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Aug. 18, 2021
Justice Romaine

COURT FILE NUMBER 2101- 10083
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.
DEFENDANTS COCOCO CHOCOLATIERS INC.

DOCUMENT **PROPOSED RECEIVER'S REPORT**
DATED AUGUST 13, 2021

PREPARED BY DELOITTE RESTRUCTURING INC.

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No.: 39279-2004

Proposed Receiver

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Introduction and background

1. Pursuant to an affidavit sworn by Brian Beck, director of Panterra Mortgage & Financial Corporation Ltd., formerly named 1870340 Alberta Ltd. (the "**Lender**" or "**Panterra**"), on August 11, 2021 (the "**Beck Affidavit**"), Panterra is the primary secured lender of Cococo Chocolatiers Inc. ("**Cococo**" or the "**Company**") which is owed approximately \$10.7 million from Cococo ("**Panterra Indebtedness**"). Panterra holds security over all of Cococo's present and after acquired personal property (the "**Panterra Security**").
2. Cococo is a private corporation incorporated in the Province of Alberta on July 7, 2011 and is owned 80% by Instant Potatoes Holdings Ltd. ("**Instant**") and 20% by DKM Holdings Inc. ("**DKM**"). The Company is headquartered in Calgary, Alberta, and is in the business of producing chocolate and other cocoa confectionary products from six (6) leased locations across British Columbia and Alberta.
3. Instant is a private corporation incorporated in the Province of Alberta on July 24, 2012 and is owned by 261820 Alberta Ltd. (50%) and Fezziwig's Holding Company Ltd. (50%).
4. DKM is a private corporation incorporated in the Province of Alberta on November 12, 2010, and is wholly owned by Buena Vista Properties Inc.
5. Cococo has had several factors contribute to its worsening liquidity, including COVID-19 restrictions and their related consequential effects, and has been reliant on financing provided by the Lender since inception. In July 2021, Panterra informed Cococo that it was no longer willing to fund ongoing operations in the ordinary course, and certain of the term facilities expired.
6. On July 27, 2021, Panterra sent a letter to Cococo providing notice that it was in default of its obligations pursuant to various loan agreements, as amended, demanding repayment of the loans advanced thereunder, and issuing a notice of intention to enforce security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**").
7. A dispute between the shareholders/directors of Cococo has resulted in the commencement of litigation in the Court of Queen's Bench of Alberta (the "**Court**") action number 2003-16696 (the "**Corporate Litigation**"), as further discussed in the Beck Affidavit, bringing additional uncertainty to Cococo's ability to effectively operate the business for all stakeholders.
8. Deloitte is a trustee within the meaning of section 2(1) of the BIA and has provided its consent to act as receiver and manager (attached as **Appendix "A"**) in these proceedings in the event that the Court grants the Receivership Order.
9. On August 3, 2010, Deloitte & Touché Inc. ("**Deloitte**") was appointed Receiver and manager of Chocolaterie Bernard Callebaut Partnership, 1013988 Alberta Ltd., Chocolaterie Bernard Callebaut Ltd. and 1054796 Alberta Ltd. (collectively "Callebaut"). Certain assets were sold to the amalgamation predecessor company of Cococo as part of those receivership proceedings and Deloitte subsequently obtained its discharge in January 2021. Callebaut also made an assignment in bankruptcy and Deloitte was appointed trustee of the estate of the bankrupt (the "**Trustee**"). All matters have been concluded in the bankruptcy proceedings and the Trustee is proceeding to obtain its discharge.

