputed or otherwise) against the Applicant of more than \$5,000, except with respect to (I) plaintiffs in the Pending Litigation, in which cases the Monitor shall only send a notice to counsel of record as applicable, and (II) beneficiaries of the Pension Plans in which case the Monitor shall only send a notice to the trustees of each of the Pension Plans and the Financial Services Commission of Ontario and the Régie Des Rentes Du Québec as applicable, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced at subparagraph (C) above shall not include the names, addresses, or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

48. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in

accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL ‘ [www.insolvencies.deloitte.ca/en-ca/JTIM](http://www.insolvencies.deloitte.ca/en-ca/JTIM)’.

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant’s creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. **THIS COURT ORDERS** that the Applicant is authorized to rely upon the notice provided in paragraph 47 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the “**Comeback Motion**”) and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

51. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials to be recorded thereon in relation to this proceeding.

Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

52. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100-2-175 (SOR/DORS).

53. **THIS COURT ORDERS** that, subject to paragraph 54, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

54. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

55. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

56. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the “**Hearing Details**”). In the absence of any such determination, a hearing will be held in the ordinary course.

57. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

58. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the “**Interested Parties**”) to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for

the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

### **SEALING**

59. **THIS COURT ORDERS** that the Confidential Exhibit “1” to the McMaster Affidavit be and is hereby sealed pending further Order of the Court and shall not form part of the public record.

### **GENERAL**

60. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

61. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

62. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, 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 and 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.

63. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

64. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

65. **THIS COURT 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 (the “**Effective Time**”) and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicant or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property or the Business shall be deemed not to have been taken or given, as the case may be.



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 **JTI-MACDONALD CORP.**

Court File No.: ~~19~~- CV- [19-615862-00CL](#)

*ONTARIO*

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

Proceedings commenced at Toronto

**INITIAL ORDER**

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Document comparison by Workshare 9 on March-28-19 1:00:26 PM

<b>Input:</b>	
Document 1 ID	interwovenSite://TGF-WSS01/Client/1255615/39
Description	#1255615v39<Client> - Initial Order - Final: March 8, 2019
Document 2 ID	interwovenSite://TGF-WSS01/Client/2581636/2
Description	#2581636v2<Client> - Amended and Restated Initial Order (March 27, 2019 draft)
Rendering set	Standard

<b>Legend:</b>	
<u>Insertion</u>	
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Padding cell	

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Deletions	10
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Moved to	1
Style change	0

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 **JTI-MACDONALD CORP.**

Court File No.: CV-19-615862-00CL

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

Proceedings commenced at Toronto

**AFFIDAVIT OF ROBERT MCMASTER  
Sworn March 28, 2019**

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Lawyers for the Applicant

**TAB 3**

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

THE HONOURABLE ) THURSDAY, THE 4TH  
 )  
JUSTICE MCEWEN ) DAY OF APRIL, 2019  
 )

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 **JTI-MACDONALD CORP.**

**STAY EXTENSION ORDER**

**THIS MOTION**, made by JTI-Macdonald Corp. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** (i) the affidavit of Robert McMaster sworn March 28, 2019 and the exhibits thereto and (ii) the first report dated March 28, 2019 of Deloitte Restructuring Inc. in its capacity as Monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant, JTI-Macdonald TM Corp. and JT Canada LLC Inc., the Monitor, and any other party appearing for any other person on the service list, properly served as appears from the affidavit of Rachel Bengino sworn on March 28, 2019, filed:

## **SERVICE**

1. **THIS COURT ORDERS** that, if necessary, the time for service and filing 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.

## **STAY EXTENSION**

2. **THIS COURT ORDERS** that the Stay Period as ordered and defined in paragraph 18 of the Initial Order granted March 8, 2019 (as may be amended and restated, the “**Initial Order**”) is hereby extended until and including June 28, 2019.

## **GENERAL**

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

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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 **JTI-MACDONALD CORP.**

Court File No.: CV-19-615862-00CL

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

Proceedings commenced at Toronto

**STAY EXTENSION ORDER**

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Lawyers for the Applicant

**TAB 4**

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

THE HONOURABLE ) FRIDAY, THE 8TH  
 )  
JUSTICE MCEWEN ) DAY OF MARCH, 2019  
 )  
 )

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 **JTI-MACDONALD CORP.**

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by JTI-Macdonald Corp. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** (i) the affidavit of Robert McMaster sworn March 8, 2019 and the exhibits thereto (the “**McMaster Affidavit**”); (ii) the affidavit of Robert McMaster sworn March 28, 2019 and the exhibits thereto; (iii) the pre-filing report dated March 8, 2019 (the “**Pre-Filing Report**”) of Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as the proposed Monitor of the Applicant (the “**Monitor**”); and (iv) the first report of the Monitor dated March 28, 2019 and on being advised that JTI-Macdonald TM Corp. and JT Canada LLC Inc., the secured creditors who are likely to be affected by the charges created herein (the “**Secured Creditors**”) were given notice, and on hearing the submissions of counsel for the Applicant, the Secured Creditors, Deloitte and on reading the consent of Deloitte to act as the Monitor,

