



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

**THE HONOURABLE MR.
JUSTICE NEWBOULD**

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**FRIDAY, THE 26th
DAY OF JUNE, 2015**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF ONE KENTON ALZHEIMER CENTER OF EXCELLENCE (NON-PROFIT) INC.**

ORDER

THIS MOTION, made by One Kenton Alzheimer Center of Excellence (Non-Profit) Inc. and B'Nai Brith Hillel of Toronto Inc. (collectively, the "**Kenton Group**") pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended ("**BIA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Michael Mostyn sworn June 23, 2015 (the "**Mostyn Affidavit**"), the First Report of A. Farber & Partners Inc. in its capacity as Trustee ("**NOI Trustee**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Kenton Group, and counsel to the NOI Trustee, no one else appearing.

SERVICE

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

ADMINISTRATIVE CONSOLIDATION

2. **THIS COURT ORDERS** that the proposal proceedings of One Kenton Alzheimer Center of Excellence (Non-Profit) Inc. (estate number 31-2008366) and B'Nai Brith Hillel of

Toronto Inc. (estate number 31-2008367) (collectively, the "**Proposal Proceedings**"), are hereby administratively consolidated and the Proposal Proceedings are hereby authorized and directed to continue under the following joint title of proceedings:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF ONE KENTON ALZHEIMER CENTER OF EXCELLENCE (NON-PROFIT) INC.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF B'NAI BRITH HILLEL OF TORONTO INC.

3. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed with the Commercial List Office only in the One Kenton Alzheimer Center of Excellence (Non-Profit) Inc. estate and court file, bearing Estate No./Court File No. 31-2008366.

APPROVAL OF SALE PROCESS

4. **THIS COURT ORDERS** that the sale solicitation process (the "**Sale Process**") attached hereto as Schedule "A" is hereby approved.

5. **THIS COURT ORDERS** that the NOI Trustee and the Kenton Group be and are hereby authorized and empowered to take such steps as are necessary or desirable to carry out and perform their obligations under the Sale Process, provided that any definitive agreement to be executed by the Kenton Group in respect of the sale of all or part of the Property (as defined below) shall require further approval of this Court.

ADMINISTRATION CHARGE

6. **THIS COURT ORDERS** that the NOI Trustee, counsel to the NOI Trustee, and counsel to the Kenton Group shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Kenton Group as part of the costs of these proceedings. The Kenton Group is hereby authorized and directed to pay the accounts of the NOI Trustee, counsel to the NOI Trustee and counsel to the Kenton Group on at least a bi-weekly basis.

7. **THIS COURT ORDERS** that the NOI Trustee (including in its capacity as trustee in bankruptcy, if applicable), counsel to the NOI Trustee (including as counsel to the trustee in bankruptcy, if applicable), and counsel to the Kenton Group shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all assets, rights, undertakings, and properties of the Kenton Group, of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "**Property**"), which Administration Charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 14 and 16 hereof.

DIP FINANCING

8. **THIS COURT ORDERS** that the execution by the Kenton Group of the DIP Term Sheet (as hereinafter defined) is hereby approved, *nunc pro tunc*, and the Kenton Group is hereby authorized and empowered to perform its obligations under the DIP Term Sheet and to obtain and borrow amounts under DIP Term Sheet entered into among the Kenton Group, as borrowers, and The Bank of Nova Scotia, as lender (in such capacity, the "**DIP Lender**"), provided that borrowings under such credit facility shall not exceed the principal amount of \$400,000 unless permitted by further Order of this Court.

9. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the Interim Financing Facility Terms and Conditions between the Kenton Group and the DIP Lender dated as of June 2, 2015, and appended to the Mostyn Affidavit (the "**DIP Term Sheet**") together with such modifications as may be agreed upon by the Kenton Group and the DIP Lender and consented to by the NOI Trustee.

10. **THIS COURT ORDERS** that the Kenton Group is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees or other definitive documents (such documents, together with the DIP Term Sheet, collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof together with such modifications as may be agreed upon by the Kenton Group and the DIP Lender and

consented to by the NOI Trustee, and the Kenton Group is hereby authorized and directed to pay and perform all of their 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 provision of this Order.

11. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 14 and 16.

12. **THIS COURT ORDERS** that, notwithstanding any other provisions of the BIA:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record, or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents, the DIP Lender may with leave of the Court (i) cease making advances to the Kenton Group, and (ii) upon at least three (3) business days' notice to the Kenton Group and the NOI Trustee, exercise any and all of its rights and remedies against the Kenton Group or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, set off and/or consolidate any amounts owing by the DIP Lender to the Kenton Group against the obligations of the Kenton Group to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim manager, or for a bankruptcy order against the Kenton Group and for the appointment of A. Farber & Partners Inc. as trustee in bankruptcy of the Kenton Group; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Kenton Group or the Property.

