

Form 49
[Rule 13.19]

Clerk's stamp:

COURT FILE NUMBER	2101-
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.
DEFENDANT	COCOCO CHOCOLATIERS INC.
DOCUMENT	<u>AFFIDAVIT OF BRIAN BECK</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

AFFIDAVIT OF BRIAN BECK

Sworn on August 11th, 2021

I, Brian Beck, of the city of Calgary in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the sole director of Panterra Mortgage & Financial Corporation Ltd., formerly named 1870340 Alberta Ltd. (the "**Lender**"), the applicant creditor in this action and, as such, have personal knowledge of the matters deposed to herein except where stated to be based on information and belief, in which case I verily believe the same to be true. I am authorized to swear this affidavit on behalf of the Lender.
2. The Lender and G.L. Black Holdings Ltd. are both 100% subsidiaries of 261820 Alberta Ltd. ("**261820**"). Since 2006, I have been employed full-time as Chief Operating Officer & Corporate Counsel for G.L. Black Holdings Ltd. My work on behalf of the Lender is an aspect of my full-time employment.
3. This Affidavit is sworn in support of an application by the Lender for Orders (the "**Application**"):
 - (a) abridging the time for service of this Application and dispensing with service on any other party other than those served;
 - (b) appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager over the assets, undertakings and properties of Cococo Chocolatiers Inc. ("**Cococo**");

- (c) authorizing the Lender and the Receiver to enter into an agreement of purchase and sale in the form attached to this Affidavit whereby the Lender will agree to acquire substantially 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;
 - (d) 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
 - (e) providing for the vesting of assets in the Lender if no superior bid is obtained in the sale process or the winning bid and replacement winning bid fail to close.
4. I am also the President of, and a director of, Cococo, but I am not swearing this Affidavit in either capacity. I have held those roles in Cococo continuously since its incorporation in 2010. Although I am President of Cococo, I have never been an employee of Cococo, nor I have ever received any remuneration for my services from Cococo, directly or indirectly.

The Parties

- 5. The Defendant, Cococo, is a corporation incorporated pursuant to the laws of Alberta and carries on business in the province of Alberta. A true copy of a search result of the Alberta Corporate Registry for Cococo is attached as **Exhibit "1"**.
- 6. Cococo is the amalgamation successor of 1563181 Alberta Ltd. A true copy of a search result of the Alberta Corporate Registry system for 1563181 Alberta Ltd. is attached as **Exhibit "2"**.
- 7. In 2011, 1563181 Alberta Ltd. changed its name to Cococo.
- 8. In 2014, Cococo amalgamated with two of its then wholly-owned subsidiaries, Cococo Chocolatiers WRB Inc. ("**WRB**") and Cococo Chocolatiers Vancouver Island Inc. ("**VI**"), with Cococo being the amalgamation successor. WRB's only business immediately prior to its amalgamation with Cococo was its operation of a retail store that distributed Cococo's products in Banff, Alberta. VI's only business immediately prior to its amalgamation with Cococo was its operation of three retail stores that distributed Cococo's products on Vancouver Island.
- 9. In 2015, Cococo amalgamated with a then wholly-owned subsidiary, Cococo Chocolatiers Ottawa Inc. ("**Ottawa**"), with Cococo being the amalgamation successor. Ottawa's only business immediately prior to amalgamation was its operation of three retail stores that distributed Cococo's products in Ottawa, Ontario.
- 10. Cococo today has one remaining wholly-owned subsidiary, Cococo Chocolatiers Central Inc. ("**Central**"). Central's only business is the operation of a retail store that distributes Cococo's products at Bankers Hall, Calgary, Alberta.

11. The registered address for Cococo is 2320 2 Avenue SE, Calgary, Alberta, as noted on the search result of the Alberta Corporate Registry.
12. Cococo is in the business of manufacturing and distributing fine chocolate confectionery products.

Indebtedness of Cococo to the Lender

13. Pursuant to an Assignment Agreement dated September 15, 2017, as amended and rectified by an Amendment and Rectification Agreement dated September 15, 2017 (collectively, the "**Assignment Agreement**") the Lender acquired an assignment of the indebtedness of Cococo then owed to 261820 and related security. A conformed copy of the Assignment Agreement is attached as **Exhibit "3"**.
14. More particularly, the Lender took an assignment of the indebtedness of Cococo pursuant to the following loans and advances made to Cococo (collectively, the "**Assignment**"):

<u>Date of Advance</u>	<u>Amount of Advance</u>
October 22, 2010	\$2,000,000.00, pursuant to a promissory note dated October 22, 2010, as amended by an amended promissory note dated July 2, 2012
July 31, 2012	\$2,000,000.00, pursuant to a promissory note dated July 3, 2012
August 27, 2012	
October 15, 2012	
September 5, 2013	\$20,000.00
August 31, 2015	\$350,000.00
October 31, 2015	\$850,000.00
December 31, 2015	\$550,000.00
July 31, 2016	\$585,000.00
September 30, 2016	\$719,452.78
October 31, 2016	\$514,471.00
November 30, 2016	\$277,672.00

15. Copies of the October 22, 2010 promissory note, the July 2, 2012 amendment to that note, and the July 3, 2012 promissory note are attached to the Assignment Agreement.

16. Pursuant to a letter agreement dated September 15, 2017, the Lender also made available to Cococo a further demand revolving loan to the maximum amount of \$1,500,000 (the "**2017 Operating Loan Agreement**"). A copy of the 2017 Operating Loan Agreement is attached as **Exhibit "4"**.
17. Terms of the 2017 Operating Loan Agreement as implemented include, among others, that:
- (a) Cococo agreed that amounts advanced and outstanding under the 2017 Operating Loan Agreement shall at no time exceed the prescribed margin requirement;
 - (b) interest before default is payable at a rate equal to HSBC Bank's prime plus 1.00% per annum;
 - (c) Cococo is responsible for all reasonable legal fees and disbursements, on a solicitor and own client basis, in respect of the loan, including enforcement costs;
 - (d) all amounts outstanding are repayable on demand by the Lender.
18. As of August 11, 2021, pursuant to the Assignment and the 2017 Operating Loan Agreement (collectively, the "**Loans**"), Cococo's indebtedness due and owing to the Lender totals \$10,696,769.25, plus costs (including legal costs on a solicitor and own-client full indemnity basis), and fees, all of which, together with interest, continue to accrue (collectively, the "**Indebtedness**") as more particularly described in the statement attached as **Exhibit "5"**.

Security

19. Pursuant to the Assignment Agreement, the Lender took an assignment of certain security, including two General Security Agreements dated October 22, 2010 and July 3, 2012. Copies of these General Security Agreements are attached to the Assignment Agreement.
20. The Lender also obtained from Cococo a third General Security Agreement dated September 15, 2017. A copy of this General Security Agreement is attached as **Exhibit "6"**.
21. Attached and marked as **Exhibit "7"** is a true copy of the Alberta Personal Property Registry search certificate in respect of Cococo (the "**PPSA Search**").
22. The PPSA Search confirms that the Lender has a registered security interest over all present and after acquired personal property of Cococo.

Default and Demand for Repayment

23. Cococo is in default of the Loans, including by reason of failing to make payment of amounts owing to the Lender. Additionally, certain of the loan facilities provided are term facilities that have matured.

24. The Lender issued demand for the repayment of the Indebtedness and a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* on Cococo pursuant to correspondence dated July 27, 2021. A copy of this demand and notice of intention are attached as **Exhibit "8"**.

State of Cococo's Business

a) Cashflow and Liquidity Issues

25. Cococo is presently facing a number of significant challenges in its business operations.
26. Cococo has for some time been, and continues to be, completely reliant on financing provided by the Lender to continue operations.
27. I attach a projected cashflow statement for Cococo as **Exhibit "9"**. I note that this cashflow statement does not take into account purchases of items such as inventory that would be necessary to ramp up production in advance of the holiday season. It further does not contemplate repayment of any of the Indebtedness.
28. Given the circumstances of Cococo today, the Lender is no longer willing to advance funds to Cococo and, without the funds advanced by the Lender, Cococo will not have the ability to continue operations.
29. In the present circumstances, the Lender furthermore would not agree to permit any party providing additional financing while taking a priority position over the Lender's collateral.
30. I verily believe there is no realistic possibility of Cococo continuing operations without access to ongoing financing, and am unaware of any alternate financing available to Cococo.

b) Corporate Litigation

31. There is presently a dispute among the shareholders and directors of Cococo, dating back to operational decisions that Cococo was forced to make in 2020 in the face of the COVID-19 pandemic and related public-health measures. This dispute has resulted in the commencement of litigation in the form of Court of Queen's Bench of Alberta action number 2003-16696 (the "**Corporate Litigation**"). Copies of an Amended Statement of Claim, Statement of Defence (the "**Statement of Defence**"), Counterclaim, and the named plaintiffs' Statement of Defence to Counterclaim, all as filed in the Corporate Litigation, are attached as **Exhibit "10"**.
32. The capital structure of Cococo is pleaded at paragraphs 19-20 and 28-30 of the Statement of Defence. The facts pleaded in those paragraphs are true.
33. Cococo's share structure as it exists today can be summarized as follows:

- (a) 80% of Cococo's common shares are owned by Instant Potatoes Holdings Ltd ("IPH"), which is indirectly owned 50/50 as between myself and Kenneth M. Black ("KMB").
 - (b) 20% of Cococo's common shares are, to the best of my knowledge, owned by DKM Holdings Inc. ("DKM") which, to the best of my knowledge, is indirectly owned by Don Freeland, Ken Freeland, and Mike Freeland.
 - (c) 261820 owns 3,108,696 Class "A" Preferred shares in Cococo, and DKM owns 3,108,696 Class "B" Preferred shares in Cococo. Each preferred share has a redemption value of CDN\$1, but the Class "A" Preferred shares (owned by 261820) must be redeemed in priority to the Class "B" Preferred shares owned by DKM. A true copy of Cococo's Articles of Amalgamation is attached as Exhibit "11".
34. The Corporate Litigation was commenced by:
- (a) DKM, a shareholder of Cococo;
 - (b) Ken Freeland, a current director and indirect shareholder of Cococo through DKM;
 - (c) Mike Freeland, a former director and indirect shareholder of Cococo through DKM; and,
 - (d) three numbered companies, each of which I understand is owned in whole or in part, directly or indirectly, by Ken Freeland and Mike Freeland, and which, to the best of my knowledge, operate stores that have, in the past, sold products manufactured by Cococo.
35. The Amended Statement of Claim names Cococo, myself, KMB, 261820, and IPH as Defendants.
36. I am a current director of Cococo, as is KMB.
37. 261820 and IPH are shareholders of Cococo.
38. The plaintiffs and defendants in the Corporate Action comprise all directors and shareholders of Cococo.
39. In my capacity as President of Cococo, I am the only individual involved in the Corporate Action who has ever been engaged in the day-to-day oversight of Cococo's operations.
40. The Amended Statement of Claim filed in the Corporate Litigation alleges various causes of action against the named defendants in those proceedings, and alleges various breaches of duty, oppression, breach of contract, and conspiracy, and the pleading also contemplates the bringing of a derivative action.
41. The Counterclaim in the Corporate Litigation alleges trademark infringement, breach of fiduciary obligation, conspiracy, and defamation, and seeks punitive damages.

42. I am concerned that the acrimony existing among the directors and shareholders of Cococo, as highlighted and made manifest by the Corporate Action, renders the effective governance of Cococo untenable going forward.
43. I am concerned that the result of these circumstances will inevitably be Cococo's inability to continue operating effectively as a going concern, and that Cococo will be incapable of operating a profitable business and repaying the Indebtedness.

Appointment of a Receiver

44. There is tremendous uncertainty regarding the operations of Cococo, and absent additional financing Cococo will run out of money to conduct operations in the coming days or weeks.
45. Additionally, in the present circumstances where there is acrimony and active litigation among Cococo's directors, the appointment of a receiver and manager is necessary to ensure the effective operation of the business for all stakeholders.
46. The appointment of a receiver and manager over the assets of Cococo is necessary, just and convenient in order to protect the interests of the Lender, and to preserve and realize upon the assets in order to recover the Indebtedness.
47. I understand that Deloitte has consented to act as receiver and manager should the Court so appoint it.

Credit Bid Offer and Sales Process

48. The Lender has evaluated its options and determined that the best alternative available to it to attempt to recoup the Indebtedness is to put forward a credit bid to acquire the assets of Cococo, and for such offer to stand as a stalking horse bid in a sales process to be commenced and overseen by the Receiver.
49. Given the quantum of the proposed credit bid, I anticipate that there will be limited interest in the market for the assets of Cococo. The business does not today have an earnings history to sell, and, although the chocolate factory and the specialized assets within that factory would have turnkey value and appeal for the right purchaser, in the wake of the COVID-19 pandemic there is a plentiful supply of used fine-chocolate and confectionery manufacturing equipment on the market today, and retail dynamics have been very difficult for several years, especially given the pronounced seasonality of Cococo's business. Further, inasmuch as several chocolate manufacturing operations have been launched in Alberta and Western Canada over the past several years, including recently as triggered by the legalization of cannabis consumption and the associated perceived demand for chocolate edibles, the local market for such facilities is, in my estimation, saturated. Lastly, there is much competition among brands in the retail fine chocolate

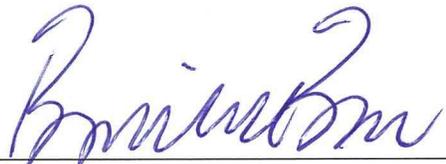
business in Western Canada, and margins are tight. I think it reasonably unlikely that even a strategic purchaser would see value in the Cococo assets at or exceeding the level of the proposed credit bid.

- 50. It is critical that any sales process for Cococo's assets be completed well in advance of the December holiday season, in order to ensure there is sufficient time to obtain supplies and manufacture inventory in advance of the holiday selling season, which is traditionally the most important time of the year for Cococo.
- 51. If the relief sought is granted by this Honourable Court, the Lender will execute an Agreement of Purchase and Sale with the Receiver in the form attached as **Exhibit "12"**.
- 52. The Lender is further willing to provide financing by way of advances pursuant to Receiver's Certificates to ensure sufficient cashflow for Cococo to maintain operations for the duration of the sales process.
- 53. I make this affidavit in support of the Application.

SWORN BEFORE ME)
 at Calgary, Alberta this 11th day of August,)
 2021.)


 _____)

Commissioner for Oaths in and for Alberta


 _____)

Brian Beck

ADAM PALMER
 Student-at-Law

This is Exhibit "1" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021

Adam Palmer

A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2021/07/07
Time of Search: 09:53 AM
Search provided by: ELDOR-WAL REGISTRATIONS (1987) LTD
Service Request Number: 35766504
Customer Reference Number:

Corporate Access Number: 2019301163
Business Number: 847873114
Legal Entity Name: COCOCO CHOCOLATIERS INC.

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Method of Registration: Amalgamation
Registration Date: 2015/11/01 YYYY/MM/DD
Date of Last Status Change: 2018/03/19 YYYY/MM/DD

Registered Office:

Street: 2320 2 AVENUE SE
City: CALGARY
Province: ALBERTA
Postal Code: T2E6J9

Records Address:

Street: 2320 2 AVENUE SE
City: CALGARY
Province: ALBERTA
Postal Code: T2E6J9

Email Address: BRIANBECK@GLBH.COM

Directors:

Last Name: BECK
First Name: BRIAN
Street/Box Number: 1140 - 4 AVENUE N.E.
City: CALGARY
Province: ALBERTA
Postal Code: T2E0K5

Last Name: BLACK

First Name: KENNETH
Middle Name: M.
Street/Box Number: 43 SUN CANYON PARK S.E.
City: CALGARY
Province: ALBERTA
Postal Code: T2X2Z3

Last Name: FREELAND
First Name: KEN
Street/Box Number: 13224 - 102 AVENUE
City: EDMONTON
Province: ALBERTA
Postal Code: T5N0N1

Voting Shareholders:

Legal Entity Name: DKM HOLDINGS INC.
Corporate Access Number: 2015631266
Street: 202-10129 124 ST
City: EDMONTON
Province: ALBERTA
Postal Code: T5N1P5
Percent Of Voting Shares: 20

Legal Entity Name: INSTANT POTATOES HOLDINGS LTD.
Corporate Access Number: 2015631928
Street: 2400-525 8 AVE SW
City: CALGARY
Province: ALBERTA
Postal Code: T2P1G1
Percent Of Voting Shares: 80

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE SCHEDULE "C" ATTACHED HERETO
Share Transfers Restrictions: SEE SCHEDULE "A" ATTACHED HERETO
Min Number Of Directors: 1
Max Number Of Directors: 7
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE SCHEDULE "B" ATTACHED HERETO

Other Information:

Amalgamation Predecessors:

Corporate Access Number	Legal Entity Name
2018580403	COCOCO CHOCOLATIERS INC.
2017104114	COCOCO CHOCOLATIERS OTTAWA INC.

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2020	2021/01/07

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2015/11/01	Amalgamate Alberta Corporation
2016/05/06	Change Address
2018/01/02	Status Changed to Start for Failure to File Annual Returns
2020/02/22	Update BN
2021/01/07	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Statutory Declaration	10000707115604604	2015/11/01
Share Structure	ELECTRONIC	2015/11/01
Restrictions on Share Transfers	ELECTRONIC	2015/11/01
Other Rules or Provisions	ELECTRONIC	2015/11/01

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



Schedule "C"

The Corporation is authorized to issue an unlimited number of Class A Common Shares, Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares which shall have the following rights, privileges, restrictions and conditions:

Class A Common Shares

1. Voting Rights

The holders of Class A Common Shares shall be entitled to notice of, to attend and to one vote per Class A Common share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class A Common Shares as such).

2. Dividends

The holders of Class A Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class A Common Shares, subject to prior satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board of Directors may declare dividends on the Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same time in different amounts than dividends declared on the Class A Common Shares.

3. Liquidation

The holders of Class A Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, *pari passu* with the holders of the Class B Common Shares, in such assets of the Corporation as are available for distribution.

Class B Common Shares

1. Voting Rights

The holders of Class B Common Shares shall be entitled to notice of, to attend and to one vote per Class B Common Share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class B Common Shares as such).

2. Dividends

The holders of Class B Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class B Common Shares subject to prior satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board of Directors may declare dividends on the Class A Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same

time in different amounts than dividends declared on the Class B Common Shares.

3. Liquidation

The holders of Class B Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, *pari passu* with the holders of the Class A Common Shares, in such assets of the Corporation as are available for distribution.

Class A Preferred Shares

1. Voting Rights

Subject to the Business Corporations Act (Alberta), the holders of Class A Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of the Class A Preferred Shares shall be entitled to receive if, as and when declared by the Board of Directors of the Corporation:

(a) until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated July 3, 2012 in the principal amount of \$2,000,000 is paid in full (the "New Facility Payment Date"), a fixed, cumulative dividend equal to 4.54% of the Redemption Value per annum payable semi-annually as well as such dividends in any financial year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.

(b) after the New Facility Payment Date and until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated October 22, 2010 in the principal amount of \$2,000,000 are paid in full (the "Working Capital Payment Date"), a fixed, cumulative dividend equal to 2.00% of the Redemption Value per annum payable semi-annually as well as such dividends in any year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.

(c) after the Working Capital Payment Date, such dividends as the Board of Directors may, in its absolute discretion, determine, *pari passu* with and at the same time as dividends are paid on the Class B Preferred Shares.

3. Redemption

(a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class A Preferred Shares at a price per share equal to CDN\$1.00 per share (the "Redemption Value"), together with all accrued and unpaid dividends thereon up to the date fixed for redemption (the whole amount being herein referred to as the "Redemption Price") provided however that the

Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.

(b) In case only a part of the then outstanding Class A Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class A Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

(a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class A Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts shall be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares, Class B Common Shares or Class B Preferred Shares.

(b) After payment to the holders of the Class A Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class A Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

Class B Preferred Shares

1. Voting Rights

Subject to the Business Corporations Act (Alberta), the holders of Class B Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of Class B Preferred Shares shall not be entitled to receive dividends on the Class B Preferred Shares until after the Working Capital Payment Date. After the Working Capital Payment Date the holders of Class B Preferred Shares shall be entitled to receive dividends as and when declared by the Board of Directors pari passu with and at the same times as holders of Class A Preferred Shares.

3. Redemption

(a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class B Preferred Shares for the Redemption Price, provided however that the Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.

(b) In case only a part of the then outstanding Class B Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class B Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

(a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class B Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares or Class B Common Shares.

(b) After payment to the holders of the Class B Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class B Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

5. General

(a) On any redemption of Class A Preferred Shares or Class B Preferred Shares the Corporation shall, subject to the unanimous waiver of notice by the registered holders thereof, give at least 21 days before the date fixed for redemption (the "Redemption Date"), a notice in writing of the intention of the Corporation to redeem Class A Preferred Shares or Class B Preferred Shares (as applicable) (the "Redemption Notice") to each person who at the date of giving of such notice is a registered holder of the shares to be redeemed. The Redemption Notice shall set out the calculation of the Redemption Price, the Redemption Date and, unless all the shares held by the holder to whom it is addressed are to be redeemed, the number of such shares so held which are to be redeemed.

(b) The Redemption Price (less any tax required to be withheld by the Corporation) may be paid by cheque payable in lawful money of Canada at par at any branch in Alberta of the Corporation's bankers for the time being or by such other reasonable means as the Corporation deems desirable. The mailing of such cheque from the Corporation's registered office, or the payment by such other reasonable means as the Corporation deems desirable, on or before the Redemption Date shall be deemed to be payment of the Redemption Price represented thereby on the Redemption Date unless the cheque is not paid upon presentation or payment by such other means is not received. Notwithstanding the foregoing, the Corporation shall be entitled to require at any time, and from time to time, that the Redemption Price be paid to holders of Class A Preferred Shares or Class B Preferred Shares only upon presentation and surrender at the registered office of the Corporation or at any other place or places in Alberta designated by the Redemption Notice of the certificate or certificates for such shares to be redeemed.

(c) If a part only of the Class A Preferred Shares or Class B Preferred Shares represented by any certificate are to be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation.

(d) At any time after the Redemption Notice is given, the Corporation shall have the right to deposit the Redemption Price of any or all Class A Preferred Shares or Class B Preferred Shares to be redeemed with any chartered bank or banks or with any trust company or trust companies in Alberta named for such purpose in the Redemption Notice to the credit of a special

account or accounts in trust for the respective holders of such shares, to be paid to them respectively upon surrender to such bank or banks or trust company or trust companies of the certificate or certificates representing the same. Upon such deposit or deposits being made or upon the Redemption Date, whichever is later, the shares in respect of which such deposit has been made shall be and be deemed to be redeemed and the rights of the holders of such shares shall be limited to receiving, without interest, the proportion of the amount so deposited applicable to their respective shares. Any interest allowed on such deposit or deposits shall accrue to the Corporation.

(e) From and after the Redemption Date, the Class A Preferred Shares or Class B Preferred Shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the Redemption Price shall not be duly made by the Corporation, in which event the rights of such holders shall remain unaffected until the Redemption Price has been paid in full.

(f) Class A Preferred Shares or Class B Preferred Shares which are redeemed or deemed to be redeemed in accordance with this Section shall, subject to applicable law, be and be deemed to be returned to the authorized but unissued capital of the Corporation.

Schedule "A"

The right to transfer shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares in the capital of the Corporation without either:

(a) the previous express sanction of the holders of a majority of the voting shares in the capital of the Corporation for the time being outstanding expressed by a resolution passed at a meeting of the holders of such shares or by an instrument or instruments in writing signed by the holders of a majority of such shares; or

(b) the previous express sanction of all of the directors of the Corporation expressed by a resolution passed at a meeting of all of the directors or by an instrument or instruments in writing signed by all of the directors.

Schedule "B"

1. BORROWING

The directors of the Corporation may from time to time:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, re-issue, sell or pledge debt obligations of the Corporation;
- (c) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all of any of the currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation for any money borrowed or any other debt, obligation or liability of the Corporation; and
- (d) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person.

2. DELEGATION

The directors may from time to time delegate to such one or more of the directors and officers of the Corporation as may be designated by the directors all or any of the powers conferred on the Board by the provisions of paragraph 1 hereof to such extent and in such manner as the directors shall determine at the time of each such delegation.

3. NUMBER OF SHAREHOLDERS

The number of shareholders of the Corporation, exclusive of persons who are in the employment and are shareholders of the Corporation and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, and have continued after the termination of that employment to be shareholders of the Corporation, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

4. INVITATION TO PUBLIC PROHIBITED

Any invitation to the public to subscribe for securities of the Corporation is prohibited.

5. GENDER

For the purpose of this schedule, words importing the singular number only shall include the plural and vice versa, words importing any gender shall include all genders, and "person" or words importing persons shall include natural persons, firms, partnerships, corporations, regulatory bodies and entities, legal or otherwise.

This is Exhibit "2" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021

Adam Palmer

A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2021/07/07
Time of Search: 10:45 AM
Search provided by: ELDOR-WAL REGISTRATIONS (1987) LTD
Service Request Number: 35767245
Customer Reference Number:

Corporate Access Number: 2015631811

Business Number:

Legal Entity Name: COCOCO CHOCOLATIERS INC.

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
1563181 ALBERTA LTD.	2011/07/07

Legal Entity Status: Amalgamated
Alberta Corporation Type: Named Alberta Corporation
Amalgamation Date: 2014/11/01 YYYY/MM/DD
Registration Date: 2010/10/06 YYYY/MM/DD

Registered Office:

Street: 2500, 10303 JASPER AVENUE
City: EDMONTON
Province: ALBERTA
Postal Code: T5J3N6

Records Address:

Street: 2500, 10303 JASPER AVENUE
City: EDMONTON
Province: ALBERTA
Postal Code: T5J3N6

Directors:

Last Name: BECK
First Name: BRIAN
Street/Box Number: 1140 - 4 AVENUE N.E.
City: CALGARY
Province: ALBERTA

Postal Code: T2E0K5
Last Name: BLACK
First Name: KENNETH
Middle Name: M.
Street/Box Number: 43 SUN CANYON PARK S.E.
City: CALGARY
Province: ALBERTA
Postal Code: T2X2Z3

Voting Shareholders:

Legal Entity Name: DKM HOLDINGS INC.
Corporate Access Number: 2015631266
Street: #202, 10129 - 124 STREET
City: EDMONTON
Province: ALBERTA
Postal Code: T5N1P5
Percent Of Voting Shares: 20

Legal Entity Name: INSTANT POTATOES HOLDINGS LTD.
Corporate Access Number: 2015631928
Street: 1140 4 AVENUE NE
City: CALGARY
Province: ALBERTA
Postal Code: T2E0K5
Percent Of Voting Shares: 80

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE SCHEDULE "C" ATTACHED
Share Transfers Restrictions: SEE SCHEDULE "A" ATTACHED
Min Number Of Directors: 1
Max Number Of Directors: 7
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE SCHEDULE "B" ATTACHED

Holding Shares In:

Legal Entity Name

COCOCO CHOCOLATIERS OTTAWA INC.
COCOCO CHOCOLATIERS VANCOUVER ISLAND INC.

Associated Registrations under the Partnership Act:

Trade Partner Name	Registration Number
CHOCOLATERIE BERNARD CALLEBAUT	TN15697816
CHOCOLATES BY BERNARD CALLEBAUT	TN15697782
E & M CHOCOLATE	TN17071572

Other Information:

Amalgamation Successor:

Corporate Access Number	Business Number	Legal Entity Name
2018580403		COCOCO CHOCOLATIERS INC.

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2013	2014/02/04

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2010/10/06	Incorporate Alberta Corporation
2011/07/07	Name Change Alberta Corporation
2012/11/16	Name/Structure Change Alberta Corporation
2014/02/04	Enter Annual Returns for Alberta and Extra-Provincial Corp.
2014/10/31	Change Director / Shareholder
2014/11/01	Amalgamate Alberta Corporation

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2010/10/06
Restrictions on Share Transfers	ELECTRONIC	2010/10/06
Other Rules or Provisions	ELECTRONIC	2010/10/06

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



This is Exhibit "3" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021

Adam Palmer

A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

ASSIGNMENT AGREEMENT

This Assignment Agreement is made this 15th day of September, 2017 among 261820 Alberta Ltd. and 1870340 Alberta Ltd.

RECITALS:

A. Cococo Chocolatiers Inc. (previously known as 1563181 Alberta Ltd.) (the "**Borrower**") is indebted to 261820 Alberta Ltd. (the "**Original Lender**") under the loans and advances more particularly described in the attached Schedule "A" and has granted security in favour of the Original Lender pursuant to certain security documents described and attached hereto as Schedule "A" (collectively, the "**Original Loan and Security Documents**").

B. The Original Lender wishes to assign to 1870340 Alberta Ltd. (the "**New Lender**") all of its rights, obligations and benefits under the Original Loan and Security Documents.

NOW THEREFORE, in consideration of the premises, the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of the foregoing being hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. The Original Lender hereby assigns and transfers to and in favour of the New Lender, its entire right, title, estate and interest in and to:

- (a) all indebtedness of the Borrower to the Original Lender outstanding as at the date hereof, howsoever evidenced or recorded including but not limited to the Original Loan and Security Documents; and
- (b) without limitation of section 2(a), any security interest granted by the Borrower in favour of the Original Lender, whether by operation of law or otherwise howsoever, in, to, over or in respect of any of the property, assets or undertaking of the Borrower as direct or indirect security for the payment or performance of any part or the whole of the liabilities, obligations and indebtedness of the Borrower to the Original Lender;

for its use and benefit in accordance with the terms and conditions of the Original Loan and Security Documents (collectively the "**Assigned Rights**").

2. The Original Lender represents and warrants to the New Lender that:

- (a) the Original Loan and Security Documents constitute all of the security documents granted by the Borrower in favour of the Original Lender; and
- (b) no person has any agreement, option, understanding, commitment, right or privilege binding upon or which at any time in the future may be capable of becoming binding upon the Original Lender to sell, transfer, pledge, hypothecate, assign or alienate the Assigned Rights or any part thereof, other than pursuant to the terms of this Assignment Agreement.

3. Except as provided for in paragraph 2 above, the Original Lender makes no representations or warranties of any nature or kind in respect of the Assigned Rights, their respective validity or enforceability or the accounts, debts, dues, demands, choses in action and claims assigned thereby, or in respect of any right, title, interest, claim or estate claimed by the Borrower to the accounts, dues, demands, choses in action and claims under this Assignment Agreement assigned and all

representations and warranties in respect of the Assigned Rights that may be implied by law, statute, custom or otherwise are expressly excluded.

4. The New Lender hereby accepts the assignment of the Assigned Rights from the Original Lender and agrees with the Original Lender to assume as of the date hereof, and thereupon and thereafter to be bound by and observe, carry out, perform and fulfil all of the covenants, conditions, obligations and liabilities of the Original Lender under the Original Loan and Security Documents, to the same extent and with the same force and effect as though the New Lender were a named party to the Original Loan and Security Documents as of the date hereof in the place and stead of the Original Lender, subject to, and in accordance with terms and conditions thereof.

5. The Borrower hereby (i) acknowledges and consents to the assignment herein contained, (ii) accepts the New Lender as a party to the Original Loan and Security Documents and covenants and agrees that as of the date hereof the New Lender shall be entitled to hold and enforce all of the benefits, rights and privileges of the Original Lender under the Original Loan and Security Documents, and (iii) covenants and agrees to be bound by and observe, carry out, perform and fulfil all of its covenants, conditions, obligations and liabilities under the Original Loan and Security Documents, to the same extent and with the same force and effect as though the New Lender was a named party to the Original Loan and Security Documents in the place and stead of the Original Lender.

6. The Original Lender hereby irrevocably constitutes and appoints the New Lender as its true and lawful attorney and agent (the "**Attorney**"), with full power and authority in the Original Lender's name, place and stead from time to time to do all acts and things and execute and deliver all consents, assignments, transfers, conveyances, agreements, documents, instruments and assurances in such form as the Attorney considers necessary or desirable for the purpose of ensuring the Assigned Rights are effectively transferred to and vested in the New Lender. The power of attorney herein granted is declared by the Original Lender to be an irrevocable power coupled with an interest and it shall extend to and bind the successors and assigns of the Original Lender, notwithstanding the dissolution, liquidation, receivership, bankruptcy or other termination of the corporate existence of the Original Lender or for any other reason.

7. The Original Lender hereby agrees to execute and deliver or cause to be delivered to the New Lender at the expense of the Borrower, all such further assurances and documents as may be necessary or desirable to give effect to the intent hereof, including registrable assignments of any and all security interests or any financing statement, caveat or security notice in respect thereof held by or of which the Original Lender is the secured party as direct or indirect security for the obligations, liabilities and indebtedness of the Borrower to the Original Lender.

8. The address of the New Lender for notices under the Original Loan and Security Documents shall be 2320 2 Ave SE, Calgary, Alberta T2E 6J9, Attention: Brian Beck, Email brianbeck@glbh.com.

9. This Assignment Agreement shall be governed by, construed and enforced in accordance with the laws in force in the Province of Alberta. The parties hereto hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta for any matter or cause arising out of or in any way related to the terms of this Assignment Agreement. The Assignment Agreement is binding upon and shall extend to and enure to the benefit of the Original Lender, the New Lender, the Borrower and their respective successors and assigns.

10. This Assignment Agreement shall not operate as a merger of any of the obligations, liabilities and indebtedness of the Borrower to the Original Lender or any security interests granted by the

Borrower to the Original Lender as direct or indirect security for such obligations, liabilities and indebtedness.

11. In the event that any provision of this Assignment Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction, it shall not affect the validity, legality or enforceability of such provision in any other jurisdiction or the validity, legality or enforceability of any other provision of this Assignment Agreement.

12. This Assignment Agreement may be executed in several counterparts (including by fax and email), each of which when so executed shall be deemed to be an original instrument and when all parties have executed a counterpart hereof, all such counterparts together shall constitute but one and the same agreement.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this Assignment Agreement as of the date and year first above written.

261820 ALBERTA LTD., as Original Lender

Per: *K M Black*
Name: *K M BLACK*
Title: *PRESEENT*

1870340 ALBERTA LTD., as New Lender

Per: *Kristy Hicks*
Name: *Kristy Hicks*
Title: *Controller*

COCOCO CHOCOLATIERS INC., as Borrower

Per: *Brian Beck*
Name: *Brian Beck*
Title: *President*

SCHEDULE "A"

Original Loan and Security Documents

Loans

Date of Advance	Amount of Advance
October 22, 2010	\$2,000,000.00, pursuant to a promissory note dated October 22, 2010, as amended by an amended promissory note dated July 2, 2012 (a copy of which is attached hereto)
October 22, 2010	\$2,000,000.00, pursuant to a promissory note dated July 3, 2012 (a copy of which is attached hereto)
September 5, 2013	\$20,000.00
August 31, 2015	\$350,000.00
October 31, 2015	\$850,000.00
December 31, 2015	\$550,000.00
July 31, 2016	\$585,000.00
September 30, 2016	\$719,452.78
October 31, 2016	\$514,471.00
November 30, 2016	\$277,672.00

Security

1. General Security Agreement dated October 22, 2010 between the Borrower as debtor and the Original Lender as secured party, a copy of which is attached hereto.
2. General Security Agreement dated July 3, 2012 between the Borrower as debtor and the Original Lender as secured party, a copy of which is attached hereto.

Schedule "D"

PROMISSORY NOTE

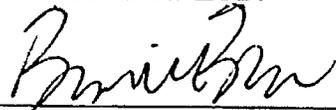
\$2,000,000.00

October 22, 2010

For Value Received the undersigned (jointly and severally, if more than one) promises to pay to 261820 Alberta Ltd. at 5505 – 6th Street, S,E, Calgary, Alberta T2H 1L6 **ON DEMAND**, the principal sum of TWO MILLION (\$2,000,000.00) DOLLARS in lawful money of Canada, together with interest on all amounts of the said principal sum remaining unpaid hereunder from time to time from the date hereof until paid, both before and after default, at a variable rate per annum equal to ONE (1.0%) per cent above the prime lending rate established from time to time by the HSBC Bank Canada. Such interest shall be calculated daily, and, prior to demand hereunder, payable monthly on the last day of each month.

The undersigned waives presentment for payment, notice of non-payment and protest.

1563181 ALBERTA LTD.

Per: 

AMENDED PROMISSORY NOTE

The undersigned payees under a Promissory Note (the "Note"), dated October 22, 2010, in the principal amount of \$2,000,000 from Cococo Chocolatiers Inc. (formerly 1563181 Alberta Ltd.) ("Cococo") hereby agree to amend the Note effective as of the date hereof to:

1. delete the requirement to pay interest; and
2. to provide that the Principal Amount (as such term is defined in the Note) of the Note, or any part thereof, may be prepaid by Cococo without any penalty or bonus.

Effective as of the 2nd day of July, 2012.

261820 ALBERTA LTD.

Per: 

Kenneth Black
President

PROMISSORY NOTE

AMOUNT: SEE SCHEDULE "A"

DUE: ON OR BEFORE JULY 2, 2018

FOR VALUE RECEIVED Cococo Chocolatiers Inc., a corporation formed under the laws of the Province of Alberta (the "Borrower") hereby promises to pay to the order of 261820 Alberta Ltd. (the "Holder") the principal sum set out in Schedule "A" attached hereto (the "Principal Sum") as such Principal Sum may change from time to time as set out in Schedule "A".

This Promissory Note evidences a revolving line of credit made available by the Holder to the Borrower up to a maximum principal amount of Cdn. \$2,000,000 (the "Credit Facility"). The Borrower may request a drawdown of the Credit Facility in minimum amounts of Cdn. \$10,000 on 5 days' prior notice (each, a "Borrowing"). The Holder shall record the principal amount of each Borrowing, the payment of principal and interest and all other amounts becoming due to the Holder under this Promissory Note, including on Schedule "A" hereto. Notwithstanding any failure by the Holder to update Schedule "A", the Holder's accounts and records shall constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Holder pursuant to this Promissory Note.

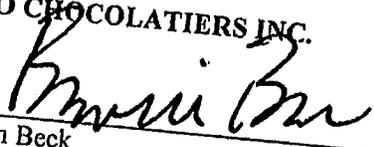
The Borrower may at any time repay the Principal Sum hereunder, in whole or in part, without any notice or penalty to the Holder. The Credit Facility shall be available for a term of 6 years and the Principal Sum shall be payable in full on July 2, 2018. The Borrower hereby waives presentment, notice of dishonour, protest and notice of protest of this Promissory Note.

This Promissory Note shall be construed in accordance with and governed by the terms of the laws of the Province of Alberta and the federal laws of Canada applicable therein.

DATED as of the 3rd day of July, 2012.

COCOCO CHOCOLATIERS INC.

Per:



Brian Beck
President

GENERAL SECURITY AGREEMENT

THIS AGREEMENT made as of July 3, 2012.

BETWEEN:

COCOCO CHOCOLATIERS INC., a corporation existing under the laws of Alberta (hereinafter referred to as the "**Debtor**")

- and -

261820 ALBERTA LTD., a corporation existing under the laws of Alberta (hereinafter referred to as the "**Secured Party**").

WHEREAS the Debtor has agreed to grant, as general and continuing security for the payment and performance of the Obligations (as hereinafter defined), the security interest and assignment, mortgage and charge granted herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants and agreements herein contained the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals hereto, this Section and any schedules or attachments hereto, unless something in the subject matter or context is inconsistent therewith:—

"**Agreement**" means this agreement, as amended, modified, supplemented or restated from time to time in accordance with the provisions hereof.

"**Charge**" means the security interests, assignments, mortgages and charges created hereunder.

"**Collateral**" has the meaning set out in Section 2.1.

"**Obligations**" means, collectively and at any time and from time to time, all present and future obligations, liabilities and indebtedness (absolute or contingent, matured or otherwise) of the Debtor to the Secured Party under the Promissory Note.

"**Promissory Note**" means the promissory note granted by the Debtor dated July 3, 2012 in favour of the Secured Party, as the same may be amended, modified, supplemented or restated from time to time in accordance with the provisions thereof.

1.2 Personal Property Security Act (Alberta) Definitions

The terms "accessions", "accounts", "chattel paper", "documents of title", "goods", "instruments", "intangibles", "inventory", "investment property", "money" and "proceeds" whenever used herein shall have the meanings given to those terms in the *Personal Property Security Act* (Alberta) (the "PPSA"), as now enacted or as the same may from time to time be amended, re-enacted or replaced.

1.3

Headings and References

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, reference herein to Articles and Sections are to Articles and Sections of this Agreement.

1.4

Included Words

In this Agreement words importing the singular number only shall include the plural and vice versa, words importing any gender shall include all genders, words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and words and terms denoting inclusiveness (such as "include" or "includes" or "including"), whether or not so stated, are not limited by their context or by the words or phrases which precede or succeed them.

1.5

Calculation of Interest

Whenever a rate of interest hereunder is calculated on the basis of a year (the "deemed year") which contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for the purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year.

ARTICLE 2
GRANT OF SECURITY

2.1

Security

As general and continuing security for the payment and performance of the Obligations, the Debtor hereby:

- (a) assigns, transfers, pledges, mortgages and charges to and in favour of the Secured Party and grants to and in favour of the Secured Party a continuing security interest in and to all of the Debtor's present and after-acquired personal property; and
- (b) mortgages and charges to and in favour of the Secured Party the undertaking and all the property and assets, rights and things of the Debtor both present and future, legal or equitable, of which the Debtor may be possessed or to which it may be entitled or which may hereafter be acquired by the Debtor, including all its right, title, estate and interest in and to any and all real, personal or mixed property, now owned or hereafter acquired by the Debtor, and all its present and future revenues, incomes, moneys, rights, franchises, goods, wares, merchandise, inventories, materials, supplies, book debts, accounts and accounts receivable, negotiable and non-negotiable instruments, judgments, investment property, choses in action, chattel paper, shares and investments, and all other property and things of value of every kind and nature, tangible or intangible, legal or equitable and all proceeds and all products of, and all accessions to, any of the foregoing (the "Collateral"),

provided that the Charge shall not:

- (i) extend, include or apply to the last day of the term of any other lease now held or hereafter acquired by the Debtor, but should the Secured Party enforce the said Charge, the Debtor shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person acquiring such term in the course of the enforcement of the said Charge,
- (ii) render the Secured Party liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Debtor is a party or by which it is bound or
- (iii) extend to, and the Collateral shall not include any agreement, right, franchise, licence or permit (the "Contractual Rights") to which the Debtor is a party or of which the Debtor has benefit, to the extent that the creation of the Charge herein would constitute a breach of the terms of, or permit any person to terminate, the Contractual Rights, but the Debtor shall hold its interest therein in trust for the Secured Party and shall assign such Contractual Rights to the Secured Party forthwith upon obtaining the consent of all other parties thereto. The Debtor agrees that it shall, upon the request of the Secured Party, use all commercially reasonable efforts to obtain any consent required to permit any Contractual Rights to be subjected to the Charge herein.

2.2

Attachment of Security Interest

The Debtor acknowledges that value has been given and agrees that the security interest granted hereby shall attach when the Debtor signs this Agreement and the Debtor has any rights in the Collateral.

2.3

Covenants

The Debtor covenants with the Secured Party that the Debtor shall:

- (a) not change its name or the jurisdiction of its chief executive office without giving 15 days' prior written notice thereof to the Secured Party;
- (b) from time to time forthwith at the request of the Secured Party execute and deliver all such financing statements, schedules, assignments and documents, and do all such further acts and things as may be reasonably required by the Secured Party to effectively carry out the full intent and meaning of this Agreement, including, without limitation, to enforce the Charge and remedies provided hereunder, or to better evidence and perfect the Charge, and upon the occurrence of an Event of Default, the Debtor hereby irrevocably constitutes and appoints the Secured Party, or any receiver or receiver and manager appointed by the court or the Secured Party, the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever the Secured Party or any such Receiver may consider it to be necessary or expedient; and
- (c) pay to the Secured Party forthwith upon demand all reasonable costs and expenses of the Secured Party in connection the preservation or enforcement of the rights of the Secured Party under this Agreement.

