

## ATTENDANCE SLIP

*November 8, 2021*

*In the Matter of the Notice of Intention to Make a Proposal of Junction Craft Brewing Inc.  
Court File No. 31-2774500*

### Counsel

1. Sam Rappos and Saneea Tanvir, Chaitons LLP - Junction Craft Brewing Inc. (the “Company”)
2. Graham Phoenix, Loopstra Nixon LLP - 1000003509 Ontario Limited (proposed DIP Lender and Stalking Horse Bidder)
3. Miranda Spence, Aird & Berlis LLP - Richter Advisory Group Inc. as Proposal Trustee
4. Tom Robson, Harrison Pensa LLP - Farm Credit Canada
5. Howard Manis, MacDonald Sager Manis LLP - David Hayes

### Individuals

6. Karen Kimel, Adam Zeldin and Shane Connolly - representatives of Richter Advisory Group Inc. as Proposal Trustee
7. Stuart Wheldon, President of the Company
8. Thomas Schmidt, Steven Dobronyi, Ed Lycklama, Rob Moffatt, and Tom Paterson - shareholders, members of the Board, and creditors of the Company
9. David Hayes and Andrew Marsh - shareholders and creditors of the Company
10. Chris Brejak, Lynne Brejak, Reinhard Zank, David Wargo, and Simon Harry - shareholders of the Company

### E-mail Addresses:

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### Endorsement of Penny J. – November 8, 2021

The Company seeks orders: (a) approving a DIP Facility pursuant to the DIP Term Sheet and granting the DIP Charge; (b) granting an Administration Charge and Directors' Charge; (c) approving a Sale Process; (d) approving the Stalking Horse bid and the transaction contemplated therein; and (e) extending the stay period by 45-days.

Junction's business includes (i) selling its high-quality, hand-crafted beers under several brands, (ii) holding weddings and corporate and other events at its facility, (iii) selling beer to customers at its taproom, and (iv) producing, on a contract basis, alcoholic and non-alcoholic drinks for approximately twenty unrelated parties.

The Company has been experiencing financial difficulties since 2018, reporting net losses in excess of \$1.0 million for the 2018 calendar year and \$842,973 for the 2019 calendar year. Junction's business and operations suffered from the Covid-19 pandemic. It has experienced declining sales from a reduction in production and operations due to pandemic-related governmental measures. Since 2019, the Company has relied on financial support from its shareholders and creditors to continue to operate, which includes accommodations from Farm Credit Corporation ("FCC"), the Company's primary secured lender and its landlord, and receipt of shareholder loans of approximately \$807,000 from April 2019 to April 2021.

The Company owes approximately \$3.8 million to its creditors. Its largest creditors are (a) FCC, owed approximately \$843,000; (b) shareholders of the Company, which are owed approximately \$1.55 million in shareholder loans; (c) the Company's landlord, which is owed approximately \$300,000 in rent arrears; and (d) governmental entities, for unpaid beer tax, collected and unremitted excise tax, collected and unremitted HST, and Canada Emergency Business Account loans.

The Company's liabilities currently exceed its total assets on a book value basis. On October 6, 2021, FCC demanded payment of \$842,961.75 and served a notice of its intention to enforce its security under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA").

The Proposal Trustee estimates that FCC would suffer a very significant shortfall if Junction's assets were sold in a liquidation, and there would be no funds available to satisfy obligations owed to any of Junction's other secured creditors, its unsecured creditors, or its shareholders.

Three of the Company's shareholders established a new numbered company ("3509"). 3509, in its capacity as lender (the "DIP Lender"), is prepared to provide a debtor-in-possession interim financing facility in the maximum principal amount of \$650,000.

The Proposal Trustee has developed a detailed process to market the assets and business of Junction in the hopes that the business will emerge as a going concern. The Sale Process will be administered by the Proposal Trustee.

3509 has agreed to acquire substantially all of the Property of the Company under a stalking horse share sale agreement dated November 5, 2021 (the "Stalking Horse" bid). The estimated purchase price under the Stalking Horse bid is \$1.155 million, which is comprised of a \$400,000 cash payment, all amounts secured by the DIP Charge on closing, an amount equal to all claims in existence as of closing that have priority over FCC's security in the Property, and an amount for costs for a bankruptcy of the residual company after the transaction is completed.

If the Stalking Horse bid is not the winning bid under the Sale Process, payment of a \$50,000 break fee and a costs reimbursement amount of \$25,000 (collectively, the "Bid Protections") will be made to the Stalking Horse Purchaser. The Proposal Trustee is of the view that the Bid Protections are fair and reasonable to compensate the Stalking Horse bidder and will not "chill" bidding as part of the Sale Process.