13. **THIS COURT ORDERS AND DECLARES** that 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 ("**Proposal**") filed by the Kenton Group or any plan of arrangement or compromise ("**Plan**") filed by the Kenton Group under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**") without consent of the DIP Lender and, the DIP Lender shall be treated as unaffected in any Proposal ("**Proposal**") under the BIA or Plan or other restructuring 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

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

First — Administration Charge (to the maximum amount of \$100,000); and

Second — DIP Lender's Charge.

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

16. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, municipal taxes (including realty taxes), charges and encumbrances, claims of secured creditors, statutory or otherwise, in favour of any Person, notwithstanding the order of perfection or attachment (collectively, "**Encumbrances**").

17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Kenton Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Kenton Group

also obtains the prior written consent of the NOI Trustee, the DIP Lender and all other beneficiaries of the Charges, or further Order of this Court.

18. **THIS COURT ORDERS** that the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder 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 motion(s) or application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such motions or applications; (c) the filing of any assignments for the general benefit of creditors made or deemed to have been made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, leases, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Kenton Group or the DIP Lender, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Kenton Group or the DIP Lender of any Agreement to which any one of them is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Kenton Group 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 the Kenton Group 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.

EXTENSION OF TIME TO FILE PROPOSAL

19. **THIS COURT ORDERS** that the time within which the Kenton Group must file a proposal with the Official Receiver be and is hereby extended to September 4, 2015.

SERVICE AND NOTICE

20. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which may be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.farberfinancial.com/insolvency-engagements/one-kenton-alzheimer-center-for-excellence-non-profit-inc.-and-bnai-brith-hillel-of-toronto-inc.-the-kenton-group>.

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

GENERAL

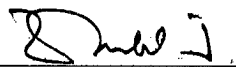
22. **THIS COURT ORDERS** that the Kenton Group or the NOI Trustee may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

23. **THIS COURT ORDERS** that nothing in this Order shall prevent the NOI Trustee from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Kenton Group or the Property.

24. **THIS COURT ORDERS** that each of the Kenton Group and the NOI Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order, and for assistance in carrying out the terms of this Order and any other Order issued in these proceedings.

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

26. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.



Schedule "A"

Sale Solicitation Process

Sale Solicitation Process

Purpose

1. The purpose of the Sale Solicitation Process ("**Sale Process**") is to identify one or more purchasers of, and/or investors in, the business and/or assets of B'Nai Brith Hillel of Toronto Inc. and One Kenton Alzheimer Center of Excellence (Non-Profit) Inc. (collectively, the "**Kenton Group**") The sale process will be conducted by A. Farber & Partners Inc. in its capacity as the trustee in the notice of intention proceedings of the Kenton Group (the "**NOI Trustee**"), with such consultation with the Kenton Group as the NOI Trustee deems appropriate.
2. It is contemplated that the Kenton Group will seek an order (the "**Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), among other things, approving of the Sale Process on or about June 26, 2015.
3. Unless otherwise indicated herein any event that occurs on a day that is not a business day shall be deemed to occur on the next business day.

Sale Process Procedures

4. The NOI Trustee will compile a list of prospective investors and purchasers (together with any other party expressing an interest in the business and/or assets of the Kenton Group, the "**Interested Parties**"). The NOI Trustee will make best efforts to canvass the interest of all Interested Parties.
5. The Sale Process will be conducted by the NOI Trustee and will provide Interested Parties with the opportunity to submit offers to purchase some or all of the Kenton Group's business and/or assets.
6. The NOI Trustee shall cause a notice of the Sale Process to be published in The Globe and Mail (National Edition) within ten (10) days following the date of the Order.
7. As soon as possible after the issuance of the Order, the NOI Trustee will distribute to Interested Parties an interest solicitation letter which will provide an overview of this

opportunity and the Kenton Group's business and assets. A form of confidentiality agreement ("**CA**") will be attached to the interest solicitation letter that Interested Parties will be required to sign in order to gain access to confidential information and to commence performing due diligence (each Interested Party who signs a CA being referred to herein as, a "**Prospective Offeror**"). All CA's shall enure to the benefit of any purchaser of or investor in the Kenton Group's business and/or assets.

8. The NOI Trustee will provide to each Prospective Offeror (i) a confidential information memorandum, (ii) access to an electronic data room (which will include certain financial and other information with respect to the Kenton group), and (iii) a proposed form of agreement of purchase and sale (the "**NOI Trustee APS**"). The NOI Trustee will also facilitate diligence by Prospective Offerors, including arranging site visits, as the NOI Trustee determines to be appropriate. The NOI Trustee will attend such site visits as it considers appropriate.