ARTICLE 3
REMEDIES

3.1

Remedies

- (a) Upon the occurrence and during the continuance of any Event of Default any or all security granted hereby shall, at the option of the Secured Party, become immediately enforceable and, in addition to any right or remedy provided by law, the Secured Party will have the rights and remedies set out below, all of which rights and remedies will be enforceable successively, concurrently, or both, and are in addition to and not in substitution for any other rights or remedies the Secured Party may have:
- (i) the Secured Party may by appointment in writing appoint a receiver or receiver and manager (each herein referred to as the "Receiver") of the Collateral (which term when used in this Section 3.1 shall include the whole or any part of the Collateral) and may remove or replace such Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of a Receiver of the Collateral; and the term "Secured Party" when used in this Section 3.1 shall include any Receiver so appointed and the agents, officers and employees of such Receiver; and the Secured Party shall not be in any way responsible for any misconduct or negligence of any such Receiver;
 - (ii) the Secured Party may take possession of the Collateral and require the Debtor to assemble the Collateral and deliver or make the Collateral available to the Secured Party at such place or places as may be specified by the Secured Party;
 - (iii) the Secured Party may take such steps as it considers desirable to maintain, preserve or protect the Collateral;
 - (iv) the Secured Party may carry on or concur in the carrying on of all or any part of the business of the Debtor;
 - (v) the Secured Party may enforce any rights of the Debtor in respect of the Collateral by any manner permitted by law;
 - (vi) the Secured Party may sell, lease or otherwise dispose of the Collateral at public auction, by private tender, by private sale or otherwise either for cash or upon credit upon such terms and conditions as the Secured Party may determine and without notice to the Debtor unless required by law and may execute and deliver to the purchaser or purchasers of the Collateral or any part thereof a good and sufficient deed or conveyance or deeds or conveyances for the same, any officer or duly authorized representative of the Secured Party being hereby constituted the irrevocable attorney of the Debtor for the purpose of making such sale and executing such deeds or conveyances, and any such sale made as aforesaid shall be a perpetual bar both in law and in equity against the Debtor and all other persons claiming all or any part of the Collateral by, from, through or under the Debtor;
 - (vii) the Secured Party may accept the Collateral in satisfaction or partial satisfaction of the Obligations upon notice to the Debtor of its intention to do so in the manner required by law;

- (viii) the Secured Party may borrow money on the security of the Collateral for the purpose of the carrying on of the business of the Debtor or for the maintenance, preservation, protection or realization of the Collateral in priority to the Charge;
- (ix) the Secured Party may enter upon, occupy and use all or any of the Collateral occupied by the Debtor and use all or any of the Collateral for such time as the Secured Party requires to facilitate the realization of the Collateral, free of charge, and the Secured Party will not be liable to the Debtor for any neglect in so doing (other than gross negligence or wilful misconduct on the part thereof) or in respect of any rent, charges, depreciation or damages in connection with such actions;
- (x) the Secured Party may charge on its own behalf and pay to others all amounts for expenses incurred and for services rendered in connection with the exercise of the rights and remedies of the Secured Party hereunder, including, without limiting the generality of the foregoing, reasonable legal, Receiver and accounting fees and expenses, and in every such case the amounts so paid together with all costs, charges and expenses incurred in connection therewith, shall be added to and form part of the Obligations hereby secured; and
- (xi) the Secured Party may discharge any claim, Security Interest, encumbrance or any rights of others that may exist or be threatened against the Collateral, and in every such case the amounts so paid together with all reasonable costs, charges and expenses incurred in connection therewith shall be added to the Obligations hereby secured.

(b) The Secured Party may:

- (i) grant extensions of time;
- (ii) take and perfect or abstain from taking and perfecting security,
- (iii) give up securities,
- (iv) accept compositions or compromises,
- (v) grant releases and discharges, and
- (vi) release any part of the Collateral or otherwise deal with the Debtor, debtors and creditors of the Debtor, sureties and others and with the Collateral and other security as the Secured Party sees fit,

without prejudice to the liability of the Debtor to the Secured Party and the Secured Party's rights hereunder.

- (c) The Secured Party shall not be liable or responsible for any failure to seize, collect, realize, or obtain payment with respect to the Collateral and shall not be bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment with respect to the Collateral or for the purpose of preserving any rights of the Secured Party, the Debtor or any other person, in respect of the Collateral.

- (d) The Secured Party shall apply any proceeds of realization of the Collateral to payment of reasonable expenses in connection with the preservation and realization of the Collateral as above described and the Secured Party shall apply any balance of such proceeds to payment of the Obligations in accordance with the Promissory Note. If the disposition of the Collateral fails to satisfy the Obligations secured by this Agreement and the aforesaid expenses, the Debtor will be liable to pay any deficiency to the Secured Party forthwith on demand. Subject to the requirements of applicable law, any surplus realized in excess of the Obligations shall be paid over to the Debtor.
- (e) Any Receiver shall be entitled to exercise all rights and powers of the Secured Party hereunder. To the extent permitted by law, any Receiver shall for all purposes be deemed to be the agent of the Debtor and not of the Secured Party and the Debtor shall be solely responsible for the Receiver's acts or defaults and remuneration.

ARTICLE 4
GENERAL

4.1 Benefit of the Agreement

This Agreement shall be binding upon the successors and permitted assigns of the Debtor and shall benefit the successors and permitted assigns of the Secured Party.

4.2 Conflict of Terms; Entire Agreement

This Agreement and the Promissory Note constitute the entire agreement between the Debtor and the Secured Party with respect to the subject matter hereof. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Secured Party and the Debtor except as expressly set forth therein and herein.

4.3 No Waiver

No delay or failure by the Secured Party in the exercise of any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the other or further exercise thereof or the exercise of any other right.

4.4 Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect. To the extent permitted by applicable law the parties hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

4.5 Notices

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and may be given by personal delivery, facsimile or other electronic means, addressed to the recipient as follows:

To the Debtor:

COCOCO CHOCOLATIERS INC.

1313 First Street SE
Calgary, Alberta
T2G 5L1

Attention: Brian Beck
Facsimile: (403) 265-7739

To the Secured Party:

261820 ALBERTA LTD.

5505 - 6 Street SE
Calgary, Alberta
T2H 1L6

Attention: Brian Beck
Facsimile: (403) 640-0247

or such other address, electronic communication number, or to the attention of such other individual as may be designated by notice by any party to the other. Any demand, notice or communication made or given by personal delivery or by facsimile or other electronic means of communication during normal business hours at the place of receipt on a Business Day shall be conclusively deemed to have been made or given at the time of actual delivery or transmittal, as the case may be, on such Business Day. Any demand, notice or communication made or given by personal delivery or by facsimile or other electronic means of communication after normal business hours at the place of receipt or otherwise than on a Business Day shall be conclusively deemed to have been made or given at 9:00 a.m. (Calgary time) on the first Business Day following actual delivery or transmittal, as the case may be.

4.6 Modification; Waivers; Assignment

This Agreement may not be amended or modified in any respect except by written instrument signed by the Debtor and the Secured Party. No waiver of any provision of this Agreement by the Secured Party shall be effective unless the same is in writing and signed by the Secured Party, and then such waiver shall be effective only in the specific instance and for the specific purpose for which it is given. The rights of the Secured Party under this Agreement may only be assigned in accordance with the requirements of the Promissory Note.

4.7 Additional Continuing Security

This Agreement and the Charge granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Secured Party and this Agreement is a continuing agreement and security that shall remain in full force and effect until discharged by the Secured Party.

4.8 No Release

The loss, injury or destruction of the Collateral shall not operate in any manner to release or discharge the Debtor from any of its liabilities to the Secured Party.

4.9 No Obligation to Act

Notwithstanding any provision of this Agreement or any other Document or the operation, application or effect hereof, the Secured Party or any Receiver, or any representative or agent acting for or on behalf of the foregoing, shall not have any obligation whatsoever to exercise or refrain from exercising any right, power, privilege or interest hereunder or to receive or claim any benefit hereunder.

4.10 Time of the Essence

Time shall be of the essence with regard to this Agreement.

4.11 Waiver of Financing Statement, etc.

The Debtor hereby waives the right to receive from the Secured Party a copy of any financing statement, financing change statement or other statement or document filed or registered at any time in respect of this Agreement or any verification statement or other statement or document issued by any registry that confirms or evidences registration of or relates to this Agreement.

4.12 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

4.13 Saskatchewan Wavier

The Debtor agrees that:

- (a) *The Land Contract (Actions) Act* (Saskatchewan) shall have no application to any action, as defined in that Act, with respect to this Agreement; and
- (b) *The Limitation of Civil Rights Act* (Saskatchewan) shall have no application to this Agreement or any agreement renewing, extending or collateral to this Agreement.

4.14 Attornment

The Debtor and the Secured Party each hereby attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Alberta. For the purpose of all legal proceedings, this Agreement shall be deemed to have been performed in the Province of Alberta and the courts of the Province of Alberta shall have jurisdiction to entertain any action or proceeding arising under this Agreement. Notwithstanding the foregoing, nothing herein shall be construed nor operate to limit the right of the Debtor or the Secured Party to commence any action or proceeding relating hereto in any other jurisdiction, nor to limit the right of the courts of any other jurisdiction to take jurisdiction over any action, proceeding or matter relating hereto.

4.15 Executed Copy

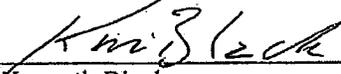
The Debtor hereby acknowledges receipt of a fully executed copy of this Agreement.

4.16 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

COCOCO CHOCOLATIERS INC
Per: 
Brian Beck
President

261820 ALBERTA LTD.
Per: 
Kenneth Black
President

GENERAL SECURITY AGREEMENT

In consideration of monies loaned and advanced to 1563181 Alberta Ltd. (the "**Debtor**") by 261820 Alberta Ltd. (the "**Secured Party**") and for other good and valuable consideration (the receipt and sufficiency of which the Debtor acknowledges), the Debtor agrees with the Secured Party as follows:

ARTICLE 1 DEFINITIONS

Words used in this security agreement which are defined in the Act shall have the meanings given to such words by that Act, unless specifically modified by this security agreement. The following words shall have the following meanings:

- 1.1 "**Act**" – the *Personal Property Security Act (Alberta)*, as amended or re-enacted from time to time.
- 1.2 "**arm's length**" - the meaning given thereto in the *Income Tax Act (Canada)*, as amended or re-enacted from time to time.
- 1.3 "**Collateral**" - the property of the Debtor referred to in Section 2.1.
- 1.4 "**Event of Default**" means the events set forth in Article 5;
- 1.5 "**Loan Agreement**" means any loan agreement now or in the future entered into between the Debtor and the Secured Party et al.
- 1.6 "**Obligations**" the obligations, indebtedness and liability of the Debtor referred to in Section 2.1.
- 1.7 "**Permitted Encumbrances**" the encumbrances listed in **Schedule "A"**.
- 1.8 "**Promissory Note**" means any note granted by the Debtor to the Secured Party from time to time and such replacement or additional note(s) as may be delivered by the Debtor to the Secured Party from time to time
- 1.9 "**Security Interest**" - the security interest referred to in Section 2.1.

ARTICLE 2 THE SECURITY INTEREST

2.1 As security for the payment and satisfaction of any and all obligations, liability and indebtedness of the Debtor to the Secured Party (including, without limitation, the obligations of the Debtor under this security agreement), and any and all obligations, liability and indebtedness of the Debtor under the Promissory Note, and/or the Loan Agreement, present or future, direct or indirect, absolute or contingent, matured or unmatured, extended or renewed, wherever and however incurred and whether from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor is bound alone or with others and whether as principal or surety (such obligations, indebtedness and liability being hereinafter

collectively called the “**Obligations**”), the Debtor hereby grants to the Secured Party a continuing and specific security interest in, and mortgages, charges, transfers and conveys, as and by way of a fixed mortgage and charge, all of the undertaking, property and assets of the Debtor now owned or hereafter acquired, both real and personal, movable and immovable, of whatever nature and kind and wherever situate (but subject to the exceptions contained in Sections 2.2 and 2.3).

- (a) the interest of the Debtor in all inventory now owned or hereafter acquired by the Debtor and all accessions thereto, and the proceeds thereof;
- (b) the interest of the Debtor in all equipment now owned or hereafter acquired by the Debtor and all accessions thereto, and the proceeds thereof;
- (c) the interest of the Debtor in all intangibles now owned or hereafter acquired by the Debtor, including, without limitation, all contractual rights, goodwill, patents, trade marks, trade names, trade secrets, copyrights, designs, industrial designs and other industrial or intellectual property or rights therein and the proceeds thereof;
- (d) the interest of the Debtor in all chattel paper now or hereafter owned by the Debtor, and the proceeds thereof;
- (e) the interest of the Debtor in all instruments, whether negotiable or non-negotiable, now owned or hereafter acquired by the Debtor and the proceeds thereof;
- (f) the interest of the Debtor in all documents of title, whether negotiable or non-negotiable now owned or hereafter acquired by the Debtor and the proceeds thereof;
- (g) the interest of the Debtor in all securities now owned or hereafter owned by the Debtor, and the proceeds thereof;
- (h) the interest of the Debtor in all accounts, including, without limitation, all debts, demands and choses in action of every nature and kind howsoever arising or secured which are now due, owing or accruing due to or owned by or which may hereafter become due, owing or accruing due to or owned by the Debtor and the proceeds thereof; and
- (i) the interest of the Debtor in all money of the Debtor and the proceeds thereof other than trust money lawfully belonging to others.

In addition, the Debtor hereby charges in favour of the Secured Party, as and by way of a floating charge, its undertaking and all property and assets, real and personal, moveable or immoveable, of whatsoever nature and kind, both present and future and every interest therein which the Debtor now has or hereafter acquires.

2.2 The Security Interest shall not extend or apply to, and the Collateral shall not include, the last day of the term of any lease or agreement to lease now or hereafter entered into by the Debtor, but the Debtor shall stand possessed of such one (1) day remaining upon trust, to assign and dispose of the same as the Secured Party or any assignee of such lease or agreement shall direct.

2.3 Until the Security Interest becomes enforceable, the Debtor may dispose of or sell inventory in the ordinary course of business and for the purpose of carrying on the same.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE DEBTOR

The Debtor represents and warrants to the Secured Party, and so long as this security agreement remains in effect, shall be deemed to continuously represent and warrant, as follows:

3.1 The execution and delivery of this security agreement by the Debtor has been duly authorized, and the Debtor has all requisite power and authority to enter into this security agreement and to grant the Security Interest. The Debtor has the power and authority to carry on its business and to own, lease and operate the assets now owned, leased or operated by it.

3.2 The execution and delivery of this security agreement by the Debtor and the observance and performance of the terms and conditions of this security agreement on the part of the Debtor to be observed and performed do not constitute a violation of applicable law or any contract or obligation to which the Debtor is a party or by which it is bound, nor do any of the foregoing constitute a default or would, with the passage of time or the giving of notice or both, or otherwise constitute a default under any contract or obligation to which the Debtor is a party or by which it is bound.

3.3 Except for Permitted Encumbrances, the Debtor owns the Collateral with good and marketable title, free and clear of any and all claims, liens, security interests or other encumbrances whatsoever and free and clear of any rights or privileges capable of becoming claims, liens, security interests or other encumbrances.

3.4 Attached hereto as **Schedule "B"** is an accurate and complete list of the locations of the offices where the Debtor keeps its records respecting the accounts of the Debtor's business, the locations where the assets and the business of the Debtor are situated and particulars of the Debtor's chief executive office.

3.5 Each account, chattel paper, and instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "**Account Debtor**") and the amount represented by the Debtor to the Secured Party from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defence, set off, claim or counterclaim against the Debtor which can be asserted against the Secured Party, whether in any proceeding to enforce the Collateral or otherwise.

ARTICLE 4 COVENANTS OF THE DEBTOR

The Debtor agrees with the Secured Party that so long as the Obligations or any part thereof remain outstanding:

4.1 Except as otherwise provided in this security agreement, without the prior written consent of the Secured Party the Debtor will not sell or otherwise dispose of the Collateral and will not create, assume or have outstanding, except to the Secured Party and except for the Permitted

Encumbrances, any mortgage, charge, lien, security interest or other encumbrance on all or any part of the Collateral which ranks or purports to rank in priority to or *pari passu* with the Security Interest, or which is capable of being enforced in priority to or *pari passu* with the Security Interest.

4.2 Without the prior written consent of the Secured Party, the Debtor will not lend money to, guarantee the debts or obligations of or invest money in any person, firm or corporation other than the Secured Party, whether by way of loan, acquisition of shares, acquisition of debt or otherwise.

4.3 Without the prior written consent of the Secured Party, the Debtor will not make any distributions or payments whatsoever (whether by way of dividends, salaries, bonuses, repayment of loans or otherwise) to any of its directors or shareholders or to any person not dealing at arm's length with the Debtor.

4.4 Without the prior written consent of the Secured Party, the Debtor will not permit any direct or indirect change in the ownership interests of the Debtor.

4.5 The Debtor will defend the Collateral against the claims and demands of all other persons claiming the same or any interest therein and will promptly notify the Secured Party of the details of any such claims and demands and of any loss of or damage to the Collateral.

4.6 The Debtor will carry on the business currently carried on by it and maintain the Collateral in compliance with all statutes, by-laws, regulations and rules of all federal, provincial or municipal authorities having jurisdiction over the Debtor or the Collateral.

4.7 The Debtor will pay as and when they become due all taxes, rates, levies, assessments and other charges of any nature which may be levied, assessed or imposed against or in respect of the Debtor or the Collateral.

4.8 The Debtor will promptly notify the Secured Party if the Debtor changes the location of its assets or the location of any offices where it keeps its records respecting its accounts or if the Debtor acquires places of business other than those listed in **Schedule "B"** hereto. The Debtor will, upon request of the Secured Party deliver forthwith to the Secured Party lists of all chattel paper, securities, documents of title, intangibles, instruments and proceeds forming a part of the Collateral.

4.9 The Debtor will keep all equipment forming a part of the Collateral in good working order and condition, reasonable wear and tear excepted, and the Secured Party may, whenever it deems it to be necessary, either in person or by agent, inspect any such equipment and make such repairs as it deems are necessary, and the cost of such inspection and repairs shall be payable by the Debtor to the Secured Party upon demand and until paid in full shall bear interest as set forth in the Promissory Note.

4.10 The Debtor will insure the Collateral and will keep the Collateral insured against loss or damage by any insurable peril. The Debtor shall, upon request of the Secured Party, deliver forthwith to the Secured Party certified copies of all policies of insurance then in force with respect to the Collateral. All such policies of insurance and any proceeds thereof which are received by the Debtor will be held in trust by the Debtor for the benefit of the Secured Party under the provisions

of this security agreement. If the Debtor fails to insure the Collateral as required by this Section, the Secured Party may at its option insure the Collateral and the premiums for such insurance shall be repayable to the Secured Party upon demand and until paid in full shall bear interest as set forth in the Promissory Note.

4.11 If the Collateral should at any time hereafter include securities, instruments, chattel paper or negotiable documents of title, the Debtor will immediately deliver possession of such securities, instruments, chattel paper or negotiable documents of title to the Secured Party and, if requested by the Secured Party, will cause any securities included in the Collateral to be registered in the Secured Party's name so that the Secured Party may appear of record as the sole owner of such securities. Until the Security Interest becomes enforceable, the Debtor shall be entitled to receive all distributions paid in respect of any securities included in the Collateral, shall be entitled to exercise all voting rights with respect to such securities and the Secured Party will deliver to the Debtor or to a person designated by the Debtor, upon written request and upon receipt of payment of the Secured Party's expenses in connection therewith, directions with respect to such distributions and a proxy to vote such securities. The Debtor waives all right to receive any such distributions after the Security Interest becomes enforceable. The Debtor agrees that no proxy issued by the Secured Party to the Debtor or its order as aforesaid shall be effective from and after the time that the Security Interest becomes enforceable, and upon the Security Interest becoming enforceable the Debtor shall immediately surrender any such proxy to the Secured Party.

ARTICLE 5 EVENTS OF DEFAULT

5.1 The occurrence of any of the following events or conditions shall constitute default under this security agreement:

- (a) the non-payment when due, whether by acceleration or otherwise, of any principal or interest or other monies forming part of Obligations or the failure of Debtor to observe or perform any obligation, covenant, term, provision or condition contained in this security agreement or any other agreement, deed, indenture or arrangement between Debtor and the Secured Party;
- (b) the death of or declaration of incompetence by a court with respect to Debtor, if an individual;
- (c) the bankruptcy or insolvency of Debtor; the filing against Debtor of a petition in bankruptcy, the making of an assignment for the benefit of creditors by Debtor; the appointment of a receiver, a receiver-manager or trustee for Debtor or for any assets of Debtor or the institution by or against Debtor of any other type of insolvency proceeding under the Bankruptcy and Insolvency Act or otherwise;
- (d) the institution by or against Debtor of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims or winding up of affairs of Debtor;
- (e) if any encumbrance affecting Collateral or any part thereof becomes enforceable against Collateral;

- (f) if Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or a transfer, sale or lease of all or substantially all Collateral without the prior written consent of Secured Party and without complying with applicable laws or commits or threatens to commit an act of bankruptcy;
- (g) if Debtor changes its name without the prior written consent of Secured Party (such consent not to be unreasonably withheld);
- (h) if any execution, sequestration or other process of any court becomes enforceable against Debtor or if a distress or analogous process is levied upon the assets of Debtor or any part thereof;
- (i) if any certificate, statement, representation, warranty or audit report heretofore or hereafter furnished by or on behalf of Debtor pursuant to or in connection with this security agreement or otherwise (including, without limitation, the representations and warranties contained herein) or as an inducement to the Secured Party to extend any credit to or to enter into this or any other agreement with Debtor, proves to have been false in any respect at the time as of which the facts therein set forth were stated or certified, or proves to have omitted any substantial contingent or unliquidated liability or claim against Debtor; or if upon the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, representation, statement, warranty or audit report, which change has not been disclosed to Secured Party at or prior to the time of such execution.

ARTICLE 6 REMEDIES UPON DEFAULT

Upon the Security Interest becoming enforceable, in addition to any rights and remedies of the Secured Party as a secured party under the Act:

6.1 The Secured Party may at its sole option declare that the whole or any part of any indebtedness forming a part of the Obligations is immediately due and payable in full, without demand or notice of any kind subject to applicable cure periods, if any.

6.2 The Secured Party may at its option appoint by instrument in writing any person (including the Secured Party) as receiver or as receiver and manager of all or any part of the Collateral. Hereafter in this security agreement the word "receiver" shall include both a receiver and a receiver and manager. The Secured Party may from time to time remove or replace any receiver so appointed, or may institute proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Collateral. Any receiver so appointed or replaced shall have and may exercise all powers conferred upon the Secured Party under this security agreement. Any receiver so appointed or replaced shall be considered to be the agent of the Debtor so far as the responsibility for its acts is concerned and the Secured Party shall not in any way be responsible for any act or omission on the part of such receiver, whether wilful, negligent, imprudent or otherwise. Where the Secured Party is hereafter in this security agreement referred to, the term shall, where the context permits, include any receiver so appointed or replaced and the officers, employees, servants and agents of such receiver.

6.3 The Secured Party may at its option take such steps as it considers necessary or desirable to obtain possession of all or any part of the Collateral and to that end the Debtor agrees that the Secured Party may, by its servants, agents or receiver, at any time during the day or night and without prior notice, enter upon lands and premises where the Collateral may be found by any lawful means for the purpose of taking possession of or removing or immobilizing the Collateral or any part thereof. The Debtor shall upon request of the Secured Party assemble and deliver possession of the Collateral to the Secured Party, at such place or places as the Secured Party may designate.

6.4 In connection with the realization of the Collateral, the Secured Party may carry on all or any part of the business and undertaking of the Debtor and may enter upon, occupy and use all or any part of the real or personal property owned or used by the Debtor for such time as the Secured Party sees fit, free of charge, and the Secured Party shall not be liable to the Debtor for any negligent or imprudent act or omission in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions.

6.5 The Secured Party may seize, collect, realize, borrow money on the security of, sell, obtain payment for, give valid receipts and discharges for, release to third parties or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable, without notice to the Debtor. The mode of disposition of the Collateral or any part thereof shall be in the sole discretion of the Secured Party and it shall be deemed to be commercially reasonable for the Secured Party to dispose of the Collateral or any part thereof in the ordinary course of its business. The Secured Party may purchase all or any part of the Collateral at a public sale.

6.6 The Secured Party may charge on its own behalf and pay to others reasonable sums for expenses incurred and for services rendered (including legal fees on a substantial indemnity basis and fees for receivers, managers, accountants and other professionals) in connection with the Secured Party realizing the Collateral or otherwise dealing with the Collateral in accordance with the provisions of this security agreement or the Act and all such sums shall be payable to the Secured Party on demand and until paid in full shall bear interest as set forth in the Promissory Note..

6.7 The Secured Party may, if it deems it necessary for the proper realization of all or any part of the Collateral, pay any claim, lien, security interest or other encumbrance that may exist or be threatened against the Collateral, in which event the amount so paid, together with all costs and expenses of the Secured Party incurred in connection therewith, shall be payable to the Secured Party on demand and until paid in full shall bear interest as set forth in the Promissory Note.

6.8 The Secured Party shall have the right to postpone indefinitely the sale of the Collateral or any part thereof and shall further have the right, pending any such sale, to lease the Collateral or any part thereof to any person for such period as the Secured Party in its absolute discretion deems necessary in order to recover or to attempt to recover any indebtedness forming a part of the Obligations.

6.9 The Secured Party shall not be liable or accountable for any failure to realize or otherwise deal with the Collateral or any part thereof and shall not be bound to institute proceedings for the

purpose of effecting any of the foregoing or for the purpose of preserving any rights of the Secured Party, the Debtor or any other person in respect of the Collateral.

6.10 All monies received or collected by the Secured Party in respect of the Collateral may be applied on account of such part of the Obligations as the Secured Party deems fit.

6.11 At its option and in accordance with the provisions of the Act, the Secured Party may retain all or any part of the Collateral in full satisfaction of the Obligations.

ARTICLE 7 GENERAL CONTRACT PROVISIONS

7.1 All remedies of the Secured Party at law and hereunder shall be cumulative and not in the alternative.

7.2 The Security Interest is in addition to and not in substitution of any other security now or hereafter held by the Secured Party.

7.3 Wherever in this security agreement any amount owing to the Secured Party is expressed to bear interest as set forth in the Promissory Note., such interest shall be calculated and payable monthly, not in advance, both before and after default and judgment, with interest on overdue interest at the same rate.

7.4 Upon the Debtor's failure to perform any of its obligations under this security agreement, the Secured Party may at its option perform such obligations and the expenses of the Secured Party in so doing shall be payable by the Debtor to the Secured Party upon demand, and until paid in full shall bear interest as set forth in the Promissory Note.

7.5 The Secured Party may waive any default by the Debtor in the observance or the performance of any of the Obligations. No act or omission of the Secured Party in respect of any default by the Debtor shall extend to or be taken in any manner whatsoever to affect any subsequent default of the Debtor or the rights of the Secured Party resulting therefrom.

7.6 The Secured Party may grant extensions of time and other indulgences, take and give up securities, accept compositions, make settlements, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with any person as the Secured Party may see fit without prejudice to the liability of the Debtor or to the Secured Party's right to hold, realize and deal with the Collateral.

7.7 If the Secured Party assigns this security agreement, the Debtor waives notice of such assignment and agrees that the assignee shall not be subject to any equities that may exist between the Debtor and the Secured Party.

7.8 Any demand, notice or other communication to be given in connection with this Security Agreement shall be given in writing and delivered or mailed, postage prepaid, to the Debtor at:

c/o 5505 – 6 Street, S.E.
Calgary, Alberta T2H 1L6

and

#202, 10129 – 124 Street
Edmonton, Alberta T5N 1P5

and to the Secured Party at:

5505 – 6 Street, S.E.
Calgary, Alberta T2H 1L6

7.9 The Debtor will from time to time, at the request of the Secured Party and at the expense of the Debtor, make, do, execute, acknowledge and deliver such financing statements, financing change statements and further assignments, transfers, documents, acts, matters, things and assurances as the Secured Party may deem necessary or desirable to perfect and preserve the Security Interest and give effect to this security agreement. The Debtor shall pay all costs for searches and filings in connection with the perfection and continuation of the Security Interest granted hereunder.

7.10 In this agreement, unless the context otherwise requires words importing the singular include the plural and vice versa, words importing gender include all genders or words importing the neuter include all genders, and the word “**person**” shall include an individual, a trust, a partnership, a body corporate or politic, an association and any other incorporated or unincorporated organization or entity.

7.11 If the Debtor is more than one person, the covenants and obligations of the Debtor under this agreement shall be both joint and several.

The division of this agreement into articles and sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this agreement. The terms “**this agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this agreement and not to any particular article, section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, reference herein to articles and sections are to articles and sections of this agreement.

7.12 This agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

7.13 If any provision contained in this agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby and each provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.

7.14 Time shall be of the essence in this agreement in all respects.

7.15 This agreement shall enure to the benefit of the Secured Party, its successors and assigns and be binding upon the permitted successors, assigns, heirs, executors, administrators, and other legal representatives, as applicable, of the Debtor.

7.16 This agreement may be executed in counterpart and each such counterpart shall, for all purposes, constitute one agreement binding upon all parties hereto notwithstanding that all parties are not signatories to the same agreement, provided that each party has signed at least one counterpart.

7.17 The Debtor acknowledges receipt of a fully executed copy of this agreement.

DATED effective this 22nd day of October, 2010.

1563181 ALBERTA LTD.

PER: 

261820 ALBERTA LTD.

PER: 

SCHEDULE "A"

PERMITTED ENCUMBRANCES

Registration Numbers 10102117695 subject to Priority/Pari Passu Agreement and
10102513922 and subject to Priority/Pari Passu Agreement

SCHEDULE "B"

Location of offices where Debtor keeps its records reporting accounts

1313 – 1 Street, S.E, Calgary, Alberta

Locations where assets and business of Debtor are situated

1. The property is legally described as:

1313 – 1 Street S.E., Calgary, Alberta

847 – 17 Avenue S.W., Calgary, Alberta

D27E03, Calgary International Airport, 2000 Airport Road N.E., Calgary, Alberta

Main Floor, Harmony Lane Mall, 111 Banff Avenue, Banff, Alberta

Crowfoot Crescent Shopping Centre, 800 Crowfoot Crescent N.W., Calgary, Alberta

1123 Kensington Road N.W., Calgary, Alberta

5771 Signal Hill Centre S.W., Calgary, Alberta

Unit 318, Southcentre Mall, 100 Anderson Road S.E., Calgary, Alberta

Versacold (Calgary), 5600 – 76 Avenue S.E., Calgary, Alberta

This is Exhibit "4" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021

Adam Palmer

A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

September 15, 2017

Cococo Chocolatiers Inc.
2320 2 Ave SE
Calgary, Alberta T2E 6J9

Attention: Mr. Ken Black and Mr. Brian Beck

Dear Sirs:

1870340 Alberta Ltd. (the "**Lender**") is pleased to offer the following credit facility on the terms and conditions set out below. The terms and conditions contained in the Schedule are incorporated by reference into and form an integral part of this Facility Letter.

Borrower

Cococo Chocolatiers Inc. (the "**Borrower**").

1. **Operating Loan**

1.1 **Amount:**

CAD 1,500,000 demand revolving loan (the "**Operating Loan**").

1.2 **Purpose:**

To assist in financing the day-to-day operating requirements of the Borrower.

1.3 **Availability:**

The Borrower shall ensure that the amount advanced and outstanding under the Operating Loan shall at no time exceed the amount of the Operating Loan set out above and at no time exceeds the Margin Requirement as calculated by the Lender described below.

1.4 **Repayment:**

All amounts outstanding under the Operating Loan shall be repaid on demand by the Lender and, unless and until otherwise demanded, interest shall be paid at the rate(s) set out below and in the manner provided in the attached Schedule.

1.5 **Interest:**

At the Borrower's option, exercisable by the delivery of the Required Notice, at the Prime plus 1.00% per annum.

1.6 **Fees:**

The Borrower shall pay to the Lender on the last day of each month, an administration fee of CAD 250.00.

Margin Requirement

In addition to ensuring that the Operating Loan does not exceed its loan amount, as set out in this Facility Letter, the Borrower shall ensure that the aggregate Canadian Dollar Equivalent of:

- (a) the amount advanced and outstanding under the Operating Loan;

Shall at no time exceed the Margin Requirement, being the aggregate of:

- (b) the lesser of 75% of Acceptable Receivables and CAD 200,000; plus
- (c) 50% of Acceptable Inventory; less
- (d) Priority Claims.

3. Security

3.1 Security Documents:

The liability, indebtedness and obligations of the Borrower under the Operating Loan and this Facility Letter shall be evidenced, governed and secured, as the case may be, by the following documents (the "**Security Documents**") completed in form and manner satisfactory to the Lender's or its solicitors:

- (a) general security agreement creating a security interest in all present and after acquired personal property of the Borrower and a floating charge over all of the Borrower's present and after acquired real property, registered in Alberta. Specific charges under the GSA are registered over all serialized assets financed by the Lender; and
- (b) endorsements by the Borrower to the Lender of all risk insurance (including extended coverage endorsement) in amounts and from an insurer acceptable to the Lender, on all of the Borrower's real and personal property including, without limitation, lands, buildings, equipment and inventory owned by the Borrower, showing the Lender as loss payee;

Such other documents as the Lender may reasonably request in order to register or otherwise perfect the documents listed above.

3.2 Registration:

The Security Documents will be registered in all jurisdictions and at all registries or public office as the Lender may determine necessary or beneficial to perfect or protect its interest under the Security Documents. The Security Documents shall rank in priority to all other mortgages, charges, liens, encumbrances and security interests unless otherwise specifically agreed to in writing by the Lender.

4. Conditions Precedent

The conditions precedent to the Lender's obligation to the advance of the Operating Loan and to the continued availability of the Operating Loan are set out below and in Section IV of the attached Schedule to this Facility Letter (collectively the "**Conditions Precedent**"). The Borrower shall deliver or cause to be delivered the following in form and content satisfactory to the Lender or its solicitor:

- (a) All Conditions Precedent have been met.

Borrower's Covenants and Conditions

The Borrower covenants and agrees with the Lender that, so long as any portion of the Loans or any indebtedness or liabilities of the Borrower under this Facility Letter remain outstanding, it shall not, without the prior written consent of the Lender:

- (a) permit its ratio of Debt to Tangible Net Worth to at any time exceed 2.00:1.

Debt is calculated as total debt less intercompany accounts payable, less postponed shareholder loans, less subordinated promissory notes payable to 261820 Alberta/Freeland Co.

Tangible Net Worth is calculated as equity plus postponed shareholder loans, plus subordinated promissory notes payable to 261820 Alberta/Freeland Co., plus intercompany accounts payable, less investments in related companies, less intercompany accounts receivable, less goodwill.

- (b) permit its ratio of Current Assets to Current Liabilities at any time to be less than 1.25:1.

- (c) permit its Tangible Net Worth to at any time be less than CAD2,000,000.

Tangible Net Worth is calculated as equity plus postponed shareholder loans, plus subordinated promissory notes payable to 261820 Alberta/Freeland Co., plus intercompany accounts payable, less investments in related companies, less intercompany accounts receivable, less goodwill.

The Borrower agrees that the foregoing financial tests shall be calculated by the Lender monthly using internally prepared financial statements of the Borrower, and annually by the Lender using accountant prepared financial statements of the Borrower, or with such other statements as the Lender may agree to use from time to time.

6. Financial Statements and Reports

The Borrower shall deliver to the Lender the following:

- (a) Monthly, within 45 days of each calendar month end:

- (i) declaration of inventory in accordance with the Lender's format;
- (ii) internally-prepared profit and loss statements and balance sheet for the Borrower;
- (iii) dealers' accounts receivable listings;
- (iv) signed margin and covenant compliance certificate;

- (b) Annually, within 150 days of the Borrower's fiscal year end:

- (i) review engagement financial statements for the Borrower;
- (ii) pro forma financial statements, cash flow statement and budget for the following fiscal year of the Borrower;

Such additional financial statements and information as and when requested by the Lender.

Periodic Review and Cancellation

Without limiting the Lender's right to demand repayment of the Operating Loan at any time, the Facility shall be subject to periodic review by the Lender as and when determined by the Lender in its discretion. Any unadvanced portion of the Operating Loan shall be automatically cancelled upon demand being made by the Lender for repayment of the amount outstanding under the Operating Loan. The Operating Loan under this Facility Letter are uncommitted and, notwithstanding any other provision of this Facility Letter, the Lender may, at any time, in its sole discretion, (i) on same day notice to the Borrower, terminate the Borrower's right to make requests for the Operating Loan hereunder, and (ii) even if the amounts available under the Operating Loan has not terminated, decline any request for the Operating Loan.

8. **Acceptance**

The terms and conditions of this Facility Letter may be accepted by signing, dating and returning the enclosed duplicate copy of this Facility Letter signed by the Borrower to the Lender by 5:00 p.m. on September 15, 2017.

Yours truly,

1870340 ALBERTA LTD.

Per: _____

Name:

Title:

The undersigned hereby acknowledges and agrees to the terms and conditions of this Facility Letter this 15 day of September, 2017.

THE BORROWER:

Cococo Chocolatiers Inc.

Per: _____

Brian Beck

Per: _____

Ken Black

**SCHEDULE TO FACILITY LETTER
FROM HSBC BANK CANADA
TO COCOCO CHOCOLATIERS INC.
DATED SEPTEMBER 15, 2017**

This Schedule shall form part of the Facility Letter and the Operating Loan as described in the Facility Letter shall also be subject to the following terms and conditions:

I. Definitions

For the purpose of the Facility Letter, the following terms shall have the meanings indicated below:

"Acceptable Inventory" means the value, determined by the Lender from its review of the most recent financial statements and inventory declaration provided by the Borrower, based on the lower of cost and fair market value of all materials owned by the Borrower for resale or for production of goods for resale, excluding work in progress, and over which the Lender holds a first mortgage, first ranking transfer or first security interest, subject only to Priority Claims;

"Acceptable Receivables" means the aggregate of accounts receivable of the Borrower, determined by the Lender from the most recent financial statements and aged list of accounts receivable of the Borrower, over which the Lender holds a first assignment or first security interest, subject only to Priority Claims, from customers approved by the Lender and which have been outstanding for not more than 60 days, from which shall be excluded accounts receivable from affiliated corporations and accounts which are disputed by the Borrower's customers or are subject to set-off;

"Business Day" means a day upon which the Lender is open for business;

"Facility Letter" means the letter from the Lender to the Borrower to which this Schedule is attached, together with this Schedule, and includes all amendments and replacements thereof;

"Governmental Authority" means any governmental, legislative, or regulatory authority, agency, commission, board or court, tribunal or other law, regulation or rule making entity having or purporting to have jurisdiction on behalf of any nation, province, or city;

"Insured Receivables" means those accounts receivable of the Borrower insured for payment by Export Development Canada or similar insurer approved by the Lender;

"Legal Requirement" means all laws, statutes, codes, ordinances, orders, awards, judgments, decrees, injunctions, rules, regulations, authorizations, consents, approvals, orders, permits, franchises, licences, directions and requirements of any Governmental Authority or otherwise;

"Prime Rate" means the variable annual rate of interest established and adjusted by HSBC Bank Canada from time to time as a reference rate for purposes of determining rates of interest it will charge on loans denominated in Canadian dollars;

"Priority Claims" means any lien, claim, charge, security interest, trust claim, right or encumbrance of any Governmental Authority or other party (whether arising under any statute, law, contract or otherwise) having priority over the Security Documents and the mortgage, charge and security interest of the Lender in any of the inventory or accounts receivable of the Borrower.

Required Notice" means a notice in form and content approved by the Lender given to the Lender referred to above not later than 10:30 a.m. local time three Business Days immediately preceding the date on which an advance is to be made, stating the date, amount and term of the requested advance.

II. Representations and Warranties

If a corporation, the Borrower and each Guarantor represents and warrants, as at the time of drawing under or other utilization of the Operating Loan, that:

- (a) it has been duly incorporated and organized, is properly constituted, is in good standing and is entitled to conduct its business in all jurisdictions in which it carries on business or has assets;
- (b) the execution of the Facility Letter and the Security Documents and the incurring of liability and indebtedness to the Lender does not and will not contravene:
 - (i) any Legal Requirement applicable to the Borrower and each Guarantor, respectively; or
 - (ii) any provision contained in any other loan or credit agreement or borrowing instrument or contract to which the Borrower and each Guarantor, respectively, is a party;
- (c) the Facility Letter and the Security Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and each Guarantor, and constitute valid and binding obligations of the Borrower and each Guarantor, as the case may be, and are enforceable in accordance with their respective terms;
- (d) all necessary Legal Requirements have been met and all other authorizations, approvals, consents and orders have been obtained with respect to the Operating Loan and the execution and delivery of the Security Documents.

Each of the Borrower and the Guarantor(s) also represents and warrants to the Lender that all financial and other information provided to the Lender in connection with the Operating Loan is true and accurate, and acknowledges that the offer of credit contained in the Facility Letter is made in reliance on the truth and accuracy of this information and the above representations and warranties.

III. Interest, Fees Payment and Rights

- (a) Interest on the daily balance of the principal amount advanced under the Operating Loan and remaining unpaid from time to time shall be payable by the Borrower as set out in the Facility Letter both before and after demand, maturity, default and judgment;
- (b) In addition to the fees previously described in other portions of the Facility Letter, the Borrower shall also pay to the Lender:
 - (i) a fee on each anniversary of this Facility Letter at which any amount remains outstanding or available under the Operating Loan; and
 - (ii) a fee for each week that the Borrower is in default in providing the financial reports contemplated by this Facility Letter.
- (c) The fees collected by the Lender shall be its property as consideration for the time, effort and expense incurred by it in the review and administration of documents and financial statements, and the Borrower acknowledges and agrees that the determination of these costs is not feasible and that the fees set out in the Facility Letter represent a reasonable estimate of such costs;

- (d) Any amounts which become payable to the Lender under the Facility Letter or the Security Documents and which are not paid when due shall accrue interest and be payable from the due date at the Prime Rate plus 3% per annum, compounded monthly and payable on the last day of each month, both before and after demand, maturity, default and judgment, if no other interest rate is expressed for such amounts;
- (e) All payments by the Borrower to the Lender shall be made at the place as the Lender may specify in writing from time to time. Any payment delivered or made to the Lender by 1:00 p.m. local time at the place where such payment is to be made shall be credited as of that day, but if made afterwards shall be credited as of the next day on which the said branch is open for business;
- (f) Notwithstanding anything to the contrary contained in the Facility Letter, the Lender may, in its discretion, make an advance under the Operating Loan to pay any unpaid interest or fees which have become due under the terms of the Facility Letter;
- (g) The Borrower acknowledges that the actual recording of the amount of any advance or repayment thereof under the Operating Loan, and interest, fees and other amounts due in connection with the Operating Loan, in an account of the Borrower maintained by the Lender shall constitute *prima facie* evidence of the Borrower's indebtedness and liability from time to time under the Operating Loan; provided that the obligation of the Borrower to pay or repay any indebtedness and liability in accordance with the terms and conditions of the Operating Loan shall not be affected by the failure of the Lender to make such recording. The Borrower also acknowledges being indebted to the Lender for principal amounts shown as outstanding from time to time in the Lender's account records, and all accrued and unpaid interest in respect of such amounts, in accordance with the terms and conditions of this Facility Letter;
- (h) The obligation of the Borrower to make all payments under the Facility Letter and the Security Documents shall be absolute and unconditional and shall not be limited or affected by any circumstance, including, without limitation:
 - (i) any set-off, compensation, counterclaim, recoupment, defence or other right which the Borrower may have against the Lender or anyone else for any reason whatsoever; or
 - (ii) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Borrower;
- (i) In addition to and not in limitation of any rights now or hereafter available to the Lender whether applicable law or arising in the Security Documents, the Lender is authorized, at any time and from time to time, upon delivery of written notice to the Borrower to set-off and appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing by the Lender to or for the credit of the Borrower against and on account of the obligations and liabilities of the Borrower to the Lender under this Facility Letter. The Lender agrees to provide written notice of the exercise of any of the rights under this section immediately after the exercise of such rights;
- (j) The remedies, rights and powers of the Lender under this Facility Letter, the Security Documents and at law and in equity are cumulative and not alternative and are not in substitution for any other remedies, rights or powers of the Lender and no delay or omission in exercise of such remedy, right, or power shall exhaust such remedies, rights or powers or be construed as a waiver of any of them.