Purpose

10. Deloitte Restructuring Inc. (the "**Proposed Receiver**") understands that an application is to be made to the Court by Panterra seeking the following in respect of Cococo (the "**Application**"):
 - a) An order (the "**Receivership Order**") (substantially in the form of the Receivership Order included in the Lender's Application materials), appointing the Proposed Receiver as receiver and manager of all of the assets, undertakings, and properties of Cococo pursuant to section 243 of the BIA and section 13 of the *Judicature Act*, RSA 2000, c J-2;

- b) Authorizing the Lender and the Proposed Receiver to enter into an agreement of purchase and sale (the "**Stalking Horse APA**") in the form attached as Exhibit 12 to the Beck Affidavit, whereby the Lender will agree to acquire all of the assets of Cococo in exchange for consideration in the form of a cash payment and a credit bid of the amounts owing to the Lender by Cococo;
 - c) Authorizing the Receiver to conduct a sales process whereby the Lender's offer to purchase the assets of Cococo shall stand as a stalking horse bid; and
 - d) Providing for the vesting of assets in the Lender if no superior bid is obtained in the sales process.
11. Further background and information regarding the Company and the receivership proceedings will be made available on the Proposed Receiver's website, if the Receivership Order is granted, at www.insolvencies.deloitte.ca/cococo.

Terms of reference

12. In preparing this Proposed Receiver's Report (the "**Report**"), the Proposed Receiver has relied upon unaudited financial information prepared by the Company's management ("**Management**"), the Company's books and records, and discussions with Management. The Proposed Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Proposed Receiver expresses no opinion or other form of assurance in respect of the information. The Proposed Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of this Report.
13. Some of the information referred to in this Report consists of financial forecast and projections. An examination or review of the financial forecast and projects, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
14. Certain information referred to in this Report is based on Management's estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and consequently no assurance can be provided regarding the forecasted or projected results. Indeed, the reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.
15. The Proposed Receiver has prepared this Report in connection with the Application to be heard on August 18, 2021. This Report should not be relied on for any other purpose.
16. Information and advice described in this Report, that has been provided to the Proposed Receiver by its legal counsel, Torys LLP ("**Torys**"), was provided to assist the Proposed Receiver in considering its course of action, and is not intended as legal or other advice to, and may not be relied upon by, any other person.
17. The Proposed Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of the Report. Any use, which any party makes of the Report, or any reliance or decision to be made based on the Report, is the sole responsibility of such party.
18. Capitalized terms not otherwise defined herein are as defined in the Company's application materials, including the Beck Affidavit, the SISP (defined herein), and the Stalking Horse APA. This Report should be read in conjunction with the Beck Affidavit as certain information has not been included herein to avoid unnecessary duplication.
19. All dollar amounts in this Report are in Canadian dollars, unless otherwise indicated.

Operations

20. Based on available financial information and discussions with Management, the Proposed Receiver understands that Cococo, since its inception, has continuously suffered net losses and, as previously mentioned, its continuing operations has been reliant on additional financing provided by Panterra.
21. Many factors have attributed to the Company's financial challenges, including but not limited to:
- Cococo acquired its business as a going concern out of receivership, inheriting poor business systems that it has either not had the financial resource to replace or that have not been sufficiently improved as a result of extraordinary events;
 - Extraordinary events, including litigation matters and natural events such as the 2013 flood in Calgary have had negative financial impacts on the business and also contributed to a constant state of flux in the Company's operations;
 - Uncertainty in the Company's real estate position with respect to its various leases and the treatment thereof by landlords with the onset of COVID-19; and
 - Significant decline in revenues especially in Calgary, as a result of low commodity prices coupled with the impacts of COVID-19 restrictions/temporary closures.
22. A review of Cococo's 13-week cash flow, provided by Management, indicates that significant funding would be required to sustain operations as a going concern past October 31, 2021. As at the date of this Report, Cococo has cash on hand of approximately \$420,000 to offset Cococo's forecasted operating loss of \$403,000 over the next 13-week period.
23. Factory operating costs, payroll and lease obligations are Cococo's three (3) largest expenses, with little room to implement material cost cutting measures without impacting revenue.
24. Cococo has a total of 44 employees, 14 of which are salaried and 30 of which are paid hourly.
25. Management advised the Proposed Receiver that the 13-week cash flow provided does not consider any additional working capital that would be required to ramp up production in advance of the holiday season, which is Cococo's busiest time of year.

