

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

S U P E R I O R C O U R T  
( C O M M E R C I A L D I V I S I O N )

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No :

IN THE MATTER OF THE RECEIVERSHIP OF:

**MAÏS SOUFFLÉ BAD MONKEY INC. / BAD MONKEY POPCORN INC.**, a corporation under the *Business Corporations Act* (Québec), having its head office at 9900, Louis-H. La Fontaine Blvd., in Montreal, Province of Quebec, H1J 2W3

Debtor/Respondent

and

**THE TORONTO-DOMINION BANK**, chartered bank duly constituted in virtue of the *Bank Act*, having its head office at 15flr-66 Wellington Street West, Toronto, Ontario, M5K 1A2, and a place of business at 1350, René-Lévesque Blvd., in Montreal, Province of Quebec, H3G 1T4

Petitioner

and

**RICHTER INC.**, a corporation constituted under the *Canadian Business Corporations Act*, having its head office at 1981 McGill College Avenue, 12<sup>th</sup> floor, in Montreal, Province of Quebec, H3A 0G6;

Proposed Receiver

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**MOTION FOR THE APPOINTMENT OF A RECEIVER**  
(Section 243 of the *Bankruptcy and Insolvency Act*)

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**TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT OF THE COMMERCIAL CHAMBER IN AND FOR THE DISTRICT OF MONTREAL, AND/OR TO THE REGISTRAR OF THIS COURT, THE PETITIONER THE TORONTO-DOMINION BANK HEREBY RESPECTFULLY SUBMITS:**

## I. INTRODUCTION

1. By way of the present motion, the Petitioner, The Toronto-Dominion Bank (the “**Petitioner**” or the “**Bank**”), a secured creditor of the Debtor/Respondent Maïs Soufflé Bad Monkey inc. / Bad Monkey Popcorn Inc. (the “**Debtor**”), seeks the issuance of a Receivership Order pursuant to section 243 and following of the *Bankruptcy and Insolvency Act* (the “**BIA**”), substantially in the form proposed by Petitioner and disclosed as **Exhibit R-1**, which shall affect all of the Debtor’s assets so as to be able to maintain the Debtor’s operations and contracts, including its goodwill, the whole as more fully explained herein below.
2. The draft receivership order submitted by the Bank as Exhibit R-1, is based on the draft standard order of the Superior court of Quebec for the District of Montreal, and a compared version between Petitioner’s draft order and the draft standard order is disclosed in support hereof as **Exhibit R-2**.
3. In the event that this Honourable Court deems it inappropriate to immediately appoint Richter Inc. as receiver pursuant to section 243 BIA, for any reason, the Petitioner requests that this Honourable Court appoint Richter Inc. as interim receiver with the powers set forth in the draft interim receivership order disclosed in support hereof as **Exhibit R-3**.
4. The Debtor operates in the chip, pretzel and popcorn industry, the whole as more fully appears from a copy of the Statement of Information on Legal Persons at the Quebec Business Register relating to the Debtor, disclosed in support hereof as **Exhibit R-4**.
5. The Debtor, in its normal course of business, borrowed funds from the Bank and, as such, entered into different credit agreements and ultimately into the Credit Agreement (as defined below) with the Bank.
6. Based on the information made available to the Bank, the Debtor employed eight (8) employees as at the end of September 2024.

## II. CREDIT FACILITIES

7. Pursuant to a *Second Amended and Restated Credit Agreement* dated April 4, 2022, as amended, supplemented, replaced, restated or otherwise modified from time to time (the “**Credit Agreement**”), the Bank granted to the Debtor notably the following credit facilities (collectively the “**Credit Facilities**”):
  - a) a revolving credit facility in the form of an operating line of credit in the aggregate principal amount not to exceed \$1,000,000.00 and is subject to borrowing base calculation (the “**Operating Credit**”);
  - b) a non-revolving term credit facility of an original principal amount of \$1,000,000.00 (the “**Term Credit**”);

- c) a leasing credit facility in the aggregate principal amount of \$630,000.00 (the “**Equipment Leasing Credit**”);
- d) a Visa credit card facility in a maximum principal amount of \$110,000.00 (the “**Visa Facility**”); and
- e) a daylight settlement line treasury risk facility in the amount of \$125,000.00 (the “**Treasury Risk Facility**”).

the whole as more fully appears from the Credit Agreement, disclosed in support hereof as **Exhibit R-5**.