**SERVICE**

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

**APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

**DEFINITIONS**

4. **THIS COURT ORDERS** that for purposes of this Order:

- (a) “**JTI Group**” means entities related to or affiliated with the Applicant;
- (b) “**Pending Litigation**” means any and all actions, applications and other lawsuits existing at the time of this Order in which the Applicant is a named defendant or respondent (either individually or with other Persons (as defined below)), relating in any way whatsoever to a Tobacco Claim (as defined below), including, without limitation, the Quebec Class Actions (as defined below), the Additional Class Actions and the HCCR Actions (as each of those terms is defined in the McMaster Affidavit);
- (c) “**Quebec Class Actions**” means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI-Macdonald*

*Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.*  
and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings;

- (d) “**Sales & Excise Taxes**” means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (e) “**Tobacco Claim**” means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicant or any member of the JTI Group that has been advanced (including without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person or on behalf of a certified or proposed class or made or advanced as a government body or agency, insurer, employer or otherwise under or in connection with:
- (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (as defined below), the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products in Canada or, in the case of the Applicant, anywhere else in the world; or
  - (ii) the HCCR Legislation (as defined in the McMaster Affidavit),

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicant or any member of the JTI Group; and

- (f) “**Tobacco Products**” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the McMaster Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Pension Plans (as defined in the McMaster Affidavit), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance

and severance pay, all of which is payable to or in respect of employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course prior to, on or after the making of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of \$1 million or an aggregate of such expenditures in a calendar year in excess of \$10 million;
- (c) all interest due and payable on the Applicant's secured obligations; and
- (d) payment for goods or services supplied or to be supplied to the Applicant (including the payment of any royalties or shared services).



9. **THIS COURT ORDERS** that the Applicant is authorized to complete outstanding transactions and engage in new transactions with the members of the JTI Group and to continue, on and after the date hereof, to buy and sell goods and services, and to allocate, collect and pay costs, expenses and other amounts from and to the members of the JTI Group, including without limitation in relation to finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licences (collectively, all transactions and all inter-company policies and procedures between the Applicant and any member of the JTI Group, the “**Intercompany Transactions**”) in the ordinary course of business or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicant and any member of the JTI Group, including the provision of goods and services from any member of the JTI Group to the Applicant, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all Sales & Excise Taxes required to be remitted by the Applicant in connection with the Business; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that the Applicant is authorized to post and to continue to have posted cash collateral, letters of credit, performance bonds, payment bonds, surety bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding \$18 million (the “**Bonding Collateral**”), to satisfy regulatory or administrative requirements to provide security that have been imposed on it in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicant as such security, and the Applicant is authorized to post and to continue to have posted surety bonds with Chubb Insurance Company of Canada (f/k/a ACE INA Insurance) and any other issuers of Bonding Collateral as security therefor.

12. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes are hereby stayed during the Stay Period (as defined below) from requiring that any additional bonding or other security be posted by or on behalf of the Applicant in connection with Sales & Excise Taxes or any other matters for which such bonding or security may otherwise be required.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant or claims to which it is subject to any of its creditors as of this date and to post no security in respect of any such amounts or claims, including pursuant to any order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### **RESTRUCTURING**

15. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$5 million in any one transaction or \$10 million in the aggregate;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

16. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time

of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

### **STAY OF PROCEEDINGS**

18. **THIS COURT ORDERS** that until and including April 5, 2019, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), including but not limited to the Pending Litigation and any other Proceeding in relation to a Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicant in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. **THIS COURT ORDERS** that during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons, the “**Other Defendants**”); and (ii) no Proceeding in Canada that relates in any way to a

Tobacco Claim or to the Applicant, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the JTI Group or R. J. Reynolds Tobacco Company or R. J. Reynolds Tobacco International, Inc.; except, in either case, with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants or any member of the JTI Group, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in this Order, the Applicant is authorized to serve and file an application for leave to appeal the Quebec Class Actions to the Supreme Court of Canada, but no further step or proceeding shall be taken by the Applicant or any other Person in respect of such application without further order of this Court. Further, during the Stay Period this paragraph does not, without further order of this Court, permit the Applicant to post security or grant any security interest, or permit any Person to seek security from the Applicant in relation to such appeal.

21. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicant, any of the Other Defendants or any member of the JTI Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

22. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the

Applicant or the Monitor, or affecting the Business or the Property (including for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions or any enforcement process or other steps in respect of the Applicant or the JTI Group's trademarks or other intellectual property used by the Applicant), are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services, or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the

Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **SALES AND EXCISE TAX CHARGE**

26. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes shall be entitled to the benefit of and are hereby granted a charge (the “**Sales and Excise Tax Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$127 million, as security for all amounts owing by the Applicant in respect of Sales & Excise Taxes. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 41 and 43 herein.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**



27. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

28. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

29. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$4.1 million, as security for the indemnity provided in paragraph 28 of this Order. The Directors' Charge shall have the priority set out in paragraphs 41 and 43 herein.

30. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under

any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 28 of this Order.

## **CRO APPOINTMENT**

31. **THIS COURT ORDERS** that

- (a) the agreement dated as of April 23, 2018 pursuant to which the Applicant has engaged BlueTree Advisors Inc. (“**BlueTree**”) to provide the services of William E. Aziz to act as chief restructuring officer to the Applicant (the “**CRO**”), a copy of which is attached as Confidential Exhibit “1” to the McMaster Affidavit (the “**CRO Engagement Letter**”), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;
- (b) the CRO shall not be or be deemed to be a director or employee of the Applicant;
- (c) neither BlueTree nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below);
- (d) BlueTree and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of BlueTree or the CRO;
- (e) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of BlueTree and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with

- leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and
- (f) the obligations of the Applicant to BlueTree and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the *Bankruptcy and Insolvency Act*, R.S.C, 1985, c. B-3, as amended (the “**BIA**”) in respect of the Applicant.

#### **APPOINTMENT OF MONITOR**

32. **THIS COURT ORDERS** that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

33. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (c) advise the Applicant in its preparation of the Applicant's cash flow statements, which information shall be reviewed with the Monitor;
- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) assist the Applicant, to the extent required by the Applicant, in its efforts to explore the potential for a resolution of any of the Tobacco Claims; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

34. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

35. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act* the *Quebec Environment Quality Act*, the *Quebec Act Respecting Occupational Health and Safety* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

36. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

37. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings and the CRO shall be paid its fees and expenses pursuant to the CRO Engagement Letter. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and the fees and expenses of the CRO pursuant to the CRO Engagement Letter.

39. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

40. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$3 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and the CRO, other than in respect of any success fee provided for in the CRO Engagement Letter. The Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

41. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "**Charges**" and each individually, a "**Charge**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$3 million);

Second — Directors' Charge (to the maximum amount of \$4.1 million); and

Third – Sales and Excise Tax Charge (to the maximum amount of \$127 million).

42. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

43. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property, save and except for

- (a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);
- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the Pension Plans, but only to the extent that any such deemed trusts and liens

are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract;

- (d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute; and
- (e) cash collateral (i) deposited with a financial institution as at the date of this Order, or (ii) deposited with a financial institution after the date of this Order with either the consent of the Monitor or further order of the Court.

44. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “**Chargees**”), or further Order of this Court.

45. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:



- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **SERVICE AND NOTICE**

47. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below), (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor, except employees, who has a claim (contingent, disputed or otherwise) against the Applicant of more than \$5,000, except with respect to (I) plaintiffs in the Pending Litigation, in which cases the Monitor shall only send a notice to counsel of record as applicable, and (II) beneficiaries of the Pension Plans in which case the Monitor shall only send a notice to the trustees of each of the Pension Plans and the Financial Services Commission of Ontario and the Régie Des Rentes Du

Québec as applicable, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced at subparagraph (C) above shall not include the names, addresses, or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

48. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL ‘ [www.insolvencies.deloitte.ca/en-ca/JTIM](http://www.insolvencies.deloitte.ca/en-ca/JTIM)’.

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant’s creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or facsimile or other electronic

transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. **THIS COURT ORDERS** that the Applicant is authorized to rely upon the notice provided in paragraph 47 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the “**Comeback Motion**”) and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

51. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

52. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100-2-175 (SOR/DORS).

53. **THIS COURT ORDERS** that, subject to paragraph 54, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

54. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

55. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

56. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

57. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The

Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

58. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the “**Interested Parties**”) to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

#### **SEALING**

59. **THIS COURT ORDERS** that the Confidential Exhibit “1” to the McMaster Affidavit be and is hereby sealed pending further Order of the Court and shall not form part of the public record.

**GENERAL**

60. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

61. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

62. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, 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 and 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.

63. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

64. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

65. **THIS COURT 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 (the “**Effective Time**”) and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicant or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property or the Business shall be deemed not to have been taken or given, as the case may be.

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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 **JTI-MACDONALD CORP.**

Court File No.: CV-19-615862-00CL

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

Proceedings commenced at Toronto

**INITIAL ORDER**

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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**SUPERIOR COURT OF JUSTICE  
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**MOTION RECORD  
Returnable April 4-5, 2019**

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