

B-250002

No. 11-3170658
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL FILED
BY MICROB RESOURCES INC.

NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1995 c b-3*

NOTICE OF APPLICATION

Names of applicant: MicRob Resources Inc., doing business as Salt Spring Coffee (“Salt Spring Coffee”).

To: Service List, attached as **Schedule “A”**

TAKE NOTICE that an application will be made by the applicants to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC on January 16, 2025 at ~~10 a.m.~~ ^{9:45am CH} for the orders set out in Part 1 below.

The Petitioners estimate that the application will take 2 hours.

- This matter is within the jurisdiction of an associate judge.
- This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. An order substantially in the form attached hereto as **Schedule “B”** (the “**Order**”), which:
 - (a) grants a first priority charge in the maximum amount of \$130,000 on the property, assets and undertakings of Salt Spring Coffee, to rank ahead of all other charges, claims and encumbrances (the “**Administration Charge**”) in favour of KPMG Inc., as the “**Proposal Trustee**”, McCarthy Tétrault LLP, as counsel to the Proposal Trustee and Osler, Hoskin & Harcourt LLP, as counsel to Salt Spring Coffee;

- (b) approves an interim lending term sheet for debtor-in-possession financing (the “**DIP Term Sheet**”) to be entered into between Salt Spring Coffee and Maynbridge Capital Inc. (the “**DIP Lender**”);
 - (c) grants a charge in the amount of \$250,000 (the “**DIP Lender’s Charge**”) on the assets, undertakings and properties of Salt Spring Coffee in favour of the DIP Lender, ranking ahead of all other charges other than the Administration Charge;
 - (d) approves and ratifying Salt Spring Coffee’s execution of an agreement of purchase and sale (the “**APA**”) among Salt Spring Coffee and to Caffe & Roaster Holdings Inc. (the “**Purchaser**”) dated January 2, 2025; and
 - (e) approves the sale of substantially all of Salt Spring Coffee’s assets to the Purchaser pursuant to the APA;
2. The Applicant seeks such other orders, directions, and declarations as counsel for the Petitioners may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

1. On January 2, 2025 (the “**NOI Filing Date**”), Salt Spring Coffee filed a notice of intention (“**NOI**”) to make a proposal under s. 50.4 of the *BIA* with the Office of Superintendent of Bankruptcy and thereby commenced these proceedings (the “**NOI Proceedings**”). KPMG Inc. was appointed to act as the Proposal Trustee.

A. Background

2. Salt Spring Coffee is a coffee roaster and manufacturer that distributes fair trade organic coffee throughout Canada. It was started in 1996 by Norman Mcleod and Robbyn Scott on Salt Spring Island, British Columbia with the mission of providing sustainable, quality, fair trade organic coffee to Canada.
3. Salt Spring Coffee’s business model is premised on importing coffee, roasting it in its facilities, packaging it, and distributing it across Canada, and recently to the United States.

4. Salt Spring Coffee currently supplies coffee to major grocery stores such as Costco, Loblaws, Whole Foods, and Sobeys, along with over one hundred other prominent food service providers, such as restaurants, the Vancouver Aquarium and the University of Victoria.
5. Since 1996, Salt Spring coffee has moved its operations to the mainland and currently operates out of a leased facility at 3551 Viking Way #105, Richmond, BC V6V 1W1, where it employs 25 people and works with multiple contractors to ship its coffee.

B. Solvency and Liquidity Issues

6. Like many businesses, Salt Spring Coffee's current solvency and liquidity issues started with the COVID-19 pandemic. With rising interest and inflation rates, it was difficult for production to keep pace with spending.
7. In addition to COVID-19, Salt Spring Coffee entered into a agreement with Club Coffee L.P. dated November 1, 2021 (the "**Club Coffee Agreement**"), which created further liquidity issues.
8. Under the Club Coffee Agreement, Salt Spring Coffee sold raw green coffee beans to Club Coffee L.P. to roast and package. The roasted and packaged product was then sold back to Salt Spring Coffee to distribute to its partners.
9. The Club Coffee Agreement was the first time that Salt Spring Coffee had outsourced any roasting and packaging work, which led to constraints in Salt Spring Coffee's liquidity. Both the Club Coffee Agreement and COVID-19 has set back Salt Spring Coffee financially (the "**Financial Constraints**").
10. The Financial Constraints left Salt Spring Coffee with insufficient liquidity to order raw materials to service its purchase orders.
11. Given the Financial Constraints, Salt Spring Coffee has sought out partners and purchasers to work with to solve its solvency issues. The extent of these efforts is outlined below, but recently, Salt Spring Coffee was able to partner with Maynbridge Capital Inc.

(“**Maynbridge**”) to address immediate liquidity concerns and complete certain outstanding purchase orders.

12. On or about November 29, 2024, Maynbridge and Salt Spring Coffee entered into a Loan and Security Agreement, whereby Maynbridge provided a loan in the principal amount of \$400,000 to allow Salt Spring Coffee to fulfil certain purchase orders (the “**Maynbridge Loan Agreement**”) and a general security agreement in favour of Maynbridge (the “**Maynbridge GSA**”).
13. The initial advance was made pursuant to the Maynbridge Loan Agreement on December 2, 2024 in the amount of US\$146,019.45 and allowed Salt Spring Coffee to purchase raw materials from Sustainable Harvest Inc., Swiss Water Decaffeinated Coffee Inc., and Sucafina Colombia to fulfill certain purchase orders.
14. The balance of funding under the Maynbridge Loan Agreement was dependent on certain conditions being met, including the acquisition by Maynbridge of certain secured debts due and owing to Royal Bank of Canada (“**RBC**”) by Salt Spring Coffee. These conditions were met on December 10, 2024 and an advance of US\$96,255.94 was made to Salt Spring Coffee.

C. Assets and Liabilities

15. Salt Spring’s major secured creditors are Maynbridge, Business Development Bank of Canada (“**BDC**”), and Bodkin, a division of Bennington Financial Corp. (“**Bodkin**”).

i. Maynbridge and Royal Bank of Canada

16. Salt Spring Coffee entered into a credit agreement with RBC dated June 28, 2023, as amended by a first amending letter dated June 30, 2023 (collectively, the “**RBC Loan Agreement**”) pursuant to which RBC provided a \$1,500,000 revolving demand loan, a \$175,000 non-revolving term loan, and certain credit card facilities (collectively, the “**RBC Loan**”). The RBC Loan was used to fund Salt Spring Coffee’s operating costs. The interest

rate on the revolving demand loan is RBC's prime rate plus 2.5% per annum. The RBC Loan and all security and documents related thereto were assigned by RBC to Maynbridge.

17. Currently, Salt Spring Coffee is indebted to Maynbridge in respect of the RBC Loan and the pursuant to the Maynbridge Loan Agreement in the aggregate amount of approximately \$2,230,000.00, with interest and fees continuing to accrue (the "**Maynbridge Indebtedness**").
18. The Maynbridge Indebtedness is secured by security interests in all of Salt Spring Coffee's present and after-acquired personal property, and such security interests were perfected by registrations of financing statements in the British Columbia personal property registry ("**BC PPR**") against all of Salt Spring Coffee's present and after acquired personal property.
19. On or about December 2, 2024 the RBC Loan and all security in connection therewith was acquired by Maynbridge pursuant to an Assignment and Assumption Agreement dated December 2, 2024 (the "**Assumption Agreement**").

ii. Business Development Bank of Canada

20. Salt Spring Coffee entered into a letter of offer with BDC dated January 21, 2019, pursuant to which BDC provided a \$1,500,000 loan (the "**BDC Loan**"). The BDC Loan is used to fund Salt Spring Coffee's equipment leases. The interest rate on the BDC Loan is BDC's prime rate minus 1.50%.
21. Currently, Salt Spring Coffee is indebted to BDC in the amount of approximately \$1,196,228 (the "**BDC Indebtedness**").
22. The BDC Indebtedness is intended to be acquired by the Purchaser and Salt Spring Coffee intends to continue servicing this debt.
23. The BDC Loan is secured by a charge on Salt Spring Coffee's equipment and all of Salt Spring Coffee's present and after acquired personal property registered in the BC PPR.

24. BDC and RBC are party to a priority agreement dated July 13, 2023, which Maynbridge adopted pursuant to the Assumption Agreement (the “**BDC Priority Agreement**”).

iii. Bodkin

25. In addition to the Maynbridge Indebtedness and the BDC Loan, Salt Spring Coffee also makes monthly payments to Bodkin, for the lease of manufacturing equipment (the “**Bodkin Lease**”).
26. Currently, Salt Spring Coffee is indebted to Bodkin in the amount of approximately \$29,240.89 and Salt Spring Coffee makes regular monthly payments to Bodkin pursuant to the Bodkin Lease of \$2,515.80 (the “**Bodkin Indebtedness**”). To service the lease payments, Bodkin deducts monthly payments from Salt Spring Coffee’s bank account.
27. The Bodkin Lease is secured by a charge on certain leased equipment pursuant to the Bodkin Lease registered in the PPR.
28. The Bodkin Indebtedness is intended to be acquired by the Purchaser and Salt Spring Coffee intends to continue servicing this debt.

iv. Total Assets and Liabilities

29. As of the end of August 2024, Salt Spring Coffee had approximately \$5,164,888 in liabilities and equity, which include the amounts owing under the RBC Loan and the BDC Indebtedness (the “**Total Liabilities**”). The Total Liabilities contrast against the total assets listed on the balance sheet of approximately \$5,164,888.40 as of the end of August 2024. This is before entering into any loan agreements with Maynbridge and paying off the Merchant Indebtedness (discussed below).

D. Pre-Filing Restructuring Efforts

30. Salt Spring Coffee has been working on a restructuring plan over the past year and has taken steps to reduce its expenses and restructure its operations.
31. Since mid-2023, Salt Spring Coffee has been working on options to find immediate liquidity solutions. To address liquidity concerns, Salt Spring Coffee has pursued two paths: (1) finding a financial partner and (2) searching for a sale.

i. Financial Partners

32. With respect to a financial partner, in addition to entering into the Maynbridge Loan Agreement detailed above, Salt Spring Coffee entered into an agreement for the purchase and sale of future receivables with Merchant Opportunities Fund Limited Partnership (“**Merchant**”) in June 2023 (the “**Merchant Agreement**”).
33. Pursuant to the Merchant Agreement, Merchant purchased \$378,000 of Salt Spring Coffee’s account receivables for \$300,000 (the “**Merchant Indebtedness**”). The Merchant Indebtedness was used to service Salt Spring Coffee’s immediate liquidity concerns, such as fulfilling purchase orders. Under the Merchant Agreement, Salt Spring Coffee has been making weekly payments of \$4,846.19 to Merchant.
34. The Merchant Indebtedness was fully repaid on December 4, 2024.

ii. Sale Partners

35. With respect to a sale, over the past year, Salt Spring Coffee has actively been looking to partners and connections in the market to sell its assets. The First Report of the Proposal Trustee details those sale efforts, which are summarized below.
36. In January of 2024 Salt Spring Coffee contacted 40 parties identified as potential purchasers to solicit interest and provided a sales package (the “**Sales Package**”) which provided information on the business.