- 8. Further to the Equipment Leasing Credit, the parties entered into a Master Equipment Leasing Contract no. T000006433 on July 5, 2021 (the “**Leasing Contract**”), by which the Bank financed the purchase of specific equipment by the Debtor (the “**Credit Equipment Leasing**”). The Bank’s right of ownership thereunder has been duly registered at the *Register of personal and Movable Real Rights* (the “**RPMRR**”) on June 18, 2021, under number 21-0673814-0014, the whole as appears from a copy of the Leasing Contract together with its schedules and certified statement of registration, disclosed in support hereof, *en liasse*, as **Exhibit R-6**.
- 9. As of October 3, 2024, the Debtor is indebted towards the Bank for a sum of \$1,267,719.24 under the Credit Agreement and the Leasing Contract (the “**Indebtedness**”), the whole as more fully appears from a copy of a Statement of Account dated October 3, 2024, disclosed as **Exhibit R-7**.

### III. SECURITY

- 10. As continuing and collateral security for the repayment and performance of all Obligations (as such term is defined from time to time in the Credit Agreement), the Debtor has granted in favour of the Bank the following (collectively the “**Hypothecs**”):
  - a) a movable hypothec for an amount of \$1,000,000.00, plus an additional hypothec of \$200,000.00, pursuant to a Deed of Movable Hypothec signed under private deed on August 26, 2019, registered at the RPMRR on August 30, 2019, under number 19-0979986-0001, copy of which, together with certified statements of its registration and of its change of name, are disclosed in support hereof, *en liasse*, as **Exhibit R-8**.
  - b) a movable hypothec for an amount of \$6,000,000.00, pursuant to a Deed of Movable Hypothec signed under private deed on October 27, 2020, registered at the RPMRR on October 27, 2020, under number 20-1114167-0001, copy of which, together with certified statements of its registration and of its change of name, are disclosed in support hereof, *en liasse*, as **Exhibit R-9**.

11. The assets affected by the Hypothec are the following:

### DESCRIPTION

#### **19-0979986-0001**

L'UNIVERSALITE DES BIENS EN STOCKS, PRESENTS ET A VENIR; TOUS LES FRUITS ET REVENUS, PRESENTS ET A VENIR, DES BIENS GREVES CI-DESSUS ET LES EFFETS DE COMMERCE, TRAITES, VALEURS MOBILIERES, LES SOMMES D'ARGENT, INDEMNITES D'EXPROPRIATION REMIS OU PAYES SUITE A UNE VENTE, UN RACHAT, UNE DISTRIBUTION OU UNE AUTRE OPERATION RELATIFS A L'UN OUL'AUTRE DES BIENS QUI SONT GREVES AU PROFIT DU CREANCIER EN VERTU DES PRESENTES OU QUI L'ONT ETE EN VERTU DE TOUT AUTRE ACTE.

L'UNIVERSALITE DES CREANCES, COMPTES DEBITEUR, COMPTES CLIENT ET AUTRES BIENS MEUBLES Y RELIES, PRESENTS ET A VENIR; TOUS LES FRUITS ET REVENUS, PRESENTS ET A VENIR, DES BIENS GREVES CI-DESSUS ET LES EFFETS DE COMMERCE, TRAITES, VALEURS MOBILIERES, LES SOMMES D'ARGENT, INDEMNITES D'EXPROPRIATION REMIS OU PAYES SUITE A UNE VENTE, UN RACHAT, UNE DISTRIBUTION OU UNE AUTRE OPERATION RELATIFS A L'UN OU L'AUTRE DES BIENS QUI SONT GREVES AU PROFIT DU CREANCIER EN VERTU DES PRESENTES OU QUI L'ONT ETE EN VERTU DE TOUT AUTRE ACTE.