IV. Conditions Precedent

In addition to the Conditions Precedent previously set out, it shall also be a condition precedent to the initial advance and continued availability of the Operating Loan that the Lender shall have received:

- (a) The Security Documents completed and, where necessary, registered in form and manner satisfactory to the Lender's solicitors;
- (b) Satisfactory reports on the financial position of the Borrower and such customers of the Borrower as the Lender may specify from time to time;
- (c) Verification of insurance arranged by the Borrower conforming to the Lender's requirements;
- (d) If deemed necessary by the Lender, an environmental questionnaire, including site profile in Alberta, and environmental site investigation report for the Lands prepared by an environmental consultant satisfactory to the Lender, in each case in form and content acceptable to the Lender;
- (e) confirmation that the Borrower is in compliance with each of the terms and conditions of the Facility Letter.

V. Borrower's Covenants and Conditions

In addition to the conditions previously set out, the following conditions shall apply until the Operating Loan are repaid in full and cancelled:

- (a) The Borrower shall not, without the prior written consent of the Lender:
 - (i) grant or allow any lien, charge, security interest, privilege, hypothec or other encumbrance, whether fixed or floating, to be registered against or exist on any of its assets and in particular, other than the security interests granted to HSBC Bank Canada as of the date hereof;
 - (ii) become guarantor or endorser or otherwise become liable upon any note or other obligation other than in the normal course of business of the Borrower;
 - (iii) declare or pay dividends on any class or kind of its shares, repurchase or redeem any of its shares or reduce its capital in any way whatsoever or repay any shareholders' advances;
 - (iv) amalgamate with or permit all or substantially all of its assets to be acquired by any other person, firm or corporation or permit any reorganization or change of control of the Borrower;
 - (v) permit any property taxes or strata fees to be past due at any time.
- (b) The Lender shall have the right to waive the delivery of any Security Documents or the performance of any term or condition of the Facility Letter, and may advance all or any portion of the Operating Loan prior to satisfaction of any of the Conditions Precedent, but waiver by the Lender of any obligation or condition shall not constitute a waiver of performance of such obligation or condition in the future;
- (c) All financial terms and covenants shall be determined in accordance with generally accepted accounting principles, applied consistently;

VI. Environmental Matters

- a) To the best of the Borrower's knowledge after due and diligent inquiry, no regulated, hazardous or toxic substances are being stored on any of the Borrower's lands, facilities or premises (the "Premises") or any adjacent property, nor have any such substances been stored or used on the Premises or in the Borrower's business or any adjacent property prior to the Borrower's ownership, possession or control of the Premises. The Borrower agrees to provide written notice to the Lender immediately upon the Borrower becoming aware that the Premises or any adjacent property are being or have been contaminated with regulated, hazardous or toxic substances. The Borrower shall not permit any activities on the Premises which directly or indirectly could result in the Premises or any other property being contaminated with regulated, hazardous or toxic substances. For the purposes of the Facility Letter, the term "regulated, hazardous or toxic substances" means any substance, defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term, by any applicable federal, provincial or local statute, regulation or ordinance now or in the future in effect, or any substance or materials, the use or disposition of which is regulated by any such statute, regulation or ordinance;
- (b) The Borrower shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, storage, treatment, control, removal or cleanup of regulated, hazardous or toxic substances in the Borrower's business or in, on, or under the Premises or in, on or under any adjacent property that becomes contaminated with regulated, hazardous or toxic substances as a result of construction, operations or other activities on, or the contamination of, the Premises, or incorporated in any improvements thereon. The Lender may, but shall not be obligated to, enter upon the Premises and take such actions and incur such costs and expenses to effect such compliance as it deems advisable and the Borrower shall reimburse the Lender on demand for the full amount of all costs and expenses incurred by the Lender in connection with such compliance activities;
- (c) The assets of the Borrower which are now or in the future encumbered by the Security Documents are hereby further mortgaged and charged to the Lender, and the Lender shall have a security interest in such assets, as security for the repayment of such costs and expenses and interest thereon, as if such costs and expenses had originally formed part of the Operating Loan.

VII. Lender Visits

Representatives of the Lender shall be entitled to attend at the Borrower's business premises and to view all financial records of the Borrower at any time, on reasonable notice.

VIII. Legal and Other Expenses

The Borrower shall pay all reasonable legal fees and disbursements (on a solicitor and own client basis) in respect of the Operating Loan, the preparation, issue and registration of the Security Documents, the enforcement and preservation of the Lender's rights and remedies under this Facility Letter and the Security Documents, and all reasonable fees and costs relating to appraisals, insurance consultation, credit reporting and responding to demands of any government or any agency or department thereof, whether or not the documentation is completed or any funds are advanced under the Operating Loan.

X. Non-Merger and Non-Assignment

The terms and conditions of the Facility Letter shall not be merged by and shall survive the execution of the Security Documents. In the event of a conflict between the terms of this Facility Letter and the terms of the Security Documents, the terms of this Facility Letter shall prevail to the extent of such conflict.

The benefits conferred by this Facility Letter shall enure to the benefit of the Lender and its successors and assigns and shall be binding on the Borrower and its successors and permitted assigns.

The Borrower shall not assign all or any of its rights, benefits or obligations under this Facility Letter without the prior written consent of the Lender.

XI. Waiver or Variation

No term or condition of the Facility Letter or any of the Security Documents may be waived or varied verbally or by any course of conduct of any officer, employee or agent of the Lender. All waivers must be in writing and signed by the waiving party.

Any amendment to the Facility Letter or the Security Documents must be in writing and signed by a duly authorized officer of the Lender.

XII. Time of Essence

Time shall be of the essence of the Facility Letter.

XIII. Indemnity

The Borrower agrees to keep the Lender and its officers, directors, employees, solicitors, agents and affiliates (collectively, the "**Lender Group**") indemnified against any claim for any damages, losses, costs or expenses (including, without limitation, legal costs on a solicitor and his own client basis) incurred or suffered by any of the Lender Group in relation to this Facility Letter or as a consequence (direct or indirect) of any breach by the Borrower of this Facility Letter, or as a result of an assessment made by any tax authority in respect of any payment made by the Lender to any third party, unless such damage, loss, cost or expense was incurred solely as a direct result of the Lender's gross negligence or wilful misconduct.

XIV Governing Law

This Facility Letter and, unless otherwise specified therein, all other documents or instruments delivered in accordance with this Facility Letter shall be governed by and interpreted in accordance with the laws of the Province of Alberta (the "**Governing Jurisdiction**") and the laws of Canada applicable therein. The Borrower irrevocably submits to the exclusive jurisdiction of the courts in the Governing Jurisdiction.

This is Exhibit "5" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021



A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

11 August 2021

RE: LOAN AGREEMENT PAYOUT STATEMENT FOR COCOCO CHOCOLATIERS INC.

	A/C No	1268
Principal Balance as at 01 August 2021	CAD\$	\$10,606,251.51
Interest paid historically on that portion of the Principal balance that was borrowed under the September 15, 2017 Agreement, as at 01 August 2021	CAD\$	\$318,143.22
Interest and unpaid fees owing on that portion of the Principal balance that was borrowed under the September 15, 2017 Agreement, as at 01 August 2021	CAD\$	\$88,508.92
Per diem interest on that portion of the Principal balance that was borrowed under the September 15, 2017 Agreement, to 10 August 2021 inclusive	CAD\$	\$2,008.82
Sub Total Account Balance	CAD\$	\$10,696,769.25
Dentons LLP - billed	CAD\$	\$
Dentons LLP – WIP estimate	CAD\$	\$
ESTIMATED TOTAL PAYOUT		\$

Notes:

1. Final TOTAL PAYOUT subject to confirmation on actual payout date.
2. ESTIMATED TOTAL PAYOUT excludes any unbilled costs of enforcement.
3. Per diem interest for the month of August 2021, as calculated on the 01 August 2021 account balance, is \$182.62.

Payout funds must be received in our office by 12:00 Noon Calgary time on the business day of payout or per diem interest will be applied.

PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.

Kristy Hicks

Kristy Hicks
Vice-President Finance
mortgage@panterraproperties.ca

This is Exhibit "6" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021



A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

GENERAL SECURITY AGREEMENT

This General Security Agreement made as of the 15th day of September, 2017 between Cococo Chocolatiers Inc. (the “Debtor”) as debtor and 1807340 Alberta Ltd. (the “Secured Party”) as secured party.

I Security

1.1 For value received, the Debtor grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.

1.2 As general and continuing security for the Obligations (as defined in clause 2.1 hereof), the Debtor:

1.2.1 hereby grants to the Secured Party, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired personal property of the Debtor of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor (all of which are herein collectively called the “Personal Property Collateral”) including, without limiting the generality of the foregoing, all the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all Goods (including all accessories, attachments, additions and Accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (subject to Clause 1.2.2 hereof), Licences, Money, Securities, Investment Property and all:

- (a) Inventory of whatsoever nature and kind and wheresoever situate;
- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the “Debts”);
- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others; and
- (g) personal property described in any schedule now or hereafter annexed hereto; and

1.2.2 hereby grants to the Secured Party, by way of mortgage and charge a security interest in all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor (all of which is deemed to be included in the definition of “Personal Property Collateral” referred to in Clauses 1.2.1 and 1.3.2 hereof); and

1.2.3 hereby charges as and by way of a floating charge in favour of the Secured Party all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Secured Party pursuant to clause 1.2.1, (all of which property, assets, effects and undertakings so charged by this clause 1.2.3 are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets and the charge created by this clause 1.2.3 shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Secured Party to:

- (a) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for Encumbrances approved in writing by the Secured Party; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

1.3 In this General Security Agreement:

- 1.3.1 any reference to "Premises" shall mean all property owned or leased by the Debtor;
 - 1.3.2 the Personal Property Collateral and the Other Collateral are herein together called the "Collateral";
 - 1.3.3 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";
 - 1.3.4 any reference to "Debtor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more corporations and, if more than one Debtor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
 - 1.3.5 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
 - 1.3.6 any reference to "PPSA" shall mean the Personal Property Security Act of the Province as amended from time to time, including any amendments thereto and any Act substituted therefor and amendments thereto;
 - 1.3.7 any reference to the "Province" shall mean the Province of Alberta;
- and
- 1.3.8 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences", "Money", "Securities", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in

accordance with their respective meanings given in the PPSA (either in the singular or plural thereof), as the context requires unless otherwise defined herein or unless the context otherwise requires.

- 1.4 The Secured Party and the Debtor have not agreed to postpone the time for attachment of the security interests granted hereby.
- 1.5 The security interest in Consumer Goods hereby granted shall not become effective until, but shall become effective immediately when, the Secured Party notifies the Debtor in writing that it is effective.
- 1.6 The last day of the term of any lease held by the Debtor with respect to any of the Collateral is excluded from the security constituted by this General Security Agreement.

II Obligations Secured

- 2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the Debtor to the Secured Party (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor be bound alone or with another or others and whether as principal or surety, (all of which obligations, indebtedness and liabilities are herein collectively called the "Obligations").
- 2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Secured Party may now or from time to time hold or take from the Debtor or from any other person whomsoever.

III Representations and Warranties of the Debtor

- 3.1 The Debtor represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:
 - 3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Debtor's obligations hereunder, legal, valid and binding;
 - 3.1.2 the Collateral is genuine and is owned by the Debtor free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "Encumbrances"), save for the security constituted by this General Security Agreement, those Encumbrances approved in writing by the Secured Party;
 - 3.1.3 the Debtor has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement;
 - 3.1.4 each Debt, Chattel Paper and Instrument included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Secured Party from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against the Debtor which can be asserted

against the Secured Party, whether in any proceeding to enforce the Collateral or otherwise;

- 3.1.5 with respect to Goods (including Inventory) comprised in the Collateral, the locations specified in the Location Schedule are accurate and complete (save for Goods in transit to such locations and Inventory on lease or consignment) and all fixtures or Goods about to become fixtures which form part of the Collateral will be situated at one of the locations specified in the Location Schedule;
- 3.1.6 the Debtor is the owner of any intellectual property applications and registrations and there are no outstanding claims of ownership by third parties in respect of these registrations and applications;
- 3.1.7 all intellectual property applications and registrations are valid and in good standing;
- 3.1.8 all trade-mark and industrial designs have been in continuous use and that the use has been proper in relation to the wares and/or services of Debtor;
- 3.1.9 only the Debtor has used the trade-marks, or if there are any third party users of the Debtor's trade-marks, such third party users are properly licensed to use such trademarks;
- 3.1.10 all assignments and other documents affecting intellectual property rights have been disclosed and provided to the Secured Party;
- 3.1.11 there are no outstanding or threatened claims or proceedings with respect to the intellectual property; and,
- 3.1.12 all necessary assignments and license agreements have been properly executed by the Debtor for use of third party intellectual property.

IV Covenants of the Debtor

- 4.1 The Debtor covenants and agrees that at all times while this General Security Agreement remains in effect the Debtor will:
 - 4.1.1 defend the Collateral for the benefit of the Secured Party against the claims and demands of all other persons;
 - 4.1.2 not, without the prior written consent of the Secured Party:
 - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for Encumbrances approved in writing by the Secured Party; or
 - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral; provided always, that, until default, the Debtor may, in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to clause 5.2 hereof, use monies available to the Debtor;
 - 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
 - 4.1.4 notify the Secured Party promptly of:
 - (a) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's name, the Debtor's business or the Collateral;
 - (b) the details of any significant acquisition of Collateral;
 - (c) the details of any claims or litigation affecting the Debtor or the Collateral;

- (d) any loss or damage to the Collateral;
 - (e) any default by any Account Debtor in payment or other performance of obligations of the Account Debtor comprised in the Collateral; and
 - (f) the return to, or repossession by, the Debtor of Collateral;
- 4.1.5 keep the Collateral in good order, condition and repair (in the locations specified in the Location Schedule or such other locations as the Secured Party may approve in writing) and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral and, at the Secured Party's request, mark any and all such records and the Collateral so as to indicate the security constituted by this General Security Agreement;
- 4.1.7 forthwith pay:
- (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
 - (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Secured Party may require; and
 - (c) all Encumbrances which rank or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, other than those approved in writing by the Secured Party;
- 4.1.8 prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;
- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Secured Party shall reasonably direct (but in any event in accordance with prudent business practice and for not less than the full replacement cost thereof) with loss payable to the Secured Party and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance;
- 4.1.10 deliver to the Secured Party from time to time promptly upon request:
- (a) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;
 - (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
 - (c) all financial statements prepared by or for the Debtor regarding the Debtor's business;
 - (d) all policies and certificates of insurance relating to the Collateral; and

- (e) such information concerning the Collateral, the Debtor and Debtor's business and affairs as the Secured Party may reasonably require;
- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Secured Party in:
- (a) inspecting the Collateral;
 - (b) negotiating, preparing, perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;
 - (c) investigating title to the Collateral;
 - (d) taking, recovering, keeping possession of and insuring the Collateral;
 - (e) connection with any disclosure requirements under the PPSA; and
 - (f) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Secured Party as security for the Obligations;
- 4.1.12 at the Secured Party's request at any time and from time to time create in favour of the Secured Party, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Secured Party's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Secured Party reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Secured Party;
- 4.1.14 permit the Secured Party and its representatives, at all reasonable times, access to all the Debtor's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection;
- 4.1.15 apply to file applications and complete registrations on any present intellectual property which is not currently protected by an application or registration where commercially reasonable, including any and all improvements to intellectual property and apply to file registrations on unregistered trade-marks in Canada and the United States;
- 4.1.16 apply to file applications and complete registrations of all after acquired intellectual property in all jurisdictions where commercially reasonable;
- 4.1.17 keep up-to-date witnessed records regarding intellectual property;
- 4.1.18 enter into confidentiality agreements with employees and other third parties who may invent, create, discover, author and/or reduce to practice intellectual property for the Debtor and who may have access to confidential information of the Debtor;
- 4.1.19 ensure that all after acquired intellectual property obtained from third parties is properly acquired by way of a written license agreement or assignment;
- 4.1.20 provide, upon written request by the Secured Party, a list of all registered and unregistered trade-marks, patent applications, issued patents, copyright, industrial designs and other intellectual property; and,
- 4.1.21 mark all products and advertising appropriately to maintain the validity of all intellectual property rights.

V Payments and Proceeds

- 5.1 Before or after default under this General Security Agreement, the Secured Party may notify all or any Account Debtors of the security constituted by this General Security Agreement and may also direct such Account Debtors to make all payments on the Collateral to the Secured Party.
- 5.2 The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of the security constituted by this General Security Agreement to Account Debtors and whether before or after default under this General Security Agreement, shall be received and held by the Debtor in trust for the Secured Party and shall be turned over to the Secured Party forthwith upon request.

VI Secured Party Actions

- 6.1 The Debtor hereby authorizes the Secured Party to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Secured Party may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Debtor hereby irrevocably constitutes and appoints the Secured Party the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient by the Secured Party
- 6.2 The Secured Party may charge for its reasonable costs incurred in connection with any disclosure requirements under the PPSA.
- 6.3 If the Debtor fails to perform any of its Obligations hereunder, the Secured Party may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Secured Party hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Secured Party forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Secured Party prior to all claims subsequent to this General Security Agreement.
- 6.4 The Debtor covenants and agrees that the Secured Party may, but shall be under no obligation to, at any time or times as the Secured Party deems necessary and without the concurrence of the Debtor or any other person make such arrangements for the repairing, finishing and putting in order of the Premises, and all reasonable costs, charges and expenses including an allowance for the time and services of the Secured Party, the Secured Party's servants or agents or any other person or persons appointed for the above purposes including, without limitation, the full amount of all legal fees, disbursements, costs, charges and expenses incurred by the Secured Party and any amount due hereunder shall be payable forthwith to the Secured Party, shall be deemed an advance to the Debtor by the Secured Party, shall be deemed to be Obligations, and shall bear interest at the highest rate per annum from time to time charged by the Secured Party on any of the other Obligations until paid.

VII Default

- 7.1 The Debtor shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Secured Party, upon the occurrence of any of the following events:
 - 7.1.1 the Debtor makes default in payment when due of any of the Obligations which are indebtedness or liabilities or the Debtor fails to perform or satisfy any other of the Obligations; or

- 7.1.2 the Debtor is in breach of any term, condition, proviso, agreement or covenant to the Secured Party, or any representation or warranty given by the Debtor to the Secured Party is untrue, whether or not any such term, condition, proviso, agreement or covenant, representation or warranty is contained in this General Security Agreement; or
- 7.1.3 the Debtor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors' Arrangement Act (Canada) or similar legislation in any jurisdiction, or makes an authorized assignment; or
- 7.1.4 there is instituted by or against the Debtor any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding-up of affairs of, the Debtor; or
- 7.1.5 the Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- 7.1.6 a receiver, receiver and manager or receiver-manager of all or any part of the Collateral or of any other property, assets or undertakings of the Debtor is appointed; or
- 7.1.7 any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or a distress or analogous process is levied upon the Collateral or any part thereof; or
- 7.1.8 an order is made or an effective resolution is passed for winding-up the Debtor; or
- 7.1.9 without the prior written consent of the Secured Party, the Debtor creates or permits to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement; or
- 7.1.10 the holder of any Encumbrance against any of the Collateral does anything to enforce or realize on such Encumbrance; or
- 7.1.11 the Debtor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
- 7.1.12 the Secured Party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral is or is about to be placed in jeopardy; or
- 7.1.13 any certificate, statement, representation, warranty or audit report herewith, heretofore or hereafter furnished by or on behalf of the Debtor to the Secured Party, whether in connection with this General Security Agreement or otherwise, and whether furnished as an inducement to the Secured Party to extend any credit to or to enter into this or any other agreement with the Debtor or not:
 - (a) proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified; or
 - (b) proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor;

or, upon the date of execution of this General Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit report, which change was not disclosed to the Secured Party at or prior to the time of such execution.

VIII Enforcement

- 8.1 The Secured Party may make demand for payment at any time of any or all of the Obligations which are payable upon demand (whether or not there is any default under this General Security Agreement) and, upon any default under this General Security Agreement, the Secured Party may declare any or all of the Obligations which are not payable on demand to become immediately due and payable.
- 8.2 Upon default under this General Security Agreement, the security hereby constituted will immediately become enforceable.
- 8.3 To enforce and realize on the security constituted by this General Security Agreement, the Secured Party may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Secured Party may do any one or more of the following:
- 8.3.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Secured Party may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;
 - 8.3.2 enter upon any of the Premises and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
 - 8.3.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Secured Party may deem advisable;
 - 8.3.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Secured Party may seem reasonable, provided that the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
 - 8.3.5 exercise all of the rights and remedies of a secured party under the PPSA.
- 8.4 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Debtor and not of the Secured Party and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Secured Party hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or pari passu with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.
- 8.5 Subject to applicable law and the claims, if any, of the creditors of the Debtor ranking in priority to the security constituted by this General Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this General Security Agreement will be applied as the Secured Party, in its sole discretion, may direct as follows:
- Firstly:** in or toward payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Secured Party in connection with or incidental to:
- (a) the exercise by the Secured Party of all or any of the powers granted to it pursuant to this General Security Agreement; and

(b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;

Secondly: in or toward payment to the Secured Party of all principal and other monies (except interest) due in respect of the Obligations;

Thirdly: in or toward payment to the Secured Party of all interest remaining unpaid in respect of the Obligations; and

Fourthly: any surplus will be paid to the Debtor.

IX Deficiency

9.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Secured Party, the Debtor will immediately pay to the Secured Party the amount of such deficiency.

X Rights Cumulative

10.1 All rights and remedies of the Secured Party set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Debtor and the Secured Party that may be in effect from time to time.

XI Appointment of Attorney

11.1 The Debtor hereby irrevocably appoints the Secured Party or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Secured Party or the Receiver, as the case may be, pursuant to this General Security Agreement.

XII Liability of Secured Party

12.1 The Secured Party shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Secured Party shall manage the Collateral upon entry of the business of the Debtor, as herein provided, nor shall the Secured Party be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.

12.2 The Secured Party shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Secured Party, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Secured Party be obliged to keep any of the Collateral identifiable.

12.3 The Secured Party shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Secured Party by making a demand upon the Secured Party for such information and materials and the Secured Party shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.

- 12.4 The Debtor will indemnify the Secured Party and hold the Secured Party harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Debtor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Secured Party, or the exercise of any of the rights and or remedies of the Secured Party, or any transaction contemplated in this General Security Agreement.
- 12.5 The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Secured Party than provided in this General Security Agreement.
- 12.6 Any amount owing by the Debtor hereunder shall, from the date of disbursement until the date the Secured Party receives reimbursement, be deemed advanced to the Debtor by the Secured Party, shall be deemed to be Obligations and shall bear interest at the highest rate per annum from time to time charged by the Secured Party on any of the other Obligations until paid.
- 12.7 The Debtor agrees that the indemnity obligations hereunder shall survive the release of the security of this General Security Agreement and the payment and satisfaction of the indebtedness and liabilities hereby secured.

XIII Appropriation of Payments and Offset

- 13.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party may at all times and from time to time change any appropriation as the Secured Party may see fit or, at the option of the Secured Party, such payments and monies may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or to the rights of the Secured Party hereunder.
- 13.2 Without limiting any other right of the Secured Party, whenever any of the Obligations is immediately due and payable or the Secured Party has the right to declare any of the Obligations to be immediately due and payable (whether or not it has so declared), the Secured Party may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Debtor by the Secured Party in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Secured Party's records subsequent thereto, and the Secured Party shall be deemed to have exercised such right to set off immediately at the time of making its decision.

XIV Liability to Advance, Etc.

- 14.1 Except to the extent that the Secured Party:
 - 14.1.1 by accepting bills of exchange drawn on it by the Debtor; or
 - 14.1.2 by issuing letters of credit or letters of guarantee on the application of the Debtor;is required to advance monies on the maturity of such bills or pursuant to such letters of credit or letters of guarantee, as the case may be, none of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Secured Party to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Secured Party or extend any term for performance or satisfaction of any obligation of the Debtor to the Secured Party.

- 14.2 Nothing herein contained shall in any way oblige the Secured Party to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Obligations or any of them.

XV Waiver

- 15.1 No delay or omission by the Secured Party in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.
- 15.2 The Secured Party may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

XVI Extensions

- 16.1 The Secured Party may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Debtor, Account Debtors of the Debtor, sureties and others and with the Collateral and other security as the Secured Party may see fit without prejudice to the liability of the Debtor or the Secured Party's right to hold and realize on the security constituted by this General Security Agreement.

XVII Assignment

- 17.1 The Secured Party may, without further notice to the Debtor, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby.
- 17.2 The Debtor expressly agrees that the assignee, transferee or secured party of the Secured Party, as the case may be, shall have all of the Secured Party's rights and remedies under this General Security Agreement and the Debtor will not assert any defence, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Secured Party in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

XVIII Satisfaction and Discharge

- 18.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Secured Party, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.
- 18.2 The Debtor shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all Obligations, or the securing of the Obligations to the satisfaction of the Secured Party, and upon written request by the Debtor and payment to the Secured Party of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Secured Party in connection with the Obligations and such release and discharge.

XIX No Merger

- 19.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill

of exchange or security in any form held or which may hereafter be held by the Secured Party from the Debtor or from any other person whomsoever.

- 19.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.
- 19.3 The release and discharge of the security constituted by this General Security Agreement by the Secured Party shall not operate as a release or discharge of any right of the Secured Party to be indemnified and held harmless by the Debtor pursuant to clause 12.4 hereof or of any other right of the Secured Party against the Debtor arising under this General Security Agreement prior to such release and discharge.

XX Interpretation

- 20.1 In this General Security Agreement:
- 20.1.1 the invalidity or unenforceability of the whole or any part of any clause shall not affect the validity or enforceability of any other clause or the remainder of such clause;
- 20.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and
- 20.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

XXI Notice

- 21.1 Whenever either the Secured Party or the Debtor is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.
- 21.2 Either the Secured Party or the Debtor may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof

XXII Variation

- 22.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

XXIII Enurement

- 23.1 This General Security Agreement shall enure to the benefit of the Secured Party and its successors and assigns and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Debtor.

XXIV Copy of Agreement and Financing Statement

- 24.1 The Debtor hereby:
- 24.1.1 acknowledges receiving a copy of this General Security Agreement; and

24.1.2 waives all rights to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

XXV Governing Law

25.1 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province.

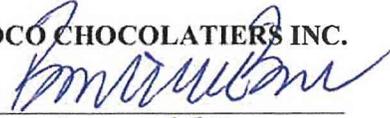
25.2 For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the Province and to be performed there and the courts of the Province shall have jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other Province, country or jurisdiction.

In Witness Whereof the Debtor has executed this General Security Agreement as of the day and year first above written.

[remainder of page intentionally blank.]

COCOCO CHOCOLATIERS INC.

Per:



Name: BRIAN BECK

Title: PRESIDENT

Location Schedule

Address(es) for Location of the Collateral

2320 – 2 Avenue SE – Calgary AB (factory and administrative offices)

1313 – 1 Street SE – Calgary AB (retail store)

847 – 17 Avenue SW – Calgary AB (retail store)

Unit No. 318 - Southcentre Mall – 100 Anderson Road SE Calgary AB (retail store)

Unit No. 5771- Signal Hill Centre – 5771 Signal Hill Centre SW Calgary AB (retail store)

Leased Premises identifiable as Leases No. YYC1289 and YYC2126 and Licensed Premises identifiable as Storage Space Licenses YYC1793 and YYC2219 – Calgary International Airport – 2000 Airport Road NE – Calgary AB (retail store)

Bay B 622 – 37 Avenue NE – Calgary AB (storage warehouse)

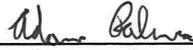
6060 – 86 Avenue SE – Calgary AB (storage yard – portion – storage van)

314A and 314B Richmond Road – Ottawa ON (retail store)

Unit No. 520 – Broadmead Village Shopping Centre – 777 Royal Oak Drive – Victoria BC (retail store)

Unit No. 3 – 621 Broughton Street – Victoria BC. (retail store)

This is Exhibit "7" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021



A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

Search ID #: Z14090753

Transmitting Party

DENTONS CANADA LLP
Attention: Accounting
15 FI Bankers Court, 850 2 Street SW
CALGARY, AB T2P 0R8

Party Code: 50017904
Phone #: 403 268 7000
Reference #: 585368-1

Search ID #: Z14090753

Date of Search: 2021-Aug-04

Time of Search: 11:10:19

Business Debtor Search For:

COCOCO CHOCOLATIERS INC.

Both Exact and Inexact Result(s) Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.



Search ID #: Z14090753

Business Debtor Search For:

COCOCO CHOCOLATIERS INC.

Search ID #: Z14090753

Date of Search: 2021-Aug-04

Time of Search: 11:10:19

Registration Number: 12112715070

Registration Date: 2012-Nov-27

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2022-Nov-27 23:59:59

Exact Match on: Debtor No: 1

Amendments to Registration

17091515010 Amendment 2017-Sep-15

21080419630 Amendment 2021-Aug-04

Debtor(s)

Block

Status

Current

1 COCOCO CHOCOLATIERS INC.
1313-1 STREET S.E.
CALGARY, AB T2G 5L1

Secured Party / Parties

Block

Status

Deleted by
17091515010

1 261820 ALBERTA LTD.
5505-6 STREET S.E.
CALGARY, AB T2H 1L6

Block

Status

Deleted by
21080419630

2 1870340 ALBERTA LTD.
2320 - 2 AVENUE SE
CALGARY, AB T2E 6J9

Block

Status

Current by
21080419630

3 PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.
5505 - 6 STREET SE
CALGARY, AB T2H 1L6

Email: mortgage@panterraproperties.ca

Search ID #: Z14090753

Block

4 1870340 ALBERTA LTD.
2320 - 2 AVENUE SE
CALGARY, AB T2E 6J9
Email: mortgage@panterraproperties.ca

Status

Current by
21080419630

Collateral: General

Block

Description

1 ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY
PROCEEDS:
ALL OF THE DEBTOR'S PRESENT AND AFTER ACQUIRED GOODS, MOTOR
VEHICLES, ACCOUNTS, MONEY, CHATTEL PAPER, DOCUMENTS OF TITLE,
SECURITIES, INSTRUMENTS AND INTANGIBLES AND ALL OTHER PROCEEDS OF
EVERY DESCRIPTION AND OF ANY KIND WHATSOEVER DERIVED DIRECTLY OR
INDIRECTLY FROM ANY DEALINGS WITH THE GENERAL COLLATERAL OR SERIAL
NUMBER COLLATERAL (IF ANY) DESCRIBED ABOVE, OR PROCEEDS IF ANY SUCH
PROCEEDS.

Status

Current

Search ID #: Z14090753

Business Debtor Search For:

COCOCO CHOCOLATIERS INC.

Search ID #: Z14090753

Date of Search: 2021-Aug-04

Time of Search: 11:10:19

Registration Number: 12122003727

Registration Type: SECURITY AGREEMENT

Registration Date: 2012-Dec-20

Registration Status: Current

Expiry Date: 2022-Dec-20 23:59:59

Inexact Match on: Debtor No: 1

Debtor(s)

Block

Status

1 COCOCO CHOCOLATIERS OTTAWA INC.
1313 FIRST STREET SE
CALGARY, AB T2G 5L1

Current

Secured Party / Parties

Block

Status

1 261820 ALBERTA LTD.
5505 6TH STREET SE
CALGARY, AB T2H 1L6

Current

Collateral: General

Block

Description

Status

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY

Current

Search ID #: Z14090753

Business Debtor Search For:

COCOCO CHOCOLATIERS INC.

Search ID #: Z14090753

Date of Search: 2021-Aug-04

Time of Search: 11:10:19

Registration Number: 12122003734

Registration Date: 2012-Dec-20

Registration Type: LAND CHARGE

Registration Status: Current

Registration Term: Infinity

Inexact Match on:

Debtor

No: 1

Debtor(s)

Block

Status

Current

1 COCOCO CHOCOLATIERS OTTAWA INC.
1313 FIRST STREET SE
CALGARY, AB T2G 5L1

Secured Party / Parties

Block

Status

Current

1 261820 ALBERTA LTD.
5506 6TH STREET SE
CALGARY, AB T2H 1L6

Search ID #: Z14090753

Business Debtor Search For:

COCOCO CHOCOLATIERS INC.

Search ID #: Z14090753

Date of Search: 2021-Aug-04

Time of Search: 11:10:19

Registration Number: 14022136209

Registration Type: SECURITY AGREEMENT

Registration Date: 2014-Feb-21

Registration Status: Current

Expiry Date: 2024-Feb-21 23:59:59

Inexact Match on:

Debtor

No: 1

Amendments to Registration

14022136408

Amendment

2014-Feb-21

14040427704

Amendment

2014-Apr-04

Debtor(s)

Block

Status

Current

1 COCOCO CHOCOLATIERS CENTRAL INC.
525 8 AVENUE SW - SUITE 2400
CALGARY, AB T2P 1G1

Block

Status

Current

2 CHOCOLATERIE BERNARD CALLEBAUT
525 8 AVENUE SW - SUITE 2400
CALGARY, AB T2P 1G1

Block

Status

Current

3 CHOCOLATES BY BERNARD CALLEBAUT
525 8 AVENUE SW - SUITE 2400
CALGARY, AB T2P 1G1

Block

Status

Current

4 COCOCO
525 8 AVENUE SW - SUITE 2400
CALGARY, AB T2P 1G1

Search ID #: Z14090753

Secured Party / Parties

Block

1 BANKERS HALL LP
335 - 8 AVENUE SW - SUITE 1700
CALGARY, AB T2P 1C9

Status

Current

Block

2 BCIMC REALTY CORPORATION
335 8 AVENUE SW - SUITE 1700
CALGARY, AB T2P 1C9

Status

Current

Block

3 BANKERS HALL GP INC.
335 8 AVENUE SW - SUITE 1700
CALGARY, AB T2P 1C9

Status

Current

Block

4 BANKERS HALL GP INC.
1700, 335 - 8TH AVENUE SW
CALGARY, AB T2P 1C9

Status

Current by
14040427704

Block

5 BANKERS HALL GP TRUST
1700, 335 - 8TH AVENUE SW
CALGARY, AB T2P 1C9

Status

Current by
14040427704

Collateral: General

Block

Description

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.
PROCEEDS OF ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF
THE DEBTOR.

Status

Current

2 THE COMPLETE ADDRESS OF ALL THE SECURED PARTIES ARE C/O BROOKFIELD
OFFICE PROPERTIES MANAGEMENT LP, 1700,335 - 8TH AVENUE SW, CALGARY,
AB T2P 1C9. ATTENTION: LAW DEPARTMENT, FACSIMILE (403) 770-7210

Status

Deleted By
14022136408

Particulars

Block

Additional Information

1 THE COMPLETE ADDRESS OF ALL THE SECURED PARTIES ARE C/O BROOKFIELD
OFFICE PROPERTIES MANAGEMENT LP, 1700,335 - 8TH AVENUE SW, CALGARY,
AB T2P 1C9. ATTENTION: LAW DEPARTMENT, FACSIMILE (403) 770-7210

Status

Current By
14022136408

Search ID #: Z14090753

Business Debtor Search For:

COCOCO CHOCOLATIERS INC.

Search ID #: Z14090753

Date of Search: 2021-Aug-04

Time of Search: 11:10:19

Registration Number: 14122416142

Registration Date: 2014-Dec-24

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Dec-24 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)

Block

Status

1 COCOCO CHOCOLATIERS INC.
1313 1ST STREET SE
CALGARY, AB T2G 5L1

Current

Secured Party / Parties

Block

Status

1 HSBC BANK CANADA
407 8TH AVENUE SW
CALGARY, AB T2P 1E5

Current

Collateral: General

Block

Description

Status

1 The entire right, title, claim and interest of the debtor in
2 and to the principal sum, interest and all other monies owing
3 and payable or hereafter owing and payable to the debtor
4 pursuant to the terms of the instrument or instruments
5 described as 329-139452 and the entire right, title, claim
6 and interest of the debtor in and to the said instrument or
7 instruments. And all proceeds including, without limitation,
8 all goods, securities, instruments, documents of title,
9 chattel paper, intangibles and money (all as defined in the
10 Personal Property Security Act, any regulations thereunder

Current

Search ID #: Z14090753

11 and any amendments thereto).

Current

Search ID #: Z14090753

Business Debtor Search For:

COCOCO CHOCOLATIERS INC.

Search ID #: Z14090753

Date of Search: 2021-Aug-04

Time of Search: 11:10:19

Registration Number: 15121015415

Registration Type: SECURITY AGREEMENT

Registration Date: 2015-Dec-10

Registration Status: Current

Expiry Date: 2021-Dec-10 23:59:59

Exact Match on: Debtor No: 1

Amendments to Registration

18071102671

Amendment

2018-Jul-11

Debtor(s)

Block

Status

1 COCOCO CHOCOLATIERS INC.
1313 1 STREET SE
CALGARY, AB T2G 5L1

Current

Block

Status

2 CHOCOLATERIE BERNARD CALLEBAUT
1313 1 STREET SE
CALGARY, AB T2G 5L1

Current

Secured Party / Parties

Block

Status

1 NATIONAL LEASING GROUP INC.
1525 BUFFALO PLACE
WINNIPEG, MB R3T 1L9
Phone #: 204 954 9000 Fax #: 204 954 9099

Deleted by
18071102671

Block

Status

2 CWB NATIONAL LEASING INC.
1525 BUFFALO PLACE
WINNIPEG, MB R3T 1L9
Phone #: 204 954 9000 Fax #: 204 954 9099

Current by
18071102671

Search ID #: Z14090753

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	ALL TELEPHONE SYSTEM AND VOIP OF EVERY NATURE OR KIND DESCRIBED IN AGREEMENT NUMBER 2746964, BETWEEN THE SECURED PARTY AND THE DEBTOR, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.	Current

Particulars

<u>Block</u>	<u>Additional Information</u>	<u>Status</u>
1	Purchase Money Security Interest.	Current

Search ID #: Z14090753

Business Debtor Search For:

COCOCO CHOCOLATIERS INC.

Search ID #: Z14090753

Date of Search: 2021-Aug-04

Time of Search: 11:10:19

Registration Number: 17090117338

Registration Type: SECURITY AGREEMENT

Registration Date: 2017-Sep-01

Registration Status: Current

Expiry Date: 2024-Sep-01 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)

Block

Status

1 COCOCO CHOCOLATIERS INC
2ND FLR 2320 2 AVE SE
CALGARY, AB T2E 6J9

Current

Secured Party / Parties

Block

Status

1 WELLS FARGO EQUIPMENT FINANCE COMPANY
1290 CENTRAL PARKWAY W. SUITE 1100
MISSISSAUGA, ON L5C 4R3

Current

Collateral: General

Block

Description

Status

1 ALL GOODS WHICH ARE PHOTOCOPIERS, MULTIFUNCTION DEVICES, PRINTERS, PRODUCTION PRINTERS, FAX MACHINES, PROJECTORS, VIDEO CONFERENCING, INTERACTIVE WHITEBOARDS, SERVERS, AND SOFTWARE MANUFACTURED, DISTRIBUTED, OR SOLD BY RICOH CANADA INC. THE GOODS DESCRIBED HEREIN TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO, AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH THE COLLATERAL OR PROCEEDS THEREOF, AND WITHOUT LIMITATION, MONEY, CHEQUES, DEPOSITS IN DEPOSIT-TAKING INSTITUTIONS, GOODS, ACCOUNTS RECEIVABLE, RENTS OR OTHER PAYMENTS ARISING FROM THE LEASE OF THE COLLATERAL, CHATTEL PAPER, INSTRUMENTS, INTANGIBLES, DOCUMENTS OF TITLE, SECURITIES, AND RIGHTS OF INSURANCE PAYMENTS OR ANY OTHER PAYMENTS AS INDEMNITY OR COMPENSATION FOR LOSS OR DAMAGE TO THE COLLATERAL OR PROCEEDS OF THE COLLATERAL. (REFERENCE NO. 9931780-001) (FOR INTERNAL USE ONLY) (AS MAY BE AMENDED OR UPDATED FROM TIME TO TIME)

Current

Search ID #: Z14090753

Business Debtor Search For:

COCOCO CHOCOLATIERS INC.

Search ID #: Z14090753

Date of Search: 2021-Aug-04

Time of Search: 11:10:19

Registration Number: 18043034209

Registration Type: SECURITY AGREEMENT

Registration Date: 2018-Apr-30

Registration Status: Current

Expiry Date: 2023-Apr-30 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)

Block

Status

1 COCOCO CHOCOLATIERS INC.
2320-2ND AVENUE SE
CALGARY, AB T2E6J9

Current

Secured Party / Parties

Block

Status

1 RCAP LEASING INC.
5575 NORTH SERVICE RD, STE 300
BURLINGTON, ON L7L 6M1

Current

Block

Status

2 RCAP LEASING INC.
300-5575 NORTH SERVICE RD,
BURLINGTON, ON L7L 6M1

Current

Collateral: General

Block

Description

Status

1 ALL OFFICE, COPIER, PRINTER EQUIPMENT FROM TIME TO TIME LEASED BY THE SECURED PARTY TO THE DEBTOR AS DESCRIBED ON LEASES, CONDITIONAL SALES AGREEMENTS AND ANY OTHER FINANCING AGREEMENTS ENTERED INTO BETWEEN THE SECURED PARTY AND THE DEBTOR FROM TIME TO TIME AND ANY PROCEEDS THEREOF, TOGETHER WITH ALL REPLACEMENT PARTS, ACCESSORIES AND ATTACHMENTS.

Current

Result Complete

This is Exhibit "8" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021



A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

July 27, 2021

File No.: 585368-1

Delivered Via Courier
Sent Via E-mail
brianbeck@glbh.com
bbeck@cococoinc.com

PRIVATE & CONFIDENTIAL

Cococo Chocolatiers Inc.
2320 2 Avenue SE
Calgary AB T2E 6J9

Attention: Directors and Officers

To Whom it May Concern:

Re: Obligations of Cococo Chocolatiers Inc. (the "Debtor") to Panterra Mortgage & Financial Corporation Ltd. (the "Lender")

We are counsel to the Lender in connection with the indebtedness owing by the Debtor to the Lender pursuant to:

1. the loans and indebtedness assigned to the Lender pursuant to the Assignment Agreement dated September 15, 2017; and
2. the letter agreement dated September 15, 2017,

(collectively, the "**Credit Documents**").

Reference is also made to:

- (a) General Security Agreement dated October 22, 2010;
- (b) General Security Agreement dated July 3, 2012; and
- (c) General Security Agreement dated September 15, 2017,

(collectively, and together with such other security as may be held by the Lender, the "**Security**", and the Security collectively with the Credit Documents are the "**Loan Documents**").

Pursuant to the Loan Documents, as of July 26, 2021, the Debtor is indebted to the Lender in the amount of \$10,693,597.33 plus all interest, costs (including legal costs on a solicitor and own-client full indemnity basis), and fees, all of which continue to accrue (the "**Indebtedness**").

A portion Indebtedness is payable on demand by the Lender, and with the balance of the Indebtedness having matured, and being presently due and payable.