37. From this initial contact, Salt Spring received 12 executed non-disclosure agreements (“NDA”), which allowed these parties access to a detailed confidential information memorandum. Salt Spring received three (3) non-binding LOI’s from the prospective purchasers which resulted in two (2) separate LOI agreements with partners to sell substantially all of its assets — one in July of 2024 and one in October of 2024 (the “LOI Agreements”). Neither of the LOI Agreements materialized, however, as both partners found solvency issues with Salt Spring Coffee during the due diligence phase.
38. As such, Salt Spring Coffee, with the assistance of the Proposal Trustee, determined that it had exhausted all efforts to transact outside of a formal process, and therefore the best way to pursue a sale was in the context of a NOI proceedings.

E. NOI Restructuring Proposal

39. Salt Spring Coffee believes that the business has significant potential value, but that it has become clear that to find solvency and liquidity solutions, a Court supervised insolvency process will be required.
40. Accordingly, Salt Spring Coffee filed the NOI on the NOI Filing Date and has entered into the APA, pending this Court’s approval, to complete an asset sale transaction with the Purchaser. Salt Spring Coffee and the Proposal Trustee agree that the best plan forward to effectuate the restructuring is to continue the NOI Proceedings and complete the transactions contemplated under the APA.
41. In particular, Salt Spring Coffee has been working closely with the Proposal Trustee, the Purchaser and the DIP Lender to find a solution and effect a transaction, which involves:
- (a) the approval of the DIP Loan and the DIP Lender’s Charge;
 - (b) the approval of the APA; and
 - (c) the approval of the Administration Charge.

i. DIP Loan and DIP Lender's Charge

42. The DIP Lender has agreed to provide Salt Spring Coffee the DIP Term Sheet. A summary of the material terms of the DIP Term Sheet is as follows:
- (a) Maximum principal amount: \$250,000;
 - (b) Interest rate: 14%
 - (c) Fees: \$10,000 commitment fee (being 4% of the maximum principal amount) and a 2.5% standby fee to be paid on the difference between the maximum principal amount and the amounts outstanding under the DIP Term Sheet;
 - (d) Security: a super priority charge on the property, assets, and undertakings of Salt Spring Coffee in the amount of \$250,000 subject only to the Administration Charge;
 - (e) Conditions precedent: issuance of the Initial Order by this Court; and
 - (f) Maturity: the earlier of 6 months from the date of the Initial Order, the date the stay of proceedings in favour of Salt Spring Coffee expires, and 10 days following written notice of an event of default under the DIP Term Sheet.
43. The financing associated with the DIP Term Sheet will provide sufficient liquidity to allow Salt Spring Coffee to continue as a going concern during these NOI Proceedings.
44. Further, Salt Spring Coffee, with the assistance of the Proposal Trustee, has prepared a 13-week cash flow forecast (the "**Cash Flow Forecast**") that demonstrates Salt Spring Coffee's intended use of the funds provided for in the DIP Term Sheet.
45. It is a condition of the DIP Loan that the DIP Lender be granted a charge on Salt Spring Coffee's assets. Salt Spring Coffee believes that, in connection with the DIP Term Sheet, the DIP Lender's Charge in favour of the DIP Lender to be reasonable and appropriate in the circumstances.

ii. Approval of the APA

46. With the assistance of the Proposal Trustee, Salt Spring Coffee continued to solicit interest in the sale of its business in the context of an insolvency proceeding, given that the two prior LOI Agreements were unable to close following the due diligence phase.
47. On or about January 1, 2025, the Purchaser presented an APA to Salt Spring Coffee to purchase substantially all of Salt Spring Coffee's assets. The terms of the APA are as follows:
 - (a) Salt Spring Coffee shall sell, transfer, convey and assign to the Purchaser and the Purchaser shall purchase and acquire from Salt Spring Coffee, free and clear of all encumbrances (other than Permitted Encumbrances as defined in the APA) substantially all of Salt Spring Coffee's right, title and interest in all of Salt Spring Coffee's property and assets (other than Excluded Assets as defined in the APA).
 - (b) The Purchaser shall pay Salt Spring Coffee the purchaser price (the "**Purchase Price**") as follows:
 - (i) A cash payment of an amount equal to the sum of: (i) the Priority Payments (being the amounts required by the BIA to be paid in super priority); (ii) the NOI Charge Amount (being the amounts due and owing under the DIP Lender's Charge and the Administration Charge); and (iii) the Administrative Wind-down Amount (being a cash payment of \$50,000 to fund the bankruptcy of Salt Spring Coffee following the closing of the APA);
 - (ii) \$2,520,000 being paid by the Purchaser to Maynbridge on behalf of Salt Spring Coffee, being the estimated aggregate principal amount of secured debt owing to Maynbridge; and
 - (iii) The amount of assumed liabilities being assumed under the APA, which is estimate to be \$1,350,000;

- (c) The Purchaser shall use commercially reasonable efforts to offer employment to all of Salt Spring Coffee's employees, on terms and conditions which are substantially comparable to those on which such employees were employed by Salt Spring Coffee; and
- (d) The Purchaser shall assume the BDC and Bodkin Indebtedness.

iii. Administration Charge

- 48. Salt Spring Coffee will require the assistance of the Proposal Trustee and counsel to pursue the financing associated with the DIP Term Sheet and to conduct these proceedings generally.
- 49. Salt Spring Coffee supports the Administration Charge and believes \$130,000 to be reasonable and appropriate in the circumstances.
- 50. The Administration Charge will only be called upon if there are unpaid fees and costs owing to the Proposal Trustee, its counsel, or Salt Spring Coffee's counsel, which have not been paid.
- 51. Pursuant to the terms of the attached proposed Order and the terms of the DIP Term Sheet, the Administration Charge will rank in priority to all other claims and encumbrances, including the DIP Lender's Charge.

Part 3: LEGAL BASIS

- 1. Salt Spring Coffee relies upon:
 - (a) *BIA*, Part III Division I;
 - (b) *Bankruptcy and Insolvency Rules*, C.R.C., c. 368, Rules 11 to 13;
 - (c) *Supreme Court Civil Rules*, B.C. Reg. 168/2009 as amended, Rule 8-5;
 - (d) the inherent jurisdiction of this Court; and
 - (e) such further and other legal basis as counsel may advise and this Court may allow.

A. Approval of the DIP Loan and DIP Lender's Charge is Appropriate

2. Section 50.6 of the *BIA* expressly authorizes the Court to approve interim financing and order a priority charge as security for amounts advanced to a debtor pursuant to said financing in NOI proceedings.
3. Section 50.6 states:

50.6(1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

50.6(3) The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

50.6(5) In deciding whether to make an order, the court is to consider, among other things:

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) ...

BIA, s. 50.6.

4. Courts have recognized that, while interim financing and an associated charge will invariably impact other creditors to some degree, in circumstances where the debtor's

operations would cease if the relief were not granted, any prejudice is outweighed by the benefits to all stakeholders of a successful proposal.

P.J. Wallbank Manufacturing Co. (Re), 2011 ONSC 7641 at para 24 [“*Wallbank*”].

OVG Inc. (Re), 2013 ONSC 1794 at para 34.

5. To this extent, courts have granted charges such as the DIP Lender’s Charge where:
- (a) declining to approve interim financing and an attendant charge would result in the cessation of the debtor’s business;
 - (b) the interim financing and a corresponding charge were supported by the proposal trustee; and
 - (c) the interim financing provided at least the prospect of increased value and a successful proposal.

Wallbank at para 24.

Mustang GP Ltd. (Re), 2015 ONSC 6562 at paras 28-29 [“*Mustang*”].

Eureka 93 Inc. et. Al. (Re), 2020 ONSC 1482 at para 24.

6. The following factors support the approval of the DIP Term Sheet and the DIP Lender’s Charge:
- (a) Salt Spring Coffee expects to be in these NOI Proceedings until February 1, 2025, which is supported by the Cash Flow Forecast;
 - (b) Salt Spring Coffee will continue to operate its business with a view of closing the APA and implementing a successful proposal to its creditors and maintaining the support of secured creditors with oversight from the Proposal Trustee;
 - (c) Maynbridge is supportive of the DIP Term Sheet and the efforts of Salt Spring Coffee to restructure its affairs;

- (d) it is clear from the Cash Flow Forecast that approval of the DIP Term Sheet is necessary for Salt Spring Coffee to continue its operations during these proceedings and service its outstanding purchase orders;
- (e) Salt Spring Coffee understands that the Proposal Trustee is supportive of the DIP Term Sheet and the DIP Lender's Charge, in addition to the other relief sought on this application.

7. As such, Salt Spring Coffee submits that the approval of the DIP Term Sheet and the corresponding DIP Lender's Charge is appropriate in these circumstances.

B. Approving the APA is Appropriate

8. Section 65.13 of the *BIA* expressly authorizes the Court to approve a sale of a debtor's assets outside of the ordinary course of business in NOI proceedings.

9. Section 65.13 provides:

65.13 (1). An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

65.13(3). An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

65.13(4). In deciding whether to grant the authorization, the court is to consider, among other things:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

BIA, s. 65.13.

10. Courts have noted that the criteria in the subsection 36(3) of the *Companies' Creditors Arrangement Act* – which are substantially similar to those contained in subsection 65.13(4) of the *BIA* – correspond to the principles articulated in *Royal Bank of Canada v. Soundair Corp.*, for the approval of the sale and assets in an insolvency scenario:

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.

Harte Gold Corp (Re), 2022 ONSC 653 at para 21 citing
Royal Bank of Canada v. Soundair Corp, 1991 Cani 2727 (Ont CA).

11. The following factors support the approval of the APA:

- (a) Salt Spring Coffee has been canvassing the market since early 2023 to find a purchaser of its assets and no offers have materialized;
- (b) the APA was solicited with the assistance of the Proposal Trustee and the Proposal Trustee is of the view the market has been sufficiently canvassed;
- (c) the Proposal Trustee has reported that, in its opinion, the sale would be more beneficial to Salt Spring Coffee's creditors than a sale or disposition under a bankruptcy;
- (d) Maynbridge is supportive of the APA;
- (e) Salt Spring Coffee believes this sale is in the best interest of its stakeholders, creditors, customers, and employees; and

(f) Salt Spring Coffee is of the view that the Purchase Price is fair and reasonable in these circumstances.