L'UNIVERSALITE DES VALEURS MOBILIERES ET DES ACTIFS FINANCIERS, PRESENTS ET A VENIR; TOUS LES FRUITS ET REVENUS, PRESENTS ET A VENIR, DES BIENS GREVES CI-DESSUS ET LES EFFETS DE COMMERCE, TRAITES, VALEURS MOBILIERES, LES SOMMES D'ARGENT, INDEMNITES D'EXPROPRIATION REMIS OU PAYES SUITE A UNE VENTE, UN RACHAT, UNE DISTRIBUTION OU UNE AUTRE OPERATION RELATIFS A L'UN OU L'AUTRE DES BIENS QUI SONT GREVES AU PROFIT DU CREANCIER EN VERTU DES PRESENTES OU QUI L'ONT ETE EN VERTU DE TOUT AUTRE ACTE.

L'UNIVERSALITE DE L'EQUIPEMENT ET DES VEHICULES ROUTIERS, PRESENTS ET A VENIR; TOUS LES FRUITS ET REVENUS, PRESENTS ET A VENIR, DES BIENS GREVES CI-DESSUS ET LES EFFETS DE COMMERCE, TRAITES, VALEURS MOBILIERES, LES SOMMES D'ARGENT, INDEMNITES D'EXPROPRIATION REMIS OU PAYES SUITE A UNE VENTE, UN RACHAT, UNE DISTRIBUTION OU UNE AUTRE OPERATION RELATIFS A L'UN OU L'AUTRE DES BIENS QUI SONT GREVES AU PROFIT DU CREANCIER EN VERTU DES PRESENTES OU QUI L'ONT ETE EN VERTU DE TOUT AUTRE ACTE.

L'UNIVERSALITE DES MARQUES DE COMMERCE ET DROITS DE PROPRIETE INTELLECTUELLE, PRESENTS ET A VENIR; TOUS LES FRUITS ET REVENUS, PRESENTS ET A VENIR, DES BIENS GREVES CI-DESSUS ET LES EFFETS DE COMMERCE, TRAITES, VALEURS MOBILIERES, LES SOMMES D'ARGENT, INDEMNITES D'EXPROPRIATION REMIS OU PAYES SUITE A UNE VENTE, UN RACHAT, UNE DISTRIBUTION OU UNE AUTRE OPERATION RELATIFS A L'UN OU L'AUTRE DES BIENS QUI SONT GREVES AU PROFIT DU CREANCIER EN VERTU DES PRESENTES OU QUI L'ONT ETE EN VERTU DE TOUT AUTRE ACTE.

L'UNIVERSALITE DES AMELIORATIONS LOCATIVES, PRESENTS ET A VENIR. TOUS LES FRUITS ET REVENUS, PRESENTS ET A VENIR, DES BIENS GREVES CI-DESSUS ET LES EFFETS DE COMMERCE, TRAITES, VALEURS MOBILIERES, LES SOMMES D'ARGENT, INDEMNITES D'EXPROPRIATION REMIS OU PAYES SUITE A UNE VENTE, UN RACHAT, UNE DISTRIBUTION OU UNE AUTRE OPERATION RELATIFS A L'UN OU L'AUTRE DES BIENS QUI SONT GREVES AU PROFIT DU CREANCIER EN VERTU DES PRESENTES OU QUI L'ONT ETE EN VERTU DE TOUT AUTRE ACTE.

L'UNIVERSALITE DE TOUS LES BIENS MEUBLES, CORPORELS OU INCORPORELS, PRESENTS ET A VENIR, UTILISES DANS LE CADRE DE OU RELIES A L'EXPLOITATION DE L'IMMEUBLE SITUE AU 3660 boul. Poirier, Montréal (Québec) H4R2J5.