Primary Assets

26. The Company's primary assets described below reflect the net book values provided by Management as at the date of this Report.

Cash on Hand

27. As previously mentioned, Cococo has approximately \$420,000 available for day-to-day operations. All bank accounts are held with HSBC.

Inventory

28. Inventory with a net book value totalling approximately \$1.1 million is comprised of:

Inventory	Total (\$)
Finished goods	537,973
Packaging	115,043
Raw materials	408,887
Total	1,061,903

Property, plant, and equipment

29. Property, plant and equipment totalling approximately \$657,000 is comprised of:

Property, plant, and equipment	Total (\$)
Manufacturing equipment	167,735
Equipment	129,410
Computer hardware	9,635
Furniture and fixtures	100,552
Vehicles	949
Tenant improvements	248,602
Total	656,883

Intangible assets

30. Intangible assets with a net book value of \$1,000, which is comprised of the various trademarks registered to Cococo.

Creditors

31. In anticipation of its appointment as Receiver, Deloitte sourced an Alberta Personal Property Registry search of Cococo, attached as Exhibit 7 to the Beck Affidavit. The search reflected various registrations on behalf of the following 10 creditors; (i) 1870349 Alberta Ltd., (ii) 261820 Alberta Ltd., (iii) Bankers Hall LP, (iv) Bankers Hall GP Inc., (v) Bankers Hall GP Trust, (vi) BCIMC Realty Corporation, (vii) HSBC Bank, (viii) CWB National Leasing Inc., (ix) Wells Fargo Equipment Finance Company, and (x) RCAP Leasing Inc.
32. The Proposed Receiver's independent legal counsel conducted an independent review of the validity and enforceability of Panterra's Security over Cococo's assets and, subject to normal assumptions and qualifications, determined that Panterra's Security was properly registered and valid. Torys will review all other security agreements and registrations to assess the priority of claims against the receivership estate in the event the Receivership Order is granted.
33. Based on the books and records as at July 31, 2021, Cococo listed unsecured creditors' claims of approximately \$70,000.

Stalking Horse APA and Sales Process

34. Panterra has prepared the Stalking Horse APA to acquire all the assets and undertakings of Cococo and is agreeable to having that the Proposed Receiver conduct a sale process ("**Sale Process**") whereby the Stalking Horse APA will stand as the leading bid to determine whether there are other interested parties who may be inclined to offer a higher amount than the purchase price of approximately \$10 million included in the Stalking Horse APA . A copy of the Stalking Horse APA is attached to the Beck Affidavit as Exhibit 12. A copy of the proposed Sale Process is attached hereto as **Appendix "B"**.
35. The Proposed Receiver has reviewed the Stalking Horse APA and in connection therewith has also reviewed and considered the following:
- Cococo's available financial statements and other available financial information for the period from 2017 to 2020;
 - The quantum of assets of the Company reflected in the financial information as at July 31, 2021;

- c) The 13-week cash flow that sets out funding requirements for Cococo’s day-to-day operations indicating the business will require additional financing in October 2021 to continue as a going concern;
- d) Continued financing required by Cococo over the past several years to continue its operations;
- e) An informal discussion with a reputable auctioneer/liquidator who is familiar with Cococo’s equipment and the values thereon indicating a value substantially less than the book value included in the Company’s financial information; and
- f) Cococo has not been profitable since its inception.
36. Based on its preliminary review, the Proposed Receiver is of the view the Stalking Horse APA, including a Purchase Price of approximately \$10 million, is reasonable given the circumstances. The Receiver observes that the Stalking Horse APA does not contemplate payment of any break fee to the Lender (the “**Stalking Horse Purchaser**”).
37. The Sale Process contemplates a process to be conducted by the Proposed Receiver over an eight-week period consisting of a marketing and bid solicitation phase followed by a determination by the Proposed Receiver as to whether any Qualified Bids (as defined in the Sale Process) have been submitted. If there are any Qualified Bids, then the Proposed Receiver would negotiate with the Qualified Bidders (as defined in the Sale Process) to ultimately select a Winning Bidder (as defined in the Sale Process).
38. A draft timeline for the Sale Process is summarized below:

Phase/ Event	Estimated Timing	Description of Activities
Sale Process Order	August 18, 2021	Court grants an Order approving the Sale Process.
Sale Process Commencement Date	August 25, 2021	Notice of the Sale Process will be published in The Globe and Mail and / or other agreed upon publications.
Solicitation of bids	To last for a period of 40 days following the Sale Process Commencement Date	Solicitation of non-binding letters of interest to invest in the Company or to purchase the Company’s assets.
Bid Deadline	October 4, 2021	Qualified Bids must be submitted by the specified deadline.
Assessment of Qualified Bids	Within 3 business days of the Bid Deadline	Qualified Bids will be considered in regard to the requirements of the Sale Process and a successful bid will be determined.
Closing of Stalking Horse APA (if no superior bids received)	October 15, 2021	Closing of Stalking Horse APA if no superior bids received in Sale Process.
Closing of any successful bid (if a superior bid is received)	October 29, 2021	To occur as soon as possible following Court approval.

39. If the Stalking Horse APA, of approximately \$10 million, is ultimately determined as the winning bid in accordance to the Sale Process, it will constitute a non-arm's length transaction.

Conclusions and Recommendations

40. Based on the foregoing, the Proposed Receiver is of the view that the relief being sought by Panterra is reasonable.

* * *

All of which is respectfully submitted at Calgary, Alberta this 13th day of August 2021.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Proposed Receiver
of Cococo Chocolatiers Inc. (as defined herein)
and not in its personal or corporate capacity

Per:



Robert J. Taylor, FCPA, FCA, CIRP, LIT

Per:



Ryan J. Adlington, CPA, CA, CIRP, LIT
Senior Vice-President

APPENDIX "A"

COURT FILE NUMBER	2101-
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.
DEFENDANTS	COCOCO CHOCOLATIERS INC.
DOCUMENT	<u>CONSENT TO ACT</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP Bankers Court 15th Floor, 850 - 2nd Street S.W. Calgary, Alberta T2P 0R8 Attention: David Mann QC / John Regush Ph. (403) 268-7097 / 7086 Fx. (403) 268-3100 File No.: 562129-3

Deloitte Restructuring Inc., a licensed insolvency trustee, hereby consents to act as receiver and manager of Cococo Chocolatiers Inc. in these proceedings if so appointed by this Honourable Court.

DATED at the City of Calgary, in the Province of Alberta this 12th day of August, 2021.

Deloitte Restructuring Inc.

Per: 
Name: Ryan Adlington
Title: Senior Vice-President

APPENDIX "B"

Sale Process Package

Cococo Chocolatiers Inc.

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ARTICLE 1

INTRODUCTION

- 1.1 **Background.** On August 18, 2021, the Court of Queen's Bench of Alberta (the "**Court**") granted an Order (the "**Receivership Order**") appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager ("**Receiver**") over the assets, properties, and undertakings of Cococo Chocolatiers Inc. ("**Cococo**").
- 1.2 **Sale Process.** On August 18, 2021, the Court granted the Sale Process Order, *inter alia*, approving the Receiver advancing the Sale Process in accordance with the terms and conditions set forth herein and approving the agreement of purchase and sale between Panterra Mortgage & Financial Corporation Ltd., or its nominee and the Receiver as a stalking horse bid (the "**Stalking Horse Bid**").
- 1.3 **Sale Process Generally.** This Sale Process describes, among other things, the process by which the Sale Process will be conducted, the criteria to become a Qualified Bidder, accessing due diligence information, the requirements to make a Qualified Bid, and the review, acceptance and approval process that then follows.