12. Courts have also commonly approved sale transactions where a debtor company has conducted a sales process prior to making an insolvency filing. In approving transactions of this nature, Courts have held that the same principles that apply to the approval of a sale transaction resulting from a post-filing sales process apply to the approval of a sale transaction from a pre-filing sales process.

Re Nelson Education Limited (Re), 2015 ONSC 5557.

Re Bloom Lake, 2015 QCCS 1920.

Mountain Equipment Co-operative (Re), 2020 BCSC 1586.

Feronia Inc (Re), 2020 BCSC 1372 at para 39 [“*Feronia*”].

13. Further, so-called “pre-packaged” proceedings, where the terms of a restructuring transaction are negotiated among key stakeholders are not precluded by statute (and, in fact are regularly approved), and that “a sale process is only required to be reasonable, not perfect”.

Sanjel Corporation (Re), 2016 ABQB 257 at paras 69-70, 80 [*Sanjel*].

Feronia at paras 52-56.

14. Although the fact that a “pre-packaged” sales process is not approved by a court in advance is a factor to be weighed in considering whether a sales process was reasonable, ultimately it is the specific details of the sales process as conducted that will be scrutinized.

Feronia at paras 54-57.

15. As such, Salt Spring Coffee submits that the approval of the sale of Salt Spring Coffee’s assets pursuant to the APA is appropriate in these circumstances.

C. Approval of the Administration Charge is Appropriate

16. Section 64.2 of the *BIA* expressly authorizes the Court to grant a super-priority charge in respect of the fees and expenses of the Proposal Trustee, its counsel, and the debtor’s counsel.

17. Specifically, section 64.2 states:

64.2(1). On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of:

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties:

(b) any financial legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

64.2(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

BIA, s. 64.2.

18. Salt Spring Coffee requires the specialized expertise, knowledge and continuing participation of the Proposal Trustee, the Proposal Trustee's counsel, and its counsel. In particular, the services of each professional is essential to the formulation of Salt Spring Coffee's restructuring in these proceedings. Salt Spring Coffee submits that the quantum of the proposed charge is appropriate given its business, outstanding liabilities, and the nature of the work involved in its proposal.

Colossus Minerals Inc., (Re) 2014 ONSC 514, at paras. 11-14.

19. It is not expected that there will be any duplication of the roles of the beneficiaries of the charge. Each has a distinct focus in the proceedings and advancement of Salt Spring Coffee's restructuring efforts and Salt Spring Coffee submits that their joint efforts will produce a better result overall.

Part 4: MATERIAL TO BE RELIED ON

20. Affidavit #1 of Norman McLeod made on January 2, 2025;

21. First Report of the Proposal Trustee, to be filed; and
22. Such further and other material as counsel may advise and this Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: January 2, 2025



Signature of Applicant(s)
 Lawyer for applicant(s)

Emma Newbery

To be completed by the court only:

Order made

[] in the terms requested in paragraphs of Part 1 of this notice of application

[] with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of [] Judge [] Associate Judge

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

Service List

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SERVICE LIST

Current to: January 2, 2025

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SCHEDULE "B"

Draft Order

(see attached)

THIS COURT ORDERS AND DECLARES that:

ADMINISTRATION CHARGE

1. For the fees incurred in connection with these proceedings, including those incurred prior to commencement of these proceedings, KPMG LLP, in its capacity as the “**Proposal Trustee**”, McCarthy Tétrault LLP, in its capacity as counsel to the Proposal Trustee, and Osler, Hoskin & Harcourt LLP, in its capacity as counsel to Salt Spring Coffee, shall be entitled to the benefit of, and are hereby granted, a charge (the “**Administrative Charge**”) on all current and future assets, undertakings and properties of Salt Spring Coffee, of every nature and kind whatsoever, and wherever situated including all proceeds thereof (collectively, the “**Charged Property**”), which Administrative Charge shall not exceed an aggregate amount of \$130,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after making of this Order in respect of these proceedings. The Administrative Charge shall have the priority set out in paragraph 10 below.

DIP LENDER CHARGE

2. Salt Spring Coffee is authorized and empowered to enter into an agreement under substantially similar terms to the term sheet dated for reference January 2, 2025 (the “**DIP Term Sheet**”) between Salt Spring Coffee, as borrower, and Maynbridge Capital Inc. as lender (in such capacity, the “**DIP Lender**”).
3. Salt Spring Coffee is authorized and empowered to perform its obligations under the DIP Term Sheet (subject to obtaining such Court and other approvals as may be required in connection with any step or transaction contemplated therein) and to obtain and borrow under the financing associated with the DIP Term Sheet, provided that borrowing under such credit facility shall not exceed the principal amount of \$250,000.
4. Salt Spring Coffee is authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents and other definitive documents (such documents, together with the DIP Term Sheet, collectively, the “**Definitive Documents**”), as is contemplated by the DIP Term Sheet or as may reasonably be required by the DIP

Lender pursuant to the terms thereof, and Salt Spring Coffee 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 Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provisions of this Order.

5. The DIP Lender shall be entitled to the benefit of and is granted a charge (the “**DIP Lender Charge**”) on the Charged Property, which DIP Lender Charge shall not secure an obligation that exists before this Order is made. The DIP Lender Charge shall attach to the Charged Property and shall secure all obligations under the Definitive Documents.
6. Notwithstanding any other provisions of this Order, 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 Lender Charge or any of the Definitive Agreements.
7. All claims of the DIP Lender pursuant to the Definitive Documents are not claims that may be compromised pursuant to any proposal under the *BIA* filed by Salt Spring Coffee without the consent of the DIP Lender and the DIP Lender shall be treated as unaffected in any proposal filed by Salt Spring Coffee under the *BIA* with respect to any obligations outstanding to the DIP Lender under or in respect of the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

8. The Administrative Charge and the DIP Lender Charge (together, the “**Charges**”) each constitute a mortgage, security interest, assignment by way of security and charge on the Charged Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”), in favour of any person, notwithstanding the order of perfection or attachment.
9. The priorities as among the Charges shall be:
 - (1) First – the Administrative Charge, up to the maximum amount of \$130,000;
and
 - (2) Second – the DIP Lender Charge up to the maximum amount of \$250,000.

10. Any security documentation evidencing, or the filing, registration or perfection of, the Charges shall not be required, and the Charges shall be effective as against the Charged Property and 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 failure to file, register or perfect such Charges.
11. The Charges and Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of the Charges (the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *BIA* or any bankruptcy order made pursuant to such application(s); (c) the filing of any assignments for the general benefit of creditors made pursuant to the *BIA*; 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, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (each, an “**Agreement**”) which binds Salt Spring Coffee, and notwithstanding any provision to the contrary in any Agreements:
 - (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or deemed to constitute a breach by Salt Spring Coffee of any Agreement to which it is a party;
 - (b) none of the Chargees shall have any liability to any person entity whatsoever as a result of any breach of any Agreement caused by or resulting from Salt Spring Coffee entering into the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
 - (c) the payments made by Salt Spring Coffee pursuant to this Order, 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.

12. The Charges created by this order over leases of real property in Canada shall only be a charge of Salt Spring Coffee interest in such real property leases.

APPROVAL AND VESTING ORDER

13. Capitalized terms used by not otherwise defined in paragraphs 14-24 of this Order have the meaning given to them in the Asset Purchase Agreement dated January 2, 2025 (the “APA”) between Salt Spring Coffee and Caffe & Roaster Holdings (the “**Purchaser**”), a copy of which is attached as **SCHEDULE “B”** to this Order.
14. The transactions (the “**Transaction**”) contemplated by the APA is hereby approved, and the APA is hereby declared to be commercially reasonable. The execution of the APA by Salt Spring Coffee is hereby authorized and approved, with such amendments as Salt Spring Coffee and the Purchaser may agree to. Salt Spring Coffee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, and for the conveyance to the Purchaser of the Purchased Assets.
15. Upon delivery by the Proposal Trustee to the Purchaser of a certificate substantially in the form attached as **SCHEDULE “C”** hereto (the “**Trustee’s Certificate**”), all of the right, title and interest of Salt Spring Coffee in and to the Purchased Assets described in the APA shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated the date hereof; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on **SCHEDULE “D”** hereto (all of which are collectively referred to as the “**Encumbrances**”), and, for greater certainty, this

Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

16. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Trustee's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
17. The Trustee is to file with the Court a copy of the Trustee's Certificate forthwith after delivery thereof.
18. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, each of Salt Spring Coffee or the Proposal Trustee, as the case may be, is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to Salt Spring Coffee's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Salt Spring Coffee.
19. Subject to the terms of the APA, vacant possession of the Purchased Assets, including any real property, shall be delivered by Salt Spring Coffee to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the APA and listed on **SCHEDULE "E"** of this Order.
20. Salt Spring Coffee, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

21. Notwithstanding:

- a. these proceedings;
- b. any applications for a bankruptcy order in respect of Salt Spring Coffee now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
- c. any assignment in bankruptcy made by or in respect of Salt Spring Coffee,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Salt Spring Coffee and shall not be void or voidable by creditors of Salt Spring Coffee, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

22. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist each of Salt Spring Coffee or the Proposal Trustee, as the case may be, and its 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 Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

23. Salt Spring Coffee or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

ENDORSEMENT

24. Endorsement of this Order by counsel appearing on this application, other than counsel for Salt Spring Coffee, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

Signature of Emma Newbery, lawyer for the Applicant

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

Appearance List

NAME	APPEARING FOR

SCHEDULE "B"

APA

(See attached)

MICROB RESOURCES INC.

(the “Vendor”)

- and -

CAFFE & ROASTER HOLDINGS INC., or its assignee

(the “Purchaser”)

ASSET PURCHASE AGREEMENT

January 2, 2024

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ASSET PURCHASE AGREEMENT dated January 2, 2024

BETWEEN:

MICROB RESOURCES INC.

- and -

CAFFE & ROASTER HOLDINGS INC., or its assignee

RECITALS:

- A. The Vendor carries on business as a coffee bean roaster, packager and supplier in British Columbia.
- B. The Vendor has agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Vendor, the Purchased Assets and to assume the Assumed Liabilities, all in consideration for the Purchase Price and on the terms and conditions set out in this Agreement (the “**Transaction**”).
- C. The Vendor intends on filing a notice of intention to make a proposal (“**NOI**”) under s. 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the “**BIA**”) with the Office of Superintendent of Bankruptcy and appoint KPMG Inc. as “**Proposal Trustee**”.
- C. Accordingly, the Parties wish to enter into this Agreement so as to conclude the Transaction, the consummation of which shall be subject to approval by the Court by way of an Order approving the Transaction and vesting the Purchased Assets in the Purchaser (the “**Approval and Vesting Order**”).

