

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
JUSTICE PENNY)

THURSDAY, THE 9th
DAY OF JUNE, 2016

NAF

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF SHOP.CA NETWORK INC., a
corporation incorporated pursuant to the laws of the Canada,
with a head office in the City of Toronto, in the Province of
Ontario

BID PROCESS AND ADMINISTRATION ORDER

THIS MOTION, made by SHOP.CA Network Inc. ("SHOP.CA") the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") for an order, among other things, (a) extending the time for SHOP.CA to file a proposal to July 15, 2016; (b) approving the sale process (the "Bid Process"); (c) approving the Key Employee Retention Agreements (the "KERAs") and payment arrangements; and (d) granting the Administration Charge (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert S. Lee sworn June 8, 2016 (the "Lee Affidavit") and the exhibits thereto and the First Report dated June 8, 2016 (the "First Report") of the Richters Advisory Group Inc., in its capacity as proposal trustee of SHOP.CA (the "Proposal Trustee") and on hearing the submissions of counsel for SHOP.CA, counsel for the Proposal Trustee and all other counsel appearing on the counsel slip.

SERVICE

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

APPROVAL OF THE BID PROCESS

2. **THIS COURT ORDERS** that the Bid Process in respect of SHOP.CA's assets, business and property, as set out in paragraphs 29 - 33 of the First Report, is hereby approved and that the Proposal Trustee is hereby authorized and empowered to take such steps as are necessary or desirable to carry out the Bid Process, provided that any definitive agreement to be executed by SHOP.CA in respect of any transaction resulting therefrom shall require further approval of this Court.

STAY EXTENSION

3. **THIS COURT ORDERS** that the time for SHOP.CA's filing a proposal (the "Proposal Period"), and the stay of proceedings herein, is hereby extended in accordance with subsection 50.4(9) of the *Bankruptcy and Insolvency Act* R.S.C. 1985 c. B-3, as amended (the "BIA"), to and including July 15, 2016.

APPROVAL OF THE KERAS

4. **THIS COURT ORDERS** that the Key Employee Retention Agreements (the "KERAs") attached as Confidential Exhibit "A" of the Lee Affidavit are hereby ratified and that SHOP.CA is hereby authorized and empowered to perform its obligation thereunder and to make the payments in accordance with the terms set out the KERAs.

5. **THIS COURT ORDERS** that the funds adequate to satisfy the Incentive Payments (as that term is defined in the KERAs) minus any deferred amounts shall be paid by

SHOP.CA to Stikeman Elliott LLP, as counsel to SHOP.CA ("**Company's Counsel**"), to be held in trust for the beneficiaries of the KERAs. The amounts owing under the KERAs shall be paid by Company's Counsel to the beneficiaries of the KERAs upon satisfaction of the conditions contained in the KERAs as determined by the Proposal Trustee or upon further Order of this Court.

6. **THIS COURT ORDERS** if after 10 business days of the expiry of the Proposal Period (i) the conditions contained in the KERAs are not satisfied; and (ii) the funds held by Company's Counsel on account of the Incentive Payments have not otherwise been paid to the beneficiaries of the KERAs, the funds held by Company's Counsel on account of the Incentive Payments shall be paid to the Proposal Trustee.

CONFIDENTIALITY

7. **THIS COURT ORDERS** that the unredacted versions of the KERAs filed with the Court shall not form part of the public record and shall be kept confidential and under seal until further Order of this Court.

ADMINISTRATION CHARGE

8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and Company's Counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by SHOP.CA as part of the costs of these proceedings. SHOP.CA is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and Company's Counsel on a weekly basis or as such accounts are otherwise rendered.

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 Company's Counsel shall be entitled to the benefit of and are hereby granted a first ranking charge (the "**Administration Charge**") on SHOP.CA's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), which charge shall not exceed \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee, counsel to the Proposal Trustee and Company's Counsel, both before and after SHOP.CA filing its Notice of Intention to Make a Proposal under the BIA.

11. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and such charge shall rank ahead 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 person, except for the Encumbrances in favour of those that have not been served with notice of this Motion. SHOP.CA and the beneficiaries of the Administration Charge shall be entitled, if necessary, to seek priority ahead of any Encumbrances in favour of any person that have not been served with notice of this Motion and that are likely to be affected by such priority.

12. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed,

registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

13. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency (expressly or impliedly) made herein; (b) any motion(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such motion(s); (c) any assignments for the general benefit of creditors made or deemed to have been 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 SHOP.CA, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Administration Charge nor the payments made in accordance with the KERAs shall create or be deemed to constitute a breach by SHOP.CA of any Agreement to which it is a party;
- (b) none of the employees who are parties to the KERAs or chargees entitled to the benefit of the Administration Charge shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from SHOP.CA making payments in accordance with the KERAs, the creation of the Administration Charge or the execution, delivery or performance of any related documents; and

- (c) the payments made by SHOP.CA pursuant to this Order, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE AND NOTICE

14. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<http://www.richter.ca/en/folder/insolvency-cases/s/shop-ca-network-inc/>’.

15. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Proposal Trustee is 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 transmission to SHOP.CA’s creditors or other interested parties at their respective addresses as last shown on the records of SHOP.CA and that any such service or distribution by courier, personal delivery or facsimile transmission shall be

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

16. **THIS COURT ORDERS** that the Proposal Trustee, SHOP.CA and their respective counsel, are at liberty to service or distribute this Order, any 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 SHOP.CA's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

17. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in management or supervision of the management of the business of SHOP.CA and shall not, in carrying out the Bid Process, otherwise fulfilling its obligations hereunder or under the BIA, be deemed to have taken possession or control of the business of SHOP.CA or the Property, or any part thereof.

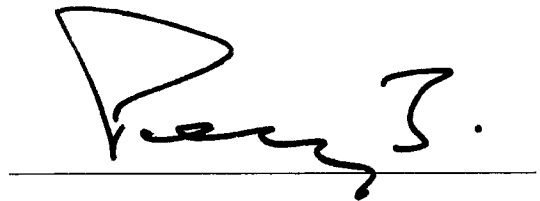
18. **THIS COURT ORDERS** that that the Proposal Trustee shall provide any creditor of SHOP.CA with information provided by SHOP.CA in response to reasonable requests for information made in writing by such creditor addressed to the Proposal Trustee. The Proposal Trustee shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Proposal has been advised by SHOP.CA or Company's Counsel is confidential, the Proposal Trustee

shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Proposal Trustee and the SHOP.CA may agree.

19. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment, carrying out of the Bid Process, in respect of any determination regarding release of payments under the KERAs or carrying out any provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by the BIA or any applicable legislation.

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist SHOP.CA and 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 SHOP.CA and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist SHOP.CA, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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



**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF SHOP.CA NETWORK INC.**, a corporation incorporated pursuant to the laws of
the Canada, with a head office in the City of Toronto, in the Province of Ontario

Estate / Court File No. 31-2131992

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

Proceeding commenced at Toronto

BID PROCESS AND ADMINISTRATION ORDER

STIKEMAN ELLIOTT LLP
199 Bay Street
5300 Commerce Court West
Toronto, ON M5L 1B9

Elizabeth Pillon LSUC# 35638M
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson LSUC# 66412I
Tel: (416) 869-5604
Fax: (416) 947-0866
E-mail: leenicholson@stikeman.com

Lawyers for the Applicant