TOUS LES FRUITS ET REVENUS, PRESENTS ET A VENIR, DES BIENS GREVES CI-DESSUS ET LES EFFETS DE COMMERCE, TRAITES, VALEURS MOBILIERES, LES SOMMES D'ARGENT, INDEMNITES D'EXPROPRIATION REMIS OU PAYES SUITE A UNE VENTE, UN RACHAT, UNE DISTRIBUTION OU UNE AUTRE OPERATION RELATIFS A L'UN OU L'AUTRE DES BIENS QUI SONT GREVES AU PROFIT DU CREANCIER EN VERTU DES PRESENTES OU QUI L'ONT ETE EN VERTU DE TOUT AUTRE ACTE

### **20-1114167-0001**

1. The universality of all of the Grantor's present and future movable property, rights and assets, corporeal and incorporeal, now owned or hereafter acquired by the Grantor (hereinafter collectively called the "Hypothecated Property"), including, without limitation, the following:

1.1. all inventory of every nature and kind of the Grantor whether in possession of the Grantor, in transit or held on its behalf, including all raw materials, work in process, finished goods, packaging materials and other materials used or consumed in carrying on the Grantor's business, and all bills of lading and other documents of title respecting such inventory (the "Inventory");

1.2. all accounts receivable and other claims and payment intangibles of every nature and kind of the Grantor, including Monetary Claims, and all of the Grantor's rights under contracts with third parties and rights of action against third parties, together with all hypothecs, suretyships, security and other accessories (the "Claims"; and individually a "Claim");

1.3. all equipment and goods of the Grantor that does not constitute Inventory, including all machinery, tools, furniture, rolling stock and vehicles of the Grantor (the "Equipment");

1.4. all shares, units or other ownership interests of the Grantor in any person and all warrants, bonds, debentures and other obligations of the Grantor considered or acknowledged as securities, as well as all assets defined as "securities", "financial assets" or "security entitlements" in An Act Respecting the Transfer of Securities and the Establishment of Security Entitlements (Quebec) (the "STA") or in any similar legislation under Applicable Laws of any other relevant jurisdiction (the "Securities");

1.5. all the intellectual property of every nature of the Grantor, including all registered and unregistered copyrights, trademarks and trade names, all patents and industrial designs, all applications and rights of the Grantor relating to the intellectual property and all know how, trade secrets and inventions of the Grantor (the "Intellectual Property"); and

1.6. all the other movable property of the Grantor including its rights, privileges and benefits under all permits, licences, grants, quotas and subsidies necessary or useful for the conduct of the Grantor's businesses, and all the goodwill associated with the Grantor's businesses.

2. The Hypothecated Property includes, without limiting the charges arising by the mere operation of law:

2.1. the product of any sale, lease, rental or other disposition of any Hypothecated Property, as well as any Claim resulting from such operations;

2.2. the proceeds, fruits and revenues of the Hypothecated Property, including all insurance or

expropriation indemnities payable with respect to such property;

2.3. all titles, documents, registers, invoices and accounts evidencing the Hypothecated Property or relating thereto, on whatever medium and no matter how they may be accessible, whether in writing, graphically, in sound, visually, computerized or otherwise;

2.4. in the case of Claims, those resulting from insurance contracts on the Grantor's other property;

2.5. in the case of Securities, all the substitutions and additions and all other property received or issued on account of any Securities; and

2.6. the property (including money and non cash proceeds) that replaces that which is already charged by the Hypothec, to the extent the former is not otherwise hypothecated pursuant to the Agreement or by operation of law.

#### DEFINITIONS:

Capitalized terms not otherwise defined herein have the meaning given to them in the Credit Agreement.

"Agreement" means the Movable Hypothec referred to herein in the section entitled "Référence à l'acte constitutif".

"Credit Agreement" means the credit agreement to be entered into on or about the date of the Agreement between the Holder, as lender, and the Grantor, as borrower (the said credit agreement as it may be amended, modified, supplemented, restated, extended, replaced or otherwise modified from time to time).

"Grantor" means Maïs Soufflé Bad Monkey inc. / Bad Monkey Popcorn Inc., formerly designated 9426-9834 Québec Inc.