ARTICLE 2

INTERPRETATION

- 2.1 **Defined Terms.** Capitalized terms used herein shall have the meanings ascribed to such terms in the Stalking Horse Bid, unless otherwise defined in this Sales Process. In this Sales Process, the following capitalized terms are defined as follows:

"**Approval Hearing**" has the meaning ascribed thereto in Article 6.6;

"**Bid Deadline**" means October 4, 2021;

"**Cococo**" has the meaning ascribed thereto in Article 1.1;

"**Confidentiality Agreement**" means a confidentiality agreement in form and substance satisfactory to the Receiver, providing generally that all information is proprietary and confidential for the benefit of the Receiver and Cococo;

"**Court**" has the meaning ascribed thereto in Article 1.1;

"**Deloitte**" has the meaning ascribed thereto in Article 1.1;

"**Deposit**" has the meaning ascribed thereto in Article 5.1(h);

"**Lender**" means Panterra Mortgage & Financial Corporation Ltd.;

"**Notice**" means a summary of the Teaser suitable for publication in print media and online mediums;

"**Offer**" means a credible, reasonably certain and financially viable offer for acquisition of all or any part of the Property;

"Potential Bidder" has the meaning ascribed thereto in Article 3.3

"Property" means the undertakings, property, and assets of Cococo;

"Purchase Price" has the meaning ascribed thereto in Article 5.1(c);

"Qualified Bid" has the meaning ascribed thereto in Article 5.2;

"Qualified Bidder" has the meaning ascribed thereto in Article 5.2;

"Receiver" has the meaning ascribed thereto in Article 1.1 and refers to the Receiver in its capacity as Receiver and not in its personal or corporate capacity;

"Receiver's Counsel" means Torys LLP, attn: Mr. K. Kashuba;

"Receivership Order" has the meaning ascribed thereto in Article 1.1;

"Replacement Winning Bid" has the meaning ascribed thereto in Article 6.8

"Sale" means the acquisition of all or any part of the Property;

"Stalking Horse Bid" has the meaning ascribed thereto in Article 1.2;

"Stalking Horse Bidder" means the Lender;

"Superior Bid" has the meaning ascribed thereto in Article 6.3;

"Superior Bidder" has the meaning ascribed thereto in Article 6.3;

"Teaser" means a notice describing this Sale Process, and containing such other relevant information that the Receiver considers relevant, including a summary description of this purchase/investment opportunity and an invitation for interested parties to submit bids/proposal in accordance with the terms hereof;

"Ultimate Closing Date" means October 29, 2021;

"Winning Bid" has the meaning ascribed thereto in Article 6.3 ;

"Winning Bidder" has the meaning ascribed thereto in Article 6.3; and

"Winning Bid Agreement" has the meaning ascribed thereto in Article 6.5.

ARTICLE 3

SALE PROCESS

- 3.1 **Notice and Teaser.** As soon as reasonably practicable after Court approval of this Sale Process, and in any event within 5 Business Days following such approval the Receiver shall cause the Notice to be published in the Globe and Mail, or such other paper of circulation as deemed

appropriate by the Receiver. The Receiver shall also be at liberty to publish the Notice in such other print and media outlets as it deems appropriate.

- 3.2 **Qualifying as a Potential Bidder.** In order to participate in the Sale Process and ultimately be considered for qualification as a Qualified Bidder pursuant to Article 5, below, an interested party must deliver to the Receiver at the address specified in Schedule "A" hereto (by delivery or email), the following material:
- (a) a duly executed Confidentiality Agreement;
 - (b) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the direct and indirect owners of the Potential Bidder and their principals;
 - (c) verification, in form and substance satisfactory to the Receiver, of the financial wherewithal of the Potential Bidder; and
 - (d) a written acknowledgement of receipt of a copy of the Court order approving the Sale Process (including this Sale Process) and agreeing to accept and be bound by all of the provisions of this Sale Process.