Pursuant to the Loan Documents, demand is hereby made upon the Debtor for payment of the Indebtedness.

The Indebtedness will continue to accrue interest at the agreed rates and to accrue costs and fees, all of which the Debtor is responsible for, until payment of all amounts owing is received. Payment may be made by providing either a certified cheque or bank draft to the following address:

Panterra Mortgage & Financial Corporation Ltd.
c/o Dentons Canada LLP, in Trust
1500-850 2 Street SW
Calgary, AB T2P 0R8
Attention: David W. Mann, Q.C.

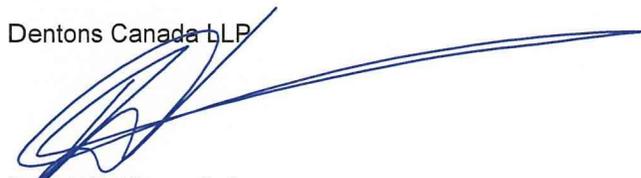
If full payment as set forth above is not received by close of business on August 6, 2021 the Lender will take whatever steps it deems appropriate to seek repayment of such amounts. To this end we enclose for service upon the Debtor a Notice of Intention to Enforce Security ("**NOI**") in accordance with Section 244 of the *Bankruptcy and Insolvency Act* (Canada). If the Debtor is prepared to waive the ten day notice period, please provide consent to early enforcement of the Lender's security by executing the consent and waiver attached to the NOI.

Please note that the Lender does not waive any defaults and reserves the right to exercise all remedies available to it under the Loan Documents or otherwise at law and the Lender reserves its rights to proceed against the Debtor: (a) prior to the time stipulated above in the event that it determines that its position is further jeopardized; and (b) any time, or from time to time, after any dates stipulated above have passed, and in either case without the necessity of serving a new demand for payment.

If you have any questions, please contact the undersigned.

Yours very truly,

Dentons Canada LLP



David W. Mann, Q.C.
Partner

DWM/ric

Enclosure

FORM 86

Notice of Intention to Enforce a Security
(Rule 124)

To: Cococo Chocolatiers Inc., an insolvent person

Take notice that:

1. Panterra Mortgage & Financial Corporation Ltd., a secured creditor, intends to enforce its security on the insolvent person's property described below:
 - (a) all of the insolvent person's personal property;
 - (b) all of the insolvent person's real property; and
 - (c) all other property of the insolvent person.
2. The security that is to be enforced is the following:
 - (a) General Security Agreement dated October 22, 2010;
 - (b) General Security Agreement dated July 3, 2012; and
 - (c) General Security Agreement dated September 15, 2017.
3. The total amount of indebtedness secured by the security is, as of July 26, 2021, \$10,693,597.33 plus all interest, costs (including legal costs on a solicitor and its own client full indemnity basis), and fees, all of which continue to accrue.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

Dated at Calgary, Alberta, this 26th day of July, 2021.



Per: David W. Mann, Q.C.
Dentons Canada LLP, Solicitors for
Panterra Mortgage & Financial
Corporation Ltd.

CONSENT AND WAIVER

WE THE UNDERSIGNED hereby:

1. Acknowledge receipt of the Notice herein;
2. Waive the ten days of notice required under Section 244 of the *Bankruptcy and Insolvency Act* (Canada); and

Consent to the immediate enforcement by the Secured Party of the Security referred to herein.

DATED this _____ day of _____, 2021.

COCOCO CHOCOLATIERS INC.

Per: _____
Authorized Signatory

Name: _____

Title: _____

I have authority to bind the corporation.

This is Exhibit "9" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021

Adam Palmer

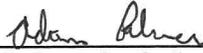
A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

	Aug 2-14	Aug 15-21	Aug 22-28	Aug 29-Sept 4	Sept 5-11	Sept 12-18	Sept 19-25	Sept 26- Oct 2	Oct 3-9	Oct 10-16
1st Street S.E. (200)	\$6,985.25	\$6,985.25	\$6,985.25	\$6,988.40	\$6,988.40	\$6,988.40	\$6,988.40	\$6,988.40	\$6,988.11	\$6,988.11
Bankers Hall	\$1,845.54	\$1,845.54	\$1,845.54	\$1,879.74	\$1,879.74	\$1,879.74	\$1,879.74	\$1,879.74	\$1,719.20	\$1,719.20
Signal Hill (325)	\$5,731.69	\$5,731.69	\$5,731.69	\$5,838.19	\$5,838.19	\$5,838.19	\$5,838.19	\$5,838.19	\$6,312.36	\$6,312.36
South Centre (375)	\$6,469.94	\$6,469.94	\$6,469.94	\$5,781.19	\$5,781.19	\$5,781.19	\$5,781.19	\$5,781.19	\$10,173.51	\$10,173.51
Victoria B/M (185)	\$7,207.68	\$7,207.68	\$7,207.68	\$6,706.28	\$6,706.28	\$6,706.28	\$6,706.28	\$6,706.28	\$6,983.95	\$6,983.95
Corporate Sales/Other	\$149.18	\$149.18	\$149.18	\$144.91	\$144.91	\$144.91	\$144.91	\$144.91	\$98.17	\$98.17
Wholesale Sales	\$4,579.01	\$4,579.01	\$4,579.01	\$5,783.09	\$5,783.09	\$5,783.09	\$5,783.09	\$5,783.09	\$8,879.91	\$8,879.91
Wholesale Sales - Fr	\$4,349.85	\$4,349.85	\$4,349.85	\$4,013.52	\$4,013.52	\$4,013.52	\$4,013.52	\$4,013.52	\$21,592.93	\$21,592.93
CHOCOLATERIE BERNARD CALLEBAUT - EDM S										
CHOCOLATERIE BERNARD CALLEBAUT - WHITEROCK										
CHOCOLATERIE BERNARD CALLEBAUT - WINNIPEG (KCD)										
Total Sales	\$37,278.12	\$37,278.12	\$37,278.12	\$37,085.30	\$37,085.30	\$37,085.30	\$37,085.30	\$37,085.30	\$61,788.14	\$61,788.14
Direct material requirements for production	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18
Factory Consumables	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15
Factory Consumables - Fr	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Shipping & Warehouse	\$0.00	\$0.00	\$0.00	\$1,805.80	\$1,805.80	\$1,805.80	\$1,805.80	\$1,805.80	\$0.00	\$0.00
HO Salary	\$0.00	\$0.00	\$0.00	\$6,413.47	\$6,413.47	\$6,413.47	\$6,413.47	\$6,413.47	\$0.00	\$0.00
Retail Salaries	\$0.00	\$0.00	\$0.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$0.00	\$0.00
Web Salaries	\$0.00	\$0.00	\$0.00	\$2,300.00	\$2,300.00	\$2,300.00	\$2,300.00	\$2,300.00	\$0.00	\$0.00
Seasonal Workers (all areas)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
GBH Fee-IT, Payroll, Act, Branding	\$0.00	\$0.00	\$0.00	\$28,704.72	\$28,704.72	\$28,704.72	\$28,704.72	\$28,704.72	\$0.00	\$0.00
Retail Store Operating Costs	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85
Total	\$0.00	\$0.00	\$0.00	\$33,318.00	\$33,318.00	\$33,318.00	\$33,318.00	\$33,318.00	\$0.00	\$0.00
1st Street Office	\$0.00	\$0.00	\$0.00	\$3,842.36	\$3,842.36	\$3,842.36	\$3,842.36	\$3,842.36	\$0.00	\$0.00
1st Street	\$0.00	\$0.00	\$0.00	\$5,447.27	\$5,447.27	\$5,447.27	\$5,447.27	\$5,447.27	\$0.00	\$0.00
1st Street deferred rent	\$0.00	\$0.00	\$0.00	\$6,458.11	\$6,458.11	\$6,458.11	\$6,458.11	\$6,458.11	\$0.00	\$0.00
Bankers Hall (includes CAM refund)	\$0.00	\$0.00	\$0.00	\$6,461.65	\$6,461.65	\$6,461.65	\$6,461.65	\$6,461.65	\$0.00	\$0.00
Bankers Hall (includes rent reduction catchup)	\$0.00	\$0.00	\$0.00	\$8,002.32	\$8,002.32	\$8,002.32	\$8,002.32	\$8,002.32	\$0.00	\$0.00
Signal Hill	\$0.00	\$0.00	\$0.00	\$11,176.73	\$11,176.73	\$11,176.73	\$11,176.73	\$11,176.73	\$0.00	\$0.00
Southcentre	\$0.00	\$0.00	\$0.00	\$4,580.11	\$4,580.11	\$4,580.11	\$4,580.11	\$4,580.11	\$0.00	\$0.00
Victoria B/M	\$0.00	\$0.00	\$0.00	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$0.00	\$0.00
HO Operating Costs	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10
Cash Balance - August 8 2021	\$11,148.85	\$41,170.42	\$11,148.85	-\$161,476.41	\$10,956.03	-\$47,163.74	\$10,956.03	-\$11,326.30	\$35,658.87	\$24,460.00
Outstanding AP	\$423,475.90	\$306,624.75	\$259,454.33	\$770,603.18	\$109,126.77	\$120,882.80	\$72,719.56	\$83,675.59	-\$47,650.71	-\$1,991.85
Payment to BPP Trust Account	-\$78,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Repayment Panterra Mortgage	\$0.00	\$0.00	\$0.00	\$109,126.77	\$120,882.80	\$72,719.56	\$83,675.59	-\$47,650.71	-\$11,991.85	-\$36,452.25
Total Cash Balance	\$306,624.75	\$259,454.33	\$270,003.18	\$109,126.77	\$120,882.80	\$72,719.56	\$83,675.59	-\$47,650.71	-\$11,991.85	-\$36,452.25

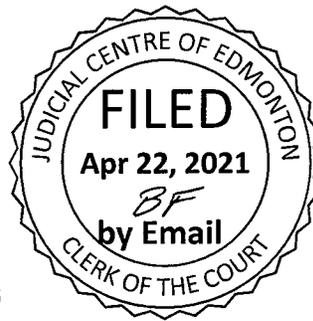
Oct-17-23	Oct-26-31	Oct-31-Nov 6	Nov 7- Nov 13	Nov 14- 20	Nov 21- 27	Nov 28- Dec 4	Dec 5- 11	Dec 12-18	Dec 19- 25	Dec 26- 31
\$6,028.11	\$6,028.11	\$10,701.42	\$10,701.42	\$10,701.42	\$10,701.42	\$14,349.62	\$46,877.49	\$53,573.76	\$55,745.76	\$5,694.42
\$1,719.20	\$1,719.20	\$5,708.19	\$5,708.19	\$5,708.19	\$5,708.19	\$14,349.62	\$29,551.18	\$20,782.06	\$8,099.08	\$46.63
\$6,312.36	\$6,312.36	\$11,148.39	\$11,148.39	\$11,148.39	\$11,148.39	\$16,138.46	\$51,538.14	\$54,500.87	\$56,472.13	\$7,394.11
\$10,173.51	\$10,173.51	\$14,644.14	\$14,644.14	\$14,644.14	\$14,644.14	\$14,165.28	\$37,575.84	\$38,598.21	\$37,848.03	\$5,178.33
\$6,983.95	\$6,983.95	\$11,685.40	\$11,685.40	\$11,685.40	\$11,685.40	\$11,863.96	\$26,589.26	\$39,553.87	\$48,344.63	\$4,222.07
\$98.17	\$98.17	\$4,146.64	\$4,146.64	\$4,146.64	\$4,146.64	\$18,699.00	\$18,699.00	\$18,699.00	\$18,699.00	\$0.00
\$8,879.91	\$8,879.91	\$30,869.04	\$30,869.04	\$30,869.04	\$30,869.04	\$50,311.90	\$50,311.90	\$50,311.90	\$50,311.90	\$25,155.95
\$21,592.93	\$21,592.93	\$51,499.39	\$51,499.39	\$51,499.39	\$51,499.39	\$40,336.08	\$40,336.08	\$40,336.08	\$40,336.08	\$20,168.05
\$61,783.14	\$61,783.14	\$140,402.61	\$140,402.61	\$140,402.61	\$140,402.61	\$182,154.20	\$301,528.89	\$335,362.75	\$315,487.61	\$67,771.56
\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18	\$8,783.18
\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15	\$7,152.15
\$1,805.80	\$1,805.80	\$1,805.80	\$1,805.80	\$1,805.80	\$1,805.80	\$0.00	\$1,805.80	\$0.00	\$1,805.80	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,413.47	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,413.47	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$16,000.00	\$0.00	\$16,000.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,600.00	\$0.00	\$4,600.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$15,000.00	\$0.00	\$20,000.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$28,704.72	\$2,403.85	\$0.00	\$0.00	\$0.00
\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85	\$2,403.85
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$33,319.00	\$0.00	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,500.00	\$0.00	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,458.11	\$0.00	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,461.65	\$0.00	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$8,002.32	\$0.00	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$11,176.73	\$0.00	\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,580.11	\$0.00	\$0.00	\$0.00	\$0.00
\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10	\$7,790.10
\$35,658.87	-\$34,460.40	\$5,607.44	\$39,154.07	\$114,273.34	\$38,854.07	\$47,659.03	\$192,880.35	\$29,233.48	\$306,828.07	\$41,642.20
-\$36,452.25	-\$793.38	-\$35,253.78	-\$20,646.35	\$9,507.72	\$123,781.06	\$160,635.12	\$208,294.16	\$401,274.51	\$200,507.99	\$907,447.06
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
-\$793.38	-\$35,453.78	-\$28,646.35	\$9,507.72	\$123,781.06	\$160,635.12	\$208,294.16	\$401,274.51	\$700,507.99	\$907,447.06	\$949,089.35

This is Exhibit "10" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021



A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law



Form 10
[Rule 3.25]

COURT FILE NUMBER 2003 16696

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS DKM HOLDINGS INC., KEN FREELAND, MIKE
FREELAND, 411913 ALBERTA LTD., 413772
ALBERTA LTD. and 413773 ALBERTA LTD.

DEFENDANTS COCOCO CHOCOLATIERS INC., BRIAN BECK, KEN
BLACK, 261820 ALBERTA LTD. and INSTANT
POTATOES HOLDINGS LTD.

DOCUMENT **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

OGILVIE LLP
1400, 10303 Jasper Avenue
Edmonton AB T5J 3N6
Attention: Imran Qureshi
Phone: 780.429.6204
Fax: 780.429.4453
File No.: 64490.1
**Service will be accepted by delivery or fax. No
other form of service will be accepted.**

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

BACKGROUND

1. The plaintiff, DKM Holdings Inc. ("DKM"), is a business duly incorporated pursuant to the laws of Alberta.
2. The plaintiff, Ken Freeland ("Ken"), is an individual residing in the City of Edmonton, in the Province of Alberta.
3. The plaintiff, Mike Freeland ("Mike"), is an individual residing in the City of Edmonton, in the Province of Alberta.

4. The plaintiff, 411913 Alberta Ltd. ("913"), is a business duly incorporated pursuant to the laws of Alberta.
5. The plaintiff, 413772 Alberta Ltd. ("772"), is a business duly incorporated pursuant to the laws of Alberta.
6. The plaintiff, 413773 Alberta Ltd. ("773" and collectively referred to with 913 and 772 as the "Dealership Stores"), is a business duly incorporated pursuant to the laws of Alberta.
7. Ken and Mike are directors in DKM and all the plaintiff parties are herein referred to collectively as the "Plaintiffs".
8. The defendant, Cococo Chocolatiers Ltd. ("Cococo"), is a business duly incorporated pursuant to the laws of Alberta.
9. Cococo operates as a chocolate manufacturer and supplier and in addition, operates retail stores in western Canada, as well as a retail website and a toll-free number for ordering products.
10. The defendant, Brian Beck ("Beck"), is an individual residing in Calgary, in the Province of Alberta.
11. The defendant, Ken Black (referred to herein as "Black" and collectively with Beck as the "Individual Defendants"), is an individual residing in Calgary, in the Province of Alberta.
12. The Defendant, 261820 Alberta Ltd. ("261"), is a business duly incorporated pursuant to the laws of Alberta. 261 is owned and operated by Black
13. The defendant, Instant Potatoes Holdings Ltd. (referred to herein as "IPH" and collectively with Cococo, 261, Black and Beck as the "Defendants"). Beck and Black are both directors in IPH.
14. Beck, Black, and Ken are all currently directors in Cococo.
15. As best known to the Plaintiffs, DKM and IPH are currently the shareholders in Cococo.

Historical Operations:

16. In or around 2010, Cococo or representatives of the same, entered into discussions for the purchase of assets from Chocolaterie Bernard Callebaut Partnership and/or Chocolaterie Bernard Callebaut Ltd. (collectively "Bernard Callebaut") as a result of a receivership proceedings.

17. Prior to the receivership, Bernard Callebaut had entered into dealership agreements (the "Dealership Agreement") with various participating stores, including the Dealership Stores, for the production, supply and licensing of chocolate products.
18. The product produced by Bernard Callebaut's is of a unique quality and standard that there is value in the ability to being able to offer said product. This product is not replaceable.
19. Subsequent to the receivership proceedings being commenced, the Defendants, or any of them, expressed interest in a group putting together an offer to purchase the assets of Bernard Callebaut as part of the receivership process.
20. Beck, who previously acted as corporate counsel for Bernard Callebaut, made express representations to the participating stores which sold Bernard Callebaut's product and whom were parties to the Dealership Agreement, including the Dealership Stores, as well as the Trustee for Bernard Callebaut, that the new owner would be assigned the Dealership Agreements and honor all existing Dealership Agreements moving forward.
21. Given the value of this representation, the offer to purchase Bernard Callebaut's assets by the new ownership group was supported by the participating stores, including the Dealership Stores, as well as the Trustee, and was sale was ultimately approved by the Court.
22. Cococo was incorporated for the purpose of purchasing Bernard Callebaut's assets and for the purposes of operating a chocolate manufacturing and retail business. As stated, it was a key term of DKM providing capital for the purchase of Bernard Callebaut's assets that the Dealership Agreements would remain in full force and effect.
23. Based on the above express representations regarding the Dealership Agreements, as well as other representations as may be proven at trial, the Plaintiffs through their corporate entity, as well as Black through his own corporate entity, put up the initial investment, in equal fifty percent (50%) portions. Specifically, DKM and the Black, through IPH, invested three million one hundred thousand (\$3,100,000) respectively into Cococo's initial operations.
24. In respect to the above initial investments, Beck did not provide any capital but was to be responsible for managing the operations of Cococo. In addition, Black had experience in corporate governance as a corporate lawyer and as such, his expertise and experience were valuable and would be relied on by the other parties.
25. Once the initial investment of the parties, DKM and IPH, was paid back in full, Beck would be provided an equal ownership interest in Cococo with each party, DKM, IPH and Beck or his corporate entity, holding an one-third each in Cococo respectively.

26. As discussed above, Bernard Callebaut had entered into Dealership Agreements with the participating stores, including the Dealership Stores, governing the licensing, supply and retail of chocolate products to the various stores, including the Dealership Stores.
27. Further, as a result of its representations in the receivership proceedings, as well as to the participating stores, including the Dealership Stores, directly, Cococo assumed the rights and responsibilities held under the Dealership Agreement.
28. The Dealership Agreement set out the basic rights and obligations between Cococo and the participating stores, including the Dealership Stores, including but not limited to:
- a. Cococo would supply the product to the participating stores in a timely manner during the term of the same;
 - b. Supply was guaranteed pursuant to the terms of the Dealership Agreement;
 - c. The participating stores would be granted exclusive territory for selling Cococo products;
 - d. Cococo will identify and promote the participating locations on its website;
 - e. If an order is made using the toll-free number or website within the Expansion Territory or Referral Territory (as defined in the Dealership Agreement), Cococo will accept the customer's order and then if there was a participating store that is the closest to the customer, Cococo will offer the Dealership Store the opportunity to complete the sale.
 - f. The participating stores may, upon reasonable notice, inspect Cococo's records to make sure they are in compliance with Article 6.5(g);
 - g. If Cococo's operations are affected by matters related to the force majeure clause but does not completely interrupt its ability to supply Product (as defined in the Dealership Agreement), Cococo agrees that it will allocate such Product as may be available on an equitable basis among all participating stores; and
 - h. Such further and other particulars as may be proven at trial.
29. At all material times, the Plaintiffs and the participating stores, including the Dealership Stores, operated as if the Dealership Agreements were still in effect.
30. In or about March 26, 2011, Beck made representations to Mike that there was a store opportunity in the Chinook Mall, in Calgary, Alberta. It was discussed that this store would be owned by Black, or an affiliated corporation, but would be operated by Cococo. The reason provided was that Cococo was not in a position to financially commit itself and as such, a separate entity would own and Cococo would simply operate the store.

31. On or about June of 2012, Cococo went through a corporate restructuring due to financial hardships and a need for an injection of finances.

32. As a result the corporate shareholder structure was revised as follows:

- a. 261 will convert its Acquisition Debt into preferred Class B Series 1 shares in Cococo;
- b. IPH would purchase another 200 Common Shares, for a total of 400 Common Shares;
- c. DKM will convert the DKM Acquisition Debt into Class B Series 2 shares in Cococo; and
- d. Such further and other particulars as may be proven at trial.

33. In consideration of the above reorganizing, Black, through his corporate entities, loaned Cococo additional capital, the amount of which is not currently known by the Plaintiffs but it is believed to be approximately seven million dollars (\$7,000,000).

34. As part of the restructuring, it was represented to, and relied on by, the Plaintiffs that Cococo would conduct regular directors meetings.

Misconduct and Breaches of Duties:

35. Almost immediately after incorporating Cococo, the Defendants, or either of them, started acting in a manner of self-interest and in conflict with their duty of care.

36. As discussed above, in or around 2011, a store became available for retail space in the Chinook Mall in Calgary, Alberta. It was understood by all parties that Black would open his own retail store in the area and enter into a similar dealership agreement with Cococo for the licensing and retail of Cococo's products as other participating stores had.

37. Notwithstanding this understanding, the Defendants, or either of them, unilaterally purchased and operated the store on behalf of Cococo. This decision was made without consulting the Plaintiffs.

38. In or about 2013, the Individual Defendants forced Mike to execute various documents without have a chance to properly review the same. One such document was a release of director actions by Cococo. No explanation or reason for these requests was provided and Mike relied on the representations of Beck as a corporate lawyer that all these documents were necessary.

39. In addition, the Individual Defendants have repeatedly made unilateral material decisions without seeking the input of the individual Plaintiffs. In fact, Cococo has routinely been operated in a closed door capacity with only Beck and/or Black having input into its operations and management.

40. The pertinent Plaintiffs often have not been provided any notice of material decisions being made despite repeated attempts to be involved in the process. Some of these unilateral decisions made by the Individual Defendants include, but are not limited to:

- a. Shutting down operations and supply during the COVID-19 emergency without proper notice;
- b. Opening and running retail stores on behalf of Cococo;
- c. Altering the compensation model for Dealership Stores, as well as unilaterally altering other key terms of the same without notice;
- d. Entering into "sweetheart" deals and charging excessive management fees without authorization or notice;
- e. Fundamentally changing manner of operations without notice or authority; and
- f. Such other particulars as may be proven at trial.

41. In addition to the above conduct, Cococo has been operated without calling required directors and/or shareholder meetings despite attempts by the Plaintiffs to conduct the same.

42. The Defendants have routinely failed to provide key financial information to the Plaintiffs despite repeated requests for the same.

43. As a result of the above and other conduct, Individual Defendants have acted in a manner in a harmful and wrongful manner in performance of their duties, including directorial duties, which includes but is not limited to:

- a. Entering into and operating retail stores on behalf of Cococo;
- b. Failing to provide financial information in a timely manner, or at all;
- c. Failing to duly call director and shareholder meetings;
- d. Failing to notify other directors of material changes to the operations of Cococo;
- e. Acting in manner of self-dealing and self-interest, contrary to the interests of Cococo and the Plaintiffs;

- f. Failing to disclose conflicts of interest;
- g. Failing to disclose material contracts or transactions;
- h. Unilaterally misappropriating sales and clients from Dealership Stores;
- i. Acting or omitting to act in a manner that was detrimental to Cococo's business operations;
- j. Gross or negligent mismanagement;
- k. Failing to acting in a prudent and reasonable manner on behalf of Cococo;
- l. Acting in manners that conflicts with their obligations and duties to Cococo; and
- m. Such further particulars as may be proven at trial.

(the "Wrongful Conduct")

44. As a result of the aforementioned conduct, including the Wrongful Conduct, the Plaintiffs have suffered losses and damages as will be proven at trial.

Breach of Dealership Agreement:

45. The participating stores, including the Dealership Stores, entered into the Dealership Agreements which dealt with the supply and licensing of product by Cococo to the participating stores.

46. It was an express or implied term of the Dealership Agreement, *inter alia*:

- a. Cococo would supply products to the participating stores in a timely manner;
- b. The participating stores would be entitled to revenues generated from any sales that occurred in their respective geographical jurisdictions, including sales made via online orders or through the toll-free number;
- c. Order would be processed in a timely and efficient manner;
- d. If operations are curtailed but not completely interrupted, Cococo would continue to supply the participating stores on an equitable basis;
- e. Unilaterally altering material terms of the participating stores without consent;
and
- f. Such other particulars as may be proven at trial.

47. Until recently all participating stores, including the Dealership Stores, were acting under the express understanding and representation that the Dealership Agreements were in force and effect, with one of the key terms of this agreement being that the participating stores would be entitled to compensation of any online or telephone sales made in their jurisdiction; this understanding was based on a historical pattern of the same.
48. As a result of the COVID-19 pandemic, many of the sales generated by the participating stores, including the Dealership Stores, relate to online or telephone orders and as such this has caused significant financial harm.
49. In addition, in or around April of 2020, Cococo, on the directions of Individual Defendants, or either of them, unilaterally stopped shipping products to the participating stores, including the Dealership Stores, without warning. Notwithstanding this, Cococo continued producing product for its own stores and those of the Defendants.
50. The Defendants, or either of them, were aware that several of the participating stores, including the Dealership Stores, relied solely on Cococo products for their businesses and that the unilateral without notice cessation of supplies would have a significant adverse impact on their ability to continue operating.
51. Notwithstanding the cessation of supplying the Dealership Stores, Cococo continued to sell products online and over the phone and further, continued to operate corporately owned stores and provide products to the same.
52. As set out above, on or around September of 2019, Cococo on the directions from Individual Defendants, or either of them, unilaterally stopped compensating Dealership Stores for orders made online and over the phone from their respective geographical jurisdiction. No notice or
53. As a result of the above conduct as further set out herein, the Defendants, or any of them, breached their obligations under the Dealership Agreements by, *inter alia*:
- a. Aggressively marketing into the participating stores jurisdiction;
 - b. Usurping revenues on all online and telephone orders by unilaterally disregarding previous sales honored and attributed to participating stores in the respective geographical jurisdiction the orders were placed;
 - c. Failing to honor orders in a timely manner, or at all;
 - d. Failing to notify the participating stores of any material changes to the Supply Agreement; and
 - e. Such further and other particulars and may be proven at trial.

54. As a result of the aforementioned conduct, the Defendants, or any of them, have breached their obligations under the Supply Agreement.

55. As a result of the above breaches and such further particulars as may be proven at trial, the Dealership Stores have suffered significant damages as will be proven at trial from lost sales and goodwill and reputation as a result of being unable to meet product demands.

Oppression:

56. The Plaintiffs, in their capacity of as shareholders, creditors and a directors of Cococo, as well as well as party to the Supply Agreement, had reasonable expectations as to the Defendants, or any of them, would conduct themselves in respect to the management of corporation. Those expectations include, *inter alia*:

- a. The Plaintiffs would be involved in the ongoing operations of Cococo and kept up-to-date on any and all material decisions of the business;
- b. The Plaintiffs would be promptly advised of any proposed material changes and proper resolutions would be passed to effect the same;
- c. The Plaintiffs would be provided financial information as required under the law;
- d. That any material changes to the Supplier Agreement would be discussed and mutually agreed to by the respective parties;
- e. The Individual Defendants, or either of them, would act in the best interests of Cococo, including basing any business decision on the best interests of Cococo and not personal profit or gain;
- f. Not act in a manner which damages Cococo's good will and business relations;
- g. The Individual Defendants, or either of them, would manage in accordance with generally accepted corporate governance practices;
- h. The Individual Defendants, or either of them, would manage in accordance with his statutory obligations under the *Business Corporations Act*, RSA 2000 c. B-9 (the "*Business Corporations Act*"); and
- i. Such further other particulars as may be proven at trial.

57. The Defendants, or any of them, conduct as set out here, including the Wrongful Conduct, have breached the reasonable expectations of the Plaintiffs and have act oppressive and unfairly prejudicial to the Plaintiffs, and unfairly disregarded the Plaintiffs' interests. This continuing course of oppressive conduct includes, but are not limited to:

- a. Usurping business opportunities;
- b. Self-dealing and acting in a manner that conflicts with Cococo's and other parties best interests;
- c. Failing to properly oversee management of Cococo, including not seeking proper authorization through meetings and resolutions;
- d. Misappropriating funds from the Dealership Stores;
- e. Damaging the good will of Cococo;
- f. Gross or negligent mismanagement;
- g. Failing to disclose material contracts or transactions;
- h. Unilaterally reduction Mike and Ken's role in Cococo;
- i. Failing to provide adequate, or any, financial information to Mike and Ken as required;
- j. Failing to operate Cococo in a manner which does not conflict with its best interests and those of the directors;
- k. Promptly notify Mike and Ken of any material changes in the operations of Cococo; and
- l. Such of particulars as may be proven at trial.

58. As a result, the Defendants, or any of them, have acted in a manner which is oppressive and unfair to the interest of the Plaintiffs expectations.

59. Further, as a result of the conduct alleged herein, including the Wrongful Conduct, and such other conduct as may be proven at trial, the Defendants, or any of them, have breached the reasonable expectations of the Plaintiffs, and as such the Defendants, or any of them, have been oppressive and unfairly prejudicial within the meaning of the *Business Corporations Act*.

60. As a result of these oppressive acts and statutory breaches, the Defendants, or any of them, have caused serious harm and prejudice to the Plaintiffs.

61. Further, or in addition to the above oppressive conduct, Individual Defendants, or either of them, through their personal conduct as directors of Cococo, have acted in their capacities thereunder in a manner that is prejudicial and oppressive to the Plaintiffs and unfairly disregards the Plaintiffs' interests and reasonable expectations.

62. As a result, it is fit and fair to hold the Individual Defendants, or either of them, personally liable for any and all damages that have occurred as a result of the oppressive and prejudicial conduct and the Individual Defendants, or either of them, have misused their corporate control as director for their own improper purposes.

63. As a result of these oppressive acts and statutory breaches, the Defendants, or any of them, have caused serious harm and prejudice to the Plaintiffs resulting in significant damages in an amount which will be proven at trial.

Leave for Derivative Claim:

64. In the further, the Individual Defendants, or either of them, have failed to act in the best interests of Cococo and has breached their duties of care, loyalty and fiduciary duties to Cococo.

65. Specifically, the Individual Defendants, or either of them, have used their powers as a directors in Cococo to carry on Cococo's business in a manner that is deferential to their own personal or individual companies interests at the expense of Cococo's best interests.

66. The Individual Defendants, or either of them, have made several business decisions as a directors in Cococo which offend the business judgment rule, lack commercial sense, and were ultimately driven by a disregard for Cococo's continued success and personally motivated.

67. As a result of the various breaches of their director and fiduciary duties to Cococo, the Individual Defendants, or either of them, have caused significant damages and loss to Cococo in such amount as will be proven at trial.

68. As a result, the Plaintiffs seeks leave of this Honorable Court to commence an action on behalf of Icon against the Individual Defendants.

69. The Plaintiffs specifically plead section 240 of the *Business Corporation Action*, and seek leave to bring a derivative action in the within Claim on behalf of Cococo against the .

70. The Plaintiffs plead herein the provisions of the *Business Corporations Act*, and the Judicature Act, R.S.A. 2000, c. J-2.

Conspiracy:

71. As is best known to the Plaintiffs, between approximately 2010 and to today's date, the Individual Defendants, or any of them, participated in conspiracies against the Plaintiffs.

72. Specifically as a result of ongoing operations, it has become clear the Individual Defendants came to an understanding, arrangement or agreement and carried out a plan, either lawful or unlawful, the primary purpose of which was to:

- a. Improperly dilute the Plaintiff's involvement in Cococo, including diluting their corporate shares;
- b. Act in a concerted effort to operate Cococo in a manner that benefits their own personal interests at the expense of the Plaintiffs;
- c. Improperly interfere with the operation of DKM, and other Dealership Stores, by affecting its supply of products and revenues generated from the same as well as from online and toll-free sales in their respective jurisdictions; and
- d. Such further and other particulars as may be proven at trial.

(the "Conspiracy")

73. The predominant purpose of the Conspiracy was to cause injury to the Plaintiffs.

74. In the alternative, the Individual Defendants conducted the Conspiracy through unlawful means directed at the Plaintiffs, the result of which the Individual Defendants knew or ought to have known that injury was likely to occur to the Plaintiffs.

75. As a result of these conspiratorial acts, the Plaintiffs have suffered damages and losses and continue to suffer on going loss and damage in such amount as may be proven at trial.

Disgorgement of Profit and/or Constructive Trust:

76. As a result of the Wrongful Conduct, specifically the usurping of the profits from the Supply Agreement, the Defendants, or any of them, profited substantially from this breach of duty resulting in a correlated loss to the Dealership Stores.

77. As a result, the Dealership Stores are entitled to a disgorgement of the profits that are result of the Defendants breach of fiduciary duty or alternatively, their duty of care, to the Dealership Stores.

78. Further or in the alternative, the Dealership Stores are entitled to a constructive trust over any and all profits and assets gained by the Defendants as a result of the Wrongful Conduct and further breaches.

REMEDY SOUGHT

79. The Plaintiffs seek an order against the Defendants, or any of them, as follows:

- a. An order allowing the Plaintiffs to continue the within action on behalf of Cococo as a derivative action, against the Defendants *nunc pro tunc*.

- b. A declaration that Beck and Black have breached their fiduciary duties and statutory duty to the Plaintiffs and/or Cococo;
- c. An order declaring that as a result of Defendants exercise of their powers and intervention in the affairs of Plaintiffs, they have acted in an oppressive or unfairly prejudicial manner, or unfairly disregarded the interests of the Plaintiffs contrary to the *Business Corporations Act*;
- d. An ordering requiring the Defendants to produce all corporate records as defined in section 21 of the Business Corporation Act;
- e. An interim order pursuant to the *Business Corporations Act*, RSA 2000 removing Beck and Black as directors and officers of Cococo;
- f. An interlocutory and permanent injunction preventing Beck and Black from acting in an oppressive manner;
- g. Order liquidating and selling the business, or alternatively, an order requiring the repurchase of the Plaintiffs interest in the business;
- h. An accounting and tracing order on any and all profits from Cococo;
- i. An accounting and disgorgement of any and all profits and other revenues earned by the Defendants as a result of the Defendants Wrongful Conduct and other conduct as particularized in the Claim;
- j. Further, or in the alternative, a declaration that the Dealership Stores have a constructive trust over any and all property, profits, rights and benefits the Defendants have now or may have related to the Defendants breach of the Supply Agreement;
- k. Damages for loss of profits in an amount to be proven at trial.
- l. Damages for the breach of the Dealership Agreements in the amount as will be proven at trial against the Defendants, specifically in respect to the misappropriated funds, or such other amount as determined by the Court.
- m. General and Special Damages, jointly and severally against the Defendants in an amount to be determined at trial.
- n. Punitive and exemplary damages in the amount of \$100,000.00 or such other amount as will be proven at trial.
- o. Interest pursuant to the *Judgment Interest Act*, RSA 2000.
- p. Costs on a solicitor and own client full indemnity basis.
- q. Such other and further relief as this Honorable Court deems just and appropriate.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

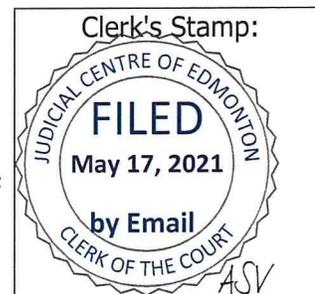
2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

COURT FILE NUMBER 2003-16696
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFFS DKM HOLDINGS INC., KEN FREELAND, MIKE FREELAND, 411913 ALBERTA LTD., 413772 ALBERTA LTD. and 413773 ALBERTA LTD.
DEFENDANTS COCOCO CHOCOLATIERS INC., BRIAN BECK, KEN BLACK, 261820 ALBERTA LTD. and INSTANT POTATOES HOLDINGS LTD.
DOCUMENT **STATEMENT OF DEFENCE**
PARTY FILING THIS DOCUMENT COCOCO CHOCOLATIERS INC.



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Burnet, Duckworth & Palmer LLP
2400, 525 – 8 Avenue SW
Calgary, Alberta T2P 1G1
Lawyer: **Sydney R. Black**
Phone: (403) 260-0104
Fax: (403) 260-0332
File No. 69832-21

Introduction

1. In 2010, the Plaintiff, DKM Holdings Ltd. (**DKM**), led by Mike Freeland (**MF**), made what has proved to be an unsuccessful minority investment in the fine chocolate business owned and operated by the Defendant, Cococo Chocolatiers Inc. (**Cococo**). For the past decade, despite the good faith and best efforts of experienced management, Cococo has struggled, and all of its investors have, unfortunately, lost money. Across that decade of activity, DKM, MF, and MF's brother, Ken Freeland (**KF**), have participated only fitfully in Cococo's management. They have acted exclusively to advance their own self-interest and, in general, have failed to learn or to appreciate the basic financial realities of the investment they chose to make.

2. With the onset of the novel coronavirus pandemic in 2020 (the **Pandemic**), at long last Cococo found itself financially unable to continue its business on an uninterrupted basis. Operations were paused while a path forward was analyzed. When that pause in Cococo's operations disrupted supply to the Plaintiffs' independent fine chocolate retail business located in Edmonton, Alberta (the **Edmonton Business**), DKM, MF, and KF became suddenly acutely interested in the business and management of Cococo. They did not, however, respond to Cococo's commercial emergency by helping support Cococo's recovery efforts, or by otherwise fulfilling their duties to the corporation. Instead, they have undertaken every effort to disrupt Cococo's business even further, making baseless accusations and bringing forward this litigation that has absolutely no foundation. There is no merit to any of the Plaintiffs' allegations against Cococo and this Action should be dismissed in its entirety.
3. Unless otherwise admitted, Cococo denies each and every allegation against it and instead relies on the recitation of facts outlined in this Statement of Defence.

Admissions

4. Cococo admits its corporate status as pleaded at paragraph 8 of the Amended Statement of Claim.
5. Cococo admits that KF, Kenneth Black (**KB**) and Brian Beck (**BB**) are directors of Cococo as pleaded at paragraph 14 of the Amended Statement of Claim.
6. Cococo admits the description of its business at paragraph 9 of the Amended Statement of Claim.
7. Cococo admits that a now-bankrupt business, Chocolaterie Bernard Callebaut Partnership (**CBCP**), had entered into various dealership agreements (the **CBCP Dealership Agreements**) with dealers of its products, including the Edmonton Business, some time prior to 2010, as pleaded at paragraph 17 of the Amended Statement of Claim.
8. Cococo admits that the products formerly produced by CBCP were of "unique quality and standard" as alleged at paragraph 18 of the Amended Statement of Claim.

Facts Relevant to the Action

Products

9. Cococo manufactures a variety of fine chocolate confectionery products (the **Products**). Some of the Products are still made today using recipes Cococo acquired in 2010 from the bankruptcy of CBCP, but many recipes have since been altered and improved upon, while others have been developed independently by Cococo. The Products are of excellent quality and are manufactured to a very high standard.
10. Cococo denies, however, that its Products—or the products made by CBCP before it—are "not replaceable", as alleged in paragraph 18 of the Amended Statement of Claim. There are literally thousands of fine chocolate confectioners operating in the world today, many in Alberta, who make and sell products reasonably comparable to the Products.

Cococo acquired its business without acquiring the CBCP Dealership Agreements

11. In June 2010, the Calgary-based fine chocolate confectionery manufacturer, CBCP, was put into receivership by its secured lender, Alberta Treasury Branches. Later in 2010, CBCP became bankrupt.
12. At or around the time of the CBCP receivership, MF approached BB, and later KB, about the prospect of bidding to acquire the going-concern CBCP business (the **CBCP Business**) from its receiver, Deloitte & Touche, Ltd. (**Deloitte**). MF, who had already been operating the Edmonton Business for many years, promoted the CBCP opportunity to BB and KB.
13. On or about September 23, 2010, a letter of intent (**LOI**) was submitted to Deloitte on behalf of a company to be incorporated (later introduced as Cococo), with MF, BB, and KB as its principals (the **Principals**), to acquire the CBCP Business.
14. The Canadian trademarks "Chocolaterie Bernard Callebaut" and "Chocolates by Bernard Callebaut" (the **CBC Trademarks**) were key assets of the CBCP Business. Barry Callebaut AG, CBCP, and Bernard Callebaut (the individual) were, at the time of the CBCP receivership, parties to a Settlement Agreement signed first on June 29, 2004 and countersigned on August 10, 2004, the terms of which govern the CBC Trademarks and

their lawful use (the **CBC Trademark Agreement**). During the CBCP receivership, on October 6, 2010, Barry Callebaut AG gave notice to Deloitte purporting to terminate the Trademark Agreement and thereby defeat the CBC Trademarks. The purported termination was not effective because, as part of the ongoing receivership, a judicial stay of proceedings was in place at the time, but the notice given by Barry Callebaut AG nevertheless served to advise potential bidders who were then looking at the CBCP Business that good title to the CBC Trademarks might not be obtainable.

15. The Principals were willing to run the risk of dealing with Barry Callebaut AG in respect of the CBC Trademarks after the receivership but, because the CBC Trademarks were fundamental to performance under the CBCP Dealership Agreements, the Principals were not willing to risk taking on obligations under such agreements and so, after the date of the purported termination notice issued by Barry Callebaut AG, the Principals declined to consider acquiring CBCP's interest under the CBCP Dealership Agreements as part of pursuing the CBCP Business.
16. Accordingly, Cococo denies the allegation made at paragraph 22 of the Amended Statement of Claim: it was never a key term of DKM's investment or involvement in Cococo that the CBCP Dealership Agreements would remain in full force and effect. Rather, Cococo acquired assets from Deloitte (the **Acquired Assets**) in a transaction that closed on October 27, 2010. The Acquired Assets included most of the assets then used in the CBCP Business: manufacturing equipment, other fixed assets, inventory, the CBC Trademarks, intellectual property (including recipes), relationships with employees, and the interest of CBCP under various retail-store leases. Cococo did not, however, acquire the CBCP Dealership Agreements as part of the Acquired Assets. Those contracts have remained vested in Deloitte as trustee in bankruptcy of CBCP.
17. Additionally, and contrary to the allegations made at paragraph 21 of the Amended Statement of Claim, the CBCP Dealership Agreements were of no consequence whatsoever to the process of Cococo successfully purchasing the Acquired Assets. Cococo's bid for the Acquired Assets was the highest and best overall recovery for the creditors of CBCP. Deloitte selected Cococo's bid, and the Court ultimately approved the resulting transaction, without any regard for the views held, or expressed, by former customers of CBCP, including the Edmonton Business.

18. More specifically:

- (a) there are no dealership agreements between Cococo and any former dealers of CBCP as alleged in paragraph 28 of the Amended Statement of Claim, whether containing the terms alleged there, or at all; and
- (b) since 2010, Cococo has never "assumed the rights and responsibilities held under the [CBCP] Dealership Agreement[s]" as alleged at paragraph 27 of the Amended Statement of Claim, nor has Cococo ever operated as if the CBCP Dealership Agreements were still in effect, as alleged at paragraph 29 of the Amended Statement of Claim or at all.