THE PARTIES AGREE AS FOLLOWS:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions. In this Agreement, including the Recitals to this Agreement, unless the context otherwise requires:

- (1) “**Accounts Receivable**” means all accounts receivable, trade accounts receivable, notes receivable, book debts and other debts due or accruing due to the Vendor, and the full benefit of any related security.
- (2) “**Administrative Wind-down Amount**” means cash in the amount of \$50,000 to be used to satisfy the costs incurred by the Proposal Trustee and its professional advisors to administer and to wind-down and/or dissolve and/or bankrupt the Vendor following the Closing of the Transaction.
- (3) “**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” means the possession, directly or indirectly, of the power to direct or

cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative thereto.

- (4) **“Agreement”** means this asset purchase agreement, including all Schedules, Appendices and Exhibits to this asset purchase agreement, as amended, supplemented, restated and replaced from time to time in accordance with its provisions.
- (5) **“Applicable Law”** means all laws, statutes, codes, ordinances (including zoning), decrees, rules, regulations, by-laws, statutory rules, published policies and guidelines, notices, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, injunctions, orders, decisions, settlements, writs, assessments, arbitration awards, rulings, determinations or awards, decrees or other requirements of any Governmental Authority having the force of law and any legal requirements arising under the common law or principles of law or equity, in each case, as are applicable at the relevant time or times to such Person or its business, undertaking, property or securities and emanate from a Governmental Authority having jurisdiction over such Person or its business, undertaking, property or securities.
- (6) **“Approvals”** means franchises, licences, qualifications, authorizations, consents, certificates, registrations, exemptions, waivers, filings, grants, notifications, privileges, rights, orders, judgments, rulings, directives, Permits, and other permits and approvals.
- (7) **“Assumed Debt”** means the liabilities and obligations of the Vendor under the loan agreements listed in Schedule 2.3(1)(a).
- (8) **“Assumed Liabilities”** has the meaning attributed to that term in Section 2.3(1).
- (9) **“Books and Records”** means all books, records, files and papers of the Vendor relating to the Business, including title documentation, software documentation (including operator and user manuals, training materials, guides, listings, specifications and any revisions or additions to such documents), electronic data, financial and Tax working papers, financial and Tax books and records, business reports, business plans and projections, sales and advertising materials, sales and purchases records and correspondence, trade association files, research and development records, lists of present and former customers and suppliers, personnel and employment records of the Hired Employees, minute and share certificate books, all other documents and data (technical or otherwise) relating to the Business, the Purchased Assets or the Assumed Liabilities, and all copies and recordings of the foregoing.
- (10) **“Business”** means the business carried on currently and prior to the date of this Agreement by the Vendor consisting of supplying, roasting, and packaging coffee beans.
- (11) **“Business Day”** means any day, except Saturdays and Sundays, on which banks are generally open for non-automated business:
 - (a) for purposes of Section 6.10, in the place specified in that Section; and
 - (b) for all other purposes in this Agreement, in Vancouver, British Columbia.
- (12) **“BIA”** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3
- (13) **“Cash Payment”** has the meaning attributed to that term in Section 2.5(1)(a).

- (14) “**CASL**” means *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act (Canada)* and the regulations made thereunder.
- (15) “**Closing**” means the completion of the Transaction on the CP Satisfaction Date, to be effective as of the Effective Date in accordance with this Agreement.
- (16) “**CP Satisfaction Date**” means the date on which all conditions set out in Article 4 (other than those conditions that cannot, by their nature, be satisfied until the Closing, but subject to the satisfaction or waiver of those conditions at the Closing) are satisfied or waived, or such other date as agreed to by the Parties in writing.
- (17) “**Contract**” means any agreement, contract, purchase order, indenture, lease, occupancy agreement, deed of trust, licence, option, undertaking, promise or any other commitment or obligation, whether oral or written, express or implied, other than a Permit.
- (18) “**Court**” means the Supreme Court of British Columbia.
- (19) “**CRA**” means the Canada Revenue Agency or any successor agency.
- (20) “**Effective Date**” means January 24, 2024, or such other date as agreed to by the Parties in writing, provided that the CP Satisfaction Date occurs prior to the Outside Date.
- (21) “**Effective Time**” 12:01 a.m. on the Effective Date.
- (22) “**ETA**” means the *Excise Tax Act (Canada)* and the regulations made thereunder.
- (23) “**Employees**” means all individuals who are currently, or were as of December 9, 2024 employed by the Vendor in the Business.
- (24) “**Encumbrance**” means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, prior claim, adverse claim, exception, reservation, restrictive covenant, agreement, easement (whether or not registered against title), lease, licence, right of occupation, option, right of use, right of first refusal, right of pre-emption, privilege or any matter capable of registration against title or any Contract to create any of the foregoing.
- (25) “**Excluded Assets**” has the meaning attributed to that term in Section 2.2.
- (26) “**Excluded Liabilities**” has the meaning attributed to that term in Section 2.3(2).
- (27) “**GST/HST**” means all Taxes payable under Part IX of the ETA (including where applicable both the federal and provincial portion of those Taxes) or under any provincial legislation imposing a similar value added or multi-staged tax.
- (28) “**Governmental Authority**” means any domestic or foreign government, whether federal, provincial, state, territorial, local, regional, municipal, or other political jurisdiction, and any agency, authority, instrumentality, court, tribunal, board, commission, bureau, arbitrator, arbitration tribunal or other tribunal, or any quasi-governmental or other entity, body, organization

or agency, insofar as it exercises a legislative, judicial, regulatory, administrative, expropriation or taxing power or function of or pertaining to government.

- (29) **“Hired Employees”** means those Employees who accept the Purchaser’s offer of employment provided for in Section 5.6(1) and continue their employment with the Purchaser after Closing.
- (30) **“Intellectual Property”** means, individually and collectively, howsoever created and wherever located: (a) all domestic and foreign patents and applications thereof and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data, schematics and customer lists, and all documentation relating to any of the foregoing; (c) all copyrights in all works (including software) and database right, copyright registrations and applications thereof, and all works of authorship and moral rights, and all other rights corresponding thereto throughout the world; (d) all trade names, domain names, corporate names, trade dress, distinguishing guises, logos, slogans, brand names, trademarks (whether registered or common law and whether used with wares or services and including the goodwill attaching to such trademarks) and registrations and applications for registration thereof; (e) all software (in source code and object code form) and databases, and any proprietary rights in such software and databases; (f) all integrated circuit design, mask work, or topography registrations or applications thereof; (g) all industrial designs and applications for and registration of industrial designs, design patents and industrial design registrations; (h) other intellectual or industrial property whatsoever; (i) all income, royalties, damages and payments now and hereafter due and/or payable with respect to any of the foregoing, including damages and payments for past or future infringements thereof; and (j) all rights to sue for past, present and future infringements of any of the foregoing.
- (31) **“Inventories”** means inventories, including all finished goods, works-in-progress, raw materials, spare parts, replacement parts, and all other materials and supplies to be used or consumed by the Vendor in the provision of services.
- (32) **“IP Assets”** means all Intellectual Property that is owned by the Vendor or in which the Vendor has rights.
- (33) **“Landlord”** means 3011 Viking Way Richmond Holdings Inc.
- (34) **“Lease”** means the lease between the Vendor and the Landlord in respect of the Premises, as extended or modified from time to time.
- (35) **“Maynbridge”** means Maynbridge Capital Inc.
- (36) **“Other Agreements”** has the meaning attributed to that term in Section 6.4.
- (37) **“Outside Date”** means January 31, 2024, or such later date as the Parties may agree to in writing.
- (38) **“NOI”** has the meaning attributed to that term in the Recitals.
- (39) **“NOI Charges”** means the charges granted by the Court in the NOI Proceedings.
- (40) **“NOI Charge Amounts”** means cash in an amount sufficient to satisfy the amounts owing in respect of the obligation secured by the NOI Charges.

- (41) **“NOI Proceedings”** means the Court proceedings commenced by the Vendor in connection with the NOI filing.
- (42) **“Parties”** means collectively, the Purchaser and the Vendor, and **“Party”** means any of them.
- (43) **“Permits”** means franchises, licences, qualifications, approvals, authorizations, consents, certificates, certificates of authorization, decrees, orders-in-council, registrations, exemptions, consents, variances, waivers, filings, grants, notifications, privileges, rights, orders, judgments, rulings, directives, permits and other approvals, obtained from, issued by or required by a Governmental Authority.
- (44) **“Permitted Encumbrances”** means the Encumbrances listed in Schedule 1.1(44).
- (45) **“Person”** is to be broadly interpreted and includes an individual, a corporation, a partnership, a joint venture, a trust, an association, a syndicate, an unincorporated organization, a Governmental Authority, an executor or administrator or other legal or personal representative, or any other juridical entity.
- (46) **“Personal Information”** means information about an identifiable natural person, but does not include the name, title, business address or telephone number of an employee of the Vendor, that is to be disclosed to the Purchaser at Closing or that was disclosed to the Purchaser to permit the Purchaser to carry out its due diligence in connection with the Transaction.
- (47) **“Personal Property”** means all machinery, equipment, furniture and other personal property owned by the Vendor (including those in possession of third parties).
- (48) **“Premises”** means #105 - 3551 Viking Way, Richmond, BC V6V 1W1.
- (49) **“Proceeding”** means any suit, action, dispute, investigation, claim, arbitration, order, summons, citation, directive, charge, demand or prosecution, whether legal or administrative, any other proceeding, or any appeal or application for review, in each case, at law or in equity or before or by any Governmental Authority.
- (50) **“Proposal Trustee”** has the meaning attributed to that term in the Recitals.
- (51) **“Purchase Price”** has the meaning attributed to that term in Section 2.4.
- (52) **“Purchased Assets”** has the meaning attributed to that term in Section 2.1.
- (53) **“Purchased Contracts”** has the meaning attributed to that term in Section 2.1(e);
- (54) **“Purchaser”** means Caffe & Roaster Holdings Inc., a company incorporated under the laws of British Columbia, or its assignee.
- (55) **“Priority Payments”** means those payments prescribed under subsections 14.06(7), 81.3, 81.4, 81.5, and 81.6 of the BIA.
- (56) **“RBC”** means the Royal Bank of Canada.
- (57) **“Representatives”** means, with respect to any Party, its Affiliates and, if applicable, its and their respective directors, officers, employees, agents and other representatives and advisors.