- 3.3 **Potential Bidder.** Once an interested party has satisfied all of the requirements described in the previous subsection they will be deemed to be a "**Potential Bidder**", and will be promptly notified of such classification by the Receiver.

ARTICLE 4 **DUE DILIGENCE**

- 4.1 **Access.** Forthwith upon being designated as a Potential Bidder, the Receiver shall provide the Potential Bidder with access to an electronic data room maintained by the Receiver in this regard. The Receiver shall provide Potential Bidders with further access to such due diligence materials and information relating to the Business and the Property as is reasonably practicable.
- 4.2 **No Representation or Warranties.** The Receiver does not make any representation or warranty as to the information contained in the Teaser or the information to be provided through the due diligence process or otherwise, except to the extent otherwise contemplated under any definitive sale agreement with a Superior Bidder executed and delivered by the Receiver.
- 4.3 **No Additional Information.** The Receiver shall not be required to produce any abstract of title, title deeds or documents, or copies thereof or any evidence as to title, other than what is already in the Receiver's possession.

ARTICLE 5 **BIDDING**

- 5.1 **Requirement for a Qualified Bid.** An Offer submitted by a Potential Bidder will be considered a "**Qualified Bid**" only if the Offer complies with all of the following:
- (a) all of the conditions in Article 3.2 remain satisfied in all respects;

- (b) it includes a letter stating that the Offer is irrevocable until the earlier of (i) the closing of a transaction with the Superior Bidder (as defined below), and (ii) 20 Business Days following the Bid Deadline; provided, however, that if such Offer is selected as the Superior Bid, it shall remain irrevocable until the closing of the Superior Bid;
- (c) it includes a duly authorized and executed purchase and sale agreement specifying the purchase price, expressed in Canadian dollars (the "**Purchase Price**") in as close a form as practicable to the Stalking Horse Bid attached hereto as marked as Schedule "B" (accompanied by a blackline demonstrating the changes to the form attached hereto), with such ancillary agreements as may be required by the Potential Bidder together with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements) and the proposed forms of order(s) for Court approval thereof;
- (d) it is not conditioned on (i) the outcome of unperformed due diligence by the Potential Bidder and/or (ii) obtaining any financing of any kind and includes an acknowledgement and representation that the Potential Bidder has had an opportunity to conduct any and all required due diligence prior to making its Offer;
- (e) it includes an acknowledgement and representation that the Potential Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Offer; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Receiver, or any of its advisors, except as expressly stated in the Offer; (iii) is a sophisticated party capable of making its own assessments in respect of making its Offer; and (iv) has had the benefit of independent legal advice in connection with its Offer;
- (f) the Offer is on an "as is, where is", "without recourse" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or its agents, except to the extent specifically set forth therein;
- (g) it includes evidence, in form and substance reasonably satisfactory to the Receiver of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the Offer;
- (h) it provides for a refundable deposit (the "**Deposit**"), to be made in the form of a wire transfer to a trust account maintained by the Receiver's Counsel in an amount equal to 10% of the proposed gross purchase price, to be held and dealt with in accordance with this Sale Process;
- (i) it provides for closing of the Offer by no later than the Ultimate Closing Date;
- (j) if the Potential Bidder is an entity newly formed for the purpose of the transaction, the Offer shall include an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Receiver;

- (k) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of compliance or anticipated compliance with any and all applicable Canadian and any foreign regulatory approvals (including, if applicable, anti-trust regulatory approval and any approvals with respect to the grant or transfer of any permits or licenses), the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
 - (l) it is otherwise compliant with, and not contrary to, the rules set forth in this Sale Process;
 - (m) it contains other information reasonably requested by the Receiver; and
 - (n) it is received by no later than the Bid Deadline.
- 5.2 **Qualified Bids.** Any Offer submitted by a Potential Bidder that complies with each and every requirement of Article 5.1 of this Sale Process shall hereinafter be referred to as a "**Qualified Bid**" (and all such bids, the "**Qualified Bids**") and each Potential Bidder who has submitted a Qualified Bid shall hereinafter be referred to as a "**Qualified Bidder**".
- 5.3 **Deemed Qualified Bids.** Notwithstanding Article 5.1 and 5.2 the Receiver may waive compliance with any one or more of the Qualified Bid requirements specified herein and deem such non-compliant bids to be Qualified Bids.