Initial capitalization of Cococo

19. The Plaintiffs description of the initial capitalization of Cococo at paragraphs 22-25 lacks substantial and necessary detail. When the Acquired Assets were obtained by Cococo from Deloitte, acting as receiver of CBCP, Cococo's initial financial and shareholding capitalization can be more accurately described as follows:

- (a) 50% of the \$6,055,500 purchase price (after adjustments, \$6,144,719) was financed by a loan to Cococo from 261820 Alberta Ltd. (**820**) (the **820 Acquisition Loan**);
- (b) 50% of the price was financed by a loan to Cococo from DKM (the **DKM Acquisition Loan**);
- (c) the 820 Acquisition Loan and the DKM Acquisition Loan were structured to be interest bearing and neither had priority over the other;
- (d) 820 provided Cococo with a further \$2MM in first-priority working-capital operating-line financing which, at the time, was intended to be transitional, and was intended to remain in place only until ordinary-course bank financing could replace it and, accordingly, it stood in priority to the 820 Acquisition Loan and DKM Acquisition Loan (the **820 Priority Loan**);

- (e) one third of the Cococo common shares were issued for nominal consideration to DKM; and
- (f) two thirds of the Cococo common shares were issued for nominal consideration to Instant Potatoes Holdings Ltd. (**IPH**). IPH is owned 50/50 between 820, controlled by KB, and Fezziwig's Holding Company Ltd., controlled by BB.

20. At all times from and after Cococo's initial capitalization and organization, DKM has been a minority shareholder of Cococo, and there have been no contracts among the shareholders governing Cococo's corporate affairs generally (for example, there has never been any unanimous shareholder agreement). IPH has, however, always supported DKM by agreeing to the election of a DKM representative to the Cococo Board of Directors.

Since 2010 Cococo has supplied dealers on an "at will" basis only

- 21. Since October 27, 2010, Cococo has sold its Products to former dealers of CBCP, including the Edmonton Business, or to their successors or assignees, on an "at will" basis exclusively. The only contractual terms applicable to the sale of Products by Cococo to dealers are Cococo's terms and conditions of sale, as they have existed from time to time.
- 22. Originally, approximately half of Cococo's sales volumes were attributable to sales to such dealer customers. The other half are attributable to direct sales by Cococo to retail consumers.
- 23. The dealer market has, in general, atrophied during the years that Cococo has operated, while meantime being unprofitable for Cococo. Many dealers have closed their shops, defaulted in paying Cococo and, in general, operated in near-total disregard for the interests of Cococo and the brands it operates.
- 24. The ability of third-party dealers, including the Edmonton Business, to use the CBC Trademarks in support of the inherently "at will" supply arrangements as pleaded in paragraph 21 above, was first addressed by a notice, dated December 9, 2010, to all former dealers of CBCP, including the Edmonton Business. Such notice specified that the

CBC Trademarks, having been acquired by Cococo, could only be used by such customers (dealers) henceforth pursuant to a gratuitous license-at-will. That same notice identified the conditions of use for the CBC Trademarks under the Trademark Agreements (the **CBC Trademark Conditions**). The CBC Trademark Conditions were, however, already widely known by dealers before the 2010 receivership of CBCP, and were subsequently also identified by Cococo on many other occasions following the delivery of this notice.

25. The Edmonton Business, and other dealers and former dealers, have breached and continue to breach the CBC Trademark Conditions, as is elaborated upon in the Cococo Counterclaim, filed herewith.

2010-2011 cash flow difficulties

26. Almost immediately following its acquisition of the Acquired Assets in 2010, Cococo's business faced cash-flow difficulties. The cause of such difficulties included the following:
 - (a) **Sales were lost and costs went up.** Bernard Callebaut, the namesake of the CBCP Business and an individual whose identity is strongly associated with the CBC Trademarks, launched a competing business, called "Papa Chocolat", using assets stolen from the CBCP receivership, which ought to have been acquired by Cococo as part of the Acquired Assets. These events were widely publicized in Calgary at the time. They eventually led to Mr. Callebaut being found in contempt of court at the behest of Deloitte. Extensive legal fees and marketing costs were incurred by Cococo as a result, and the ensuing brand confusion adversely impacted Cococo's sales;
 - (b) **Prices were reduced but volumes were stagnant.** Cococo reversed onerous price increases that CBCP had shockingly introduced in the period leading up to the CBCP Receivership, the brunt of which had been borne by both individual consumers and dealers/wholesale customers. Prices were reduced in the hope of garnering consumer good faith and stimulating the purchase of Products in greater volumes, but ultimately these goals were not realized at levels sufficient to offset reduced unit revenues; and

(c) **Expansion costs.** Cococo elected to finance the construction of two new retail locations in Calgary, Alberta: one in Aspen Landing and another at Chinook Centre. Leasing commitments by CBCP at both of these locations had been overlooked by Deloitte during the receivership of CBCP. Only after Cococo was operating its new business, and only after the harmfully competitive Papa Chocolat business had been launched with all its resulting scandal, did it become evident that, if Cococo did not proceed forward with such leasing commitments, then the locations would, instead, be offered to the Papa Chocolat business. Opening these stores was therefore deemed absolutely necessary by Cococo, notwithstanding that the pursuit of this strategy consumed considerable capital and entailed the taking on of considerable unforeseen risk.

27. In specific reply to paragraph 30 of the Statement of Claim, Cococo leased premises at Chinook Centre with full knowledge of MF and the other Plaintiffs. The cost to Cococo of the related purchase of property and equipment was specifically reported in Cococo's financial statements, which were provided to and discussed with the Plaintiffs. Furthermore, there was never any agreement that any entity other than Cococo (including, in particular, any business owned by KB) would own and operate such a store on a dealership basis, as alleged or at all.

The 2012 Cococo restructuring

28. By mid-2012, including because of the matters pleaded in paragraph 26 above, Cococo faced a cash crunch and would not have been able to continue in business at all without further investment. This resulted in a recapitalization transaction being entered into. This transaction is wrongly and incompletely described at paragraphs 32-33 of the Amended Statement of Claim. Simplified, Cococo was reconfigured through the 2012 restructuring transaction such that:

(a) 820 agreed to provide Cococo with further working capital financing in the amount of \$2MM (further to the original \$2MM 820 Priority Loan but ranking in priority with it, such that the 820 Priority Loan effectively became a \$4MM 820 Priority Loan);

- (b) the 820 Acquisition Loan and the DKM Acquisition Loan were converted on a dollar-per-dollar basis into preferred shares, but with 820's resulting preferred shares having certain dividend priorities over the DKM preferred shares; and
 - (c) the original 2/3 (IPH) to 1/3 (DKM) split in Cococo's common shares was adjusted to 80% IPH, 20% DKM ownership.
- 29. The restructuring as described in paragraph 28 reflected the underlying business reality at the time, which was that Cococo would have failed in 2012 without the further financial support then provided to it by 820. 820 was the only party involved in Cococo that was able to provide such support at the time. With the agreement of all parties, 820 went forward with its priority position as lender ranking behind only Cococo's bank at the time, HSBC Bank Canada (**HSBC**). Otherwise, 820's interest stood ahead of all other equity. 820's preferred-share equity likewise assumed a position ranking ahead of all other equity, including both DKM's preferred shares and, of course, all common shares owned by IPH and DKM.
- 30. Cococo denies the allegation at paragraph 34 of the Amended Statement of Claim that any specific agreement was reached as part of the 2012 reorganization transaction regarding the pattern of holding directors' meetings. No part of the reorganization touched upon Cococo's corporate governance at all. The 2012 reorganization transaction was structured by a Recapitalization Term Sheet, signed among the parties and dated June 27, 2012, and, although that Term Sheet had a "Governance" section within it, all of the points in that section were specifically acknowledged in writing by the parties as being "not contractual in nature". There is no contract of any kind amongst the shareholders and/or directors of Cococo concerning its governance.
- 31. In response to the whole of DKM's allegations in the Amended Statement Claim, to whatever extent such allegations pertain to, or in any way concern, the original or updated capitalization of Cococo, or DKM's investment in Cococo generally, Cococo pleads and relies upon the fact that DKM executed an Acknowledgment of Payment and Release dated November 16, 2012, pursuant to which DKM released and forever discharged Cococo "from any and all actions, causes of action, debts, claims, liabilities, damages, obligations and demand[s] of any nature whatsoever [DKM] ever had, now

has, or shall or may have in relation to or arising out of or connected with" the DKM Acquisition Loan.

32. Furthermore, and contrary to the inflammatory allegation at paragraph 38 of the Amended Statement of Claim, at no point was MF ever "forced" to execute any Cococo corporate paperwork, as alleged or at all. DKM, MF, and KF entered into the 2012 reorganization transaction freely and after having first exercised the opportunity to consult with their advisors and counsel.

MF exits Cococo's Board of Directors and governance matters generally

33. MF was a Cococo director from the date when Cococo was first organized until October 10, 2014. From approximately April through approximately October 2014, MF, in his dealings with Cococo, advanced the interests of the Edmonton Business in preference to, and in conflict with, his duties as a director of Cococo, creating considerable interpersonal and business conflict. In September 2014, MF precipitated a crisis in Cococo's governance when he purported to engage Cococo's then-legal counsel to act on his behalf, or on behalf of the Plaintiffs generally, and adversely to Cococo. In the aftermath of this conflict-of-interest crisis, the legal counsel in question withdrew, and MF then resigned from Cococo's Board of Directors as part of KB arranging on behalf of IPH to support the election of KF to Cococo's Board of Directors in MF's stead.
34. After MF's resignation from the Cococo Board of Directors on October 10, 2014, he seemed to totally disregard Cococo for a number of years. He then resumed communications with Cococo only in 2018, and then only with the objective of advocating that Cococo buy out his family's interest in the Edmonton Business, together with DKM's interest in Cococo itself, all on unspecified terms.
35. At no time from 2014 to 2018 did MF request any information concerning Cococo that was then withheld from him, or any information at all. All corporate dealings during this period from Cococo were coordinated through KF.
36. MF, since the date of his resignation as a director of Cococo, has not had any responsibility for, nor any direct involvement in, the governance of Cococo. MF has not

been and is not entitled to any notice as to any of the alleged governance or management decisions complained of by the Plaintiffs.

37. KF became a director of Cococo after MF resigned. In that capacity, he has received notice of, and has participated in, all formal meetings of the Board of Directors of Cococo, has received copies of such financial statements as have been presented to the Board of Directors, and has also been kept informally abreast of Cococo's business and management from time to time.
38. At no time as between the date in 2014 when KF became a director of Cococo, and mid-2020, when the Pandemic-related events that triggered these proceedings occurred, has KF ever:
 - (a) requested any financial records that were not then provided to him;
 - (b) called, or requested the calling of, a directors' meeting;
 - (c) made any suggestion at all concerning the management of Cococo's business;
 - (d) called, or requested the calling of, a shareholders' meeting; or
 - (e) availed himself of the right and opportunity to inspect corporate documents, including after these proceedings were commenced.
39. DKM, as shareholder of Cococo, has never:
 - (a) called, or requested the calling of, any meeting of shareholders;
 - (b) submitted any shareholder proposal; or
 - (c) except via these proceedings, ever expressed any specific concern with, or suggested any act that ought to occur, regarding the corporate governance of Cococo.
40. Cococo denies that it has ever or routinely "operated in a closed door capacity", as alleged at paragraph 39 of the Amended Statement of Claim. Cococo has issued abundant communication over the years to its customers and other third parties,

including the Plaintiffs. Cococo communicates openly across various online platforms, and it has, at all material times, employed staff who have communicated with the Plaintiffs about day-to-day matters as part of their regular duties and as required.

41. Cococo denies that there have been any "attempts by the Plaintiffs to conduct" ... "required directors and/or shareholder meetings" as alleged by paragraph 41 of the Amended Statement of Claim, or at all.
42. Cococo denies that the Plaintiffs have ever made "repeated attempts to be involved in the process" of making material decisions as alleged at paragraph 40 of the Amended Statement of Claim, or at all.
43. Cococo has provided the Plaintiffs, or such subset of them as were entitled at any given time, routine notice of many material decisions, contrary to allegations made at paragraph 40 of the Amended Statement of Claim, specifically:
 - (a) Cococo gave extensive notice of the Pandemic Disruptions (see paragraphs 47-54) below, contrary to the allegation in paragraph 40(a) of the Amended Statement of Claim; and
 - (b) Cococo has routinely given notice of store openings and closures, to the best of its ability, including by keeping up-to-date records available on its website, contrary to the allegation in paragraph 40(b) of the Amended Statement of Claim.
44. Cococo has never failed to provide the Plaintiffs with any key financial information to which they were entitled, contrary to the allegation in paragraph 42 of the Amended Statement of Claim, nor have any of the Plaintiffs ever made "repeated requests" for such information as there alleged.

Cococo's lack of financial success to date

45. Cococo's financial history leading up to 2020 has been fraught. Across its 10-year history, it has consistently experienced operational losses, especially in relation to a number of exceptional and adverse events encountered by it, including:

- (a) events involving Bernard Callebaut, his theft of product, his launch of a confusing competitive business, and his resulting contempt-of-court sanctions, as detailed at paragraph 26(a) above, and many related and various similar subsequent events involving Mr. Callebaut;
- (b) failed efforts by Cococo to expand its sales market through store openings and expansions, including those identified in paragraph 26(c), but also including stores at the Calgary International Airport and in Ottawa, Ontario, and efforts to sell Products on grocery-store wholesale basis;
- (c) the total physical destruction of Cococo's manufacturing facility and flagship retail store as a result of the flooding of Calgary's Bow and Elbow Rivers in June 2013, which resulted in seven-figure losses for Cococo and resulted in a 2.5 years long operational recovery by Cococo;
- (d) various five- and six-figure bad-debt expenses being encountered by Cococo attempting, without success, to support and work with the various third-party dealers it had inherited from the CBCP bankruptcy;
- (e) the unpredictable and sudden closure of dealer stores, with resulting costly impacts upon inventory management and working capital;
- (f) the 2015 insolvency of a general contractor who had been retained by Cococo to equip Cococo's new head office and factory location after the 2013 flood, and the resulting legal work required to address builders' liens that had been registered against that property;
- (g) a multi-year dispute with the landlord of Cococo's new head office and factory location who failed to pay Cococo a \$300,000 tenant improvement allowance when it was due and owing;
- (h) the faltering of Calgary's retail economy generally, especially in 2015 and 2016, alongside an economy-wide deterioration in the oil-and-gas business; and
- (i) the Pandemic.

46. In response to the whole of the Amended Statement of Claim, Cococo pleads that it has never been profitable. Instead, it has experienced consistent operational losses which have been supported by the substantial good faith investments—financial and otherwise—made both by itself and by the other named Defendants. The Plaintiffs have benefitted from such investments because Cococo has continued in business longer than might otherwise have been the case, such that Cococo has been able to continue supplying Products to the Plaintiffs’ Edmonton Business at inherently money-losing prices for Cococo. Far from being victimized by Cococo, the Plaintiffs have been the direct beneficiaries of Cococo’s losses. Apart from its initial DKM Acquisition Loan, DKM has never invested another single dollar directly in Cococo.

Pandemic reactions

47. Cococo has experienced tremendous disruption to its business by reason of the Pandemic, especially during the period of March-October, 2020, as further particularized below (the **Pandemic Disruptions**).
48. Cococo’s first reaction to the Pandemic was to give its dealer customers notice, dated March 24, 2020, suspending the application of its standard credit terms and requiring all Product orders to be prepaid. On March 28, 2020, Cococo then closed all of its retail stores, to comply with public health orders.
49. By notice dated April 30, 2020, Cococo advised its dealer customers that it had, as of that date, effectively shut down all of its operations, including its factory operations (apart from a skeleton staff) in consequence of public health orders, and that all Product shipping was, as of that date, paused. By a subsequent notice, dated May 29, 2020, Cococo dealers were reminded by Cococo of their right to seek alternative sources of supply. Cococo suspended its operations to take stock and make projections, in order to ascertain the viability of any path forward.
50. Next, Cococo gave notice, dated June 16, 2020, of:
- (a) resumed shipping of limited quantities,
 - (b) various store closures and disruptions,

- (c) forthcoming restrictions on Cococo's willingness to continue licensing the CBC Trademarks on an at-will basis,
- (d) a forthcoming Shopify interface (**B2B**) for dealer ordering, and
- (e) reiterating the CBC Trademark Conditions.

51. Thus, the most severe period of Pandemic Disruptions at Cococo persisted from April 30 – June 16, 2020. This was a 46-day period when Products were not shipped to stores, in the very early period of the Pandemic when much was uncertain, and a time of year when fine chocolate sales are generally slow.
52. The B2B interface was launched October 14, 2020, and all Product ordering from and after such date required each customer to accept *Cococo's Standard Terms & Conditions of Sale – Wholesale Accounts (Dealer)*. These terms (the **B2B Terms**) include the following:

No liability. In no event will Cococo be liable to you or to any third party (including any consumer) in relation to any supply or non-supply of Products under these Terms, for any incidental, special, or consequential damages, or for any lost profits or revenues, or any other indirect damages or costs whatsoever, whether arising in contract, tort (including negligence), strict liability, or otherwise.

Limited quantities. Cococo reserves the right to limit quantities. Cococo supplies products "at will" only and offers no guarantee of product availability or for any particular term or duration. Cococo's acceptance of your Product order is the only confirmation of Product availability that is presently available to you.

Trademarks. Cococo's trademarks, including "Chocolaterie Bernard Callebaut®", "Chocolates by Bernard Callebaut®", "Chocolaterie Bernard®", "Chocolates by Bernard®", "Cococo®", and "Good Clean Fun®" are subject to separate license at will, but for the avoidance of doubt, these trademarks may: (a) never be used in conjunction with the sale of wares or services except those manufactured or distributed or authorized by Cococo, and only then in circumstances where the fact of Cococo's trademark ownership is displayed to the public; and, (b) not be used upon any signage to identify a retail store premises except where the premises offer for sale mostly Cococo-supplied products, measured in terms of both a store's revenue and also its square-footage display. In any case where you sell products in a retail store that have not been supplied by Cococo, you must clearly identify and distinguish such products from those supplied by Cococo. Any use of the word "Callebaut®" in Canada in connection with the sale of chocolate wares and services, and which

has not been specifically licensed, will (among other things) infringe upon the trademark rights of Barry Callebaut AG.

Freedom to operate / independent operations. You can buy and sell whatever products you want as part of your independent business operations, and your purchase of Products from Cococo pursuant to these Terms in no way limits your freedom to operate (except as noted above in respect of retail-store signage). Cococo neither has, nor asserts, any ability to control your retail operations, provided however that Cococo will not knowingly sell to you in circumstances where you are known not to be conducting your retail operations in compliance with laws concerning food labelling and handling.

Force majeure. Cococo's obligation to perform any contract of purchase and sale will be subject to and suspended during any event beyond Cococo's reasonable control that fully or partly or seriously impedes Cococo's ability to perform. Without limiting the generality of the foregoing, any labour shortage or interruption arising from any pandemic or public-health-related cause may comprise an event of *force majeure*.

53. The Edmonton Business has placed various orders using the B2B system and has, on each such occasion, accepted the B2B Terms. Cococo clearly notified the Plaintiffs of the B2B Terms, contrary to the apparent allegation at paragraph 53(d) of the Amended Statement of Claim (paragraph 53(d) uses a capitalized term left undefined by the Amended Statement of Claim, "Supply Agreement"; Cococo more generally denies the existence of any vague "Supply Agreement" in any event).
54. Cococo's corporate retail stores remained closed after April 30, 2020 and began reopening throughout September and October 2020. Various third-party dealer stores supplied by Cococo, including those operated by the Edmonton Business, operated during the summer of 2020 and were supplied by Cococo at a time when Cococo was not supplying its own stores.
55. MF, KF, and DKM responded to the Pandemic Disruptions as follows:
 - (a) by claiming an entitlement to be sold Products despite Cococo's position and in priority to other stakeholders;
 - (b) by assuming the position that Cococo was acting other than in good faith in respect of the Pandemic Disruptions, and encouraging others—especially other third-party dealers of Cococo's Products—to believe the same and to take

positions hostile and adverse to Cococo accordingly (events which are the subject matter of the Counterclaim filed herewith);

- (c) by engaging counsel to make demands for information of Cococo, including spurious demands for information already in the Plaintiffs' possession, and to threaten Cococo with legal consequences, all without ever following up to avail themselves of access to information made readily available by Cococo in response to such demands, or following up upon vague threats at all until the commencement of these proceedings; and
- (d) by failing to respond at all when provided with significant detail concerning Cococo's precarious circumstances, both those existing as a backdrop to the Pandemic Disruptions, and those more proximately caused by the Pandemic Disruptions themselves.

Specific Responses to the Plaintiff's Alleged Causes of Action

- 56. The Statement of Claim fails to identify clearly which alleged cause of action is levelled at which of the various Defendants, and about which pleaded facts bear relevance to which alleged causes of action. While endeavouring to respond directly to those alleged causes of action that appear to concern it most, Cococo first generally denies that any of the Plaintiffs have any cause of action against it as alleged or at all.

Mike Freeland has no standing to bring this action

- 57. MF is a former director of Cococo who was replaced on the Board by KF in consequence of the events described at paragraph 33 above. Those events occurred in 2014, and, to the extent that MF *qua* director today pleads having experienced any harm in such capacity, any related cause of action was reasonably discoverable at the time of its occurrence, and is today statute barred. Cococo pleads and relies upon the *Limitations Act*, RSA 2000, c L-12.
- 58. MF, in his individual capacity, does not have and has not pleaded any legal nexus existing as between himself and Cococo that would give rise to any of the duties he alleges would now be owed to him. He is not a shareholder, director, officer, or creditor of Cococo, nor is he, in relation to the Edmonton Business, a proprietor of that business

acting as an individual. Instead, so far as is known to Cococo, the Edmonton Business is carried on exclusively through the numbered-company Plaintiffs. MF is, as identified in the Amended Statement of Claim, simply an individual residing in the City of Edmonton.

59. All claims that purport to have been brought against Cococo by MF are without any legal or equitable justification.

There has been no breach of the CBCP Dealership Agreements; they don't exist

60. The numbered company Plaintiffs, 411913 Alberta Ltd., 413772 Alberta Ltd., and 413773 Alberta Ltd., allege that Cococo breached the CBCP Dealership Agreements.
61. Cococo is not a party, by assignment or otherwise, to the CBCP Dealership Agreements, or any of them, as pleaded at paragraphs 14-18 above. Cococo cannot have breached contracts to which it has never been a party. Cococo denies the express and implied terms alleged at paragraph 46 of the Amended Statement of Claim. Those terms and those allegations pertain to the CBCP Dealership Agreements exclusively, which are irrelevant to the dealings between Cococo and its customers today.
62. Cococo has worked only transactionally with the Edmonton Business, supplying Products from time to time when ordered, and issuing invoices, accordingly. Until 2020, Cococo afforded the Edmonton Business (and most other dealers) credit terms, but those terms were retracted in 2020 as pleaded at paragraph 48 above. The current terms and conditions applying to Cococo's transactions with the Edmonton Business are the B2B Terms, as pleaded at paragraph 52 above.
63. At all times, Cococo's dealings with the Edmonton Business, and with all former dealers of the now-bankrupt CBCP Business, have occurred exclusively on an "at will" basis, as pleaded at paragraphs 21-25 above. Cococo has never had any general obligations of supply, nor any obligations in relation to distribution decisions or allocations, affecting the Edmonton Business as alleged or at all.
64. Alternatively, if Cococo has ever owed any general obligations of supply, or any obligations in relation to distribution decisions or allocations, then:

- (a) at all times Cococo has behaved fairly, in good faith, and in a commercially reasonable manner as regards such obligations, decisions, or allocations, especially given such financial and operational constraints as then existed; and
 - (b) if at any time any obligation, decision, or allocation might have fallen short of any required standard otherwise applicable as of any particular date, then Cococo pleads and relies upon the doctrine of *force majeure*, both in relation to the Pandemic Disruptions specifically and especially during the period March 2020 to date, and including the *force majeure* provision as specifically expressed in the B2B Terms.
65. At all times, Cococo has reserved exclusively unto itself all rights in relation to online e-commerce (via websites or otherwise) and has supplied Products to dealers exclusively to be sold from and out of bricks-and-mortar retail store establishments only. Cococo has never conveyed to any third party (neither any of the Plaintiffs nor any other dealer or customer) any contractual rights in respect of toll-free, website, or geographically-calculated revenues, as alleged at paragraphs 47-53 of the Amended Statement of Claim. Such concepts historically existed under the now-irrelevant CBCP Dealership Agreements but, even then, the concepts were never honoured or implemented. The Plaintiffs are attempting to bind Cococo to a deal they struck but never actually secured from a company, CBCP, that has now been bankrupt for a decade.
66. In specific reply to paragraph 52 of the Amended Statement of Claim, Cococo never agreed to, nor has it, in fact, at any time during its ten years of operations, "compensated" any customer (including the Plaintiffs) for orders fulfilled online or over the phone by Cococo in respect of any geographical area. Similarly, in reply to paragraph 40(c) of the Amended Statement of Claim, Cococo has never had any "compensation model for Dealership Stores" and therefore has never "altered other key terms of the same without notice".
67. There is no "Supply Agreement" as referred to (but never defined) at paragraphs 53(d), 54, 56, 76, 79(j) of the Amended Statement of Claim. Since there was no "Supplier Agreement", as it is variously called at paragraph 56(d) of the Amended Statement of Claim, Cococo denies that there was ever any occasion calling for any agreement

between itself and the Plaintiffs as regards any "material changes" to a non-existent contract.

There has been no oppression

68. The Plaintiffs have pleaded oppression in very general terms, without particularizing which alleged action was taken by which of the named Defendants, and indeed against which interest of which named Plaintiff. In any event, Cococo denies that any of the Plaintiffs have ever been treated in an oppressive or unfairly prejudicial manner by it.
69. Cococo denies that the oppression remedy is available to the numbered company Plaintiffs who own and operate the Edmonton Business under s. 242(1) of the *Business Corporations Act*, RSA 2000, c B-9 or at common law. The Edmonton Business is an enterprise that operates entirely separate and apart from Cococo. The Edmonton Business is not a security holder, creditor, director, or officer of Cococo. It is a customer-at-will of Cococo's. The oppression remedy of corporate law is not a remedy available to an aggrieved commercial customer of an arm's length supplier.
70. None of the Plaintiffs is a Cococo creditor, as alleged in paragraph 56 of the Amended Statement of Claim or at all.
71. Cococo denies that the oppression remedy is available to MF, as he is not a creditor, director, or officer of Cococo, nor is he personally a shareholder in Cococo. Alternatively, Cococo denies that MF has been oppressed by Cococo as alleged or at all.
72. Cococo denies any fault on its behalf in any corporate governance or management matters, including all allegations to the effect that KF was ever prevented from participating in the management or decision making of Cococo. Cococo furthermore denies that KF has been oppressed by Cococo as alleged or at all.
73. Cococo denies that DMK has been oppressed by Cococo as alleged or at all.
74. In reply to paragraph 56(f) of the Amended Statement of Claim, Cococo denies that the alleged damage to its goodwill or business relationships, as distinct from that which has been sown by the Plaintiffs, as elaborated upon in Cococo's Counterclaim.

75. In reply to paragraph 57 of the Amended Statement of Claim, Cococo denies:
- (a) that it has ever wrongly usurped any business opportunity as alleged at paragraph 57(a) of the Amended Statement of Claim or at all;
 - (b) that it has ever misappropriated funds from "the Dealership Stores" as alleged in paragraph 57(d) of the Amended Statement of Claim or at all;
 - (c) that it has ever damaged its own goodwill, as alleged at paragraph 57(e) of the Amended Statement of Claim or at all;
 - (d) that it has ever been grossly or negligently mismanaged, as alleged at paragraph 57(f) of the Amended Statement of Claim or at all;
 - (e) that it has ever failed to disclose material contracts or transactions to any person entitled to such disclosure, as alleged at paragraph 57(g) of the Amended Statement of Claim or at all;
 - (f) that it ever unilaterally reduced MF's or KF's "role in Cococo" as alleged in paragraph 57(h) of the Amended Statement of Claim or at all (the only role that MF or KF has ever had "in Cococo" was/is the role of director, which Cococo itself could not "unilaterally reduce");
 - (g) that it ever failed to provide any financial information to MF or KF to which they were entitled as alleged at paragraph 57(i) of the Amended Statement of Claim or at all;
 - (h) that it ever operated in a manner conflicting with its own best interests as alleged at paragraph 57(j) of the Amended Statement of Claim or at all; or
 - (i) that it ever failed to notify MF and KF of any material changes in the operations of Cococo in circumstances where MF and KF were entitled to any such notice, as alleged at paragraph 57(k) of the Amended Statement of Claim or at all.

No action has been taken to substantiate a derivative claim

76. Paragraphs 64-70 of the Amended Statement of Claim make allegations in support of an application that has not been brought by the Plaintiffs for leave to commence a derivative action in the name of Cococo against KB and BB.
77. Before the Plaintiffs can proceed further with this matter, they ought properly to be required to perfect or abandon their allegations regarding the making of any derivative claim, as alleged or at all.
78. Insofar as no application to commence any such derivative action has yet been made, the pleaded allegations at paragraphs 64-70 of the Amended Statement of Claim presently serve no purpose. If, as, and when the matter of the pleaded claim for derivative-action relief is properly brought before the court in these proceedings, Cococo reserves the right to defend the allegations made at paragraph 64-70 of the Amended Statement of Claim, insofar as such allegations may affect its interests at such time.

There is no basis for any extraordinary equitable remedy

79. Paragraph 76 of the Amended Statement of Claim alleges that, as a result of the "Wrongful Conduct" (defined as being conducted by the "Individual Defendants" only, being KB and BB (see paragraph 43 of the Amended Statement of Claim for the definition of "Wrongful Conduct", and paragraph 11 of the Amended Statement of Claim for the definition of "Individual Defendants")), somehow Cococo as Defendant has "profited substantially" with a "correlated loss to the Dealership Stores". The pleading is tortured and the resulting allegations are likely incapable of being precisely tracked, but nevertheless Cococo replies that:
 - (a) there is no basis for establishing a constructive trust. There has been no enrichment on Cococo's part, nor any corresponding deprivation on the part of any Plaintiff. Further, to whatever extent Cococo has ever benefitted in an isolated way from time to time as regards its purchase-and-sale dealings with the Edmonton Business, any such benefit has arisen because the very purpose of a manufacturer selling Products to a customer is to pursue profits. The pursuit of profits under isolated contracts of purchase and sale as between Cococo and the

Edmonton Business would be the juridical reason for any enrichment and corresponding deprivation in this case;

- (b) Cococo has, regardless, never made any profits to be disgorged or to be made the subject of a constructive trust; and
- (c) Cococo denies that it has ever committed any wrongful acts at all, and furthermore denies that any relationship exists at all as between Cococo and any of the Defendants that would give rise to any equitable or other extraordinary remedy.

Set Off

80. In the alternative, Cococo pleads and incorporates into its Statement of Defence the allegations from its Counterclaim, and pleads that the damages it has suffered can be set off against any alleged damages owing to the Plaintiffs, which are nonetheless denied.

Denial of damages

81. Cococo denies that the Plaintiffs have suffered losses and damages as alleged at paragraph 44 of the Amended Statement of Claim or at all, nor any damages in the form of lost sales and goodwill and reputation as alleged at paragraph 55 of the Amended Statement of Claim or at all. Cococo denies that the Plaintiffs or any of them have experienced serious harm and prejudice and significant damages as alleged at paragraphs 60 and 63 of the Amended Statement of Claim. Cococo furthermore pleads that the Edmonton Business, as a licensee at will of the CBC Trademarks, has no ownership interest in any associated goodwill and therefore lacks standing to claim any associated damages in respect of injury to the brands embodied in the CBC Trademarks.

Remedy sought

82. An Order dismissing the Action with costs payable to Cococo.



\$150.00
Invoice: 085460

COURT FILE NUMBER 2003-16696

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF BY
COUNTERCLAIM COCOCO CHOCOLATIERS INC.

DEFENDANTS BY
COUNTERCLAIM DKM HOLDINGS INC., KEN FREELAND, MIKE FREELAND, 411913
ALBERTA LTD., 413772 ALBERTA LTD., 413773 ALBERTA LTD., RYAN
BOSCHMAN, RONALD BOSCHMAN, 539696 ALBERTA LTD., DUANE
PETERS, TRACY HANSEN, 784075 ALBERTA LTD., JUDITE HOLDER,
AND 1247999 ONTARIO LIMITED

DOCUMENT **COUNTERCLAIM**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Burnet, Duckworth & Palmer LLP
2400, 525 – 8 Avenue SW
Calgary, Alberta T2P 1G1
Lawyer: **Sydney R. Black**
Phone: (403) 260-0104
Fax: (403) 260-0332
File No. 69832-21

NOTICE TO DEFENDANTS BY COUNTERCLAIM

You are being sued. You are a Defendant by Counterclaim.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff by Counterclaim, Cococo Chocolatiers Inc. (**Cococo**) adopts and relies upon the facts pleaded in the Statement of Defence.

Edmonton Defendants

2. The Defendant by Counterclaim, Mike Freeland (**MF**), is an individual resident in Edmonton, Alberta.
3. The Defendant by Counterclaim, Ken Freeland (**KF**) is an individual resident in Edmonton, Alberta.
4. Each of the following corporate Defendants by Counterclaim, DKM Holdings Inc. (**DKM**), 411913 Alberta Ltd. (**913**), 413772 Alberta Ltd. (**772**), and 413773 Alberta Ltd. (**773**), is an Alberta corporation with a place of business in Edmonton, Alberta.
5. So far as is known to Cococo, the Defendants 913, 772, and 773 own and operate a fine chocolate retail store confectionery business (the **Edmonton Business**) through two stores located at 11004 – 51 Avenue, Edmonton AB and 10103 – 124 Street, Edmonton AB (the **Edmonton Stores**).
6. KF and MF own, control, manage, and are the directing minds and alter egos of DKM, 913, 772, and 773. At all material times, Cococo dealt with each of KF, MF, DKM, 913, 772, and 773 interchangeably, having no written contract with any of them, and with each holding itself out as the legal and functional equivalent of the other. Each is therefore jointly and severally liable with each other in respect of all matters complained of in this Counterclaim touching in any way upon the Edmonton Business and the Edmonton Stores.
7. The Defendants MF, KF, DKM, 913, 772, and 773 are collectively referred to in this Counterclaim as the **Edmonton Defendants**.

Lethbridge Defendants

8. The Defendant by Counterclaim, Ryan Boschman (**RB1**), is an individual resident in Lethbridge, Alberta.
9. The Defendant by Counterclaim, Ronald Boschman (**RB2**), is an individual resident in Lethbridge, Alberta.

10. The Defendant by Counterclaim, 539696 Alberta Ltd. (**696**) is an Alberta corporation with a registered office in Lethbridge, Alberta.
11. So far as is known to Cococo, 696 owns and operates a fine chocolate retail store confectionery business (the **Lethbridge Business**) located at 500 – 4 Avenue South, Lethbridge AB (the **Lethbridge Store**).
12. RB1, and RB2 own, control, manage, and are the directing minds and alter egos of 696. At all material times, Cococo dealt with each of RB1, RB2, and 696 interchangeably, having no written contract with any of them, and with each holding itself out as the legal and functional equivalent of the other. Each is therefore jointly and severally liable with each other in respect of all matters complained of in this Counterclaim touching in any way upon the Lethbridge Business and the Lethbridge Stores.
13. The Defendants RB1, RB2, and 696 are collectively referred to in this Counterclaim as the **Lethbridge Defendants**.

Kelowna Defendants

14. The Defendant by Counterclaim, Duane Peters (**DP**), is an individual resident in Kelowna, British Columbia.
15. The Defendant by Counterclaim, Tracy Hansen (**TH**), is an individual resident in Kelowna, British Columbia.
16. The Defendant by Counterclaim, 784075 Alberta Ltd. (**075**) is an Alberta corporation with a registered office in Calgary, Alberta.
17. So far as is known to Cococo, 075 owns and operates a fine chocolate retail store confectionery business (the **Kelowna Business**) located at #113A – 2365 Gordon Drive, Kelowna BC (the **Kelowna Store**).
18. DP, and TH own, control, manage, and are the directing minds and alter egos of 075. At all material times, Cococo dealt with each of DP, TH, and 075 interchangeably, having no written contract with any of them, and with each holding itself out as the legal and functional equivalent of the other. Each is therefore jointly and severally liable with each

other in respect of all matters complained of in this Counterclaim touching in any way upon the Kelowna Business and the Kelowna Stores.

19. The Defendants DP, TH, and 075 are collectively referred to in this Counterclaim as the **Kelowna Defendants**.

London Defendants

20. The Defendant by Counterclaim, Judite Holder (**JH**), is an individual resident in London, Ontario.
21. The Defendant by Counterclaim, 1247999 Ontario Limited (**999**), is an Ontario corporation with a registered office in London, Ontario.
22. So far as is known to Cococo, 999 owns and operates a fine chocolate retail store confectionery business (the **London Business**) located at 745 Waterloo Street, London ON (the **London Store**).
23. JH owns, controls, manages and is the directing mind and alter ego of 999. At all material times, Cococo dealt with each of JH and 999 interchangeably, having no written contract with either of them (except as pleaded in paragraph 61 below), and with each holding itself out as the legal and functional equivalent of the other. Each is therefore jointly and severally liable with each other in respect of all matters complained of in this Counterclaim touching in any way upon the London Business and the London Stores.
24. The Defendants JH and 999 are collectively referred to in this Counterclaim as the **London Defendants**.

Cococo Supplies Defendants by Counterclaim - Generally

25. As of October 27, 2010, Cococo began business selling its manufactured fine chocolate confectionery products (the **Products** and each a **Product**) to (among others) the Edmonton Business, the Lethbridge Business, the Kelowna Business, and the London Business, from time to time.

26. Whereas there had been written dealership agreements entered into as between certain of the Defendants by Counterclaim, and the now-bankrupt Chocolaterie Bernard Callebaut Partnership (**CBCP**), those dealership agreements (the **CBCP Dealership Agreements**) were never acquired by Cococo when Cococo acquired certain assets of the going-concern business formerly operated by CBCP. Cococo has never supplied its Products to any former dealer of CBCP on anything but a transactional basis: customers could submit orders and Cococo would, in response, fill such orders as it was able to fill and then issue invoices requiring payment.
27. Cococo therefore has made its Products available for purchase by the Edmonton Business, the Lethbridge Business, the Kelowna Business, and the London Business on a "supply at will" basis only, and such Products were purchased by those Defendants by Counterclaim exclusively on that basis.
28. All such transactional Product contracts are Alberta contracts, and the place of contracting for all of Cococo's contracts, including any contracts referred to in this Counterclaim, is Alberta. All Product deliveries by Cococo to its customers occur *ex works* Cococo's loading dock in Calgary, Alberta, pursuant to Cococo's standard terms and conditions of sale, as they have existed from time to time. This includes all Product deliveries to the Defendants by Counterclaim referred to herein.
29. The Edmonton Business, the Lethbridge Business, the Kelowna Business, and the London Business once operated as authorized dealers of the now- bankrupt CBCP under CBCP Dealership Agreements. On that basis, historically, they used the Canadian trademarks "Chocolaterie Bernard Callebaut" and "Chocolates by Bernard Callebaut" (the **CBC Trademarks**) before Cococo purchased those trademarks in 2010 and began selling its Products. Cococo, accordingly, elected to grant each such business a license-at-will in 2010 (the **License**) to use the CBC Trademarks, but only in respect of the Products and only directly in connection with the operation of brick-and-mortar retail stores—specifically: the Edmonton Stores, the Lethbridge Store, the Kelowna Store, and the London Store, as the case may be.
30. From time to time, Cococo gave notice to the Defendants by Counterclaim—and the Defendants by Counterclaim knew, in any event, by reason of them having entered into

the CBCP Dealership Agreements—of various restrictions applicable to the use of the CBC Trademarks that were incorporated into the License (the **CBC Trademark Conditions**). CBC Trademark Conditions were, in part, instituted pursuant to a Settlement Agreement signed June 29, 2004 and countersigned August 10, 2004, the terms of which govern the Trademarks and their lawful use (the **CBC Trademark Agreement**). The CBC Trademark Conditions include the following:

- (a) the CBC Trademarks are owned by Cococo and cannot be used by any third party except under license from Cococo;
- (b) the word "Callebaut" is a trademark belonging to Barry Callebaut AG, and that word may not be used in conjunction with the sale of any chocolate-related ware or service in Canada, except by Barry Callebaut AG itself or as that corporation might license, or within the CBC Trademarks as owned or licensed by Cococo;
- (c) no online reference to the word "Callebaut" is permissible in any URL except in the URL "bernardcallebaut.com", which is owned by Cococo;
- (d) when printed (as, for example, on a sign or a package) each word used in each of the CBC Trademarks must appear in a consistent font type and size when compared to each other word, thus prohibiting a historical usage whereby the words "Chocolaterie" and/or "Chocolates by" were de-emphasized by being rendered in a different, and much smaller, font than the thus-emphasized and more prominent words "Bernard Callebaut" (the **Font Restriction**); and
- (e) given the existence of both the CBC Trademarks and the "Callebaut" trademark in Canada, Bernard Callebaut, the individual, is altogether prohibited from using his own name in Canada to sell chocolate wares and services except in the case where he might, as a chocolatier, conduct business himself as a sole proprietor, and, in particular, under the clear terms of the CBC Trademark Agreement, in respect of his name Bernard Callebaut is "not to give any license to third parties to use it in any manner" (the **Bernard Callebaut Name Restriction**).

31. In addition to the CBC Trademarks, Cococo has developed and owns other trademarks, including the trademark "Cococo" (the **Cococo Trademarks**). The Cococo Trademarks

are not part of the License, and Cococo has never licensed the Cococo Trademarks for use by any third party at all, except (in circumstances irrelevant to these proceedings) in isolated cases where Cococo has permitted the Cococo Trademarks to appear on store signage as expressly authorized by Cococo. In particular, Cococo has never licensed the Cococo Trademarks to any of the Defendants by Counterclaim in these proceedings. Typically, Cococo has used its Cococo Trademarks only when conducting its own consumer-facing business, or when packaging its Products.

Pandemic

32. With the onset of the novel coronavirus pandemic (the **Pandemic**), Cococo in 2020 found itself financially unable to continue its business without first analyzing a path forward. The resulting pause in Cococo's operations temporarily disrupted its ability to supply the Edmonton Stores, the Lethbridge Store, the Kelowna Store, the London Store, and other Cococo-supplied third-party-owned retail stores as well, including a store owned and operated by the non-party, David Loblaw, and located at 2130 Robinson Street, Regina SK (the **Regina Business**).
33. Cococo gave various notices (the **Notices**) to the Edmonton Business, the Lethbridge Business, the Kelowna Business, the London Business, and the Regina Business concerning disruptions to its business occasioned by the Pandemic (the **Pandemic Disruptions**), including a notice dated April 30, 2020, which identified that Cococo was, as of such date, shut down and not processing any Product orders (the **Shut-Down Notice**). Forty-six days later, Cococo then gave notice to the same recipients as to its "Resumption of Shipping". On a staggered basis thereafter, Cococo again began fulfilling Product orders, and has continued doing so since such date, including to dealer customers who are not parties to this Action. The content in the Notices was true and was communicated in good faith by Cococo to its customers at the time.
34. Cococo's corporately owned retail stores were closed and remained closed because of Pandemic Disruptions from approximately April 30, 2020 through and until various reopening dates in September and October, 2020. The Edmonton Stores were, meanwhile, kept open during this period when Cococo's stores were closed.