"Holder" means The Toronto-Dominion Bank.

"Hypothec" means the hypothec granted pursuant to the Agreement.

"Monetary Claims" shall mean all claims held by the Grantor, present or future, that constitute monetary claims within the meaning of Article 2713.1 of the Civil Code of Québec, including, without limitation, the present and future credit balance of all present and future financial accounts held or to be held by the Grantor with financial account maintainers.

(the "**Property Assets**")

#### IV. OTHER SECURED CREDITOR

12. The Bank is the first-ranking secured creditor with respect to the Property Assets, as appears from the certified statements of rights registered at the RPMRR with respect to the Debtor (the "**Certified Statements of Rights**"), copy of which is disclosed in support hereof as **Exhibit R-10**.
13. It appears from the Certified Statements of Rights (Exhibit R-8) that the other secured creditor is 9047-2176 Québec inc. doing business under the name Groupe Molida.

## V. THE FORBEARANCE AGREEMENT

14. A *New Forbearance Agreement* was executed on January 13, 2023, between the Bank and the Debtor (the “**New Forbearance Agreement**”), copy of which is disclosed in support hereof as **Exhibit R-11**.
15. The New Forbearance Agreement was amended from time to time, namely pursuant to the following amendments:
  - a) *First Amendment to the New Forbearance Agreement* executed by the Bank and the Debtor on July 25, 2023 (the “**Amendment no.1**”), copy of which is disclosed in support hereof as **Exhibit R-12**;
  - b) *Second Amendment to the New Forbearance Agreement* executed by the Bank and the Debtor on August 11, 2023 (the “**Amendment no.2**”), copy of which is disclosed in support hereof as **Exhibit R-13**; and
  - c) *Third Amendment to the New Forbearance Agreement* executed by the Bank and the Debtor on October 31, 2023 (the “**Amendment no.3**” and collectively with the new Forbearance Agreement, Amendment no.1 and Amendment no.2, the “**Forbearance Agreement**”), copy of which is disclosed in support hereof as **Exhibit R-14**.
16. It should be noted that since the expiration of the Tolerance Period (as defined in the Amendment no.3) namely April 30, 2024, the Bank and the Debtor have been discussing an extension of said Tolerance Period and the repayment of the Indebtedness. As at the date of the present motion, no agreement has been reached by the parties.

## VI. DEFAULTS

17. Thus, the Debtor is in default to respect its obligations towards the Bank arising from the Credit Agreement, the Leasing Contract, the Hypothec and the Forbearance Agreement, in that (collectively the “**Defaults**”):
  - a) It has failed to provide the Bank with its annual audited consolidated financial statements for the fiscal year ending as of September 30, 2023, along with a compliance certificate within 120 calendar days of fiscal year end which were due by no later than January 31, 2024;
  - b) since January 2024, it has failed to provide the Bank with its consolidated financial statements with a reconciliation of actual monthly cash flow balances compared to the most recent budgeted monthly cash flow balances within 30 calendar days of month end;
  - c) it has failed to ensure that the principal amount outstanding under the Operating Credit does not exceed the lesser of (i) \$750,000.00 (which was

the maximal amount available at that time) and (ii) the then current Operating Credit Borrowing Base, and more specifically:

- i. as at September 30, 2023, the principal amount outstanding under the Operating Credit was in excess of the then current Operating Credit Borrowing Base by approximately \$88,000.00; and
- ii. as at October 31, 2023, the principal amount outstanding under the Operating Credit was in excess of the then current Operating Credit Borrowing Base by approximately \$234,000.00.

the whole as more detailed in the notices of non-compliance default delivered by the Bank to the Debtor on December 4, 2023 and on February 14, 2024, copy of which are disclosed in support hereof, *en liasse*, as **Exhibit R-15**.

it has failed to provide the Bank a Borrowing Base Certificate within twenty (20) days after the end of each month, as more detailed in the notice of non-compliance default delivered by the Lender to the Borrower on February 5, 2024 (the "**February 2024 Notice of Default**").