ARTICLE 6

SELECTION OF THE SUCCESSFUL BID OR SUCCESSFUL BIDS

- 6.1 **Review of Qualified Bids.** Immediately following the Bid Deadline the Receiver will assess all Qualified Bids received, if any, and will determine whether it is likely that the transactions contemplated by such Qualified Bids are likely to be consummated and whether proceeding with this Sale Process is in the best interests of Cococo and its stakeholders. Such assessments will be made as promptly as practicable after the Bid Deadline.
- 6.2 **Further Negotiations.** Immediately following the Bid Deadline the Receiver may select Qualified Bids for further negotiation and/or clarification of any terms or conditions of such Qualified Bids, including the amounts offered.
- 6.3 **Determining Superior Bids and Winning Bid.** Upon completion of any further negotiations or clarifications that may be conducted pursuant to Article 6.2 above, the Receiver will determine whether there are any Qualified Bids superior to the Stalking Horse Bid. In the case where one or more such Qualified Bid is identified, each such Qualified bid shall be deemed to be a "**Superior Bid**", and the Receiver shall notify each party who made such a bid (each a "**Superior Bidder**") that it is a Superior Bidder who has submitted a Superior Bid, and the Receiver shall furthermore notify that Superior Bidder who submitted the highest and best such bid (the "**Winning Bidder**") that that its bid (the "**Winning Bid**") has been so identified.
- 6.4 **No or Only Inferior Qualified Bids.** In the event that: (a) no Qualified Bid is received; or (b) no Qualified Bid received is superior to the Stalking Horse Bid, this Sale Process shall be deemed to be immediately terminated and the Property shall vest in the Stalking Horse Bidder in accordance with the terms of the Sale Process Order.

- 6.5 **Finalization of Winning Bid.** Forthwith upon identifying a Winning Bid, the Receiver and the Winning Bidder will promptly finalize the definitive agreements in respect of the Winning Bid, conditional upon approval of the Court (the “**Winning Bid Agreement**”).
- 6.6 **Court Approval.** The Receiver shall apply to the Court as soon as practicable after completion of the Winning Bid Agreement for: (i) an order approving the Winning Bid and authorizing the Receiver to enter into any and all necessary agreements with respect to the Winning Bidder; and (ii) any order that may be required vesting title to Property in the name of the Winning (the “**Approval Hearing**”).
- 6.7 **Closing.** Closing shall occur as soon as practicable after the Winning Bid is approved by the Court.
- 6.8 **Failure to Close Winning Bid Agreement.** In the event that the purchase and sale transaction that arises from the Winning Bid Agreement shall fail to be completed, the Receiver will correspond in writing with the makers of all the Superior Bids, if any, for the purpose of obtaining a replacement Winning Bid for the Purchased Assets. The Superior Bids considered by the Receiver must be on the same terms and conditions and as originally submitted and any maker of a Superior Bid that is interested in acquiring the Purchased Assets shall be required to resubmit its deposit in accordance with Article 5.1(h). The Receiver shall select the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all of the features of the bids, considers to be the most favourable (the “**Replacement Winning Bid**”). Thereafter, the Receiver shall apply to Court as soon as reasonably practicable for: (i) an order approving the Replacement Winning Bid and authorizing the Receiver to enter into any and all necessary agreements with respect to the Replacement Winning Bidder; and (ii) any order that may be required vesting title to Property in the name of the Replacement Winning Bidder (also an “**Approval Hearing**”).
- 6.9 **Failure to Close Superior Bids.** In the event that Superior Bids are received and the Receiver is unable to close the Winning Bid and Replacement Winning Bid, this Sale Process shall be deemed to be immediately terminated and the Property shall vest in the Stalking Horse Bidder in accordance with the terms of the Sale Process Order
- 6.10 **Rejection of Unsuccessful Bids.** All Qualified Bids (other than any Winning Bid) and the Stalking Horse Bid, if applicable, shall be deemed rejected on and as of the date of closing of the Winning Bid, Replacement Winning Bid, or Stalking Horse Bid, as the case may be.