- (58) “**Tax Act**” or any reference to a specific provision thereof means the *Income Tax Act* (Canada) and legislation of any legislature of any province or territory of Canada (including the *Taxation Act* (Québec)) and any regulations made thereunder in force of like or similar effect.
- (59) “**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof (including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, gains, capital stock, production, gift, wealth, environment, net worth, utility, sales, goods and services, harmonized sales, use, consumption, valued-added, excise, stamp, withholding, premium, business, franchising, property, employer health, payroll, employment, health, social services, education and social security taxes, surtaxes, customs duties and import and export taxes, development, occupancy, social services, licence, franchise and registration fees and employment insurance, health insurance and Canada, Québec and other government pension plan premiums or contributions), and “**Tax**” has a corresponding meaning.
- (60) “**Transmission**” has the meaning attributed to that term in Section 6.10(1).
- (61) “**Vendor**” means Microb Resources Inc., doing business as Salt Spring Coffee.

1.2 Construction. This Agreement has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party does not apply to the construction or interpretation of this Agreement.

1.3 Certain Rules of Interpretation. In this Agreement:

- (a) the division into Articles and Sections and the insertion of headings and the Table of Contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement;
- (b) the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular portion of this Agreement; and
- (c) unless specified otherwise or the context otherwise requires:
- (i) references to any Article, Section or Schedule are references to the Article or Section of, or Schedule to, this Agreement;
 - (ii) “including” or “includes” means “including (or includes) but is not limited to” and is not to be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it;
 - (iii) references to Contracts are deemed to include all present amendments, supplements, restatements and replacements to those Contracts;
 - (iv) references to any legislation, statutory instrument or regulation or a section thereof are references to the legislation, statutory instrument, regulation or section as amended, re-enacted, consolidated or replaced from time to time; and

- (v) words in the singular include the plural and vice-versa and words in one gender include all genders.

1.4 Computation of Time. In this Agreement, unless specified otherwise or the context otherwise requires:

- (a) a reference to a period of days is deemed to begin on the first day after the event that started the period and to end at 5:00 p.m. on the last day of the period, but if the last day of the period does not fall on a Business Day, the period ends at 5:00 p.m. on the next succeeding Business Day;
- (b) all references to specific dates mean 11:59 p.m. on the dates;
- (c) all references to specific times are references to Pacific Standard time; and
- (d) with respect to the calculation of any period of time, references to “from” mean “from and excluding” and references to “to” or “until” mean “to and including”.

1.5 Performance on Business Days. If any action is required to be taken pursuant to this Agreement on or by a specified date that is not a Business Day, the action is valid if taken on or by the next succeeding Business Day.

1.6 Currency and Payment. In this Agreement, unless specified otherwise:

- (a) references to dollar amounts or “\$” are to Canadian dollars; and
- (b) any payment is to be made by an official bank draft drawn on a Canadian chartered bank, wire transfer or any other method (other than cash payment) that provides immediately available funds.

1.7 Effective Date. For greater certainty, the Parties agree that the transactions set out herein shall be effective as at the Effective Time, notwithstanding that the CP Satisfaction Date may occur at a time after the Effective Date.

1.8 Schedules. The following Schedules are attached to and form part of this Agreement:

Schedule 1.1(44)	Permitted Encumbrances
Schedule 2.1(e)	Purchased Contracts
Schedule 2.3(1)(a)	Assumed Debt

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement to Purchase and Sell. Subject to the terms and conditions of this Agreement, as of the Effective Time, the Vendor shall sell, transfer, convey and assign to the Purchaser and the Purchaser shall purchase and acquire from the Vendor, free and clear of all Encumbrances, except for the Permitted Encumbrances, substantially all of the Vendor’s right, title and interest in and to all of the Vendor’s property and assets (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situate (collectively, the “**Purchased Assets**”), including the following:

- (a) the Personal Property;

- (b) the Inventories;
- (c) the Accounts Receivable;
- (d) the IP Assets;
- (e) all Contracts set out in Schedule 2.1(e) (the “**Purchased Contracts**”);
- (f) all Permits and all pending applications for, and renewals of, Permits, in each case to the extent transferable to the Purchaser;
- (g) all Books and Records (except, in the case of those required by Applicable Law to be retained by the Vendor, copies thereof);
- (h) all goodwill, together with the exclusive right of the Purchaser to represent itself as carrying on the Business;
- (i) all cash on hand or in banks or other depositories, term or time deposits and similar cash items including all accrued interest thereon and any capital gains relating thereto;
- (j) all Tax instalments paid by the Vendor and all rights to receive any refund of, and/or credit in respect of, Taxes paid by the Vendor;
- (k) all rights to deposits and prepaid expenses;
- (l) subject to Section 5.5, all insurance benefits, including rights and proceeds, arising from or relating to the insurance policies maintained by the Vendor prior to the Effective Date, unless expended in accordance with this Agreement; and
- (m) the list of email addresses for which the Vendor has obtained the express written consent to the receipt of “commercial electronic messages” (as defined in CASL).

2.2 Excluded Assets. The following assets (collectively, the “**Excluded Assets**”) are not part of the Transaction, are excluded from Purchased Assets and remain the property of the Vendor:

- (a) all personnel and employment records that the Vendor is required by Applicable Law to retain;
- (b) all constating documents, minute books, shareholder records and corporate seals of the Vendor; and
- (c) any Purchased Asset which, by its terms or under Applicable Law, is not capable of being sold, transferred, conveyed or assigned by operation of the Approval and Vesting Order.

2.3 Liabilities.

- (1) Subject to the terms and conditions of this Agreement, the Purchaser shall assume, pay, satisfy, discharge, perform and fulfil, from and after the Effective Time, only the following obligations and liabilities of the Vendor:
 - (a) all liabilities and obligations of the Vendor under the Purchased Contracts, including the Assumed Debt; and

- (b) all liabilities and obligations that are assumed under Section 5.6(2) (collectively, the “**Assumed Liabilities**”).
- (2) Other than the Assumed Liabilities, the Purchaser shall not assume or have any obligation to discharge, perform or fulfill any obligation or liability of the Vendor of any kind whatsoever (collectively, the “**Excluded Liabilities**”) and all Excluded Liabilities remain the obligation and responsibility of the Vendor, including the obligations and liabilities of the Vendor:
 - (a) for Taxes payable or remittable by the Vendor;
 - (b) owing to a lender or creditor of the Vendor, including any bank overdrafts or bank indebtedness and any indebtedness or liabilities other than the Assumed Liabilities owing under any promissory note, or Contract for the borrowing of money;
 - (c) arising out of or relating to products or services of the Vendor to the extent manufactured, sold, shipped or rendered prior to the Effective Time;
 - (d) arising out of any Proceeding against the Vendor in the conduct of the Business or otherwise no matter when arising by reason of any facts or circumstances that occurred or existed prior to the Effective Time, in each case whether or not an action or any other proceeding is commenced prior to the Effective Time;
 - (e) for refunds arising under any services performed by the Vendor in respect of which the Purchaser has assumed performance obligations pursuant to Section 2.3(1)(a); and
 - (f) relating to an Excluded Asset.

2.4 Purchase Price and Purchase Price Allocation.

- (1) Subject to the terms and conditions of this Agreement, the aggregate purchase price (the “**Purchase Price**”) to be paid by the Purchaser to the Vendor for the Purchased Assets is \$3,900,000.00, plus the Cash Payment.
- (2) If any Purchased Asset is not capable of being sold, transferred, conveyed or assigned to the Purchaser on the Effective Date, then such Purchased Asset shall be retained by the Vendor and shall be deemed to be an Excluded Asset.
- (3) The Purchaser and the Vendor shall cooperate after Closing to allocate the Purchase Price and shall report the purchase and sale of the Purchased Assets for all Tax purposes in a manner consistent with that allocation. If any Governmental Authority does not agree with that allocation, the Purchaser and the Vendor shall use their best efforts (which is not to be construed as requiring the Purchaser or the Vendor to commence or participate in any litigation or administrative process challenging the determination of any Governmental Authority) to agree on a different allocation acceptable to that Governmental Authority, and the Purchaser and the Vendor shall amend the original allocation and the relevant tax returns accordingly.

2.5 Payment of Purchase Price. At the Closing, the Purchaser shall pay and satisfy the Purchase Price as follows:

- (1) by payment to or to the order of the Proposal Trustee, an amount equal to the sum of: (i) the Priority Payments; (ii) the NOI Charge Amount; and (iii) the Administrative Wind-down Amount (collectively, the “Cash Payment”), provided, the Proposal Trustee shall hold the Cash Payment in trust for the benefit of Persons entitled to be paid from the Cash Payment; and
- (2) by payment to or to the order of the Vendor:
 - (a) as to \$2,545,000.00, being the aggregate principal amount of secured debt owing to Maynbridge, by paying such amount to Maynbridge on behalf the Vendor; and
 - (b) as to \$1,355,000.00, by assuming and performing the Assumed Liabilities, including the Assumed Debt.

2.6 GST/HST Election. The Purchaser and the Vendor shall jointly elect under subsection 167(1) of the ETA and under any similar provision of any applicable provincial legislation imposing a similar value added or multi-staged tax, that no tax be payable with respect to the purchase and sale of the Purchased Assets pursuant to this Agreement. The Purchaser and the Vendor shall make those elections in prescribed form containing prescribed information and shall file those elections in compliance with the requirements of applicable legislation.

2.7 Accounts Receivable Election. If requested by the Purchaser, the Purchaser and the Vendor shall elect jointly in the prescribed form under Section 22 of the Tax Act and under any similar provision of any other applicable provincial legislation as to the sale of the Accounts Receivable forming part of the Purchased Assets and described in Section 22 of the Tax Act and shall in that election allocate an amount equal to the portion of the Purchase Price allocated to those assets pursuant to Section 2.4(3) as the consideration paid by the Purchaser for those assets. The Parties shall file such election forms, along with any documentation necessary or desirable to give effect to such election, with CRA and any other appropriate taxation authority within the prescribed time limits.

2.8 Payment of Taxes. The Vendor shall pay and remit all Taxes relating to the Business which arise, or are related to a period of time, prior to the Effective Time.

2.9 As is, Where is. The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is” basis as they shall exist as at the Effective Date. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets. No representation, warranty or condition is expressed or can be implied as to title, Encumbrances, description, fitness for purpose, merchantability, transferability, assignability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell, transfer, assign or convey same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (British Columbia) or similar legislation do not apply hereto and have been waived by the Purchaser.

ARTICLE 3 CLOSING ARRANGEMENTS

3.1 Closing. Subject to the satisfaction or waiver by the applicable Party of the conditions set out in Article 4, the Parties shall hold the Closing at the Effective Time.

3.2 Vendor's Closing Deliveries. At Closing, the Vendor shall deliver or cause to be delivered to the Purchaser all certificates, agreements, documents and instruments as required under Section 4.1(1)(e).

3.3 Purchaser's Closing Deliveries. At Closing the Purchaser shall deliver or cause to be delivered to the Vendor all payments, certificates, agreements, documents and instruments as required under Section 4.2(1)(c).