The structure of the Stalking Horse bid involves a reverse vesting order ("RVO") transaction. This is considered necessary because of the existence of the Non-Transferable Licenses. It provides a mechanism to ensure that the Company can operate the business following closing and not be faced with a lengthy and potentially disruptive "re-licensing processes" if the transaction was structured as an asset sale. The Proposal Trustee is of the view that the RVO transaction structure is superior to any alternatives and represents the transaction structure that best preserves the Company's value. The Proposal Trustee recommends Court approval of the Sale Process and Stalking Horse bid.

The Company is seeking the following charges over its Property: (a) a charge in the maximum amount of \$300,000 (the "Administration Charge") to secure payment of the fees and disbursements of the Company's lawyers, the Proposal Trustee, and the Proposal Trustee's lawyers; and (b) a charge in the maximum amount of \$150,000 (the "Directors' Charge") to secure the Company's obligation to indemnify its directors and officers with respect to any liabilities that they may incur on and after the filing of the NOI. The Proposal Trustee is of the view that

the Administration Charge and the Directors' Charge are required and reasonable in the circumstances and supports the granting of the charges.

The Company is seeking an extension of the stay period under section 50.4 of the BIA (the "Stay Period") by 45-days to December 29, 2021. Junction appears to be acting in good faith and with due diligence in seeking to preserve its business on a going concern basis for the benefit of stakeholders and to permit the Proposal Trustee to implement and conduct the Sale Process. The Proposal Trustee supports the proposed extension and believes the Company is acting in good faith and with due diligence and the proposed extension will not materially prejudice or adversely affect any group of creditors.

A number of shareholders attended the hearing, some on their own behalf and some represented by counsel. They seek an adjournment. Mr. Zank asks for 60 to 90 days. Mr. Manis, on behalf of another shareholder, conceded that length of time was not viable. He seeks an adjournment of only a few days. The complaint is that the shareholders were not advised of any of these contemplated proceedings until only days ago and they want time to discuss the matter and consider their options. At the heart of their concerns is that they were not given the opportunity to participate in the Stalking Horse bid or, maybe they say, that they might have come up with a more favourable, competing stalking horse bid option.

There are several problems with the shareholders' requests. First, time is one thing Junction does not have. In the absence of the urgently needed DIP loan, Junction will have to declare bankruptcy. The Proposal Trustee advises that Junction is totally out of cash. The secured creditor is poised to realize on its security.

The objecting shareholders also advanced no evidence that they can or will offer better terms than the existing stalking horse bid. They likewise advanced no evidence or law to support an argument that they were entitled to an opportunity to participate in 3509's stalking horse bid in any event.

Shareholders have no economic interest in an insolvent enterprise. This is reflected in the amendments made to the BIA in 2009, to explicitly subordinate equity claims: *Sino-Forest Corporation (Re)*, 2012 ONSC 4377, paras. 23-29; ss. 54(2)(d), 60(1.7), and 140.1 of the BIA.

On the evidence, there is no scenario in which the shareholders will get any recovery on their investment. Junction is deeply underwater. Even its first ranked secured creditor will suffer a significant shortfall if the application is not granted. Finally, the Stalking Horse bid is not a done deal. It is a bid to kick start the Sales

Process. If the shareholders want to develop a bid for Junction that is better than the Stalking Horse bid, they are at liberty to do so. In the circumstances, I am not prepared to grant an adjournment. To do so would almost certainly put the Company into bankruptcy and end any possibility of Junction's restructuring and continuing as a going concern. The shareholders will receive notice if the Stalking Horse bid is going to be approved. They will have to chance to object at that time if so advised.

I am satisfied that the DIP financing meets the BIA test. It is supported by the Proposal Trustee and Junction's primary secured creditor. Without the DIP financing, Junction will be bankrupt and cease doing business.

I am also satisfied that the Administrative and Directors Charges are reasonable and necessary in the circumstances.

The sales process is supported by the Proposal Trustee and the primary secured creditor. There is no better, viable alternative. The proposed Sales Process represents the best chance of maximizing value and preserving Junction as a going concern.

The role of the RVO was not the subject of any specific objection or, for that matter, even discussion at the hearing. Junction does not have the ability to apply under the CCAA, where this remedy has been employed before. The evidence is that this is the only way to ensure the preservation of Junction's licenses etc. which are necessary for it to continue in business. Although an RVO has not been issued in the context of NOI proceeding before, I am satisfied that I have the jurisdiction to approve one. On the basis of the material before me, there does not appear to be any prejudice in doing so.

It is clear that the proposal requires more time and that an extension of the stay is necessary. This too is supported by the Proposal Trustee.

The orders sought are granted and shall issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read 'Penny J.' followed by a stylized flourish.

Penny J.