

Estate File No.: 31-2774500

Court File No.: 31-2774500

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE MR.)	MONDAY, THE 8th DAY
)	
JUSTICE PENNY)	OF NOVEMBER, 2021

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF JUNCTION CRAFT BREWING INC.**

ORDER

THIS MOTION, made by Junction Craft Brewing Inc. (the “**Company**”), was heard this day via videoconference.

ON READING the Affidavit of Stuart Wheldon sworn November 1, 2021 and the exhibits thereto, the First Report of Richter Advisory Group Inc. in its capacity as proposal trustee in this proceeding (the “**Proposal Trustee**”) dated November 2, 2021 (the “**First Report**”) and the appendices thereto, the Supplement to the First Report of the Proposal Trustee dated November 5, 2021 and the appendices thereto, and such other materials filed in respect of this motion, and on hearing the submissions of counsel for the Company, counsel for the Proposal Trustee, counsel for the DIP Lender (as defined below), and such other counsel or persons as were present and listed on the attendance slip, no one else from the service list appearing although properly served as appears from the affidavits of service filed,

SERVICE

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

DIP FINANCING

2. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to obtain and borrow under a credit facility from 1000003509 Ontario Limited (the "**DIP Lender**") in order to finance the Company's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$650,000 unless permitted by further Order of this Court.

3. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Company and the DIP Lender dated as of November 1, 2021 (the "**DIP Term Sheet**").

4. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Company is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

5. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") on the Company's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 14 and 16 hereof.

6. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Charge, the DIP Lender, upon five (5) days notice to the Company and the Proposal Trustee, may exercise any and all of its rights and remedies against the Company or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Charge, including without limitation, to cease making advances to the Company and set off and/or consolidate any amounts owing by the DIP Lender to the Company against the obligations of the Company to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Company and for the appointment of a trustee in bankruptcy of the Company; and

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- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Company or the Property.

7. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by the Company under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), with respect to any advances made under the Definitive Documents.

ADMINISTRATION CHARGE

8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and counsel for the Company on a bi-weekly basis (or on such other basis as agreed to by the Company and the applicable party).

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

10. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and the Company's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of

this Order in respect of these proceeding. The Administration Charge shall have the priority set out in paragraphs 14 and 16 hereof.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

11. **THIS COURT ORDERS** that the Company shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Company on and after October 15, 2021, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

12. **THIS COURT ORDERS** that the directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for the indemnity provided in paragraph 11 of this Order. The Directors' Charge shall have the priority set out in paragraphs 14 and 16 herein.

13. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Company's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 11 of this Order.

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VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, and the DIP Charge, as among them, shall be as follows:

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| First | Administration Charge (to the maximum amount of \$300,000); |
| Second | DIP Lender's Charge; and |
| Third | Directors' Charge (to the maximum amount of \$150,000) |

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

16. **THIS COURT ORDERS** that each of the Administration Charge, the Directors' Charge, and the DIP Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), notwithstanding the order of perfection or attachment, except for any secured creditor of the Company who did not receive notice of the motion for this Order.

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17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge, the Directors' Charge, or the DIP Charge, unless the Company also obtains the prior written consent of the Proposal Trustee, the DIP Lender and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

18. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the DIP Term Sheet, the Definitive Documents and the DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of this proceeding; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;

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- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Company entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Company pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

APPROVAL OF FIRST REPORT

20. **THIS COURT ORDERS** that the First Report, and the actions, conduct and activities of the Proposal Trustee as set out therein, be and are hereby approved.

EXTENSION

21. **THIS COURT ORDERS** that the time for filing a proposal under section 50.4 of the BIA is hereby extended by a period of forty-five (45) days up to and including December 29, 2021.

SERVICE AND NOTICE

22. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “Guide”) is approved and adopted by reference herein and, in this proceeding, the service of

documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-commercial>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL <https://www.richter.ca/insolvencycase/junction-craft-brewing-inc>

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

24. **THIS COURT ORDERS** that the Company, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Company's creditors or other interested parties and their advisors, as applicable. For greater certainty, any such distribution or

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service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

25. **THIS COURT ORDERS** that the Company or the Proposal Trustee may from time to time apply to this Court to amend, vary, supplement or replace this Order, or for advice and directions in the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

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

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



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JUNCTION CRAFT BREWING INC.

Estate File No.: 31-27-500
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		<p><i>ONTARIO</i></p> <p>SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>(IN BANKRUPTCY AND INSOLVENCY)</p> <p>Proceedings commenced at TORONTO</p>	
		<p>ORDER</p>	
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