ARTICLE 4 CONDITIONS OF CLOSING

4.1 Conditions for the Benefit of the Purchaser.

- (1) The Purchaser shall be obliged to complete the Transaction only if each of the following conditions precedent has been satisfied in full at or before the time of Closing on the CP Satisfaction Date:
 - (a) the Vendor has complied with or performed all of the obligations, covenants and agreements under this Agreement to be complied with or performed by the Vendor on or before the CP Satisfaction Date, to the satisfaction of the Purchaser, acting reasonably;
 - (b) all Permits and Approvals have been obtained, in each case in form and substance satisfactory to the Purchaser, acting reasonably, and are in full force and effect, including, for clarity, the consent of the secured lenders in respect of the assignment and assumption of the Assumed Debt, and any consent of the Landlord required for the assignment of the Lease;
 - (c) there is no injunction or restraining order issued preventing, and no pending or threatened Proceeding, against any Party, for the purpose of enjoining or preventing, the completion of the Transaction or otherwise claiming that this Agreement or the completion of the Transaction is improper or would give rise to a Proceeding, under any Applicable Law;
 - (d) the Court shall have granted the Approval and Vesting Order providing for:
 - (i) approval of this Agreement and the performance of the same by the Vendor;
 - (ii) the vesting of the Purchased Assets in the Purchaser, free and clear of any Encumbrances except for the Permitted Encumbrances; and
 - (iii) such other provisions as reasonably requested by the Purchaser or that would customarily be contained in an approval and vesting order granted by the Court;
 - (e) the Vendor has caused to be delivered to the Purchaser the following:
 - (i) all deeds, conveyances, bills of sale, assurances, transfers, assignments and any other documentation or action which in the opinion of the Purchaser are necessary or reasonably required to transfer the Purchased Assets to the Purchaser with good and marketable title, free and clear of all Encumbrances except for the Permitted Encumbrances, in each case duly executed by the Vendor, and in form and substance satisfactory to the Purchaser, acting reasonably, and which, for clarity shall include an assignment of the Lease duly executed by the Vendor and Landlord; and

- (ii) the tax elections in Section 2.6 and Section 2.7, duly executed by the Vendor.
- (f) Each of the Employees to which the Purchaser has made an offer of employment pursuant to Section 5.6(1) shall have accepted such offer of employment.
- (2) Each of the conditions set out in Section 4.1(1) is for the exclusive benefit of the Purchaser and the Purchaser may waive compliance with any such condition in whole or in part by notice in writing to the Vendor, except that no such waiver operates as a waiver of any other condition.

4.2 Conditions for the Benefit of the Vendor.

- (1) The Vendor shall be obliged to complete the Transaction only if each of the following conditions precedent has been satisfied in full at or before the time of Closing on the CP Satisfaction Date:
 - (a) the Court shall have granted the Approval and Vesting Order, which shall not have been stayed, there shall be no outstanding appeal therefrom, and all applicable appeal periods shall have passed;
 - (b) there is no injunction or restraining order issued preventing, and no pending or threatened Proceeding, against any Party, for the purpose of enjoining or preventing, the completion of the Transaction or otherwise claiming that this Agreement or the completion of the Transaction is improper or would give rise to a Proceeding, under any Applicable; and
 - (c) the Purchaser has caused to be delivered to the Vendor the following:
 - (i) payment of the amounts required to be paid to the Vendor pursuant to Section 2.5;
 - (ii) the tax elections in Section 2.6 and Section 2.7, duly executed by the Purchaser.
- (2) Each of the conditions set out in Section 4.2(1) is for the exclusive benefit of the Vendor and the Vendor may waive compliance with any such condition in whole or in part by notice in writing to the Purchaser, except that no such waiver operates as a waiver of any other condition.

4.3 Termination Events. By notice given prior to or at Closing, subject to Section 4.4, this Agreement may be terminated as follows:

- (a) by the Purchaser pursuant to Section 5.5(1)(a);
- (b) by mutual consent of the Purchaser and the Vendor;
- (c) by the Purchaser or the Vendor and, upon dismissal of the motion for the Approval and Vesting Order (or if any such order is stayed, vacated or varied without the consent of the Purchaser or the Vendor);
- (d) by the Purchaser or the Vendor, if a court of competent jurisdiction, including the Court or other Governmental Authority has issued an order or taken any other action to restrain, enjoin or otherwise prohibit the consummation of Closing and such order or action has become a final order; and
- (e) by the Purchaser unless it is in material breach of this Agreement or by the Vendor unless the Vendor is in material breach of this Agreement, if the Closing has not occurred on or before the Outside Date.

4.4 Effect of Termination. Each Party's right of termination under Section 4.3 is in addition to any other rights it may have under this Agreement or otherwise, whether at law, in equity or otherwise, and the exercise of that right of termination is not an election of remedies. If this Agreement is terminated pursuant to Section 4.3, all obligations of the Parties under this Agreement will terminate except that the obligations contained in this Section 4.3 and in 4.4 (except for Section 6.2) will survive.

4.5 Waiver of Conditions of Closing. If any of the conditions set forth in Section 4.1 has not been satisfied, the Purchaser may elect in writing to waive the condition and proceed with the completion of the Transaction and, if any of the conditions in Section 4.2 has not been satisfied, the Vendor may elect in writing to waive the condition and proceed with the completion of the Transaction. Any such waiver and election by the Purchaser or the Vendor, as the case may be, will only serve as a waiver of the specific closing condition and the other Party will have no liability with respect to the specific waived condition, provided that neither Party may waive the requirement for the Court to have granted the Approval and Vesting Order.

ARTICLE 5 COVENANTS

5.1 Exclusive Dealings. The Vendor shall not take any action, at any time, directly or indirectly, to encourage, initiate or engage in discussions or negotiations with, or provide any information to, or enter into any agreement or arrangement or understanding with, any Person, other than the Purchaser and its designated and authorized Representatives, concerning any sale, transfer or assignment of any portion of the Business or the Purchased Assets. The Vendor shall notify the Purchaser promptly if any such discussions or negotiations are sought or if any proposal for a sale, transfer or assignment of any portion of the Business or the Purchased Assets is received. The Vendor shall use its best efforts to provide the Court with all necessary documents, forms, consents and other information as the Court may require in order to obtain the Approval and Vesting Order as expeditiously as possible. The Purchaser shall cooperate with the Vendor in its efforts to obtain the Approval and Vesting Order and shall make commercially reasonable efforts to provide or cause to be provided to the Vendor at the Vendor's request and cost all certificates, affidavits or other documents and instruments reasonably required by the Vendor to obtain the Approval and Vesting Order. The Vendor shall use commercially reasonable efforts to obtain the Approval and Vesting Order.

5.2 Access. Upon request by the Purchaser, the Vendor shall promptly make available to the Purchaser and its Representatives copies of all documents and information concerning the Purchased Assets, Assumed Liabilities and Business as the Purchaser may reasonably request and which are in the Vendor's possession or control.

5.3 Transfer of Documentation. On the Effective Date, the Vendor shall deliver, and shall cause to be delivered, to the Purchaser the Books and Records and all documents (except, in the case of those required by Applicable Law to be retained by the Vendor, copies thereof) and other data, technical or otherwise, which are owned by the Vendor and in the possession or control of the Vendor at the Effective Date, relating to the Business or the Purchased Assets. The Purchaser shall preserve all those documents delivered to it in accordance as is required by Applicable Law. The Purchaser shall permit the Vendor and its authorized Representatives reasonable access to those documents while they are in the Purchaser's possession or control solely to the extent that access is required by the Vendor to perform its obligations under this Agreement or under Applicable Law, but the Purchaser shall not be responsible or liable to the Vendor for, or as a result of, any loss or destruction of or damage to any such documents and other data. The Vendor shall be responsible for all reasonable out-of-pocket costs and expenses incurred, directly or indirectly, by the Purchaser in connection with any access contemplated by this Section 5.3.

5.4 Personal Information.

- (1) The Vendor and the Purchaser shall:
 - (a) at all times, use and disclose the Personal Information under its control solely for the purposes for which the Personal Information was collected or permitted to be used or disclosed, unless to the extent required by Applicable Law, the Vendor or the Purchaser, as the case may be, has obtained the consent of or has given notice to the individual to whom the Personal Information relates of the additional purposes for which the Personal Information is to be used or disclosed, or such additional purposes are permitted or authorized by Applicable Law;
 - (b) protect the Personal Information using security safeguards that meet or exceed industry standards, taking into account the sensitivity of the Personal Information; and
 - (c) give effect to any withdrawal of consent by the individual to whom the Personal Information relates where the Personal Information was collected with consent.
- (2) The Purchaser shall, to the extent required by Applicable Law, notify the individuals to whom the Personal Information relates that the Transaction has been completed and of the disclosure of their Personal Information to the Purchaser.
- (3) In the event that the Transaction is not completed, the Purchaser shall, within a reasonable period of time, return the Personal Information to the Vendor or, in its discretion, destroy it and provide a certificate of a senior officer of the Purchaser to that effect to the Vendor.

5.5 Risk of Loss.

- (1) If, before the Closing, any material portion of the Purchased Assets or material portion of the Business is lost, damaged or destroyed or is appropriated, expropriated or seized by any Governmental Authority, and the loss, damage, destruction, appropriation, expropriation or seizure cannot, in the reasonable opinion of the Purchaser, be restored within 60 days from the date of loss, damage, destruction, appropriation, expropriation or seizure, then the Purchaser may either:
 - (a) terminate this Agreement; or
 - (b) elect to complete the Transaction, in which case any insurance proceeds or other compensation paid or payable with respect to such loss, damage, destruction, appropriation,

expropriation or seizure of Purchased Assets will be assigned or paid by the Vendor to the Purchaser.

- (2) If, before the Closing, any of the Purchased Assets or part of the Business is lost, damaged or destroyed or is appropriated, expropriated or seized by any Governmental Authority, and the loss, damage, destruction, appropriation, expropriation or seizure can, in the reasonable opinion of the Purchaser, be restored within 60 days from the date of loss, damage, destruction, appropriation, expropriation or seizure, then upon satisfaction or waiver of the conditions set out in Article 4, the Parties will complete the Transaction; provided that any proceeds of insurance payable as a result of the occurrence are to be directed by the Vendor to be paid to the Purchaser.

5.6 Employees.

- (1) Prior to the CP Satisfaction Date, but conditional on the completion of the Closing, the Purchaser shall use commercially reasonable efforts to offer employment to all of the Employees effective as at the Effective Time, on terms and conditions which are substantially comparable to those on which such Employees were employed by the Vendor immediately prior to the Effective Date. For greater certainty, unless the Purchaser elects to make an offer of employment to any Employee that is on temporary layoff, leave of absence, disability or other non-active status and that offer of employment is accepted by that Employee, the Vendor shall remain responsible for and the Purchaser is not assuming any liability or obligation with respect to that Employee.
- (2) The Purchaser shall assume and be responsible for all liabilities and obligations with respect to the Hired Employees.