9. Notwithstanding paragraph 8 above, the NOI Trustee, in such consultation with the Kenton Group and the DIP Lender as the NOI Trustee deems appropriate, shall have the right to limit any Prospective Offeror's access to confidential information. This will include limiting access, if deemed appropriate, to parties who the NOI Trustee reasonably believes are not likely to be serious offerors.

Timeline

10. A chart summarizing material deadlines for the Sale Process is set out below:

Sale Solicitation Process	Date
Court Approval of Sale Process	Date of Approval (" Sale Process Approval Date ")
Begin Marketing to Interested Parties	Immediately following the Sale Process Approval Date
Complete Deliver of Sale Solicitation Materials and Listings	July 15, 2015
Deadline for Submissions of Offers	September 17, 2015
Selection of Offer	September 21, 2015

Execution of Binding Agreement	September 30, 2015
Court Approval of Binding Agreement and Granting of Vesting Order	October 15, 2015
Closing(s)	As soon as practicable following Court approval of the of binding agreement, and in any event no later than October 31, 2015

Submission of Offers

11. The NOI Trustee shall seek binding offers from Prospective Offerors in accordance with the timeline above that:
- (a) provides the identity of each person or entity (including its shareholders) that is sponsoring or participating in the offer and the complete terms of such participation, evidence of corporate authority, and proof of such offeror's financial ability to perform the proposed transaction to the satisfaction of the NOI Trustee, acting reasonably;
 - (b) are in the form of a binding offer capable of acceptance, irrevocable until September 21, 2015;
 - (c) at the discretion of the NOI Trustee, are accompanied by a cash deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the NOI Trustee), in an amount equal to 10% of the consideration in the offer and otherwise on terms acceptable to the NOI Trustee;
 - (d) in the case of a proposed purchase of the Kenton's Group's business and/or assets, is substantially in the form of the NOI Trustee APS, with any changes to the offer blacklined against the NOI Trustee APS;
 - (e) includes: an acknowledgement and representation that the offeror: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (ii) did not rely upon any written or oral statements, representations,

promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business and/or assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in any definitive documents;

- (f) is not conditional upon:
 - (i) the outcome of unperformed due diligence; or
 - (ii) obtaining financing; and
- (g) states any conditions to closing.

12. Each offer submitted in accordance with paragraph 11 above shall be a "**Qualified Offer**" and each such offeror a "**Qualified Offeror**".

Post-Offer Procedure

13. If one or more Qualified Offers are received, the NOI Trustee, in consultation with the Kenton Group and The Bank of Nova Scotia (the "**DIP Lender**"), may choose to:

- (a) accept one (or more if for distinct transactions) Qualified Offer(s) (the "**Successful Offer**" and each Qualified Offeror making the Successful Offer(s) being a "**Successful Offeror**") and take such steps as are necessary to finalize and complete an agreement for the Successful Offer(s) with the Successful Offeror(s); or
- (b) continue negotiations with a selected number of offerors (collectively, "**Selected Offerors**") with a view to finalizing one or more agreements with one or more Selected Offerors.

14. The NOI Trustee shall be under no obligation to accept the highest or best offer and the selection of the Successful Offer(s) and the Selected Offeror(s) shall be entirely in the discretion of the NOI Trustee, after consultation with the Kenton Group.

15. No party shall be allowed any break, termination or similar fee. For greater certainty, Interested Parties and Qualified Offerors shall be responsible for their own fees and costs relating to any transaction.

Other Terms

16. If a Successful Offeror breaches its obligations under the terms of its offer, its Deposit shall be forfeited to the Kenton Group as liquidated damages and not as a penalty.
17. Notwithstanding anything else contain herein, if it becomes evident to the NOI Trustee that no Qualified Offers will be received, the NOI Trustee may terminate the Sale Process.
18. The NOI Trustee shall apply to the Court (the "**Approval Motion**") for an order approving the Successful Offer(s) and authorizing the Kenton Group to undertake such actions as may be necessary or appropriate to give effect to the Successful Offer.
19. The NOI Trustee will schedule the Approval Motion on the earliest reasonably possible date following the determination of the Successful Offer.
20. At any time during the Sale Process, the NOI Trustee or the Kenton Group may, upon reasonable notice to the service list, apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.
21. There shall be no amendments to this Sale Process, including, for greater certainty the process and procedures set out herein, without further order of the Court. Notwithstanding the foregoing, the NOI Trustee shall be permitted to extend the dates in the SISF by a total of up to two (2) weeks without further order of the Court, provided that the NOI Trustee receives the prior written consent of the Kenton Group and the DIP Lender.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.
1985, c. B-3, AS AMENDED

Court File No.: 31-2008367
Estate No.: 31-2008367

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF ONE KENTON ALZHEIMER CENTER OF EXCELLENCE
(NON-PROFIT) INC.

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

Proceeding commenced at Toronto

ORDER

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