ARTICLE 7

GENERAL PROVISIONS

- 7.1 **Deposits.** All Deposits shall be retained by the Receiver’s Counsel and invested in an interest-bearing trust account. If there is a Winning Bid or Replacement Winning Bid, the Deposit (plus accrued interest) paid by the Winning Bidder or Replacement Winning Bidder whose bid is approved at the Approval Hearing shall be applied to the purchase price to be paid by the Winning Bidder or Replacement Winning Bidder upon closing of the approved transaction and will be non-refundable. If any Qualified Bidder fails to comply with any provision contained in its Qualified Bid the Deposit and all other payments made in connection with the Purchase Price shall be forfeited as liquidated damages. The Deposits (plus applicable interest) of Qualified Bidders not selected as a Winning Bidder shall be returned to such bidders within ten Business

Days after the date on which Qualified Bids or the Stalking Horse Bid, as applicable, are deemed rejected in accordance with Article 6.10. If there is no Winning Bid, all Deposits shall be returned to the bidders within 10 Business Days of the date upon which the Sale Process is terminated in accordance with these procedures.

- 7.2 **Right to Reject Offers.** The highest or any Offer will not necessarily be accepted. The Receiver does not have any obligation to conclude a sale arising out of this process and reserves the right and unfettered discretion to reject any Offer received.
- 7.3 **Taxes.** All applicable federal and provincial taxes are payable by the Qualified Bidder (unless an exemption certificate is produced), not the Receiver.
- 7.4 **No Assignment.** No Qualified Bid, Winning Bid, or Replacement Winning Bid may be assigned by the bidder to any third party without the prior written consent of the Receiver.
- 7.5 **Time of the Essence.** All stipulations as to time in this Sale Process are strictly of the essence.
- 7.6 **No Commissions.** The Receiver shall not be required to pay any finder's fees, commissions, expenses or other compensation to any agents, consultants, advisors, or other intermediaries in respect of any Stalking Horse Bid, Qualified Bid, Winning Bid, or Replacement Winning Bid unless expressly agreed to separately and in writing and consented to by the Receiver.
- 7.7 **Applicable Law.** The laws of the Province of Alberta shall govern this Sale Process. Each Qualified Bidder and the Stalking Horse Bidder agrees that the Court shall have the exclusive jurisdiction to determine any and all disputes under this Sale Process and any transaction contemplated hereunder hereby attorn to the jurisdiction of the Court.

ARTICLE 8 **ADDITIONAL APPROVALS**

- 8.1 **Additional Approvals.** For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the applicable law in order to implement the Stalking Horse Bid, Winning Bid, or Replacement Winning Bid, as applicable.

ARTICLE 9 **ONGOING SUPERVISION**

- 9.1 **Standing.** At any time during the Sale Process, the Receiver may apply to the Court for advice and directions with respect to the terms and condition of the Sale Process.

Schedule "A"

DELOITTE RESTRUCTURING INC., in its capacity as receiver and manager of the assets, properties, and undertakings of Cococo Chocolatiers Inc.

700 850 – 2nd Street SW

Calgary, Alberta T2P 0R8

Attention: Robert J Taylor / Ryan Adlington

Email: bobtaylor@deloitte.ca / radlington@deloitte.ca

Schedule "B"