ARTICLE 6 GENERAL

6.1 Expenses. Each Party shall pay all expenses (including Taxes imposed on those expenses) it incurs in connection with the authorization, negotiation, preparation, execution and performance of this Agreement and Transactions, including all fees and expenses of legal counsel, bankers, investment bankers, brokers, accountants or other representatives or consultants.

6.2 Best Efforts. In this Agreement, unless specified otherwise, an obligation of any Party to use its best efforts to obtain any Approval does not require the Party to make any payment to any Person for the purpose of procuring the Approval, except for payments for amounts due and payable to that Person, payments for incidental expenses incurred by that Person and payments required by any Applicable Law.

6.3 No Third Party Beneficiary. This Agreement is solely for the benefit of the Parties and no third party accrues any benefit, claim or right of any kind pursuant to, under, by or through this Agreement.

6.4 Entire Agreement. This Agreement together with the other agreements to be entered into as contemplated by this Agreement (the “**Other Agreements**”) constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and the Other Agreements and supersede all prior correspondence, agreements, negotiations, discussions and understandings, written or oral. Except as specifically set out in this Agreement or the Other Agreements, there are no representations, warranties, conditions or other agreements or acknowledgements, whether direct or collateral, express or implied, written or oral, statutory or otherwise, that form part of or affect this Agreement or the Other Agreements or which induced any Party to enter into this Agreement or the Other Agreements. No reliance is placed on any representation, warranty, opinion, advice or assertion of fact made either prior to, concurrently with, or after entering into, this Agreement or any Other Agreement, or any amendment or supplement hereto or

thereto, by any Party to this Agreement or any Other Agreement or its Representatives, to any other Party or its Representatives, except to the extent the representation, warranty, opinion, advice or assertion of fact has been reduced to writing and included as a term in this Agreement or that Other Agreement, and none of the parties to this Agreement or any Other Agreement has been induced to enter into this Agreement or any Other Agreement or any amendment or supplement by reason of any such representation, warranty, opinion, advice or assertion of fact. There is no liability, either in tort or in contract, assessed in relation to the representation, warranty, opinion, advice or assertion of fact, except as contemplated in this Section.

6.5 Time of Essence. Time is of the essence of this Agreement.

6.6 Amendment. This Agreement may be supplemented, amended, restated or replaced only by written agreement signed by each Party.

6.7 Waiver of Rights. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement is effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement operates as a waiver of that right. No single or partial exercise of any such right precludes any other or further exercise of that right or the exercise of any other right.

6.8 Jurisdiction. The Parties irrevocably and unconditionally attorn to the exclusive jurisdiction of the Courts in respect of all disputes arising out of, or in connection with, this Agreement, or in respect of any legal relationship associated with it or derived from it.

6.9 Governing Law. This agreement is governed by, and interpreted and enforced in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia, excluding the choice of law rules of that province.

6.10 Notices.

(1) Any notice, demand or other communication (in this Section 6.10, a “**notice**”) required or permitted to be given or made under this Agreement must be in writing and is sufficiently given or made if:

- (a) delivered in person and left with a receptionist or other responsible employee of the relevant Party at the applicable address set forth below;
- (b) sent by prepaid courier service or (except in the case of actual or apprehended disruption of postal service) mail; or
- (c) sent by email, or by facsimile transmission, with confirmation of transmission by the transmitting equipment (each, a “**Transmission**”);

in the case of a notice to the Vendor, addressed to it at:

211 Horel Rd
Salt Spring Island, BC
V8K 2A4

Attention: Norman (Mickey) McLeod
Email: mickey@saltspringcoffee.com

with a copy (not constituting notice) to:

Osler, Hoskin & Harcourt LLP
3000 - 1055 Dunsmuir St.
Vancouver, BC V7X 1K8

Attention: Mary Buttery, KC
Email: mbuttery@osler.com

and in the case of a notice to the Purchaser, addressed to it at:

388 – 1111 West Hastings St.
Vancouver, BC V6E 2J3

Attention: Dean Shillington
Email: dean@kbcapital.ca

- (2) Any notice sent in accordance with this Section 6.10 is deemed to have been received:
- (a) if delivered prior to or during normal business hours on a Business Day in the place where the notice is received, on the date of delivery;
 - (b) if sent by mail, on the fifth Business Day after mailing in the place where the notice is received, or, in the case of disruption of postal service, on the fifth Business Day after cessation of that disruption;
 - (c) if sent by email during normal business hours on a Business Day in the place where the Transmission is received, on the same day that it was received by Transmission; or
 - (d) if sent in any other manner, on the date of actual receipt;

except that any notice delivered in person or sent by Transmission not on a Business Day or after normal business hours on a Business Day, in each case in the place where the notice is received, is deemed to have been received on the next succeeding Business Day in the place where the notice is received.

- (3) Any Party may change its address for notice by giving notice to the other Parties.

6.11 Assignment. No Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement to any Person. Notwithstanding the foregoing, Caffè & Roaster Holdings Inc. may, prior to Closing, assign this Agreement in its discretion and without consent to a subsidiary incorporated for the purpose of completing the Transaction.

6.12 Further Assurances. Each Party shall promptly do, execute, deliver or cause to be done, executed or delivered all further acts, documents and matters in connection with this Agreement that any other Party may reasonably require, for the purposes of giving effect to this Agreement.

6.13 Severability. If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, that provision will, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in

any other jurisdiction and, if applicable, without affecting its application to the other Parties or circumstances. The Parties shall engage in good faith negotiations to replace any provision which is so restricted, prohibited or unenforceable with an unrestricted and enforceable provision, the economic effect of which comes as close as possible to that of the restricted, prohibited or unenforceable provision which it replaces.

6.14 Successors. This Agreement is binding on, and enures to the benefit of, the Parties and their respective successors and assigns.

6.15 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 constitute one agreement. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in legible form, including in a tagged image format file (TIFF) or portable document format (PDF), shall be equally effective as delivery of a manually executed counterpart of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date first above written.

MICROB RESOURCES INC.

By: _____
Norman (Mickey) McLeod
President

CAFFE & ROASTER HOLDINGS INC.

By:  _____
Dean Shillington
President

Signature page to Asset Purchase Agreement – Microb Resources Inc.

Schedule 1.1(44)

Permitted Encumbrances

Base Registration	Registration Date	Debtor Name	Secured Party
143401E	January 18, 2008	Microb Resources Inc.	Business Development Bank of Canada
020610M	January 23, 2020	Microb Resources Inc.	Bodkin, A Division of Bennington Financial Corp.

Schedule 2.1(e)

Purchased Contracts

1. The Lease.
2. Offer to Sublease dated April 9, 2024, between the Vendor and Awin Enterprise Inc.
3. Contracts in respect of the Assumed Debt.
4. Contracts with the customers listed in the Key Customers list attached to this Schedule as Attachment 1.
5. Contracts with the following suppliers and service providers:
 - a. TricorBraun Flex;
 - b. Atlas Coffee Importers, Inc.;
 - c. InterAmerican Coffee Inc.;
 - d. Intercontinental Coffee Trading;
 - e. Sucafina NA Inc.;
 - f. New Age Marketing and Brand Management Inc.; and
 - g. Oracle.
6. Sovereign General Insurance Company Policy Nos. S4002005876 & SOV79632272.
7. To the extent not listed above, all Contracts pertaining to the list of Accounts Receivable attached as Attachment 2 to this Schedule.

Attachment 1

Key Customers

See attached.

Key Customers	CATEGORY	FY2020	FY2021	FY2022	FY2023	FY2024	Customer Since
		Net Sales \$	Net Sales \$	Net Sales \$	Net Sales \$	Net Sales \$	
Costco Canada	Grocery	4,450,976	4,899,265	6,319,595	6,882,674	5,714,143	2008
Pattison Food Group (Save-On)	Grocery	815,404	683,696	485,293	483,370	400,212	2014
Loblaws	Grocery	602,484	691,787	754,312	811,552	808,609	2010
London Drugs	Grocery	438,120	524,066	596,110	713,056	715,837	2014
PSC Natural Foods	Grocery	547,492	511,389	557,908	672,574	805,516	2016
Curve Distribution (was Elite)	Grocery	522,616	386,420	133,567	214,406	45,747	2016
Metro Richelieu	Grocery		109,296	282,429	469,403	311,718	2021
Dovre Import & Export	Grocery	401,747	428,159	211,451	244,979	228,500	2016
Horizon Distributors	Grocery	360,308	345,794	351,550	270,715	228,424	2005
Thirst First Coffee & Vending	Food Service	210,272	123,246	197,801	296,704	351,533	2009
Quality Foods	Grocery	168,568	253,080	261,584	266,446	19,096	2014
Amazon.ca	Retail	52,518	54,433	67,981	155,661	259,766	2016
Shopify Orders	Retail	122,407	233,682	222,940	189,087	189,553	2019
UNFI	Grocery	68,319	127,130	180,728	204,373	221,034	2018
John Norget & Co	Grocery	157,139	177,416	51,641	61,222	62,338	2016
Gordon Food Service	Food Service		27,845	109,608	160,455	222,845	2015
Canteen of Canada	Food Service			7,173	142,672	223,964	2022
	Subtotal	8,918,370	9,576,704	10,791,671	12,239,349	10,808,835	
	Remainder	1,073,329	679,757	855,590	1,225,160	1,404,485	
	TOTAL OF ALL CUSTOMERS	9,991,699	10,256,461	11,647,261	13,464,509	12,213,320	

from Sales by Customer SSC Gross Sort Dollars

Attachment 2

Accounts Receivable

See attached.