The Edmonton Defendants

35. MF is a former director of Cococo. He resigned as a Cococo director in 2014 and was replaced by KF. While MF was a director, Cococo disclosed to MF in his capacity as director and for the purpose of him discharging his directors' duties only, confidential information (the **Cococo Confidential Information**), including its financial information and information about its customers, including dealers. Cococo has similarly disclosed to KF, in his capacity as a director and for the purpose of him discharging his directors' duties only, Cococo Confidential Information.
36. In breach of his duties as a director, MF disclosed the Cococo Confidential Information to the other Defendants by Counterclaim who were then enabled to misuse that information for the purpose of benefitting their respective businesses to the detriment of Cococo.
37. In breach of his duties as a director, KF disclosed the Cococo Confidential Information to the other Defendants by Counterclaim who were then enabled to misuse that information for the purpose of benefitting their respective businesses to the detriment of Cococo.
38. Since 2018, MF has engaged Cococo, both on his own behalf and on behalf of the other Edmonton Defendants, attempting to induce or pressure Cococo to acquire the Edmonton Business and DKM's ownership interest in Cococo, on some never specified or agreed-to basis.
39. When the Pandemic Disruptions arose, and in specific response to the Shut-Down Notice, the Edmonton Defendants, as led and represented by MF, misrepresented to third parties, including the Lethbridge Defendants, the Kelowna Defendants, the London Defendants, and the Regina Business, the position of Cococo, including while disclosing and misusing Cococo's Confidential Information, in order to induce such third parties to believe that, and furthermore conspired with one another to cause third parties to believe that:
 - (a) facts and positions communicated by the Notices were not true or not communicated in good faith;

- (b) Cococo had suspended shipping, not as a genuine response to the Pandemic Disruptions, but, rather, in order to effectuate some non-existent scheme or strategy to weaken or otherwise eliminate dealer customers from Cococo's business;
- (c) such third parties ought to collaborate together for the purpose of purchasing in a coordinated way products competitive to the Products, including products produced and sold by Daniel Le Chocolates Belge (Le Chocolat Belge Daniel Ltee) (**Daniel Chocolates**), or other chocolatier competitors, in order to create a buying block or group capable of opposing and resisting Cococo;
- (d) such third parties ought to combine together to sue Cococo; and
- (e) an entitlement existed for them to rely upon and enforce against Cococo rights they believe exist opposite Cococo under the CBCP Dealership Agreements.

(the **Edmonton Scheme**)

- 40. In undertaking the Edmonton Scheme, the individual Edmonton Defendants engaged in a civil conspiracy with one another, and, alternatively, with one or more of the named Defendants by Counterclaim, to commit the acts complained of in paragraph 39, in circumstances where the predominant purpose of such conduct was to cause injury to Cococo or, alternatively, to commit the unlawful acts complained of in paragraph 39, in circumstances where it should have been known that injury to Cococo was likely to result.
- 41. It was a reasonably foreseeable consequence of the Edmonton Scheme—especially by the Edmonton Defendants, who knew the Cococo Confidential Information and had actual knowledge the CBC Trademark Agreement—that:
 - (a) third parties would react to the Edmonton Scheme with hostility to Cococo, and would be likely to make defamatory statements about Cococo;
 - (b) dealer customers of Cococo, who had previously been using the CBC Trademarks in a permissible way under the License, would instead proceed forward with operations that would breach the terms of the License and the CBC Trademark

Conditions, which would, in turn and amongst other things, jeopardize Cococo's ownership of the CBC Trademarks under the CBC Trademark Agreement; and

- (c) dealer customers with contractual obligations owing to Cococo would be induced to breach such contracts, including as referred to in paragraphs 47-49, 51-54, and 59-63 below.

42. After commencing the Edmonton Scheme, the Edmonton Defendants proceeded to purchase and resell, via the Edmonton Business including in the Edmonton Stores, products supplied by Daniel Chocolates. On its own, this was not only permissible but advised as an option for dealers in light of the Pandemic Disruptions. However, as they transitioned suppliers, the Edmonton Defendants proceeded to defame Cococo by making statements to third parties falsely alleging that Cococo had altogether refused to supply the Edmonton Business with Products, and was otherwise cutting off supply to the Edmonton Business, on a voluntary or gratuitous basis. Specific defamatory statements included the following, as posted on both the Edmonton Business's Facebook page and as in print in the Edmonton Stores, for months after June 16, 2021:

We had every expectation of continuing to sell Bernard Callebaut Chocolates as we have for the past 35 years. But our friends and suppliers at Cococo Chocolatiers in Calgary who produce all our product have decided to stop shipping to all 12 independently owned stores.

The statement quoted above is untrue. In their plain and natural meaning on the dates published, the words quoted above would naturally have been understood as falsely meaning that (a) Cococo was not shipping, or not willing to ship, Products to the Edmonton Business, which it was, and (b) that any interruption in shipping was a commercial choice being imposed upon the Edmonton Business as Cococo's victim.

43. The words impugned in paragraph 42 were defamatory, in the sense that they would tend to lower Cococo's reputation in the eyes of a reasonable person, the words in fact referred to Cococo, and the words were published.
44. The Result of the Edmonton Scheme has been that:
- (a) the Lethbridge Business broke off communications with Cococo, switched its source of chocolate supply permanently from Cococo, and began selling products

manufactured by GRC Food Services Ltd. o/a "Master Chocolat" (**Master Chocolat**), while breaching the License (which breach continues until today), and breached a contract between the Lethbridge Business and Cococo by failing and refusing to pay Cococo amounts owed for Products purchased, as described in paragraphs 47-50;

- (b) the Kelowna Business broke off communications with Cococo, switched its source of chocolate supply permanently from Cococo and began selling Daniel Chocolates, while breaching the License (which breach continues until today), breached a contract between the Kelowna Business and Cococo by failing and refusing to pay Cococo amounts owed for Products purchased, and made defamatory statements victimizing Cococo, as pleaded in paragraphs 51-57 below;
- (c) the London Business falsely entered into and then intentionally, and with intent to harm, breached a contract with Cococo (as pleaded at paragraphs 59-60), while breaching the License (which breach continues until today); and
- (d) the Regina Business broke off communications with Cococo, and switched its sources of fine-chocolate confectionery supply permanently from Cococo to various others, including Master Chocolat.

45. At all material times, the Edmonton Defendants, the Lethbridge Defendants, the London Defendants, and the Regina Business were specifically aware that Master Chocolat, at all material times, conducts its business in a way that violates the CBC Trademark Agreement and the Bernard Callebaut Name Restrictions, in particular. The Defendants by Counterclaim, as especially MF and KF as former and current directors of Cococo, knew that any dealer switching supply from Cococo to Master Chocolat would cause unfair and undue harm to the brands of Cococo and the goodwill of the CBC Trademarks. Master Chocolat is a business owned by GRC Food Services Ltd., a third party to whom Bernard Callebaut, Master Chocolat's key employee, cannot lawfully convey any license to use his name, but the CBC Trademark Restrictions are, as of this date, being wantonly breached by Bernard Callebaut and Master Chocolat, now

knowingly assisted by the Regina Business, the Lethbridge Defendants, and the London Defendants.

46. KF's involvement in the Edmonton Scheme is particularly egregious. KF is a sitting Director of Cococo. His participation in the Edmonton Scheme constitutes a flagrant breach of, and total disregard for, his fiduciary duties to Cococo. KF's conduct calls for particular deterrence, and warrants punitive or exemplary damages.

The Lethbridge Defendants

47. Cococo supplied the Lethbridge Business with Products and rendered Invoices IN047751, IN047752, IN047753, IN047754, IN047755, IN047756, IN047757, and IN047758, totaling \$7,853.22 in the aggregate (the **Lethbridge Debt**). The Lethbridge Defendants are jointly and severally liable for payment of the Lethbridge Debt.
48. Despite demands, the Lethbridge Defendants have neglected, failed, and refused to pay the Lethbridge Debt.
49. The License extended to the Lethbridge Business by Cococo has terminated according to its terms. In breach of the terminated License, the Lethbridge Defendants:
- (a) have sold products not manufactured by Cococo but packaged in packaging bearing the Cococo Trademarks and the CBC Trademarks;
 - (b) have passed off products manufactured by third parties as Products manufactured by Cococo;
 - (c) continue to operate the Lethbridge Store beneath physical signs that use the CBC Trademarks and that otherwise breach the CBC Trademark Restrictions;
 - (d) continue to operate social media accounts, including on Facebook, falsely identifying the Lethbridge Business with reference to the CBC Trademarks, even while now selling products manufactured by Master Chocolat; and

(e) seek to wrongly transfer goodwill properly belonging to Cococo and correctly associated with the Cococo Trademarks and the CBC Trademarks to the Lethbridge Business and to Master Chocolat.

50. Cococo has been harmed by and has suffered damages in consequence of the matters pleaded at paragraph 49 above. Such harm includes lost sales, lost profits, damage to its corporate reputation, and diminution in goodwill, all in amounts to be proved at trial.

The Kelowna Defendants

51. Cococo supplied the Kelowna Business with Products and rendered Invoices IN047779, IN047780, IN047781, IN047782, IN047783, IN047784, IN047785, IN047786, and IN047787, totaling \$10,188.17 in the aggregate (the **Kelowna Debt**). The Kelowna Defendants are jointly and severally liable for payment of the Kelowna Debt.

52. Despite demands, the Kelowna Defendants have neglected, failed, and refused to pay the Kelowna Debt.

53. The License extended to the Kelowna Business by Cococo has been terminated. In breach of the terminated License, the Kelowna Defendants continue to operate social media accounts, including on Facebook, falsely identifying the Kelowna Business with reference to the CBC Trademarks, even while selling products manufactured by Daniel Chocolates. More specifically, the Kelowna Business now operates a business identified as Daniel Chocolates and that sells only Daniel Chocolates products, but it operates a Facebook account while continuing to use the (never authorized by Cococo) handle @ChocolaterieBernardCallebautKelowna, and while continuing to display on that Facebook account the Products and the CBC Trademarks owned by Cococo.

54. The Kelowna Defendants are seeking to wrongly transfer goodwill properly belonging to Cococo and correctly associated with the Cococo Trademarks and the CBC Trademarks to the Kelowna Business and to Daniel Chocolates.

55. On repeated occasions since the Kelowna Defendants unilaterally cut off communications with Cococo, the Kelowna Defendants, as represented and led by DP, have defamed Cococo by publishing the following statements:

- (a) Facebook, June 19, 2020: "Bernard Callebaut Cococo refused to sell products to us independently owned dealerships. Caused terrible financial hardships for 14 stores. Nasty bastards."
- (b) Facebook, August 18, 2020: "... we were given no choice. BC stopped selling to independently owned dealers on April 30. It was switch or go under. 3 dealership [*sic*] are now gone because of this decision."
- (c) Facebook, September 15, 2020: "We were a huge advocate and owners of the old brand for 22+ years and we were dumped like yesterday's trash!"

The statements quoted above are untrue. In their plain and natural meaning on the dates published, the words quoted above would naturally have been understood as falsely meaning that (a) Cococo was not shipping, or not willing to ship, Products to the Kelowna Business, which it was (assuming payment of the Kelowna Debt), (b) that any interruption in shipping was a commercial choice being imposed upon the Kelowna Business as Cococo's victim, and (c) that three businesses disappeared by the fault of Cococo.

- 56. The words impugned in paragraph 55(a)-55(c) were defamatory, in the sense that they would tend to lower Cococo's reputation in the eyes of a reasonable person, the words in fact referred to Cococo, and the words were published.
- 57. Cococo has been harmed by and has suffered damages in consequence of the matters pleaded at paragraph 53, 54, and 55 above. Such harm includes lost sales, lost profits, damage to its corporate reputation, and diminution in goodwill, all in amounts to be proved at trial.

The London Defendants

- 58. For an uncertain period of time preceding the Pandemic Disruptions, the London Business operated one or more websites (the **London Websites**) offering Cococo's Products for sale. Such distribution of Cococo's products by the London Business using such e-commerce means was unauthorized, and the use of Cococo's trademarks, including the CBC Trademarks, for such purpose was in specific violation of the License.

At all times, Cococo has reserved exclusively unto itself the right to distribute its Products by e-commerce channels, and this fact has been extensively communicated by notice over the years to all of the Defendants by Counterclaim.

59. After the Notices were sent, JH approached Cococo on behalf of the London Business, proposing a contract (the **London Contract**), the essential terms of which were as follows, and which were accepted by Cococo:
- (a) Cococo would not require the London Business to prepay for Products but would instead afford the London Business credit terms through until Christmas 2020;
 - (b) including as financed by Cococo's working capital in the form of Product inventory supplied on the credit terms just described, the London Defendants would continue operating the London Store and the London Business through until not later than Valentine's Day 2021, and then close the London Business permanently, while recouping during the remaining period of operations sufficient cash flows so as to pay off debts then-owing to Cococo, including debts outstanding as of the date the London Contract was entered into;
 - (c) alongside the London Business closing down for good, the London Websites would be permanently shut down as well; and
 - (d) to secure the financial risk associated with Cococo's supply of Products on the credit terms described at paragraph 59(a), JH would execute and provide to Cococo a personal guarantee.
60. Cococo entered into the London Contract not just as a matter of courtesy and goodwill in favour of a customer who was, at the time, believed to have then been operating in good faith, but also specifically out of a desire to see the offending London Websites taken down and the associated License violations resolved on an essentially amicable basis. JH, on behalf of the London Defendants, fraudulently misrepresented the intentions of the London Defendants when she promoted the London Contract to Cococo, Cococo relied upon those misrepresentations, and Cococo has suffered damage as a result.

61. JH provided the required personal guarantee, Cococo supplied Products to the London Business on credit through until Christmas 2021, and the London Defendants then paid Cococo all amounts outstanding on the credit account. JH then contacted Cococo asking for the London Stores to be taken off the list of Cococo's authorized distributors.
62. Around February 2021, Cococo discovered that, in breach of the London Contract and the terminated License:
 - (a) the London Business and the London Websites were continuing (and are continuing today) to operate;
 - (b) the London Business and the London Websites had switched their supply of distributed fine-chocolate confectionery to Master Chocolat, while continuing to use the CBC Trademarks extensively; and
 - (c) the London Websites purposefully and extensively promote confusion between Bernard Callebaut, the individual, and the CBC Trademarks.
63. All of these arrangements were undertaken by the London Defendants clandestinely and with the hope that they would not be discovered by Cococo until it was too late.
64. Cococo has been harmed by and has suffered damages in consequence of the matters pleaded at paragraph 58-63 above. Such harm includes lost sales, lost profits, damage to its corporate reputation, and diminution in goodwill, all in amounts to be proved at trial.

Punitive Damages

65. The conduct of the Edmonton Defendants, the Lethbridge Defendants, the Kelowna Defendants, and the London Defendants, has been high-handed and malicious, undertaken in full knowledge of Cococo's rights and the harms likely to be caused. Such conduct warrants the imposition of punitive damages.

Remedy sought

66. Against the Edmonton Defendants, jointly and severally:
- (a) damages compensating Cococo for the Edmonton Defendants, or any of them, having induced breaches of contract existing as between Cococo and the other Defendants by Counterclaim, in amounts to be proved at trial;
 - (b) damages compensating Cococo for the Edmonton Defendants, or any of them, having unlawfully interfered with Cococo's economic relations, in amounts to be proved at trial;
 - (c) damages compensating Cococo for lawful-act, or, alternatively, unlawful-act civil conspiracy, in amounts to be proved at trial;
 - (d) compensatory damages for defamation in the amount of \$5,000 or such other amount as may be proved at trial;
 - (e) a declaration confirming that Cococo owes no future obligation of any kind to supply the Edmonton Business with Products or to permit the use of its trademarks, including the Cococo Trademarks and the CBC Trademarks, for any term at all, or, alternatively, declaring the minimum remaining term of any such obligation;
 - (f) a declaration that the Edmonton Defendants have no persisting rights under the License, and, in particular, no right to use any trademarks belonging to Cococo, including the Cococo Trademarks and the CBC Trademarks, and a permanent injunction to the same effect;
 - (g) an order requiring the Edmonton Defendants to remove all usages of the Cococo Trademarks and the CBC Trademarks from the Edmonton Stores, and to remove such usages from all online platforms wherever they appear, and a permanent injunction to the same effect;
 - (h) punitive damages in the amount of \$100,000 or such other amount as the Court deems just and proper;

- (i) costs on a solicitor-and-own-client full-indemnity basis; and
- (j) such other and further relief as this Honourable Court deems just and appropriate.

67. Against the Lethbridge Defendants, jointly and severally:

- (a) judgment for the amount of the Lethbridge Debt, plus interest pursuant to contract, or, alternatively, pursuant to the *Judgment Interest Act*, RSA 2000,c J-1;
- (b) compensatory damages for passing off in an amount to be proved at trial;
- (c) a declaration that the Lethbridge Defendants have no persisting rights under the License, and, in particular, no right to use any trademarks belonging to Cococo, including the Cococo Trademarks and the CBC Trademarks, and a permanent injunction to the same effect;
- (d) an order requiring the Lethbridge Defendants to remove all usages of the Cococo Trademarks and the CBC Trademarks from the Lethbridge Stores, and to remove such usages from all online applications wherever they appear, and a permanent injunction to the same effect;
- (e) punitive damages in the amount of \$10,000 or such other amount as the Court deems just and proper;
- (f) costs on a solicitor-and-own-client full-indemnity basis; and
- (g) such other and further relief as this Honourable Court deems just and appropriate.

68. Against the Kelowna Defendants, jointly and severally:

- (a) judgment for the amount of the Kelowna Debt, plus interest pursuant to contract, or, alternatively, pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;

- (b) compensatory damages for defamation in the amount of \$10,000 or such other amount as may be proved at trial;
- (c) a declaration that the Kelowna Defendants have no persisting rights under the License and, in particular, no right to use any trademarks belonging to Cococo, including the Cococo Trademarks and the CBC Trademarks, and a permanent injunction to the same effect;
- (d) an order requiring the Kelowna Defendants to remove all usages of the Cococo Trademarks and the CBC Trademarks from all online applications wherever they appear, and a permanent injunction to the same effect;
- (e) punitive damages in the amount of \$10,000 or such other amount as the Court deems just and proper;
- (f) costs on a solicitor-and-own-client full-indemnity basis; and
- (g) such other and further relief as this Honourable Court deems just and appropriate.

69. Against the London Defendants, jointly and severally:

- (a) judgment for damages caused by breach of the London Contract in the amount of \$10,000, or such other amount as may be proved at trial;
- (b) a declaration that the London Defendants have no persisting rights under the License, and, in particular, no right to use any trademarks belonging to Cococo, including the Cococo Trademarks and the CBC Trademarks, and a permanent injunction to the same effect;
- (c) an order requiring the London Defendants to remove all usages of the Cococo Trademarks and the CBC Trademarks from all online applications wherever they appear, and a permanent injunction to the same effect;
- (d) punitive damages in the amount of \$10,000 or such other amount as the Court deems just and proper;

- (e) costs on a solicitor-and-own-client full-indemnity basis; and
- (f) such other and further relief as this Honourable Court deems just and appropriate.

NOTICE TO THE DEFENDANTS BY COUNTERCLAIM:

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or Demand for Notice to Counterclaim in the office of the Clerk of the Court of Queen's Bench at ~~Choose an item~~ ^{Edmonton}, Alberta, AND serving your Statement of Defence or Demand for Notice to Counterclaim on the Plaintiff by Counterclaim's address for service.

WARNING

If you do not file your Statement of Defence or Demand for Notice for Counterclaim within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff by Counterclaim against you after a notice of the application has been served on you.

COURT FILE NUMBER 2003 16696

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF BY COUNTERCLAIM COCOCO CHOCOLATIERS INC

DEFENDANTS BY
COUNTERCLAIM DKM HOLDINGS INC., KEN FREELAND, MIKE
FREELAND, 411913 ALBERTA LTD., 413772
ALBERTA LTD., 413773 ALBERTA LTD., RYAN
BOSCHMAN, RONALD BOSCHMAN, 539696
ALBERTA LTD., DUANE PETERS, TRACY
HANSEN, 784075 ALBERTA LTD., JUDITE
HOLDER, AND 1247999 ONTARIO LIMITED

DOCUMENT **STATEMENT OF DEFENCE TO COUNTERCLAIM**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

OGILVIE LLP
1400, 10303 Jasper Avenue
Edmonton AB T5J 3N6
Attention: Imran Qureshi
Phone: 780.429.6204
Fax: 780.429.4453
File No.: 64490.1
**Service will be accepted by delivery or fax. No
other form of service will be accepted.**

Statement of facts relied on:

1. The Defendants by Counterclaim, DKM Holdings Inc., Ken Freeland, Mike Freeland, 411913 Alberta Ltd., and 413772 Alberta Ltd. (collectively herein the "DKM Parties"), repeat and rely on the facts stated in the Amended Statement of Claim filed in this Action and adopt the defined terms in the same except as is modified by this Statement of Defence to Counterclaim.
2. Unless expressly admitted herein or in the Statement of Claim, the DKM Parties deny every allegation and statement of facts made in the Statement of Defence, filed by in action May 17, 2021, as well as the allegations and statement of facts made in the Counterclaim, filed in the Action May 17, 2021.

Any matters that defeat the claim of the Plaintiff by Counterclaim:

3. In response to the entirety of the Counterclaim, the DKM Parties deny that they have breached any duty, contractual or otherwise, owed to Cococo Chocolatiers Inc. ("Cococo"), as alleged or at all, and put Cococo to the strict proof thereof.
4. If the DKM Parties breached any duty, contractual or otherwise, which is not admitted but denied, Cococo was at all times aware and acquiesced to the breach and is hereby estopped from seeking damages for the same.
5. Further, the DKM Parties deny that Cococo has suffered any loss or injury as in Counterclaim, or at all, and put Cococo to the strict proof thereof.
6. In specific response to the Counterclaim, the DKM Parties deny that they breached any duty of confidentiality and at no time disclosed any confidential information in breach of any duty or obligation. If any confidential information was disclosed in breach of any duty or obligation, which is not admitted but denied, Cococo has not suffered any damages as a result.
7. Further, the DKM Parties deny that they undertook any civil conspiracy amongst themselves or any other party and put Cococo to the strict proof thereof.
8. At all times, the DKM Parties acted in good faith and in accordance within their legal rights and did not act with any purpose or intent to harm or injury Cococo. At all times, the DKM Parties were acting lawfully and in the interest of preserving their business operations and livelihood which was being threatened by the conduct of the Cococo and its principals as more particularized in the Statement of Claim.
9. Further, the DKM Parties deny attempting to induce or pressure Cococo into acquiring their businesses or DKM's interest in Cococo. As more particularized the Statement of Claim, Cococo and its principals utilized their position of power as a supplier to create pressure on the Defendants with the intent to cause harm or with the understanding such action would likely cause harm.
10. Further, in response to the allegations raised paragraph 42 of the Counterclaim regarding defamatory comments alleged by Cococo, the DKM Parties specifically deny the comments alleged, if proven, are defamatory on the basis that the statement was factual and true.
11. Further, the statement of claimed in the Counterclaim is not capable of bearing defamatory meanings ascribed to them as in the Counterclaim and the DKM Parties put Cococo to the strict proof thereof.

12. Further, or in the alternative, if the DKM Parties, or either of them, are found to have made defamatory comments as alleged or at all, which is not admitted but expressly denied, the DKM Parties state that Cococo has not suffered any damage to its reputation, or at all, as a result of said statements and put Cococo to the strict proof thereof.
13. Further, or in the alternative, the DKM Parties deny that their conduct or actions resulted in any of the consequences alleged in paragraph 44 and put Cococo the strict proof thereof.
14. Further, or in the alternative, if Cococo has suffered any loss or injury, which is not admitted but denied, the DKM Parties state that Cococo has grossly overvalued such loss or injury and any actual loss or injury is nominal.
15. Further, or in the alternative, the DKM Parties deny that Cococo is entitled to any remedies including injunctive relief, damages, or otherwise, as alleged in the Counterclaim.

REMEDY SOUGHT

16. Dismissal of the Counterclaim in its entirety; and
17. Costs of this Action on solicitor and own client basis or in such other amount as this Honorable Court deems just in the circumstances.

This is Exhibit "11" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021



A Commissioner for Oaths in and for Alberta

* **ADAM PALMER** *
Student-at-Law

Amalgamate Alberta Corporation - Registration Statement

Alberta Registration Date: 2015/11/01

Corporate Access Number: 2019301163

Service Request Number: 24157496
Alberta Corporation Type: Named Alberta Corporation
Legal Entity Name: COCOCO CHOCOLATIERS INC.
French Equivalent Name:
Nuans Number:
Nuans Date:
French Nuans Number:
French Nuans Date:

REGISTERED ADDRESS

Street: 5505 - 6 STREET S.E.
Legal Description:
City: CALGARY
Province: ALBERTA
Postal Code: T2H 1L6

RECORDS ADDRESS

Street: 5505 - 6 STREET S.E.
Legal Description:
City: CALGARY
Province: ALBERTA
Postal Code: T2H 1L6

ADDRESS FOR SERVICE BY MAIL

Post Office Box:
City:
Province:
Postal Code:
Internet Mail ID:

Share Structure: SEE SCHEDULE "C" ATTACHED HERETO
Share Transfers Restrictions: SEE SCHEDULE "A" ATTACHED HERETO
Number of Directors:
Min Number Of Directors: 1
Max Number Of Directors: 7

Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE SCHEDULE "B" ATTACHED HERETO

Professional Endorsement Provided:
Future Dating Required:
Registration Date: 2015/11/01

Director

Last Name: BLACK
First Name: KENNETH
Middle Name: M.
Street/Box Number: 43 SUN CANYON PARK S.E.
City: CALGARY
Province: ALBERTA
Postal Code: T2X 2Z3
Country:
Resident Canadian: Y
Named On Stat Dec:

Last Name: BECK
First Name: BRIAN
Middle Name:
Street/Box Number: 1140 - 4 AVENUE N.E.
City: CALGARY
Province: ALBERTA
Postal Code: T2E 0K5
Country:
Resident Canadian: Y
Named On Stat Dec: Y

Last Name: FREELAND
First Name: KEN
Middle Name:
Street/Box Number: 13224 - 102 AVENUE
City: EDMONTON
Province: ALBERTA
Postal Code: T5N 0N1
Country:
Resident Canadian: Y

Named On Stat Dec:

Amalgamating Corporation

Corporate Access Number	Legal Entity Name
2017104114	COCOCO CHOCOLATIERS OTTAWA INC.
2018580403	COCOCO CHOCOLATIERS INC.

Attachment

Attachment Type	Microfilm Bar Code	Date Recorded
Restrictions on Share Transfers	ELECTRONIC	2015/11/01
Other Rules or Provisions	ELECTRONIC	2015/11/01
Share Structure	ELECTRONIC	2015/11/01
Statutory Declaration	10000707115604604	2015/11/01

Registration Authorized By: COLIN A. LUKE
SOLICITOR

**Articles of Amalgamation
For
COCOCO CHOCOLATIERS INC.**

Share Structure: SEE SCHEDULE "C" ATTACHED HERETO
Share Transfers Restrictions: SEE SCHEDULE "A" ATTACHED HERETO
Number of Directors:
Min Number of Directors: 1
Max Number of Directors: 7
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE SCHEDULE "B" ATTACHED HERETO

**Registration Authorized By: COLIN A. LUKE
SOLICITOR**

Schedule "C"

The Corporation is authorized to issue an unlimited number of Class A Common Shares, Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares which shall have the following rights, privileges, restrictions and conditions:

Class A Common Shares

1. Voting Rights

The holders of Class A Common Shares shall be entitled to notice of, to attend and to one vote per Class A Common share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class A Common Shares as such).

2. Dividends

The holders of Class A Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class A Common Shares, subject to prior satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board of Directors may declare dividends on the Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same time in different amounts than dividends declared on the Class A Common Shares.

3. Liquidation

The holders of Class A Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, *pari passu* with the holders of the Class B Common Shares, in such assets of the Corporation as are available for distribution.

Class B Common Shares

1. Voting Rights

The holders of Class B Common Shares shall be entitled to notice of, to attend and to one vote per Class B Common Share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class B Common Shares as such).

2. Dividends

The holders of Class B Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class B Common Shares subject to prior

satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board of Directors may declare dividends on the Class A Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same time in different amounts than dividends declared on the Class B Common Shares.

3. Liquidation

The holders of Class B Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, *pari passu* with the holders of the Class A Common Shares, in such assets of the Corporation as are available for distribution.

Class A Preferred Shares

1. Voting Rights

Subject to the Business Corporations Act (Alberta), the holders of Class A Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of the Class A Preferred Shares shall be entitled to receive if, as and when declared by the Board of Directors of the Corporation:

(a) until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated July 3, 2012 in the principal amount of \$2,000,000 is paid in full (the "New Facility Payment Date"), a fixed, cumulative dividend equal to 4.54% of the Redemption Value per annum payable semi-annually as well as such dividends in any financial year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.

(b) after the New Facility Payment Date and until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated October 22, 2010 in the principal amount of \$2,000,000 are paid in full (the "Working Capital Payment Date"), a fixed, cumulative dividend equal to 2.00% of the Redemption Value per annum payable semi-annually as well as such dividends in any year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.

(c) after the Working Capital Payment Date, such dividends as the Board of Directors may, in its absolute discretion, determine, *pari passu* with and at the same time as dividends are paid on the Class B Preferred Shares.

3. Redemption

(a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class A Preferred Shares at a price per share equal to CDN\$1.00 per share (the "Redemption Value"), together with all accrued and unpaid dividends thereon up to the date fixed for redemption (the whole amount being herein referred to as the "Redemption Price") provided however that the Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.

(b) In case only a part of the then outstanding Class A Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class A Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

(a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class A Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts shall be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares, Class B Common Shares or Class B Preferred Shares.

(b) After payment to the holders of the Class A Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class A Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

Class B Preferred Shares

1. Voting Rights

Subject to the Business Corporations Act (Alberta), the holders of Class B Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of Class B Preferred Shares shall not be entitled to receive dividends on the Class B Preferred Shares until after the Working Capital Payment Date. After the Working Capital Payment Date the holders of Class B Preferred Shares shall be entitled to receive dividends as and when declared by the Board of Directors pari passu with and at the same times as holders of Class A Preferred Shares.

3. Redemption

(a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class B Preferred Shares for the Redemption Price, provided however that the Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.

(b) In case only a part of the then outstanding Class B Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class B Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

(a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class B Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares or Class B Common Shares.

(b) After payment to the holders of the Class B Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class B Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

5. General

(a) On any redemption of Class A Preferred Shares or Class B Preferred Shares the Corporation shall, subject to the unanimous waiver of notice by the registered holders thereof, give at least 21 days before the date fixed for redemption (the "Redemption Date"), a notice in writing of the intention of the Corporation to redeem Class A Preferred Shares or Class B Preferred Shares (as applicable) (the "Redemption Notice") to each person who at the date of giving of such notice is a registered holder of the shares to be redeemed. The Redemption Notice shall set out the calculation of the Redemption Price, the Redemption Date and, unless all the shares held by the holder to whom it is addressed are to be redeemed, the number of such shares so held which are to be redeemed.

(b) The Redemption Price (less any tax required to be withheld by the Corporation) may be paid by cheque payable in lawful money of Canada at par at any branch in Alberta of the Corporation's bankers for the time being or by such other reasonable means as the Corporation deems desirable. The mailing of such cheque from the Corporation's registered office, or the payment by such other reasonable means as the Corporation deems desirable, on or before the Redemption Date shall be deemed to be payment of the Redemption Price represented thereby on the Redemption Date unless the cheque is not paid upon presentation or payment by such other means is not received. Notwithstanding the foregoing,

the Corporation shall be entitled to require at any time, and from time to time, that the Redemption Price be paid to holders of Class A Preferred Shares or Class B Preferred Shares only upon presentation and surrender at the registered office of the Corporation or at any other place or places in Alberta designated by the Redemption Notice of the certificate or certificates for such shares to be redeemed.

(c) If a part only of the Class A Preferred Shares or Class B Preferred Shares represented by any certificate are to be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation.

(d) At any time after the Redemption Notice is given, the Corporation shall have the right to deposit the Redemption Price of any or all Class A Preferred Shares or Class B Preferred Shares to be redeemed with any chartered bank or banks or with any trust company or trust companies in Alberta named for such purpose in the Redemption Notice to the credit of a special account or accounts in trust for the respective holders of such shares, to be paid to them respectively upon surrender to such bank or banks or trust company or trust companies of the certificate or certificates representing the same. Upon such deposit or deposits being made or upon the Redemption Date, whichever is later, the shares in respect of which such deposit has been made shall be and be deemed to be redeemed and the rights of the holders of such shares shall be limited to receiving, without interest, the proportion of the amount so deposited applicable to their respective shares. Any interest allowed on such deposit or deposits shall accrue to the Corporation.

(e) From and after the Redemption Date, the Class A Preferred Shares or Class B Preferred Shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the Redemption Price shall not be duly made by the Corporation, in which event the rights of such holders shall remain unaffected until the Redemption Price has been paid in full.

(f) Class A Preferred Shares or Class B Preferred Shares which are redeemed or deemed to be redeemed in accordance with this Section shall, subject to applicable law, be and be deemed to be returned to the authorized but unissued capital of the Corporation.

Schedule "A"

The right to transfer shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares in the capital of the Corporation without either:

(a) the previous express sanction of the holders of a majority of the voting shares in the capital of the Corporation for the time being outstanding expressed by a resolution passed at a meeting of the holders of such shares or by an instrument or instruments in writing signed by the holders of a majority of such shares; or

(b) the previous express sanction of all of the directors of the Corporation expressed by a resolution passed at a meeting of all of the directors or by an instrument or instruments in writing signed by all of the directors.

Schedule "B"

1. BORROWING

The directors of the Corporation may from time to time:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, re-issue, sell or pledge debt obligations of the Corporation;
- (c) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all of any of the currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation for any money borrowed or any other debt, obligation or liability of the Corporation; and
- (d) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person.

2. DELEGATION

The directors may from time to time delegate to such one or more of the directors and officers of the Corporation as may be designated by the directors all or any of the powers conferred on the Board by the provisions of paragraph 1 hereof to such extent and in such manner as the directors shall determine at the time of each such delegation.

3. NUMBER OF SHAREHOLDERS

The number of shareholders of the Corporation, exclusive of persons who are in the employment and are shareholders of the Corporation and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, and have continued after the termination of that employment to be shareholders of the Corporation, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

4. INVITATION TO PUBLIC PROHIBITED

Any invitation to the public to subscribe for securities of the Corporation is prohibited.

5. GENDER

For the purpose of this schedule, words importing the singular number only shall include the plural and vice versa, words importing any gender shall include all genders, and "person" or words importing persons shall include natural persons, firms, partnerships, corporations, regulatory bodies and entities, legal or otherwise.

ARTICLES OF AMALGAMATION

**Business Corporations Act
(Alberta)
Section 185**

1. Name of Amalgamated Corporation: Cococo Chocolatiers Inc.	20119301163
--	-------------

2. The classes of shares, and any maximum number of shares that the Corporation is authorized to issue:

See Schedule "C" attached

3. Restriction on share transfers, if any:

See Schedule "A" attached

4. Number, or minimum and maximum number of directors:

Minimum of one (1); Maximum of seven (7)

5. If the corporation is restricted FROM carrying on a certain business or restricted TO carrying on a certain business, specify the restriction(s):

None

6. Other Provisions, if any:

See Schedule "B" attached

7. Name of Amalgamating Corporations:	Corporate Access Number:
Cococo Chocolatiers Inc.	2018580403
Cococo Chocolatiers Ottawa Inc.	2017104114

Colin Luke

Name of Person Authorizing (please print)



Signature

Solicitor

Title (please print)

November 1, 2015

Date

BURNET, DUCKWORTH & PALMER LLP
NOV 01 2015
FILED 

Schedule "C"

The Corporation is authorized to issue an unlimited number of Class A Common Shares, Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares which shall have the following rights, privileges, restrictions and conditions:

Class A Common Shares

1. Voting Rights

The holders of Class A Common Shares shall be entitled to notice of, to attend and to one vote per Class A Common share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class A Common Shares as such).

2. Dividends

The holders of Class A Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class A Common Shares, subject to prior satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board of Directors may declare dividends on the Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same time in different amounts than dividends declared on the Class A Common Shares.

3. Liquidation

The holders of Class A Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, *pari passu* with the holders of the Class B Common Shares, in such assets of the Corporation as are available for distribution.

Class B Common Shares

1. Voting Rights

The holders of Class B Common Shares shall be entitled to notice of, to attend and to one vote per Class B Common Share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class B Common Shares as such).

2. Dividends

The holders of Class B Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class B Common Shares subject to prior satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board of Directors may declare dividends on the Class A Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same time in different amounts than dividends declared on the Class B Common Shares.

3. Liquidation

The holders of Class B Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, *pari passu* with the holders of the Class A Common Shares, in such assets of the Corporation as are available for distribution.

Class A Preferred Shares

1. Voting Rights

Subject to the *Business Corporations Act* (Alberta), the holders of Class A Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of the Class A Preferred Shares shall be entitled to receive if, as and when declared by the Board of Directors of the Corporation:

- (a) until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated July 3, 2012 in the principal amount of \$2,000,000 is paid in full (the "**New Facility Payment Date**"), a fixed, cumulative dividend equal to 4.54% of the Redemption Value per annum payable semi-annually as well as such dividends in any financial year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.
- (b) after the New Facility Payment Date and until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated October 22, 2010 in the principal amount of \$2,000,000 are paid in full (the "**Working Capital Payment Date**"), a fixed, cumulative dividend equal to 2.00% of the Redemption Value per annum payable semi-annually as well as such dividends in any year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.
- (c) after the Working Capital Payment Date, such dividends as the Board of Directors may, in its absolute discretion, determine, *pari passu* with and at the same time as dividends are paid on the Class B Preferred Shares.

3. Redemption

- (a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class A Preferred Shares at a price per share equal to CDN\$1.00 per share (the "**Redemption Value**"), together with all accrued and unpaid dividends thereon up to the date fixed for redemption (the whole amount being herein referred to as the "**Redemption Price**") provided however that the Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.

- (b) In case only a part of the then outstanding Class A Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class A Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

- (a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class A Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts shall be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares, Class B Common Shares or Class B Preferred Shares.
- (b) After payment to the holders of the Class A Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class A Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

Class B Preferred Shares

1. Voting Rights

Subject to the *Business Corporations Act* (Alberta), the holders of Class B Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of Class B Preferred Shares shall not be entitled to receive dividends on the Class B Preferred Shares until after the Working Capital Payment Date. After the Working Capital Payment Date the holders of Class B Preferred Shares shall be entitled to receive dividends as and when declared by the Board of Directors *pari passu* with and at the same times as holders of Class A Preferred Shares.

3. Redemption

- (a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class B Preferred Shares for the Redemption Price, provided however that the Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.
- (b) In case only a part of the then outstanding Class B Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class B Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

- (a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class B Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares or Class B Common Shares.
- (b) After payment to the holders of the Class B Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class B Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

5. General

- (a) On any redemption of Class A Preferred Shares or Class B Preferred Shares the Corporation shall, subject to the unanimous waiver of notice by the registered holders thereof, give at least 21 days before the date fixed for redemption (the "**Redemption Date**"), a notice in writing of the intention of the Corporation to redeem Class A Preferred Shares or Class B Preferred Shares (as applicable) (the "**Redemption Notice**") to each person who at the date of giving of such notice is a registered holder of the shares to be redeemed. The Redemption Notice shall set out the calculation of the Redemption Price, the Redemption Date and, unless all the shares held by the holder to whom it is addressed are to be redeemed, the number of such shares so held which are to be redeemed.
- (b) The Redemption Price (less any tax required to be withheld by the Corporation) may be paid by cheque payable in lawful money of Canada at par at any branch in Alberta of the Corporation's bankers for the time being or by such other reasonable means as the Corporation deems desirable. The mailing of such cheque from the Corporation's registered office, or the payment by such other reasonable means as the Corporation deems desirable, on or before the Redemption Date shall be deemed to be payment of the Redemption Price represented thereby on the Redemption Date unless the cheque is not paid upon presentation or payment by such other means is not received. Notwithstanding the foregoing, the Corporation shall be entitled to require at any time, and from time to time, that the Redemption Price be paid to holders of Class A Preferred Shares or Class B Preferred Shares only upon presentation and surrender at the registered office of the Corporation or at any other place or places in Alberta designated by the Redemption Notice of the certificate or certificates for such shares to be redeemed.
- (c) If a part only of the Class A Preferred Shares or Class B Preferred Shares represented by any certificate are to be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation.
- (d) At any time after the Redemption Notice is given, the Corporation shall have the right to deposit the Redemption Price of any or all Class A Preferred Shares or Class B Preferred Shares to be redeemed with any chartered bank or banks or with any trust company or trust companies in Alberta named for such purpose in the Redemption Notice to the credit of a special account or accounts in trust for the respective holders of such shares, to be paid to them respectively upon surrender to such bank or banks or trust company or trust companies of the certificate or certificates representing the same. Upon such deposit or

deposits being made or upon the Redemption Date, whichever is later, the shares in respect of which such deposit has been made shall be and be deemed to be redeemed and the rights of the holders of such shares shall be limited to receiving, without interest, the proportion of the amount so deposited applicable to their respective shares. Any interest allowed on such deposit or deposits shall accrue to the Corporation.

- (e) From and after the Redemption Date, the Class A Preferred Shares or Class B Preferred Shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the Redemption Price shall not be duly made by the Corporation, in which event the rights of such holders shall remain unaffected until the Redemption Price has been paid in full.
- (f) Class A Preferred Shares or Class B Preferred Shares which are redeemed or deemed to be redeemed in accordance with this Section shall, subject to applicable law, be and be deemed to be returned to the authorized but unissued capital of the Corporation.

Schedule "A"

The right to transfer shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares in the capital of the Corporation without either:

- (a) the previous express sanction of the holders of a majority of the voting shares in the capital of the Corporation for the time being outstanding expressed by a resolution passed at a meeting of the holders of such shares or by an instrument or instruments in writing signed by the holders of a majority of such shares; or
- (b) the previous express sanction of all of the directors of the Corporation expressed by a resolution passed at a meeting of all of the directors or by an instrument or instruments in writing signed by all of the directors.

Schedule "B"

1. BORROWING

The directors of the Corporation may from time to time:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, re-issue, sell or pledge debt obligations of the Corporation;
- (c) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all of any of the currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation for any money borrowed or any other debt, obligation or liability of the Corporation; and
- (d) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person.

2. DELEGATION

The directors may from time to time delegate to such one or more of the directors and officers of the Corporation as may be designated by the directors all or any of the powers conferred on the Board by the provisions of paragraph 1 hereof to such extent and in such manner as the directors shall determine at the time of each such delegation.

3. NUMBER OF SHAREHOLDERS

The number of shareholders of the Corporation, exclusive of persons who are in the employment and are shareholders of the Corporation and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, and have continued after the termination of that employment to be shareholders of the Corporation, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

4. INVITATION TO PUBLIC PROHIBITED

Any invitation to the public to subscribe for securities of the Corporation is prohibited.

5. GENDER

For the purpose of this schedule, words importing the singular number only shall include the plural and vice versa, words importing any gender shall include all genders, and "person" or words importing persons shall include natural persons, firms, partnerships, corporations, regulatory bodies and entities, legal or otherwise.



10000707115604604

2019301163

STATUTORY DECLARATION

CANADA) IN THE MATTER OF the *Business Corporations Act* (Alberta)
) AND IN THE MATTER OF the Amalgamation of Cococo
 PROVINCE OF ALBERTA) Chocolatiers Inc. and Cococo Chocolatiers Ottawa Inc.
)
 WIT:)

I, Brian Beck, of the City of Calgary, in the Province of Alberta, do solemnly declare that:

1. I am a proposed director of Cococo Chocolatiers Inc., the amalgamated corporation resulting from the amalgamation of Cococo Chocolatiers Inc. and Cococo Chocolatiers Ottawa Inc. (hereinafter called the "**Amalgamated Corporation**") and as such have personal knowledge of the matters herein declared to.
2. I have conducted such examinations of the books and records of the Amalgamated Corporation and have made such inquiries and investigations as are necessary to enable me to make this declaration.
3. There are reasonable grounds for believing that:
 - (a) the Amalgamated Corporation will be able to pay its liabilities as they become due; and
 - (b) the realizable value of the Amalgamated Corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes.
4. There are reasonable grounds for believing that no creditor will be prejudiced by the amalgamation.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED before me at the City of)
 Calgary, in the Province of Alberta, this 1st)
 day of November, 2015.)