Salt Spring Coffee
A/R Aging Summary
As of December 17, 2024

Customer	Current	11/17/2024 - 12/16/2024 (30)	10/18/2024 - 11/16/2024 (60)	9/18/2024 - 10/17/2024 (90)	Before 9/18/2024 (>90)	Total
	Open Balance	Open Balance	Open Balance	Open Balance	Open Balance	Open Balance
- No Customer/Job -	\$11,627.76	\$0.00	-\$7,001.32	-\$6,395.65	\$13,396.97	\$11,627.76
Amazon.ca	\$195.13	\$0.00	\$0.00	\$0.00	\$0.00	\$195.13
Aramark Refreshment Services	\$3,026.74	\$1,256.97	\$0.00	\$0.00	\$0.00	\$4,283.71
BC Pavilion Corporation	\$366.83	\$0.00	\$0.00	\$0.00	\$0.00	\$366.83
BC Place	\$630.21	\$0.00	\$0.00	\$0.00	\$0.00	\$630.21
Best Western Plus Chemainus	\$1,261.97	\$558.10	\$0.00	\$0.00	\$0.00	\$1,820.07
Canteen of Canada	\$22,796.40	\$18,018.30	\$24,803.70	\$0.00	\$0.00	\$65,618.40
Chan Nowosad Boates Accounting	\$0.00	\$455.10	\$0.00	\$0.00	\$0.00	\$455.10
Cinematheque	\$0.00	\$454.65	\$0.00	\$0.00	\$0.00	\$454.65
Costco.ca	\$3,823.57	\$0.00	\$0.00	\$0.00	\$0.00	\$3,823.57
Curve Distribution (was Elite)	\$0.00	\$0.00	\$0.00	\$0.00	\$8,613.27	\$8,613.27
Days Inn On the Harbour	\$666.90	\$0.00	\$0.00	\$0.00	\$0.00	\$666.90
Days Inn Victoria Uptown	\$349.20	\$0.00	\$0.00	\$0.00	\$0.00	\$349.20
Discovery Organics	\$315.86	\$0.00	\$0.00	\$0.00	\$0.00	\$315.86
Dovre Import & Export	\$15,546.40	\$0.00	\$0.00	\$0.00	\$0.00	\$15,546.40
Embarc Resorts						
Embarc Ucluelet	\$658.65	\$0.00	\$0.00	\$0.00	\$0.00	\$658.65
Total - Embarc Resorts	\$658.65	\$0.00	\$0.00	\$0.00	\$0.00	\$658.65
Gordon Food Service	\$11,334.52	\$7,487.32	\$0.00	\$0.00	\$0.00	\$18,821.84
Highwayman Pub Abbotsford	\$375.81	\$255.79	\$0.00	\$0.00	\$0.00	\$631.60
Highwayman Pub Surrey	\$375.81	\$0.00	\$0.00	\$0.00	\$0.00	\$375.81
Horizon Distributors	\$12,465.60	\$0.00	\$0.00	\$0.00	\$0.00	\$12,465.60
IGA Coquitlam Deli	\$0.00	\$368.75	\$0.00	\$0.00	\$0.00	\$368.75
KeHE						
KeHE - DC 14 Phoenix	\$1,285.62	\$763.69	\$0.00	\$0.00	\$0.00	\$2,049.31
KeHE - DC 27 North East	\$0.00	\$2,237.75	\$0.00	\$0.00	\$0.00	\$2,237.75
KeHE - DC 31 Miami	\$1,114.53	\$3,814.80	\$0.00	\$0.00	\$0.00	\$4,929.33
KeHE - DC 33 Stockton	\$1,291.27	\$382.26	\$0.00	\$0.00	\$0.00	\$1,673.53
KeHE - DC 41 Chino	\$0.00	\$4,086.40	\$866.74	\$0.00	\$0.00	\$4,953.14
KeHE - DC 55 Douglasville	\$449.96	\$0.00	\$0.00	\$0.00	\$0.00	\$449.96
Total - KeHE	\$4,141.38	\$11,284.90	\$866.74	\$0.00	\$0.00	\$16,293.02
Leduc Safeway 8857	\$0.00	\$0.00	-\$5.00	\$0.00	\$0.00	-\$5.00
Loblaws	\$34,427.20	\$0.00	\$0.00	\$0.00	\$0.00	\$34,427.20
London Drugs	\$28,229.75	\$0.00	\$0.00	\$0.00	\$0.00	\$28,229.75
Meadowbrook	\$977.82	\$0.00	\$0.00	\$0.00	\$0.00	\$977.82
Metro Richelieu	\$18,778.83	\$19,556.52	-\$350.00	\$0.00	\$0.00	\$37,985.35
Mill Creek Coffee	\$6,969.14	\$2,136.17	\$0.00	\$0.00	\$0.00	\$9,105.31
Mill Creek Coffee - Nanaimo	\$244.68	\$4,710.84	\$0.00	\$0.00	\$0.00	\$4,955.52
Northwestern Systems Corp.	\$1,639.55	\$0.00	\$0.00	\$0.00	\$0.00	\$1,639.55
Pattison Food Group (Save-On)	\$18,848.02	\$1,562.82	\$0.00	\$0.00	\$0.00	\$50,410.84
Potluck Catering	\$156.18	\$0.00	\$0.00	\$0.00	\$0.00	\$156.18
PSC Natural Foods	\$10,661.60	\$0.00	\$0.00	\$0.00	\$0.00	\$10,661.60
Salt Spring Coffee - Ganges	-\$6,768.31	\$0.00	\$0.00	\$0.00	\$0.00	-\$6,768.31
Satau	\$0.00	\$0.00	-\$1,280.25	-\$1,563.98	\$0.00	-\$2,844.23
Shopify Orders	\$0.00	-\$501.78	\$0.00	\$0.00	\$0.00	-\$501.78
Slope Side Supply	\$2,472.70	\$0.00	\$0.00	\$0.00	\$0.00	\$2,472.70
Snow Cap	\$3,054.08	\$1,183.14	\$0.00	\$0.00	\$0.00	\$4,237.22
Super Valu Gibsons	\$0.00	\$0.00	\$0.00	\$0.00	-\$30.05	-\$30.05
Thirst First Coffee & Vending	\$42,426.62	\$12,326.52	\$0.00	\$0.00	\$0.00	\$54,753.14
True Key						
Bighorn Meadows Resort	\$1,463.91	\$0.00	\$0.00	\$0.00	\$0.00	\$1,463.91
Total - True Key	\$1,463.91	\$0.00	\$0.00	\$0.00	\$0.00	\$1,463.91
UNFI East	\$3,049.28	\$0.00	\$0.00	\$0.00	\$0.00	\$3,049.28

Customer	Current	11/17/2024 - 12/16/2024 (30)	10/18/2024 - 11/16/2024 (60)	9/18/2024 - 10/17/2024 (90)	Before 9/18/2024 (>90)	Total
	Open Balance	Open Balance	Open Balance	Open Balance	Open Balance	Open Balance
UNFI West	\$10,429.42	\$0.00	\$0.00	\$0.00	\$0.00	\$10,429.42
Uprising Breads Bakery	\$3,778.05	\$782.31	\$0.00	\$0.00	\$0.00	\$4,560.36
UVic - Degrees Catering	\$646.38	\$0.00	\$0.00	\$0.00	\$0.00	\$646.38
Vancouver Aquarium (FS)	\$2,546.53	\$0.00	\$0.00	\$0.00	\$0.00	\$2,546.53
VIU						
VIU Nanaimo	\$3,198.21	-\$24.97	\$0.00	\$0.00	\$0.00	\$3,173.24
Total - VIU	\$3,198.21	-\$24.97	\$0.00	\$0.00	\$0.00	\$3,173.24
Walmart.ca	\$135.78	\$0.00	\$0.00	\$0.00	\$0.00	\$135.78
Wentworth						
Homer Street Cafe & Bar	\$345.75	\$0.00	\$0.00	\$0.00	\$0.00	\$345.75
Maxine's Cafe & Bar	\$345.75	\$510.75	\$0.00	\$0.00	\$0.00	\$856.50
Tableau Bar Bistro	\$345.75	\$0.00	\$0.00	\$0.00	\$0.00	\$345.75
Total - Wentworth	\$1,037.25	\$510.75	\$0.00	\$0.00	\$0.00	\$1,548.00
Western Forest						
Western Forest - Nanaimo Adm	\$181.40	\$0.00	\$0.00	\$0.00	\$0.00	\$181.40
Total - Western Forest	\$181.40	\$0.00	\$0.00	\$0.00	\$0.00	\$181.40
Whisha Pacific Northwest	\$460.55	-\$583.71	-\$621.68	\$0.00	\$0.00	-\$744.84
Windsor Plywood	\$0.00	\$666.90	\$0.00	\$0.00	\$0.00	\$666.90
Total	\$309,003.36	\$82,465.39	\$16,412.19	-\$7,959.63	\$21,980.19	\$421,901.50

Schedule 2.3(1)(a)

Assumed Debt

1. Business Development Bank of Canada. Loan Agreement between the Vendor and BDC, dated January 21, 2030.
2. The Econolease Financial Services Inc. Lease Agreement between the Vendor and Bodkin, a division of Bennington Financial Corp., dated January 10, 2020.
3. Loan from Norman (Mickey) McLeod dated, January 2, 2024, in an amount not to exceed \$125,000.

SCHEDULE "C"

Trustee's Certificate

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL FILED
BY MICROB RESOURCES INC.**

**NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE BANKRUPTCY
AND INSOLVENCY ACT, R.S.C. 1995 c b-3**

NOTICE OF APPLICATION

TRUSTEE'S CERTIFICATE

RECITALS

- A. On [DATE] (the "**NOI Filing Date**"), MicRob Resources Inc., doing business as Salt Spring Coffee ("**Salt Spring Coffee**") filed a notice of intention ("**NOI**") to make a proposal under s. 50.4 of the *BIA* with the Office of Superintendent of Bankruptcy and thereby commenced these proceedings (the "**NOI Proceedings**"). KPMG LLP was appointed to act as the "**Proposal Trustee**".
- B. Pursuant to an Order of the Court dated [DATE], the Court, among other things, approved the Asset Purchase Agreement dated [DATE] (the "**APA**") between the Salt Spring Coffee and Caffe & Roaster Holdings (the "**Purchaser**") and the transactions contemplated thereby, and provided for the vesting in the Purchaser of the right, title and interest in the Purchased Assets of the Salt Spring Coffee, which vesting is to be effective with respect to the Purchased Assets upon delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) payment by the Purchaser of the Purchase Price for the Purchased Assets;

(ii) that the conditions to Closing as set out in the APA have been satisfied or waived by Salt Spring Coffee and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the APA.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and Salt Spring Coffee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the APA; and
2. The conditions to Closing set out in the APA have been satisfied or waived by Salt Spring Coffee and the Purchaser.

This Certificate was delivered by the Proposal Trustee at [TIME] on [DATE], 2024, which shall constitute the Effective Time (as defined in the APA).

KPMG LLP., in its capacity as Proposal Trustee of MicRob Resources Inc., doing business as Salt Spring Coffee, and not in its personal capacity

Per: _____
Name:
Title:

SCHEDULE "D"

Claims to be Expunged

NIL.

SCHEDULE "E"

Permitted Encumbrances

Base Registration	Registration Date	Debtor Name	Secured Party
143401E	January 18, 2008	Microb Resources Inc.	Business Development Bank of Canada
020610M	January 23, 2020	Microb Resources Inc.	Bodkin, A Division of Bennington Financial Corp.