A Notary Public in and for the Province of)
 Alberta)

Colin A. Luke
 Barrister & Solicitor

BRIAN BECK

BURNET, DUCKWORTH & PALMER LLP
 NOV 01 2015
 FILED

Amalgamate Alberta Corporation - Registration Statement

Alberta Registration Date: 2014/11/01

Corporate Access Number: 2018580403

Service Request Number: 22301786
Alberta Corporation Type: Named Alberta Corporation
Legal Entity Name: COCOCO CHOCOLATIERS INC.
French Equivalent Name:
Nuans Number:
Nuans Date:
French Nuans Number:
French Nuans Date:

REGISTERED ADDRESS

Street: 5505 - 6 STREET S.E.
Legal Description:
City: CALGARY
Province: ALBERTA
Postal Code: T2H 1L6

RECORDS ADDRESS

Street: 5505 - 6 STREET S.E.
Legal Description:
City: CALGARY
Province: ALBERTA
Postal Code: T2H 1L6

ADDRESS FOR SERVICE BY MAIL

Post Office Box:
City:
Province:
Postal Code:
Internet Mail ID:

Share Structure: SEE SCHEDULE "C" ATTACHED
Share Transfers Restrictions: SEE SCHEDULE "A" ATTACHED
Number of Directors:
Min Number Of Directors: 1
Max Number Of Directors: 7

Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE SCHEDULE "B" ATTACHED

Professional Endorsement Provided:
Future Dating Required:
Registration Date: 2014/11/01

Director

Last Name: BECK
First Name: BRIAN
Middle Name:
Street/Box Number: 1140 - 4 AVENUE N.E.
City: CALGARY
Province: ALBERTA
Postal Code: T2E 0K5
Country:
Resident Canadian: Y
Named On Stat Dec: Y

Last Name: BLACK
First Name: KENNETH
Middle Name: M.
Street/Box Number: 43 SUN CANYON PARK S.E.
City: CALGARY
Province: ALBERTA
Postal Code: T2X 2Z3
Country:
Resident Canadian: Y
Named On Stat Dec:

Amalgamating Corporation

Corporate Access Number	Legal Entity Name
2015631811	COCOCO CHOCOLATIERS INC.
2017471778	COCOCO CHOCOLATIERS WRB INC.
2017685021	COCOCO CHOCOLATIERS VANCOUVER ISLAND INC.

Attachment

Attachment Type	Microfilm Bar Code	Date Recorded
Restrictions on Share Transfers	ELECTRONIC	2014/11/01
Share Structure	ELECTRONIC	2014/11/01
Statutory Declaration	10000407115604035	2014/11/01
Other Rules or Provisions	ELECTRONIC	2014/11/01

Registration Authorized By: COLIN A. LUKE
SOLICITOR

**Articles of Amalgamation
For
COCOCO CHOCOLATIERS INC.**

Share Structure: SEE SCHEDULE "C" ATTACHED
Share Transfers Restrictions: SEE SCHEDULE "A" ATTACHED
Number of Directors:
Min Number of Directors: 1
Max Number of Directors: 7
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE SCHEDULE "B" ATTACHED

**Registration Authorized By: COLIN A. LUKE
SOLICITOR**

Schedule "C"

The Corporation is authorized to issue an unlimited number of Class A Common Shares, Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares which shall have the following rights, privileges, restrictions and conditions:

Class A Common Shares

1. Voting Rights

The holders of Class A Common Shares shall be entitled to notice of, to attend and to one vote per Class A Common share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class A Common Shares as such).

2. Dividends

The holders of Class A Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class A Common Shares, subject to prior satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board of Directors may declare dividends on the Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same time in different amounts than dividends declared on the Class A Common Shares.

3. Liquidation

The holders of Class A Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, pari passu with the holders of the Class B Common Shares, in such assets of the Corporation as are available for distribution.

Class B Common Shares

1. Voting Rights

The holders of Class B Common Shares shall be entitled to notice of, to attend and to one vote per Class B Common Share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class B Common Shares as such).

2. Dividends

The holders of Class B Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class B Common Shares subject to prior satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board

of Directors may declare dividends on the Class A Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same time in different amounts than dividends declared on the Class B Common Shares.

3. Liquidation

The holders of Class B Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, *pari passu* with the holders of the Class A Common Shares, in such assets of the Corporation as are available for distribution.

Class A Preferred Shares

1. Voting Rights

Subject to the Business Corporations Act (Alberta), the holders of Class A Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of the Class A Preferred Shares shall be entitled to receive if, as and when declared by the Board of Directors of the Corporation:

(a) until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated July 3, 2012 in the principal amount of \$2,000,000 is paid in full (the "New Facility Payment Date"), a fixed, cumulative dividend equal to 4.54% of the Redemption Value per annum payable semi-annually as well as such dividends in any financial year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.

(b) after the New Facility Payment Date and until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated October 22, 2010 in the principal amount of \$2,000,000 are paid in full (the "Working Capital Payment Date"), a fixed, cumulative dividend equal to 2.00% of the Redemption Value per annum payable semi-annually as well as such dividends in any year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.

(c) after the Working Capital Payment Date, such dividends as the Board of Directors may, in its absolute discretion, determine, *pari passu* with and at the same time as dividends are paid on the Class B Preferred Shares.

3. Redemption

(a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class A Preferred Shares at a price per share equal to CDN\$1.00 per share (the "Redemption Value"), together with all accrued and unpaid dividends thereon up to the date fixed for redemption (the whole amount being herein referred to as the "Redemption Price") provided however that the Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.

(b) In case only a part of the then outstanding Class A Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class A Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

(a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class A Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts shall be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares, Class B Common Shares or Class B Preferred Shares.

(b) After payment to the holders of the Class A Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class A Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

Class B Preferred Shares

1. Voting Rights

Subject to the Business Corporations Act (Alberta), the holders of Class B Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of Class B Preferred Shares shall not be entitled to receive dividends on the Class B Preferred Shares until after the Working Capital Payment Date. After the Working Capital Payment Date the holders of Class B Preferred Shares shall be entitled to receive dividends as and when declared by the Board of Directors pari passu with and at the same times as holders of Class A Preferred Shares.

3. Redemption

(a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class B Preferred Shares for the Redemption Price, provided however that the Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.

(b) In case only a part of the then outstanding Class B Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class B Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

(a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class B Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares or Class B Common Shares.

(b) After payment to the holders of the Class B Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class B Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

5. General

(a) On any redemption of Class A Preferred Shares or Class B Preferred Shares the Corporation shall, subject to the unanimous waiver of notice by the registered holders thereof, give at least 21 days before the date fixed for redemption (the "Redemption Date"), a notice in writing of the intention of the Corporation to redeem Class A Preferred Shares or Class B Preferred Shares (as applicable) (the "Redemption Notice") to each person who at the date of giving of such notice is a registered holder of the shares to be redeemed. The Redemption Notice shall set out the calculation of the Redemption Price, the Redemption Date and, unless all the shares held by the holder to whom it is addressed are to be redeemed, the number of such shares so held which are to be redeemed.

(b) The Redemption Price (less any tax required to be withheld by the Corporation) may be paid by cheque payable in lawful money of Canada at par at any branch in Alberta of the Corporation's bankers for the time being or by such other reasonable means as the Corporation deems desirable. The mailing of such cheque from the Corporation's registered office, or the payment by such other reasonable means as the

Corporation deems desirable, on or before the Redemption Date shall be deemed to be payment of the Redemption Price represented thereby on the Redemption Date unless the cheque is not paid upon presentation or payment by such other means is not received. Notwithstanding the foregoing, the Corporation shall be entitled to require at any time, and from time to time, that the Redemption Price be paid to holders of Class A Preferred Shares or Class B Preferred Shares only upon presentation and surrender at the registered office of the Corporation or at any other place or places in Alberta designated by the Redemption Notice of the certificate or certificates for such shares to be redeemed.

(c) If a part only of the Class A Preferred Shares or Class B Preferred Shares represented by any certificate are to be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation.

(d) At any time after the Redemption Notice is given, the Corporation shall have the right to deposit the Redemption Price of any or all Class A Preferred Shares or Class B Preferred Shares to be redeemed with any chartered bank or banks or with any trust company or trust companies in Alberta named for such purpose in the Redemption Notice to the credit of a special account or accounts in trust for the respective holders of such shares, to be paid to them respectively upon surrender to such bank or banks or trust company or trust companies of the certificate or certificates representing the same. Upon such deposit or deposits being made or upon the Redemption Date, whichever is later, the shares in respect of which such deposit has been made shall be and be deemed to be redeemed and the rights of the holders of such shares shall be limited to receiving, without interest, the proportion of the amount so deposited applicable to their respective shares. Any interest allowed on such deposit or deposits shall accrue to the Corporation.

(e) From and after the Redemption Date, the Class A Preferred Shares or Class B Preferred Shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the Redemption Price shall not be duly made by the Corporation, in which event the rights of such holders shall remain unaffected until the Redemption Price has been paid in full.

(f) Class A Preferred Shares or Class B Preferred Shares which are redeemed or deemed to be redeemed in accordance with this Section shall, subject to applicable law, be and be deemed to be returned to the authorized but unissued capital of the Corporation.

SCHEDULE "A"

1. RESTRICTION ON TRANSFER OF SHARES

The right to transfer shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares in the capital of the Corporation without either:

(a) the previous express sanction of the holders of a majority of the voting shares in the capital of the Corporation for the time being outstanding expressed by a resolution passed at a meeting of the holders of such shares or by an instrument or instruments in writing signed by the holders of a majority of such shares; or

(b) the previous express sanction of all of the directors of the Corporation expressed by a resolution passed at a meeting of all of the directors or by an instrument or instruments in writing signed by all of the directors.

SCHEDULE "B"

1. BORROWING

The directors of the Corporation may from time to time:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, re-issue, sell or pledge debt obligations of the Corporation;
- (c) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all or any of the currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation for any money borrowed or any other debt, obligation or liability of the Corporation; and,
- (d) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person.

2. DELEGATION

The directors may from time to time delegate to such one or more of the directors and officers of the Corporation as may be designated by the directors all or any of the powers conferred on the Board by the provisions of paragraph 1 hereof to such extent and in such manner as the directors shall determine at the time of each such delegation.

3. NUMBER OF SHAREHOLDERS

The number of shareholders of the Corporation, exclusive of persons who are in the employment and are shareholders of the Corporation and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, and have continued after the termination of that employment to be shareholders of the Corporation, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

4. INVITATION TO PUBLIC PROHIBITED

Any invitation to the public to subscribe for securities of the Corporation is prohibited.

5. GENDER

For the purpose of this schedule, words importing the singular number only shall include the plural and vice versa, words importing any gender shall include all genders, and "person" or words importing persons shall include natural persons, firms, partnerships, corporations, regulatory bodies and entities, legal or otherwise.

ARTICLES OF AMALGAMATION

**Business Corporations Act
(Alberta)
Section 185**

1. Name of Amalgamated Corporation: Cococo Chocolatiers Inc.	2018580403
--	------------

2. The classes of shares, and any maximum number of shares that the Corporation is authorized to issue:
See Schedule "C" attached

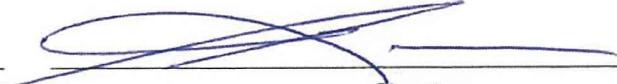
3. Restriction on share transfers, if any:
See Schedule "A" attached

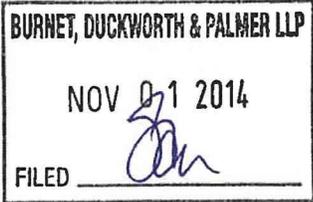
4. Number, or minimum and maximum number of directors:
Minimum of one (1); Maximum of seven (7)

5. If the corporation is restricted FROM carrying on a certain business or restricted TO carrying on a certain business, specify the restriction(s):
None

6. Other Provisions, if any:
See Schedule "B" attached

7. Name of Amalgamating Corporations:	Corporate Access Number:
Cococo Chocolatiers Inc.	2015631811
Cococo Chocolatiers WRB Inc.	2017471778
Cococo Chocolatiers Vancouver Island Inc.	2017685021

Colin Luke	
Name of Person Authorizing (please print)	Signature
Solicitor	November 1, 2014
Title (please print)	Date



Schedule "A"

The Corporation is authorized to issue an unlimited number of Class A Common Shares, Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares which shall have the following rights, privileges, restrictions and conditions:

Class A Common Shares

1. Voting Rights

The holders of Class A Common Shares shall be entitled to notice of, to attend and to one vote per Class A Common share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class A Common Shares as such).

2. Dividends

The holders of Class A Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class A Common Shares, subject to prior satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board of Directors may declare dividends on the Class B Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same time in different amounts than dividends declared on the Class A Common Shares.

3. Liquidation

The holders of Class A Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, *pari passu* with the holders of the Class B Common Shares, in such assets of the Corporation as are available for distribution.

Class B Common Shares

1. Voting Rights

The holders of Class B Common Shares shall be entitled to notice of, to attend and to one vote per Class B Common Share held at any meeting of the shareholders of the Corporation (other than meetings of the holders of a class of shares of the Corporation other than the Class B Common Shares as such).

2. Dividends

The holders of Class B Common Shares shall be entitled to receive dividends, as and when declared by the Board of Directors of the Corporation, on the Class B Common Shares subject to prior satisfaction of all preferential rights to dividends attached to the Class A Preferred Shares. The Board of Directors may declare dividends on the Class A Common Shares, Class A Preferred Shares and Class B Preferred Shares at different times or at the same time in different amounts than dividends declared on the Class B Common Shares.

3. Liquidation

The holders of Class B Common Shares shall be entitled in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, and subject to the prior satisfaction of all preferential rights to return of capital on wind-up or dissolution attached to the Class A Preferred Shares and Class B Preferred Shares, to share, *pari passu* with the holders of the Class A Common Shares, in such assets of the Corporation as are available for distribution.

Class A Preferred Shares

1. Voting Rights

Subject to the *Business Corporations Act* (Alberta), the holders of Class A Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of the Class A Preferred Shares shall be entitled to receive if, as and when declared by the Board of Directors of the Corporation:

- (a) until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated July 3, 2012 in the principal amount of \$2,000,000 is paid in full (the "**New Facility Payment Date**"), a fixed, cumulative dividend equal to 4.54% of the Redemption Value per annum payable semi-annually as well as such dividends in any financial year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.
- (b) after the New Facility Payment Date and until the date on which all amounts owing pursuant to the loan from 261820 Alberta Ltd. to the Corporation dated October 22, 2010 in the principal amount of \$2,000,000 are paid in full (the "**Working Capital Payment Date**"), a fixed, cumulative dividend equal to 2.00% of the Redemption Value per annum payable semi-annually as well as such dividends in any year as the Board of Directors may determine. Such dividends, whether or not declared, shall accrue and be cumulative.
- (c) after the Working Capital Payment Date, such dividends as the Board of Directors may, in its absolute discretion, determine, *pari passu* with and at the same time as dividends are paid on the Class B Preferred Shares.

3. Redemption

- (a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class A Preferred Shares at a price per share equal to CDN\$1.00 per share (the "**Redemption Value**"), together with all accrued and unpaid dividends thereon up to the date fixed for redemption (the whole amount being herein referred to as the "**Redemption Price**") provided however that the Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.

- (b) In case only a part of the then outstanding Class A Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class A Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

- (a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class A Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts shall be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares, Class B Common Shares or Class B Preferred Shares.
- (b) After payment to the holders of the Class A Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class A Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

Class B Preferred Shares

1. Voting Rights

Subject to the *Business Corporations Act* (Alberta), the holders of Class B Preferred Shares shall not be entitled to receive notice of, attend at, or vote at any meeting or meetings of the shareholders of the Corporation.

2. Dividends

The holders of Class B Preferred Shares shall not be entitled to receive dividends on the Class B Preferred Shares until after the Working Capital Payment Date. After the Working Capital Payment Date the holders of Class B Preferred Shares shall be entitled to receive dividends as and when declared by the Board of Directors *pari passu* with and at the same times as holders of Class A Preferred Shares.

3. Redemption

- (a) Subject to applicable law, the Corporation shall have the right to redeem, at any time all, or from time to time any part of, the then outstanding Class B Preferred Shares for the Redemption Price, provided however that the Corporation must redeem all outstanding Class A Preferred Shares prior to any redemption of Class B Preferred Shares.
- (b) In case only a part of the then outstanding Class B Preferred Shares is at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, excluding fractions, from the holdings of all shareholders of Class B Preferred Shares or in such other manner as the Board of Directors deems reasonable.

4. Liquidation

- (a) In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class B Preferred Shares shall be entitled to receive the Redemption Value per share, together with any accrued and unpaid dividends thereof up to the date of commencement of any such liquidation, dissolution, winding up or other distribution of the assets of the Corporation and all such amounts be paid in full before any money shall be paid or property or assets distributed to the holders of any Class A Common Shares or Class B Common Shares.
- (b) After payment to the holders of the Class B Preferred Shares of the amounts so payable to them in accordance with this Section, the holders of Class B Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

5. General

- (a) On any redemption of Class A Preferred Shares or Class B Preferred Shares the Corporation shall, subject to the unanimous waiver of notice by the registered holders thereof, give at least 21 days before the date fixed for redemption (the "**Redemption Date**"), a notice in writing of the intention of the Corporation to redeem Class A Preferred Shares or Class B Preferred Shares (as applicable) (the "**Redemption Notice**") to each person who at the date of giving of such notice is a registered holder of the shares to be redeemed. The Redemption Notice shall set out the calculation of the Redemption Price, the Redemption Date and, unless all the shares held by the holder to whom it is addressed are to be redeemed, the number of such shares so held which are to be redeemed.
- (b) The Redemption Price (less any tax required to be withheld by the Corporation) may be paid by cheque payable in lawful money of Canada at par at any branch in Alberta of the Corporation's bankers for the time being or by such other reasonable means as the Corporation deems desirable. The mailing of such cheque from the Corporation's registered office, or the payment by such other reasonable means as the Corporation deems desirable, on or before the Redemption Date shall be deemed to be payment of the Redemption Price represented thereby on the Redemption Date unless the cheque is not paid upon presentation or payment by such other means is not received. Notwithstanding the foregoing, the Corporation shall be entitled to require at any time, and from time to time, that the Redemption Price be paid to holders of Class A Preferred Shares or Class B Preferred Shares only upon presentation and surrender at the registered office of the Corporation or at any other place or places in Alberta designated by the Redemption Notice of the certificate or certificates for such shares to be redeemed.
- (c) If a part only of the Class A Preferred Shares or Class B Preferred Shares represented by any certificate are to be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation.
- (d) At any time after the Redemption Notice is given, the Corporation shall have the right to deposit the Redemption Price of any or all Class A Preferred Shares or Class B Preferred Shares to be redeemed with any chartered bank or banks or with any trust company or trust companies in Alberta named for such purpose in the Redemption Notice to the credit of a special account or accounts in trust for the respective holders of such shares, to be paid to them respectively upon surrender to such bank or banks or trust company or trust companies of the certificate or certificates representing the same. Upon such deposit or

deposits being made or upon the Redemption Date, whichever is later, the shares in respect of which such deposit has been made shall be and be deemed to be redeemed and the rights of the holders of such shares shall be limited to receiving, without interest, the proportion of the amount so deposited applicable to their respective shares. Any interest allowed on such deposit or deposits shall accrue to the Corporation.

- (e) From and after the Redemption Date, the Class A Preferred Shares or Class B Preferred Shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the Redemption Price shall not be duly made by the Corporation, in which event the rights of such holders shall remain unaffected until the Redemption Price has been paid in full.
- (f) Class A Preferred Shares or Class B Preferred Shares which are redeemed or deemed to be redeemed in accordance with this Section shall, subject to applicable law, be and be deemed to be returned to the authorized but unissued capital of the Corporation.

Schedule "B"

The right to transfer shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares in the capital of the Corporation without either:

- (a) the previous express sanction of the holders of a majority of the voting shares in the capital of the Corporation for the time being outstanding expressed by a resolution passed at a meeting of the holders of such shares or by an instrument or instruments in writing signed by the holders of a majority of such shares; or
- (b) the previous express sanction of all of the directors of the Corporation expressed by a resolution passed at a meeting of all of the directors or by an instrument or instruments in writing signed by all of the directors.

Schedule "C"

1. BORROWING

The directors of the Corporation may from time to time:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, re-issue, sell or pledge debt obligations of the Corporation;
- (c) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all of any of the currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation for any money borrowed or any other debt, obligation or liability of the Corporation; and
- (d) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person.

2. DELEGATION

The directors may from time to time delegate to such one or more of the directors and officers of the Corporation as may be designated by the directors all or any of the powers conferred on the Board by the provisions of paragraph 1 hereof to such extent and in such manner as the directors shall determine at the time of each such delegation.

3. NUMBER OF SHAREHOLDERS

The number of shareholders of the Corporation, exclusive of persons who are in the employment and are shareholders of the Corporation and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, and have continued after the termination of that employment to be shareholders of the Corporation, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

4. INVITATION TO PUBLIC PROHIBITED

Any invitation to the public to subscribe for securities of the Corporation is prohibited.

5. GENDER

For the purpose of this schedule, words importing the singular number only shall include the plural and vice versa, words importing any gender shall include all genders, and "person" or words importing persons shall include natural persons, firms, partnerships, corporations, regulatory bodies and entities, legal or otherwise.

This is Exhibit "12" referred to in the
Affidavit of Brian Beck sworn before me
this 11th day of August, 2021

Adam Palmer

A Commissioner for Oaths in and for Alberta

ADAM PALMER
Student-at-Law

AGREEMENT OF PURCHASE AND SALE
(STALKING HORSE)

THIS AGREEMENT OF PURCHASE AND SALE made this _____ day of August, 2021

BETWEEN:

DELOITTE RESTRUCTURING INC., solely in its capacity as court-appointed Receiver and Manager of Cococo Chocolatiers Inc. and not in its personal or corporate capacity
(the “**Receiver**”)

-and-

PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD., or its nominee, (the
“**Purchaser**”)

WHEREAS pursuant to an order of the Honourable Justice Romaine dated August 18, 2021 (the “**Receivership Order**”), the Receiver was appointed receiver and manager of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of Cococo (defined below);

AND WHEREAS the Court has further granted an Order approving the Sale Process (as defined below) which includes approval of a “stalking horse bid”;

AND WHEREAS the Purchaser desires to act as the “stalking horse bidder” and to purchase, and the Receiver wishes to sell, the right, title and interest of Cococo and the Receiver in the Purchased Assets (defined below), on and subject to the terms of this Agreement (defined below).

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties (defined below) agree as follows.

ARTICLE 1
Definitions

1.1 Capitalized terms used herein shall have the meanings ascribed to such terms in the Sales Process, unless otherwise defined in this Agreement. In this Agreement, the following capitalized terms are defined as follows:

“**Agreement**” or “**this Agreement**” means this Agreement of Purchase and Sale.

“**Approval**” in relation to the Court means the making of an appropriate Order of the Court in respect of the particular action or proposed action of the Receiver submitted for approval, on terms satisfactory to the Receiver.

“**Assumed Liabilities**” has the meaning ascribed thereto in Article 4.1.

“**Business**” means the existing fine chocolate confectionery manufacturing and distribution business of Cococo.

"Business Day" means a day other than Saturday, Sunday or a statutory holiday or any other day upon which the Receiver is not open for the transaction of business throughout normal business hours at its office in Calgary, Alberta.

"Choses in Action" mean all causes of action, choses in action, or other rights, including but not limited to rights of recovery, of Cococo related to, arising from, or associated with those matters set out in Schedule "A" hereto and the right to commence, continue, and prosecute all claims, suits, demands, causes of action, rights, and indemnities arising from or related thereto but, for greater certainty, excluding absolutely any associated claims or allegations that have prior to the Closing Date been advanced or alleged, or that might in future be advanced or alleged as against Cococo, and in any case arising out of or in connection with such matters..

"Closing" or **"Closing Date"** has the meaning ascribed in Article 16.

"Cococo" means Cococo Chocolatiers Inc.

"Court" means the Court of Queen's Bench of Alberta.

"Employees" means all individuals employed by Cococo immediately before Closing.

"Environmental Laws" means all applicable federal, provincial, municipal and local laws, statutes, ordinances, by-laws and regulations and all orders, directives and decisions rendered by, and policies, standards, guidelines and similar guidance of, any Governmental Authority, ministry, department or administrative or regulatory agency or court having jurisdiction over the Purchased Assets (which, for further certainty, in each case shall be deemed to have the force of law), including any obligations or requirements arising at law, relating to the protection of the environment, human and other animal health and safety or the release, manufacture, processing, distribution, use, treatment, storage, presence, disposal, packaging, labelling, recycling, transport, handling, containment, clean-up or other remediation or corrective action of or in respect of any Hazardous Substances.

"Excluded Assets" means all assets described in Schedule "B", which shall not form part of the Purchased Assets.

"GST" has the meaning ascribed thereto in Article 15.

"Governmental Authority" means any government, parliament, legislature, or any governmental, quasi-governmental or regulatory authority, agency, commission, department or board, or any political subdivision thereof, or any court or any other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, or any person acting under the authority of any of the foregoing (including any court or any arbitrator with the authority to bind the Parties at law) or any other authority charged with the administration or enforcement of legal requirements.

"Hazardous Substances" means any contaminant, pollutant, dangerous substance, potentially dangerous substances, noxious substance, toxic substance, hazardous waste, flammable material, explosive material, radioactive material, urea-formaldehyde foam insulation, asbestos, PCBs radiation and any other substance, material, effect, or thing declared or defined to be hazardous, toxic, a contaminant, or pollutant, in or pursuant to any Environmental Laws.

"Intellectual Property" means:

- (a) in any jurisdiction, all trademarks or trade names, designs, domain names, business names, corporate names, or any other similar names to the foregoing related to the Business owned or controlled by Cococo and any rights, claims and interest therein, or any outstanding or pending applications or rights, claims or interest in respect thereof, and including without restriction: the specific trademarks outlined in the attached Schedule "C" and the domain names outlined in the attached Schedule "C"
- (b) all manuals and recipes, techniques and procedures of the Business, owned or used by Cococo, as it is presently is or has ever been conducted, as necessary or convenient for the manufacture, storage and distribution of chocolates and related food products from and in the Premises or elsewhere and all information, documentation and data (hard copy or electronic) relating to same, and whether or not such chocolates and related food products are currently being produced from such Premises or not;
- (c) the design, industrial design, or decoration of any packaging or Premises, owned by Cococo and used by the Business, including any likeness or signature used thereon;
- (d) all brands and branding schemes related to the Business owned or controlled by Cococo, including colour schemes, images, videos, slogans, look and feel, and floor plan design;
- (e) all social media accounts related to the Business owned or controlled by Cococo
- (f) all plans, specifications and models relating to the Business including the set up and operation of retail stores or any aspect thereof;
- (g) all copyrights and moral rights therein, as applicable, of any original works related to the Business owned or operated by Cococo;
- (h) technology, computer telecommunications and electronic equipment, devices and apparatus relating to the operation of the Business and owned or operated by Cococo together with all written and electronic manuals and software relating to such operating systems (including all licenses, proprietary rights and rights of use relating to same) which relate to or are necessary for the operation of the Business and which may, without limitation, contain specifications, designs, market research, customer lists, business plans, receipts and general information for the operation of the Business; and,
- (i) all of the systems located on the Premises (including telephone and computer systems and software and security/monitoring systems).

"Leases" means the leases held by Cococo on eight locations in Alberta and British Columbia as described in Schedule "D" hereto, but excluding any such leases if identified as Excluded Assets, including any Leases that may be identified as Excluded Assets by the Lender subsequent to the execution of this Agreement.

"New Lease" has the meaning ascribed thereto in 7.1.

"Parties" means collectively, the Receiver and the Purchaser; and **"Party"** means either one.

"Permitted Encumbrances" means, collectively, the encumbrances described at Schedule "E" to this Agreement.

"Personal Property" means all of the undertakings, property, and assets of Cococo of whatever nature and wheresoever located, including, but not limited to the Choses in Action, Intellectual Property, Warranties and Guarantees, and the Property Documents, but excluding in each case the Excluded Assets.

"Premises" means the leased head office, manufacturing, storage, and distribution facility located at 2320 2nd Avenue SE in Calgary, Alberta as well as the retail store lease locations throughout Calgary, Alberta, and the two retail store lease locations in Victoria, British Columbia, where Cococo carries on business or has rights to carry on business.

"Priority Debt" means collectively the Receiver's Charge, Receiver's Borrowing Charge, and any debt or charge due and payable in priority to the Secured Debt.

"Property Documents" means all documents relating to the Purchased Assets including, without limitation (but only to the extent in the possession or control of the Receiver) the following:

- (a) true copies of the Leases;
- (b) true copies of any assigned contracts;
- (c) a list of the Personal Property;
- (d) all records and financial statements and other documents and correspondence relating to the operation of the Business, provided that if the Receiver is required to retain originals of any documents, the documents may consist of legible copies thereof;
- (e) all Warranties and Guarantees together with particulars of any claims made thereunder, whether settled or not;
- (f) a list of all employees, salaries, benefits, job descriptions, unpaid holiday pay and unpaid health benefits;
- (g) all documents and information (hard copy or electronic) relating to the Intellectual Property; and
- (h) such other documents respecting the Purchased Assets as the Purchaser may otherwise require.

"Purchase Price" has the meaning ascribed thereto in Article 3.

"Purchased Assets" means collectively, the Personal Property and the Leases, but excludes the Excluded Assets.

"Receiver's Charge" has the meaning ascribed thereto in the Receivership Order.

"Receiver's Borrowings Charge" has the meaning ascribed thereto in the Receivership Order.

"Receivership Order" has the meaning ascribed thereto in the recitals.

"Sale Process" has the meaning ascribed thereto in 6.1.

"Sale Process Order" has the meaning ascribed thereto in 6.1.

"Secured Debt" means the secured debt owed to the Purchaser pursuant to the security granted to it by Cococo and accrued interest, fees and costs accrued up to and including the Closing Date.

"Vesting Order" means an Order to be made by the Court upon terms acceptable to the Parties, acting reasonably, which, *inter alia*, provides that, upon Closing, all of Cococo's right, title and interest in the Purchased Assets shall irrevocably vest in the Purchaser, the Winning Bidder or the Replacement Winning Bidder, as the case may be, free and clear of all registered or unregistered liens, claims and encumbrances.

“**Warranties and Guarantees**” means any and all warranties and guarantees, or other similar rights, in respect of the Purchased Assets, or any part thereof.

ARTICLE 2

Agreement of Purchase and Sale

- 2.1** The Purchaser hereby agrees to purchase from and through the Receiver all of the right, title and interest in and to the Purchased Assets that the Receiver is entitled to sell pursuant to the Receivership Order at the Purchase Price (defined below) set out herein and upon and subject to the terms hereof.

ARTICLE 3

Purchase Price

- 3.1** The Purchaser shall pay to the Receiver, in consideration for the sale, assignment, conveyance and transfer of the Purchased Assets to the Purchaser at Closing, the sum of \$10,000,000.00 plus all applicable taxes (the “**Purchase Price**”), which sum shall be comprised of:
- (a) a certified cheque, bank draft or wire transfer in an amount equal to the Priority Debt, provided, however that in no circumstance shall such amount be greater than \$400,000; and
 - (b) the balance by way of set-off as against the Secured Debt;

on and in accordance with the terms and conditions herein.

ARTICLE 4

Assumption of Liabilities

- 4.1** In determining the Purchase Price, the Parties have taken into account the Purchaser's assumption of responsibility for the payment of all costs for existing or future liabilities related to the Purchased Assets that are not vested off title to the Purchased Assets in accordance with Sale Process Order (collectively, the “**Assumed Liabilities**”) associated with the Purchased Assets, as set forth in this Agreement, and the absolute release of the Receiver of all and any responsibility or liability therefor.
- 4.2** Subject to Closing, the Purchaser hereby agrees to: (i) assume, discharge, perform and fulfil the Assumed Liabilities from and after the Closing Date; and (ii) indemnify and save harmless the Receiver from all claims, damages, and other amounts arising directly or indirectly out of or in connection with the Assumed Liabilities.
- 4.3** In the event any of the Purchased Assets are contracts that are not assignable by the Receiver to the Purchaser in whole or in part without the consent, approval or waiver of any party or parties to them, if any such consents, approvals or waivers therefor have not yet been obtained as of the Closing Date, such contracts shall be deemed to be Excluded Assets.

ARTICLE 5
Acceptance of Agreement

- 5.1 The Purchaser agrees that no agreement for the purchase and sale of the Purchased Assets shall result from this Agreement unless and until this Agreement has been accepted by the Receiver and approved by the Court in accordance with the provisions of Article 6.

ARTICLE 6
Sale Process

- 6.1 Prior to the execution of this Agreement the Court shall have granted an Order (the "**Sales Process Order**") that: (i) recognizes and approves this Agreement, and in particular the Purchase Price, as a baseline or "stalking horse bid"; (ii) provides for a sales process substantially as described in the attached Schedule "F" (the "**Sale Process**"); and (iii) and in the event no Superior Bid is received, the Sales Process Order shall provide for the vesting of the Purchased Assets in the Purchaser in accordance with the terms of the Stalking Horse Bid upon provision of a Receiver's closing certificate.

ARTICLE 7
New Leases

- 7.1 From and after the fifth Business Day prior to the Closing Date, or for as long as this Agreement is in effect, the Receiver shall not enter into any lease, or agree to amend, modify, vary, terminate, surrender or cancel any existing lease (a "**New Lease**"), or any contract or other agreement affecting the Purchased Assets, or agree to amend, modify, vary, terminate, surrender or cancel any existing Contract without the prior written approval of the Purchaser, which approval may be unreasonably withheld. The Receiver shall provide to the Purchaser a copy of the proposal for the New Lease and any other available information that the Purchaser reasonably determines to be necessary in order to decide whether or not to grant its approval, and the Purchaser shall notify the Receiver of its decision in writing within five (5) Business Days of receiving such information, failing which the Receiver may take such steps it deems necessary in relation to such New Lease or contract.

ARTICLE 8
Employment Matters

- 8.1 The Purchaser shall make written offers of employment to all Employees no later than five business days before the Closing Date, which offers shall be conditional upon Closing, effective as of Closing, and on terms and conditions substantially similar in the aggregate to those existing immediately before the Closing Date. Immediately prior to the employment offers being made by the Purchaser, the Receiver will provide notice to the employees of termination of their employment, conditional on Closing and effective immediately before the Closing Date. The Purchaser shall recognize the prior service of all the Employees with Cococo, or its predecessors for all purposes, including statutory notice of termination, common law notice of termination, and the Purchaser's employee benefit plans, as applicable.

ARTICLE 9
Capacity of Receiver

- 9.1** The Receiver, in executing this Agreement, is entering into this Agreement solely in its capacity as the court appointed Receiver and Manager of the assets, undertakings and properties of Cococo, and not in its personal or any other capacity. Any claim against the Receiver shall be limited to and only enforceable against the property and assets then held by or available to it in its said capacity as Receiver and shall not apply to its personal property and assets held by it in any other capacity. The Receiver shall have no personal or corporate liability of any kind, whether in contract or in tort or otherwise. The term "Receiver" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets.

ARTICLE 10
Obligation to Complete

- 10.1** The obligation of the Receiver to complete this Agreement is subject to the satisfaction of the following terms and conditions on the Closing Date, which conditions are for the sole benefit of the Receiver and which may be waived by the Receiver in its sole discretion:
- (a) the representations and warranties of the Purchaser herein are true and accurate as of the Closing Date;
 - (b) no action or proceeding at law or in equity shall be pending or threatened by any person, firm, government, Governmental Authority, regulatory body or agency to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets;
 - (c) the Purchased Assets shall not have been removed from the control of the Receiver by any means or process;
 - (d) no third party shall take any action to redeem the Purchased Assets;
 - (e) the Court shall have granted the Sale Process Order in accordance with and containing substantially the same terms set out in Article 6 above, and the Sale Process Order shall not have been vacated, stayed, set aside, amended, reversed, annulled or modified;
 - (f) there shall have been no Superior Bid received by the Bid Deadline;
 - (g) the Purchaser shall have fulfilled or complied with all covenants contained in this Agreement; and the Receiver shall have received from the Purchaser the closing deliveries contemplated in Article 19.

ARTICLE 11
Purchaser's Acknowledgements

- 11.1** The Purchaser hereby acknowledges and agrees with and to be subject to the following:
- (a) it is responsible for conducting its own searches and investigations of the current and past uses of the Purchased Assets;

- (b) the Receiver makes no representation or warranty of any kind with respect to the Purchased Assets, including but not limited to that the present use or future intended use by the Purchaser of the Purchased Assets is or will be lawful or permitted;
- (c) it is satisfied with the Purchased Assets and all matters and things connected therewith or in any way related thereto;
- (d) it is purchasing the Purchased Assets on an "as is, where is" and "without recourse" basis including without limitation defaults under the Leases and any assigned contracts, outstanding work orders, deficiency notices, compliance, requests, development fees, imposts, lot levies, sewer charges, zoning and building code violations and any outstanding requirements which have been or may be issued by any Governmental Authority having jurisdiction over the Purchased Assets;
- (e) it relies entirely on its own judgment, inspection and investigation of Purchased Assets and any documentation relating to the Purchased Assets obtained from the Receiver has been prepared or collected solely for the convenience of prospective purchasers and is not warranted to be complete or accurate and is not part of this Agreement;
- (f) notwithstanding anything in this Agreement to the contrary or any other information provided to the Purchaser (including, without limitation, any confidential information memorandum, data room information, or herein, or otherwise, as applicable), the Purchaser acknowledges that although the Receiver has provided such information, it recognizes that there may be unintended omissions or misdescriptions contained therein, including property which may be listed in the Schedules hereto, but which does not exist and/or is missing as of the Closing Date. As such, the Purchaser acknowledges that if such property does not exist and/or is missing, or is otherwise mischaracterized/misdescribed, the Receiver shall not be in breach of this Agreement, nor shall: (i) any condition to Closing be unsatisfied; (ii) the Purchase Price be adjusted; or (iii) the Closing delayed;
- (g) it will provide the Receiver with all requisite information and materials, including proof respecting source or funds, at any time or times within forty-eight (48) hours of request by the Receiver so that the Receiver may determine the credit worthiness of the Purchaser;
- (h) the Receiver shall have no liability or obligation with respect to the value, state or condition of the Purchased Assets, whether or not the matter is within the knowledge or imputed knowledge of the Receiver, its officers, employees, directors, agents, representations and contractors;
- (i) the Property Documents are being provided to the Purchaser merely as a courtesy and without any representations or warranties whatsoever; and
- (j) it will ensure that any environmental and/or structural reports on behalf of the Purchaser shall also be addressed to the Receiver and a copy of each such report shall be delivered to the Receiver promptly after the completion thereof, regardless of whether the transaction contemplated by this Agreement closes.

ARTICLE 12

Title to the Purchased Assets

12.1 Title to the Purchased Assets shall be free from all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order and Sale Process Order;
- (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and
- (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta); and

save and except for the Permitted Encumbrances.

ARTICLE 13

Authorizations

13.1 The Purchaser shall assume, at its cost, complete responsibility for compliance with all municipal, provincial and federal laws insofar as the same apply to the Purchased Assets and the use thereof by the Purchaser. It shall be the Purchaser's sole responsibility to obtain, and pay the cost of obtaining any consents, permits, licenses or other authorizations necessary or desirable for the transfer to the Purchaser of the Receiver's right, title and interest, if any, in the Purchased Assets. Provided, however, any costs of the Receiver incurred in connection with obtaining the Vesting Order shall not be borne by the Purchaser.

ARTICLE 14

Risk of Loss

14.1 The Purchased Assets shall be and remain until Closing at the risk of the Receiver. The Purchased Assets shall thereafter be at the risk of the Purchaser. Pending completion, the Receiver shall hold all insurance policies, if any, and the proceeds thereof in trust for the Parties as their interest may appear and in the event of damage to the Purchased Assets in excess of \$1,000,000 before Closing which damage gives rise to any insurance proceeds, the Purchaser may either terminate this Agreement and have the Deposit returned without interest or deduction or else take the proceeds of insurance and complete the transaction contemplated herein.

ARTICLE 15

Taxes

15.1 The Purchaser hereby represents and warrants to the Receiver that it is or will become registered for the purposes of Part IX of the *Excise Tax Act* (Canada) in accordance with the requirements of Subdivision (d) of Division V thereof and it will continue to be so registered as of the Closing Date.

The Purchaser covenants to deliver to the Receiver drafts not less than five (5) days before the Closing Date and originals upon Closing of: (i) a true copy of the certificate evidencing its registration for purposes of the goods and services tax ("**GST**"), including the registration number assigned to it; and (ii) a declaration and indemnity of the Purchaser confirming the accuracy, as at Closing, of the representations and warranties set out herein and agreeing to indemnify the Receiver for any amounts for which the Receiver may become liable as a result of any failure by the Purchaser to pay the GST payable in respect of the sale of the Purchased Assets under Part IX of the *Excise Tax Act* (Canada) and that the Purchaser is buying for its own account and not as trustee or agent for any other party. Provided that the Purchaser delivers a true copy of the certificate and the declaration and indemnity as set out above, in a form satisfactory to the Receiver, the Purchaser shall not be required to pay to the Receiver, nor shall the Receiver be required to collect from the Purchaser, the GST in respect of the Purchased Assets. In the event that the Purchaser shall fail to deliver the true copy of the certificate and the declaration and indemnity as set out above, then the Purchaser shall pay to the Receiver, in addition to the Purchase Price, in pursuance of the Purchaser's obligation to pay and the Receiver's obligation to collect GST under the provisions of the *Excise Tax Act* (Canada), an amount equal to five (5%) percent of the Purchase Price, or such other rate due and owing at the time of Closing.

- 15.2** The Purchaser shall be liable for and shall pay, and be solely responsible for, any and all transfer taxes pertaining to the Purchaser's acquisition of the Purchased Assets, and shall indemnify the Receiver for, from, and against any transfer taxes that the Receiver is required to pay or for which the Receiver may become liable as a result of any failure by the Purchaser to self-assess, pay, or remit such transfer taxes.

ARTICLE 16 **Closing**

- (a) Closing shall take place at the offices of the solicitors for the Receiver in Calgary, Alberta, or by such other electronic means as may be agreed by the Parties, at 11:00 a.m. (Calgary time) on the date which is ten (10) days following the Bid Deadline, or such other date as the Parties or their respective solicitors may agree upon in writing (the "**Closing Date**" or "**Closing**"), provided that the Receiver by written notice to the Purchaser or its solicitors may postpone the Closing Date from time to time, but in no event shall the date of Closing be postponed to a date more than sixty (60) days after the original Closing Date. The parties agree that Closing shall take place in accordance with such usual and customary trust conditions agreed to between the solicitors for the Receiver and the solicitors for the Purchaser as are applicable to similar transactions in Calgary, Alberta.
- (b) The Purchaser shall be responsible for all registration fees payable in connection with the transfer of the Purchased Assets to the Purchaser and for registration fees payable in connection with the registration of discharges of any mortgages, liens, charges, encumbrances, restrictions, leases or other claims or interests which the Receiver is required to discharge hereunder

ARTICLE 17 **Adjustments**

- 17.1** The Purchase Price for the Purchased Assets shall be adjusted as of the Closing Date. The adjustments shall include all tax accounts, current rents, including basic rent and current additional

rent, and all other charges, including operating expenses, realty taxes and management fees, prepaid rents, security deposits, realty taxes, local improvement assessments, rates and charges, water and assessment rates, utility deposits (including replacement letters of credit or letters of guarantee therefor), prepaid amounts or current amounts payable under the Leases, operating costs, utilities, fuel, licenses necessary for the operation of the Purchased Assets and all other items normally adjusted between a vendor and purchaser in respect of the sale of assets similar to the Purchased Assets. Any current rent, including base rent and current additional rent and other charges which are due and owing at the date of Closing shall be adjusted and any claim against a tenant in respect of the same shall be conveyed by the Receiver to the Purchaser. For purposes hereof, "current rent" means rent payable during the subject month which is not more than fifteen (15) days in arrears.

ARTICLE 18
Receiver's Closing Deliveries

- 18.1** The Receiver shall execute and deliver or cause to be executed and delivered to the Purchaser on the Closing Date, against payment of the Purchase Price, the following:
- (a) a bill of sale conveying the Purchased Assets to the Purchaser, if any, so that the Purchaser shall have title to such Purchased Assets free and clear of any liens, charges and encumbrances save and except for Permitted Encumbrances;
 - (b) an assignment in respect of the Leases;
 - (c) assignments in respect of the Choses in Action;
 - (d) a notice or notices to be given to parties under any assigned contracts of their assignment to the Purchaser, together with directions relating to payments thereunder;
 - (e) assignments of contracts that are capable of being assigned by the Receiver;
 - (f) an assignment of any Warranties and Guarantees in respect of or related to the Purchased Assets, to the extent that there are any and that they are assignable without consent;
 - (g) a statement of adjustments;
 - (h) a direction for the payment of the balance of the Purchase Price due on Closing;
 - (i) an undertaking by the Receiver to readjust all items on the statement of adjustments within sixty (60) days of the Closing Date;
 - (j) a certificate of the Receiver to the effect that it is not at the Closing Date a nonresident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada);
 - (k) keys and passwords or any similar security credentials that may be in the possession of the Receiver;
 - (l) all Property Documents, if not already in the possession of the Purchaser; and

- (m) any other documents relative to the completion of this Agreement as may reasonably be required by the Purchaser or its solicitors,

provided that none of such documents shall contain covenants, representations or warranties, which are in addition to or more onerous upon either the Receiver or the Purchaser than those expressly set forth in this Agreement.

ARTICLE 19 **Purchaser's Closing Deliveries**

19.1 The Purchaser shall execute and deliver to the Receiver on the Closing Date the following:

- (a) a certified cheque, bank draft or wire transfer for any remaining portion of the Purchase Price being satisfied in cash and any other monies required to be paid by the Purchaser pursuant to this Agreement, or the adjustments, including all applicable federal and provincial taxes, duties and registration fees unless the applicable exemption certificates in a form acceptable to the Receiver are presented to the Receiver on or before the Closing Date to exempt the Purchaser therefrom;
- (b) an undertaking by the Purchaser to readjust all items on the statement of adjustments within sixty (60) days of the Closing Date;
- (c) a true copy of its GST registration and GST certificate and indemnity as required pursuant to this Agreement;
- (d) any other documents relative to the completion of this Agreement as may reasonably be required by the Receiver or its solicitors,

provided that none of such documents shall contain covenants, representations or warranties, which are in addition to or more onerous upon either the Receiver or the Purchaser than those expressly set forth in this Agreement.

ARTICLE 20 **Purchaser's Representations and Warranties**

20.1 The Purchaser hereby represents and warrants to and in favour of the Receiver that as of the Closing Date:

- (a) the Purchaser is a corporation duly existing and governed by the laws of its incorporating jurisdiction and has the necessary corporate authority, power and capacity, to own the Purchased Assets and to enter into this Agreement and to carry out the transactions contemplated by this Agreement in the manner contemplated by this Agreement;
- (b) the obligations of the Purchaser hereunder and the documents and transactions contemplated herein shall be duly and validly authorized by all requisite corporate proceedings on or before the Closing Date;
- (c) neither the execution of this Agreement nor its performance by the Purchaser will result in a breach of any term or provision or constitute a default under any of the constating

- documents or by-laws of the Purchaser or any other agreement to which the Purchaser is a party;
- (d) the Purchaser:
- (i) is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada);
 - (ii) has not made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof;
 - (iii) has not had any petition or receiving order presented in respect of it; or
 - (iv) has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding-up, liquidation or dissolution;
- (e) this Agreement has been validly executed and delivered by the Purchaser and is a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject to the limitations with respect to enforcement imposed by applicable laws in connection with bankruptcy, insolvency, liquidation, reorganization or other similar laws affecting the enforcement of creditors rights generally and subject to the availability of equitable remedies such as specific performance and injunction which are only available in the discretion of the court from which they are sought;
- (f) the Receiver shall not be liable for any brokerage commission, finder's fee or similar payment in connection with the transaction contemplated herein;
- (g) on the Closing Date, the Purchaser will meet all requirements of Governmental Authorities to purchase and accept a transfer of the Purchased Assets;
- (h) the Purchaser is not a non-Canadian within the meaning of the *Investment Canada Act* (Canada); and
- (i) the Purchaser is or will be on the Closing Date a GST registrant under the *Excise Tax Act* (Canada).

ARTICLE 21
Confidentiality

- 21.1** The Purchaser agrees that all information and documents supplied by the Receiver or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and shall not without the Receiver's prior written consent be disclosed to any third party. If for any reason Closing does not occur, all such documents (including without limitation, the Property Documents) shall forthwith be returned intact to the Receiver and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser further agrees that unless and until the terms of this Agreement become public knowledge in connection with an application to the Court for Approval of this Agreement, the Purchaser shall keep such terms confidential and shall not disclose the same to anyone except the Purchaser's prospective syndicate members,

solicitors, agents or lenders acting in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

ARTICLE 22
Release and Indemnification

22.1 The Purchaser agrees to release and discharge the Receiver together with its officers, employees, agents and representatives from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Substance relating to the Purchased Assets. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Receiver to clean up or remove or pay for the cleanup or removal of any Hazardous Substance, remediate any condition or matter in, on, under or in the vicinity of the Purchased Assets or seek an abatement in the Purchase Price or damages in connection with any Hazardous Substance.

22.2 If Closing occurs the Purchaser shall:

- (a) be liable to the Receiver, its affiliates and their respective representatives for; and
- (b) as a separate covenant, indemnify and save harmless the Receiver, its affiliates and their representatives from and against,

all losses and liabilities suffered, sustained, paid or incurred by the Receiver, its affiliates, or their respective representatives related to or in connection with the Purchased Assets and the Assumed Liabilities, arising or accruing, prior to, on or after the Closing Date; including: (i) all losses and liabilities attributable to the ownership, operation, use, construction or maintenance of the Purchased Assets following the Closing Date; and (ii) any other losses and liabilities for which the Purchaser has agreed to indemnify the Vendor pursuant to this Agreement.

ARTICLE 23
Non-Registration

23.1 The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Purchased Assets. Should the Purchaser be in default of its obligations under this Section, the Receiver may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Purchased Assets. The Purchaser irrevocably nominates, constitutes and appoints the Receiver as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Purchased Assets.

ARTICLE 24
Notices

24.1 Any notice or communications required to be given by the Parties shall be given by courier or facsimile, or if mailed, by registered letter, prepaid to the Parties as follows:

(a) in the case of the Receiver:

Deloitte Restructuring Inc.
700 850-2nd Street SW
Calgary, AB T2P 0R8
Attention: Robert J. Taylor / Ryan Adlington
Email: bobtaylor@deloitte.ca / radlington@deloitte.ca

with a copy to:

Torys LLP
525 – 8th Avenue SW 46th Floor Eighth Avenue Place East
Calgary, Alberta T2P 1G1
Attention: Kyle Kashuba / Jessie Mann
Email: kkashuba@torys.com / jmann@torys.com

(b) in the case of the Purchaser:

Panterra Mortgage & Financial Corporation Ltd.
Attention: Brian Beck
Email: brianbeck@glbh.com

with a copy to:

Dentons Canada LLP
1500 850 2nd Street SW
Calgary, Alberta T2P 0R8
Attention: David Mann, QC / John Regush
Email: david.mann@dentons.com / john.regush@dentons.com

or such other address as may be furnished from time to time by either Party. Any notice, if delivered by courier or email, shall be deemed to have been given or made on the date delivered or the date that a confirmation of receipt of the email was recorded by the sender and if mailed correctly, shall be deemed to have been received on the third Business Day after mailing. In the event of actual or imminent disruption or postal service, any notice shall be delivered, by courier or email.

ARTICLE 25 **Entire Agreement**

25.1 The Agreement shall constitute the entire agreement between the Parties to it pertaining to the subject matter hereof and shall supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there shall be no agreements or understandings between the Parties in connection with the subject matter thereof except as specifically set forth herein. No Party has relied on any express or implied representation, written or oral, of any individual or entity as an inducement to enter into this Agreement.

ARTICLE 26
Amendment

- 26.1** No supplement, modification, waiver or termination of this Agreement shall be binding, unless executed in writing by the Parties to be bound thereby, provided that the time provided for doing any matter or thing contemplated herein may be abridged or extended by written agreement, in letter form or otherwise.

ARTICLE 27
Time of Essence

- 27.1** Time shall be of the essence in this Agreement in all respects and any waiver of any time provision shall not be effective unless in writing and signed by both Parties.

ARTICLE 28
Binding Agreement

- 28.1** This Agreement, when duly executed by the Parties, shall constitute a binding agreement of purchase and sale subject to its terms. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Purchased Assets supported hereby other than as expressed herein in writing.

ARTICLE 29
Successors and Assigns

- 29.1** All of the covenants and agreements contained in this Agreement shall be binding upon the Parties and their respective successors and permitted assigns and shall enure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns pursuant to the terms and conditions of this Agreement. The Purchaser may assign this Agreement to one or more subsidiary, parent or affiliated entity of the Purchaser upon the provision of prior notice in writing to the Receiver, which shall be provided not less than five (5) Business Days prior to the Closing Date, and provided however, the Purchaser shall not be released from any liability to observe and perform all of the terms and conditions contained herein until Closing. Any other assignment by the Purchaser or any assignment by the Receiver shall require the prior written consent of the other Party, which consent may be arbitrarily withheld.

ARTICLE 30
Governing Law

- 30.1** This Agreement shall be construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract and the parties attorn to the jurisdiction of the Court.

ARTICLE 31
Gender, Interpretive Matters

- 31.1** This Agreement shall be read with all changes of gender or number required by the context. The titles to provisions do not form part of this Agreement and are inserted for reference purposes

only. Preparation and submission of the form of this Agreement or any other material by the Receiver shall not constitute an offer to sell.

ARTICLE 32
Severability

- 32.1** Any provision of this Agreement which is determined to be void, prohibited or unenforceable shall be severable to the extent of such avoidance, prohibition or unenforceability without invalidating or otherwise limiting or impairing the other provisions of this Agreement.

ARTICLE 33
Non-Merger

- 33.1** The provisions of this Agreement (including, without limitation, the representations and warranties of the Purchaser), shall survive Closing and shall not merge in the Sales Process Order or in any other documents delivered hereunder.

ARTICLE 34
Further Assurances

- 34.1** Each of the Parties shall from time to time hereafter and upon any reasonable request and at the cost of the other Party, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

ARTICLE 35
Counterparts

- 35.1** This Agreement may be executed in any number of counterparts and delivered via facsimile or email in PDF format, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

ARTICLE 36
Solicitors as Agents

- 36.1** Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated by this Agreement may be given or delivered and accepted or received by the Purchaser's solicitors on behalf of the Purchaser and by the Receiver's solicitors on behalf of the Receiver and any tender of closing documents and the balance of the Purchase Price and/or any other payment hereunder may be made upon the Purchaser's solicitors and the Receiver's solicitors, as the case may be.

ARTICLE 37
Nominee

- 37.1** The Receiver acknowledges and agrees that, the Purchaser is a nominee on behalf of parties having a beneficial interest in the acquisition of, or the ownership of the Purchased Assets, and such parties shall have no liability whatsoever pursuant to or rising out of this Agreement.

DELOITTE RESTRUCTURING INC., solely in its capacity as court-appointed Receiver and Manager of Cococo Chocolatiers Inc. and not in its personal or corporate capacity

Per: _____

Name: _____

Title: _____

PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.

Per: _____

Name: _____

Title: _____

I have authority to bind the corporation.

Schedule A – Choses in Action

Part 1 – Litigation

<p>The Plaintiff's claim in Provincial Court of Alberta (Civil) Action Number P2190101325 Cococo Chocolatiers Inc. v Wild Rose Investments, L.L.C., Helen Shum, and Eddie Shum</p>
<p>The Plaintiff's claim in Provincial Court of Alberta (Civil) Action Number P2190101266 Cococo Chocolatiers Inc. v Roshan Holdings Inc. and Darlene Longueil</p>
<p>The Counterclaim of the Plaintiff by Counterclaim Cococo Chocolatiers Inc. in Court of Queen's Bench of Alberta Action Number 2003-16696. Cococo Chocolatiers Inc. v. DKM Holdings Inc., Ken Freeland, Mike Freeland, 411913 Alberta Ltd., 413772 Alberta Ltd., 413773 Alberta Ltd., Ryan Boschman, Ronald Boschman, 539696 Alberta Ltd., Duane Peters, Tracy Hansen, 784075 Alberta Ltd., Judite Holder, and 1247999 Ontario Ltd.</p>
<p>The Plaintiff's claim in Court of Queen's Bench Action Number 1501-14252 Cococo Chocolatiers Inc. v. Train Trailers Rentals Limited</p>
<p>The claim of Cococo Chocolatiers Inc. as an unsecured creditor in Court of Queen's Bench of Alberta Court File Number BK 25-2072482 In the Matter of the Bankruptcy of Bernard Willy Margueritte Callebaut</p>
<p>The Default Judgment and Bill of Costs of Cococo Chocolatiers Inc. in Court of Queen's Bench Action Number 1601-02192, and all associated registrations and rights of enforcement.</p>
<p>Cococo Chocolatiers Inc. v. 1213725 Ontario Inc.</p>

Part B – Debts or Other

<p>The demand obligations and resulting debts upon demand, owing to Cococo Chocolatiers Inc. by Christine McAuley and/or Sugar Rush Chocolates Ltd.</p>
<p>All outstanding accounts receivable of Cococo Chocolatiers Inc. existing as of the Closing Date, a listing of which will be attached to this Schedule A as of the Closing Date for reference, and which shall include but not be limited to the accounts receivable owing by the following if uncollected at the Closing Date:</p>

Aged AR August 10, 2021

Customer No.	Customer Name	Current	1 to 30	31 to 60	61 to 90	Over 90	Total	
			Days	Days	Days	Days		
1102	784075 ALBETA LTD. / DUANE PETERS / TRACY HANSEN	0.00	0.00	0.00	0.00	12,494.33	12,494.33	
1200	539696 ALBERTA LTD. / RYAN BOSCHMAN / RON BOSCHMAN	0.00	0.00	0.00	0.00	9,630.84	9,630.84	
1202	LQCONCEPTS, LLC / LA QUITA CORBETT MARTIN	0.00	0.00	0.00	0.00	4,646.81	4,646.81	
1900	ROSHAN HOLDINGS LTD. / DARLENE LONGUEIL	0.00	0.00	0.00	0.00	13,195.53	13,195.53	
2303	STARWOOD CHOCOLATERIES INC. / JACQUELINE PEARSON	0.00	0.00	0.00	0.00	52,910.07	52,910.07	
2306	1247999 ONTARIO LTD. / JUDITE HOLDER	0.00	0.00	0.00	0.00	1,250.51	1,250.51	
3000	WILD ROSE INVESTMENTS LLC / HELEN SHUM / EDDIE SHUM	0.00	0.00	0.00	0.00	54,522.26	54,522.26	
3001	737861 ALBERT LTD. / DON MCCAFFREY	3,860.63	0.00	0.00	0.00	0.00	3,860.63	
6000	COCOCO CHOCOLATIERS CENTRAL INC.	0.00	0.00	0.00	5,875.72	41,441.39	47,317.11	
CAN001	CANMORE TEA COMPANY INC.	0.00	0.00	0.00	0.00	753.90	753.90	
DUZ001	DUZU DATES	0.00	66.48	0.00	0.00	0.00	66.48	
ERI000	ERIKS NORTH AMERICA	0.00	0.00	3,775.60	0.00	0.00	3,775.60	
FIT000	FITWAVE	0.00	1,338.18	0.00	0.00	0.00	1,338.18	
GLB001	G.L. BLACK HOLDINGS LTD	0.00	0.00	0.00	0.00	69.30	69.30	
HEY000	HEY HAPPY COFFEE	0.00	0.00	432.00	0.00	0.00	432.00	
PUR001	PURE CASINO YELLOWHEAD	0.00	0.00	0.00	0.00	1,166.97	1,166.97	
SOB001	SOBEYS INC	0.00	0.00	0.00	0.00	2,532.28	2,532.28	
REC000	RECEPTION SALES	0.00	273.00	387.00	125.00	111.70	896.70	
REC001	RECEIVER GENERAL FOR CANADA	0.00	0.00	0.00	0.00	22,796.99	22,796.99 GST Overpayr	
REN000	RENEGADE TRAILER SOLUTIONS	0.00	2,520.00	0.00	0.00	0.00	2,520.00	
TV5000	TV5 QUEBEC CANADA	0.00	0.00	6,405.00	0.00	0.00	6,405.00	
Report Total:		3,860.63	4,197.66	10,999.60	6,000.72	217,522.88	242,581.49	
							Interest	31,217.65
							Revised	211,363.84
							GL	1100
								134,204.57
								1150
								77,159.27
								211,363.84
							Variance	0.00

Schedule B – Excluded Assets

- Each and every agreement and contract, of any kind whatsoever, whether written or unwritten, express or implied, that does or could obligate Cococo to sell or otherwise provide any product or service to any third party including, in particular, any (immediately prior to the Closing Date) current or former dealer customer of Cococo's.
- Any and all agreements and contracts, of any kind whatsoever, between Cococo and any other party, provided however that the following agreements and contracts shall not be Excluded Assets, unless specifically identified as Excluded Assets in this Schedule:
 - all service contracts and agreements to enter into service contracts relating to the management, service, maintenance, operation, repair and cleaning of the Purchased Assets or the furnishing of supplies or services thereto;
 - the Choses in Action;
 - all Leases;
 - all Warranties and Guarantees
- The Plaintiff's Civil Claim against Cococo in Provincial Court of Alberta (Civil) Action Number P2090102871; 630344 Alberta Inc. v. Cococo Chocolatiers Inc.
- Any claim by, or alleged debt owing to, Massound Hassannia & Nahideh Hassannia under or in respect of any lease of premises by them (directly or indirectly), such premises being identifiable as 314A and 314B Richmond Road, Ottawa, Ontario, to Cococo Chocolatiers Ottawa Inc. as tenant.
- Any claim by, or alleged debt owing to, The Calgary Airport Authority, under or in respect of Lease No. YYC1289 or Lease No. YYC2126, or any related storage or service leases or contracts, including Storage Space License YYC2162 or the IT Shared Services Agreement dated for reference January 1, 2017, all of which exist in respect of two retail store concessions vacated by Cococo with the consent of The Calgary Airport Authority.
- The following leases, plus any other Leases as the Purchaser may identify upon written notice to the Receiver, which shall be provided not less than five (5) Business Days prior to the Closing Date:
 - (a) **Bankers Hall Retail Lease:** Lease Agreement originally between 4087844 Canada Inc., as landlord, Cococo Chocolatiers Central Inc., as tenant, and Cococo Chocolatiers Inc, as indemnifier, dated June 11, 2013, as amended (the "**Bankers Hall Retail Lease**"), which may be further particularized as originally pertaining to Retail Unit #224 in Bankers Hall, 315 – 8th Avenue SW Calgary, Alberta, and having been amended by A Premises Relocation and Lease Amending and Extension Agreement between Bankers Hall LP and bcIMC Realty Corporation, as landlord, Cococo Chocolatiers Central Inc., as tenant, and Cococo Chocolatiers Inc., as indemnifier dated August 1, 2018 regarding Unit 236 at Bankers Hall 315 – 8th Avenue SW Calgary, Alberta, and as further amended by Rent Reduction Agreements dated September 2, 2020, December 18, 2020, and February 18, 2021.

- (b) **Bankers Hall Storage Agreement:** Storage Agreement made as of November 28, 2013 originally as between Bankers Hall LP and bcIMC Realty Corporation, as landlord, and Cococo Chocolatiers Central Inc., as tenant, as the same may have been amended and/or superseded or replaced from time to time (the “**Bankers Hall Storage Agreement**”).

- (c) **Government Street Retail Lease:** Offer to Lease/Interim Agreement from Cococo Chocolatiers Inc. to Town Properties Ltd. c/o Equitex Realty Ltd dated November 29, 2019 regarding a portion of the property having civic address 612 View Street 1205 Government Street Victoria, BC and legally described as Lot 167, Victoria City.

Schedule C – Intellectual Property

<u>Canada</u>			
Trademark	Application #	Registration #	Goods and Services
HALO GELATO (Word)	1523763	TMA845133	Goods: Gelato
P & DESIGN OF YOUNG BOY (Design)	1319814	TMA702861	Services: Operation of a manufacturing, wholesale and retail establishment selling chocolate
CHOCOLATES BY BERNARD (Word)	1234516	TMA719159	Services: Sale of chocolates and chocolate food products
CHOCOLATERIE BERNARD (Word)	1234470	TMA719023	Services: Sale of chocolate and chocolate food products
CHOCOLATES BY BERNARD CALLEBAUT (Word)	1091732	TMA635554	Goods: Chocolates Services: Operation of a retail establishment selling chocolates
COCOCO (Word)	1530197	TMA847323	Goods: (1)Chocolate confections, namely chocolate confections filled with fresh creams, butter creams, marzipan, ganaches, pralines and liquers, solid chocolates, solid molded chocolates, chocolate bars, chocolate wafers, chocolate covered nuts, chocolate covered fruits, chocolate covered coffee beans, chocolate covered ginger, molded chocolate shapes and characters, chocolate cups; frozen desserts, namely ice cream, soft-serve ice cream, frozen

		<p>malted beverages, gelatos, chocolate-based baking ingredients namely, solid baking chocolate, cocoa powder, chocolate shavings, chocolate drops, chocolate sprinkles, chocolate decorations, chocolate sauces and spread; chocolate-based snack foods namely, chocolate dipped biscuits, chocolate dipped biscotti, chocolate covered pretzels, chocolate cookies and chocolate pastries; chocolate flavourings for beverages, namely hot chocolate and chocolate flavourings for hot or cold coffee beverages</p> <p>(2) Beverages namely coffee namely whole bean coffee, ground coffee and chocolate flavoured coffee beverages</p> <p>Services: (1) Retail store services namely retail store selling chocolate confections, frozen desserts, chocolate-based baking ingredients, chocolate sauces and spreads, chocolate-based snack foods and cookies, chocolate flavourings for beverages, coffee</p>
--	--	---

			<p>beans, ground coffee and beverages</p> <p>(2) Cafe services namely cafe serving coffee, tea, beverages, coffee flavoured drinks, tea flavoured drinks, pastries, snacks, chocolate confections, frozen desserts, chocolate-based snack foods and cookies</p> <p>(3) Wholesale and distribution of chocolate confections, frozen desserts, chocolate-based baking ingredients, chocolate sauces and spreads, chocolate-based snack foods and cookies, chocolate flavorings for beverages, coffee beans, ground coffee and beverages</p> <p>(4) Retail sale through an internet website of chocolate confections, frozen desserts, chocolate-based baking ingredients, chocolate sauces and spreads, chocolate-based snack foods and cookies, chocolate flavourings for beverages, coffee beans, ground coffee and beverages</p>
TRUFFLE TREASURES (Word)	1399021	TMA790964	<p>Goods: (1) Chocolate</p> <p>(2) Confectionery products, namely, granola, hot chocolate packs, cocoa powder, roasted coaco bags,</p>

			<p>and sauces, namely, fondue sauces, caramel sauces, and fudge sauces</p> <p>Services: (1) Retail sales of chocolate</p> <p>(2) Retail sales of confectionery items, namely, granola, hot chocolate packs, cocoa powder, roasted cacao bags, and sauces, namely, fondue sauces, caramel sauces, and fudge sauces</p> <p>(3) Retail sales of beverages, namely, coffee, tea, hot chocolate, bottled water, and fruit juices, of baked goods, namely, waffles, crepes, pastries, and cookies, and of ice cream and gelato</p> <p>(4) Retail sales of gift items and household items, namely, books, journals, card decks, candles, air diffusers, jewellery, and household decorations made of glass, and of non-electric coffee and tea accessories, namely, ceramic mugs and ceramic tea pots</p> <p>(5) Café services</p> <p>(6) Retail sales of gift items and household items, namely, candle holders, household decorations made of</p>
--	--	--	--

			metals, ceramics and wood, tea balls, and ceramic coffee pots
CHOCOLATERIE BERNARD 'C (Word)	0779368	TMA456117	<p>Goods: (1) Chocolates; chocolate confectionary; candy ice cream; cookies; cakes, sauces; chocolate spreads; gift boxes; recipe cards and cookbooks; gift packaging, namely wrapping appear, paper and metallic ribbons and bows and gift cards and chocolate recipes</p> <p>Services: (1) Operation of a business dealing in the sale of chocolates; chocolate confectionery, candy ice cream; cookies; cakes, sauces; chocolate spreads; gift boxes; recipe cards and cookbooks; gift packaging, namely wrapping paper, paper and metallic ribbons and bows and gift cards and chocolate recipes</p>
CHOCOLATERIE BERNARD CALLEBAUT (Word)	0655302	TMA391640	<p>Goods: (1) Chocolates, chocolate confectionery, candy, ice cream, cookies, cakes, and related items namely, sauces, spreads, gift boxes, tins and gift packaging, and chocolate recipes and cookbooks</p> <p>Services: (1) Operation of business dealing in the sale of chocolates,</p>

			confectionery, candy, ice cream, cookies, cakes and related items
GOOD CLEAN FUN (Word)	1668677	TMA964132	Goods: (1) Chocolate confections, namely chocolate confections filled with creams, marizpan, ganaches, pralines and liqueurs, solid chocolates, solid molded chocolates, chocolate bars, chocolate wafers, chocolate covered nuts, chocolate covered fruits, chocolate covered coffee beans, chocolate covered ginger, molded chocolate shapes and characters, chocolate cups; frozen desserts namely, ice cream, soft-serve ice cream, frozen malted beverages, gelatos; chocolate-based baking ingredients namely, solid baking chocolate, cocoa powder, cocoa nibs, chocolate shavings, chocolate drops, chocolate sprinkles, chocolate decorations, chocolate sauces and spreads; chocolate-based snack foods namely, chocolate dipped biscuits, chocolate covered pretzels, chocolate cookies and chocolate pastries; chocolate flavourings for beverages, namely hot chocolate and chocolate flavourings

			<p>for hot or cold coffee beverages; beverages namely chocolate flavoured coffee beverages</p> <p>Services: (1) Retail store services namely retail store featuring chocolate confections, frozen desserts, chocolate-based baking ingredients, chocolate sauces and spreads, chocolate-based snack foods and cookies, chocolate flavourings for beverages, coffee beans, ground coffee and beverages; cafe services namely cafe serving coffee, tea, beverages, coffee flavoured drinks, tea flavoured drinks, pastries, snacks, chocolate confections, frozen desserts, chocolate-based snack foods and cookies; wholesale and distribution of chocolate confections, frozen desserts, chocolate-based baking ingredients, chocolate sauces and spreads, chocolate-based snack foods and cookies, chocolate flavourings for beverage; retail sale through an internet website of chocolate confections, frozen desserts, chocolate-based baking ingredients, chocolate sauces and spreads,</p>
--	--	--	--

			chocolate-based snack foods and cookies, chocolate flavourings for beverages, coffee beans, ground coffee and beverages
POD Design (Design)	1646883	TMA909351	Goods: (1) Chocolate confections, namely confections filled with fresh creams, butter creams, marzipan, ganaches, parlines and liquers, solid chocolates, solid molded chocolates, chocolate bars, chocolate wafers, chocolate covered nuts, chocolate covered fruits, chocolate covered coffee beans, chocolate covered ginger, molded chocolate shapes and characters, chocolate cups; frozen desserts namely, ice cream, soft-serve ice cream, frozen malted beverages, gelatos; chocolate-based baking ingredients namely, solid baking chocolate, cocoa powder, chocolate shavings, chocolate drops, chocolate sprinkles, chocolate decorations, chocolate sauces and spreads; chocolate-based snack foods namely, chocolate dipped biscuits, chocolate dipped biscotti, chocolate covered pretzels, chocolate cookies and

			<p>chocolate pastries; chocolate flavourings for beverages, namely hot chocolate and chocolate flavourings for hot or cold coffee beverages; beverages namely coffee namely whole bean coffee, ground coffee and chocolate flavoured coffee beverages</p> <p>Services: (1) Retail store services namely retail store featuring chocolate confections, frozen desserts, chocolate-based baking ingredients, chocolate sauces and spreads, chocolate-based snack foods and cookies, chocolate flavourings for beverages, coffee beans, ground coffee and beverages; cafe services namely cafe serving coffee, tea, beverages, coffee flavoured drinks, tea flavoured drinks, pastries, snacks, chocolate confections, frozen desserts, chocolate-based snack foods and cookies.</p>
<u>United States</u>			
Trademark	Application #	Registration #	Goods and Services
COCOCO	85364066	4848721	Goods/Services: Chocolate confections, namely, chocolate confections filled with fresh creams, butter creams, marzipan,

		<p>ganaches, pralines and liqueurs, solid chocolates, solid molded chocolates, chocolate bars, chocolate wafers, chocolate covered nuts, chocolate covered fruits, chocolate covered coffee beans, chocolate covered ginger, molded chocolate shapes and characters, chocolate cups; frozen desserts namely, ice cream, soft-serve ice cream, frozen malted beverages, namely, milk shakes and milk-based ice cream beverages, gelatos; chocolate-based baking ingredients, namely, solid baking chocolate, cocoa powder, chocolate shavings, chocolate drops, chocolate sprinkles, edible chocolate decorations, chocolate sauces and spreads; chocolate-based snack foods, namely, chocolate dipped biscuits, chocolate dipped biscotti, chocolate covered pretzels, chocolate pastries; chocolate flavorings for beverages, namely, hot chocolate and chocolate flavorings for hot or cold coffee beverages; chocolate flavored coffee beverages; all of the</p>
--	--	---

			<p>aforesaid goods containing cocoa</p> <p>Goods/Services: Retail store services featuring cocoa, and featuring chocolate confections, frozen desserts, chocolate-based baking ingredients, chocolate sauces and spreads, chocolate-based snack foods and cookies, chocolate flavorings for beverages, coffee beans, ground coffee and beverages</p> <p>Goods/Services: Cafe services, namely, cafe featuring cocoa, and featuring coffee, tea, beverages, coffee flavored drinks, tea flavored drinks, pastries, snacks, chocolate confections, frozen desserts, chocolate-based snack foods and cookies</p>
COCOCO	85364060	4848720	<p>Goods/Services: Chocolate confections, namely, chocolate confections filled with fresh creams, butter creams, marzipan, ganaches, pralines and liqueurs, solid chocolates, solid molded chocolates, chocolate bars, chocolate wafers, chocolate covered nuts, chocolate covered fruits, chocolate covered coffee beans, chocolate covered</p>

			<p>ginger, molded chocolate shapes and characters, chocolate cups; frozen desserts, namely, ice cream, soft-serve ice cream, frozen malted beverages, namely, milk shakes and milk-based ice cream beverages, gelatos; chocolate-based baking ingredients, namely, solid baking chocolate, cocoa powder, chocolate shavings, chocolate drops, chocolate sprinkles, edible chocolate decorations, chocolate sauces and spreads; chocolate-based snack foods, namely, chocolate dipped biscuits, chocolate dipped biscotti, chocolate covered pretzels, chocolate pastries; chocolate flavorings for beverages, namely, hot chocolate and chocolate flavorings for hot or cold coffee beverages; chocolate flavored coffee beverages; all of the aforesaid goods containing cocoa</p> <p>Goods/Services: Retail store services featuring cocoa, and featuring chocolate confections, frozen desserts, chocolate-based baking ingredients, chocolate sauces and spreads,</p>
--	--	--	---

			<p>chocolate-based snack foods and cookies, chocolate flavorings for beverages, coffee beans, ground coffee and beverages</p> <p>Goods/Services: Cafe services, namely, cafe featuring cocoa, and featuring coffee, tea, beverages, coffee flavored drinks, tea flavored drinks, pastries, snacks, chocolate confections, frozen desserts, chocolate-based snack foods and cookies</p>
CHOCOLATERIE BERNARD	78509821	3587119	<p>Goods/Services: Retail store services featuring chocolates and chocolate food products; mail order services featuring chocolates and chocolate food products; on-line retail store services featuring chocolates and chocolate food products</p>
CHOCOLATES BY BERNARD	78513997	3554168	<p>Goods/Services: Retail store services featuring chocolates and chocolate food products; mail order services featuring chocolates and chocolate food products; on-line retail store services featuring chocolates and chocolate food products</p>

Domain Names:

- BERNARDC.COM
- bernardcallebaut.com
- chocolate-together.ca
- chocolate-together.com
- chocolateriebernard.com
- CHOCOLATERIEBERNARD.XXX
- chocolateriebernardandsons.com
- CHOCOLATERIEBERNARDC.XXX
- CHOCOLATERIEBERNARDCALLEBAUT.XXX
- CHOCOLATERIECOCOCO.CA
- CHOCOLATERIECOCOCO.COM
- chocolatesbybernard.com
- CHOCOLATESBYBERNARD.XXX
- chocolatesbybernardandsons.com
- CHOCOLATESBYBERNARDCALLEBAUT.XXX
- chocolatetogether.biz
- chocolatetogether.ca
- chocolatetogether.co
- chocolatetogether.com
- chocolatetogether.live
- chocolatetogether.net
- chocolatetogether.org
- COCOCOCHOCLATIERS.COM
- cococochocolate.ca

- cocochocolate.com
- COCOCOCHOCOLATEIRS.COM
- COCOCOCHOCOLATERIE.CA
- COCOCOCHOCOLATERIE.COM
- COCOCOCHOCOLATIER.CA
- COCOCOCHOCOLATIER.COM
- COCOCOCHOCOLATIERS.CA
- COCOCOCHOCOLATIERS.COM
- COCOCOINC.CA
- COCOCOINC.COM
- COCOCOONLINE.CA
- COCOCOONLINE.COM
- COCOCOSTORE.CA
- COCOCOSTORE.COM
- rubycacao.ca
- rubychocolatecanada.ca
- rubychocolatecanada.com
- rubychocolates.ca
- rubychocolatetogether.ca
- rubychocolatetogether.com
- rubycocoa.ca
- rubycouv.ca
- rubycouv.com
- rubycouverture.ca
- rubycouverture.com

- thechocolatetogether.com
- whatischocolate.ca
- chocolateriebernardcallebaut.com

Schedule D – Leases

1. **Calgary Factory Lease:** Lease between 1075397 Alberta Ltd. as landlord and Cococo Chocolatiers Inc. as tenant, as amended (the “**Calgary Factory Lease**”), which may be further particularized as pertaining to the property bearing civic address 2320 – 2nd Avenue SE Calgary, Alberta and legally described as Plan 7810519 Block 5 Lot 2 excepting thereout all mines and minerals, with the original and unamended lease bearing a Commencement Date of January 1, 2016, as amended by Lease Amending Agreement made as of August 3, 2018 between 1075397 Alberta Ltd. and Cococo Chocolatiers Inc., and the letter from the tenant to the landlord exercising its option under section 8(a) of Schedule “D” of the lease, dated August 6, 2019.
2. **First Street Retail Lease:** Lease originally between First Street Equities Inc. as landlord and 1563181 Alberta Ltd. as tenant dated October 19, 2010, as amended (the “**First Street Retail Lease**”), which may be further particularized as pertaining to the property bearing civic address 1313 – 1st Street SE Calgary, Alberta, and having been amended by the Lease Renewal and Amending Agreement dated September 30, 2015 between 13th Avenue SE LP by its general partner 13th Avenue SE GP Inc., as landlord, and Cococo Chocolatiers Inc., as tenant, and by the Rent Repayment Agreement dated March 24, 2021 between 13th Avenue SE LP, by its General Partner 13th Avenue SE GP Inc., as landlord, and Cococo Chocolatiers Inc., as tenant, and including also related documentation pertaining to a pending surrender of the original leased premises and relocation of such premises to a different unit in the same building.
3. **8th Street Retail Lease:** Lease between Northern Horizon Properties Ltd., as landlord, and Cococo Chocolatiers Inc., as tenant, dated November 8, 2012 (the “**8th Street Retail Lease**”) regarding the property bearing civic address 1509 8th Street SW Calgary, Alberta and legally described as Plan A1 Block 111 The Southerly 25 feet of Lots 19 and 20.
4. **Southcentre Retail Lease:** Lease between Oxford Properties Retail Holdings Inc. and Oxford Properties Retail Holdings II Inc., as landlord, and Cococo Chocolatiers Inc., as tenant, dated February 9, 2011, as amended (the “**Southcentre Retail Lease**”), which may be further particularized as pertaining to the property described as Southcentre Mall, Unit 318, Calgary, Alberta, and having been amended by the Lease Extension and Amending Agreement between Oxford Retail Holdings Inc. and Oxford Properties Retail Holdings II Inc., as landlord, and Cococo Chocolatiers Inc., as tenant, dated November 20, 2017, by the letter agreement dated October 28, 2019 between Oxford Properties Retail Holdings Inc. and Oxford Properties Retail Holdings II Inc., as landlord, and Cococo Chocolatiers Inc. O/A Bernard Callebaut, as tenant, by the partly executed Lease Extension and Amending Agreement dated November 27, 2019 between Oxford Properties Retail Holdings Inc. and Oxford Properties Retail Holdings II Inc., as landlord, and Cococo Chocolatiers Inc., as tenant, and by the letter agreement dated January 8, 2021 between Oxford Properties Retail Holdings Inc. and Oxford Properties Retail Holdings II Inc., as landlord, and Cococo Chocolatiers Inc., O/A “Bernard Callebaut”, as tenant.
5. **Southcentre Storage License:** Storage Space Licence Agreement dated March 7, 2018 between Oxford Properties Retail Holdings Inc. and Oxford Properties Retail Holdings II Inc., as licensor, and Cococo Chocolatiers Inc. as licensee (the “**Southcentre Storage License**”).

6. **Signal Hill Retail Lease:** Lease originally between Riotrin Properties Inc., as landlord, and 737861 Alberta Ltd., as tenant, dated ____ November, 1998, as amended (the “**Signal Hill Retail Lease**”), which may be further particularized as pertaining to lands legally described as Plan 961 1831 Block 1 Lot 9, and having been amended by a Lease Amending and Extending Agreement between Riotrin Properties Inc., as landlord, and Chocolaterie Bernard Callebaut Limited Partnership, by its manager partner Chocolaterie Bernard Callebaut, as tenant, dated March 10, 2008, by an Assignment of Lease between Deloitte & Touch Inc., as Receiver, 1563181 Alberta Ltd., as assignee, and Riotrin Properties Inc., as landlord, dated October 25, 2010, by a Lease Amending and Extending Agreement between Riotrin Properties Inc., as landlord, and Cococo Chocolatiers Inc., as tenant, dated May 2, 2013, by a Lease Amending and Extending Agreement between Riotrin Properties Inc., as landlord, and Cococo Chocolatiers Inc (t/a “Chocolaterie Bernard Callebaut”), as tenant, dated January 19, 2018, and by the letter agreement between Riotrin Properties Inc., as landlord, and Cococo Chocolatiers Inc., as tenant, dated November 17, 2020.

7. **Broadmead Retail Lease:** Standard Retail Lease between Grosvenor Canada Limited and ADMNS Broadmead Investment Corporation, as landlord, and Cococo Chocolatiers Inc., as tenant, dated August 1, 2014 regarding Unit #520, Broadmead Village Shopping Centre, 777 Royal Oak Drive, Victoria, British Columbia, as amended by an Extension of Lease Agreement between Grosvenor Canada Limited and ADMNS Broadmead Investment Corporation, as landlord, and Cococo Chocolatiers Inc., as tenant, dated July 22, 2019 and the Letter Agreement between Grosvenor Canada Limited and ADMNS Broadmead and Cococo Chocolatiers Inc. dated September 16, 2020 (the “**Broadmead Retail Lease**”).

Schedule E – Permitted Encumbrances

<u>Registration Number</u>	<u>Secured Party(ies)</u>	<u>Description</u>
14122416142	HSBC BANK CANADA	The entire right, title, claim and interest of the debtor in and to the principal sum, interest and all other monies owing and payable or hereafter owing and payable to the debtor pursuant to the terms of the instrument or instruments described as 329-139452 and the entire right, title, claim and interest of the debtor in and to the said instrument or instruments. And all proceeds including, without limitation, all goods, securities, instruments, documents of title, chattel paper, intangibles and money (all as defined in the Personal Property Security Act, any regulations thereunder and any amendments thereto).
15121015415	CWB NATIONAL LEASING INC	ALL TELEPHONE SYSTEM AND VOIP OF EVERY NATURE OR KIND DESCRIBED IN AGREEMENT NUMBER 2746964, BETWEEN THE SECURED PARTY AND THE DEBTOR, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.
17090117338	WELLS FARGO EQUIPMENT FINANCE COMPANY	ALL GOODS WHICH ARE PHOTOCOPIERS, MULTIFUNCTION DEVICES, PRINTERS, PRODUCTION PRINTERS, FAX MACHINES, PROJECTORS, VIDEO CONFERENCING, INTERACTIVE WHITEBOARDS, SERVERS, AND SOFTWARE MANUFACTURED, DISTRIBUTED, OR SOLD BY

		<p>RICOH CANADA INC. THE GOODS DESCRIBED HEREIN TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO, AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH THE COLLATERAL OR PROCEEDS THEREOF, AND WITHOUT LIMITATION, MONEY, CHEQUES, DEPOSITS IN DEPOSIT-TAKING INSTITUTIONS, GOODS, ACCOUNTS RECEIVABLE, RENTS OR OTHER PAYMENTS ARISING FROM THE LEASE OF THE COLLATERAL, CHATTEL PAPER, INSTRUMENTS, INTANGIBLES, DOCUMENTS OF TITLE, SECURITIES, AND RIGHTS OF INSURANCE PAYMENTS OR ANY OTHER PAYMENTS AS INDEMNITY OR COMPENSATION FOR LOSS OR DAMAGE TO THE COLLATERAL OR PROCEEDS OF THE COLLATERAL. (REFERENCE NO. 9931780-001) (FOR INTERNAL USE ONLY) (AS MAY BE AMENDED OR UPDATED FROM TIME TO TIME)</p>
RCAP LEASING INC.	18043034209	ALL OFFICE, COPIER, PRINTER EQUIPMENT FROM TIME TO TIME LEASED BY THE SECURED PARTY TO THE DEBTOR AS DESCRIBED ON LEASES, CONDITIONAL SALES AGREEMENTS AND ANY OTHER FINANCING

		AGREEMENTS ENTERED INTO BETWEEN THE SECURED PARTY AND THE DEBTOR FROM TIME TO TIME AND ANY PROCEEDS THEREOF, TOGETHER WITH ALL REPLACEMENT PARTS, ACCESSORIES AND ATTACHMENTS.
--	--	--

Schedule F – Sales Process

Sale Process Package

Cococo Chocolatiers Inc.

TABLE OF CONTENTS

Article 1 INTRODUCTION..... 1

Article 2 INTERPRETATION..... 1

Article 3 SALE PROCESS 2

Article 4 DUE DILIGENCE 3

Article 5 BIDDING 3

Article 6 SELECTION OF THE SUCCESSFUL BID OR SUCCESSFUL BIDS..... 5

Article 7 GENERAL PROVISIONS 6

Article 8 ADDITIONAL APPROVALS..... 7

Article 9 ONGOING SUPERVISION 7

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"