- d) it has failed to provide the Bank the monthly internal financial statements of the Borrower within twenty (20) days after the end of each month, including without limitation:
  - i. the monthly internal financial statements for the months of February, March, and April 2024 were provided on June 6, 2024; and
  - ii. the monthly internal financial statements for the month of May, 2024 were provided on July 4, 2024;
- e) Gestion Immobilière Teracon Inc. has addressed to the Borrower a notice of default and notice of termination dated October 1<sup>st</sup>, 2024, indicating that the Borrower owes \$308,406.99 in outstanding rent, penalties and other fees, and indicating that the lease granted to the Borrower will be terminated as of October 7, 2024 (the "**Notice of Termination**"), copy of which is disclosed in support hereof as **Exhibit R-16**;
- f) According to information available to the Bank, the Debtor has ceased its operations and might seek the protection of the *Bankruptcy and Insolvency Act* but has not yet done so as of the date hereof; and
- g) The relationship of trust between the Bank and the Borrower has been severed.



## VII. ADVANCE NOTICE UNDER SECTION 244 OF THE BANKRUPTCY AND INSOLVENCY ACT

18. On September 26, 2024, the Bank has notified by email to the Debtor a *Notice of the intention to exercise its security* pursuant to section 244 of BIA on all the Property Assets, following which the Debtor has returned the relevant *Consent to an Earlier Enforcement of the Security* (the “**244 Notice**”), the whole as appears from a copy of the 244 Notice, disclosed in support hereof as **Exhibit R-17**.
19. The Bank shall also serve upon the Debtor before the hearing hereof, a demand letter claiming the reimbursement of the Indebtedness as well as a Prior Notice of the Exercise of Hypothecary Rights (the “**Prior Notice**”), copy of which are disclosed *en liasse* in support hereof as **Exhibit R-18**.
20. The Bank respectfully submits, that it is justified in requesting that this Court orders the forced surrender of the Debtor’s Property Assets prior to the expiry of the statutory 20-days period of the Prior Notice since there is reason to fear that the recovery of the Petitioner’s claim will otherwise be endangered, namely because the Property Assets will decline or depreciate rapidly given notably that the Property Assets consists of edible and perishable goods and the Notice of Termination (Exhibit R-16).

## VIII. REASONS JUSTIFYING THE NOMINATION OF A RECEIVER

21. Petitioner submits to this Honourable Court that it is now essential, for the protection of the Property Assets and for the protection of Petitioner’s interests, that a Receiver be named by this Honourable Court without any delay.
22. As further explained herein, there are reasons to fear that recovery of the Bank’s claim may be endangered and the Property Assets might disappeared and/or be damaged.
23. In fact, the nomination of a Receiver (collectively a “**Receiver**”) is required for the following reasons:
  - a) Debtor is in default of respecting its contractual obligations towards the Petitioner;
  - b) Debtor’s officer has indicated to the Bank that the Debtor has ceased its operations, which may lead to uninsured and unsupervised Property Assets with the risks inherent thereto, loss of value in the Property Assets, which will increase significantly the losses to be incurred by the Bank;
  - c) As appears from the Notice of Termination (Exhibit R-16), the Debtor’s landlord has required that the Debtor vacate the leased premises on or before October 7, 2024;

- d) The Bank fears that without the appointment of a Receiver, the Property Assets might be removed from or abandoned in the leased premises, thereby exposing them to theft, damages and/ or that the Bank may not have access to the Property Assets subject to the Hypothecs;
  - e) In particular, a Receiver is needed to :
    - i) to collect receivables;
    - ii) to safeguard the Property Assets notably to avoid their disappearance or further deterioration in value.
  - f) The Bank's claim is clearly at risk and in peril without the appointment of the Receiver.
24. It is therefore currently essential and fundamentally urgent to take the appropriate measures to ensure the safeguard of the Property Assets notably to avoid that their value deteriorates further, and/or at the very least, to obtain the necessary information about their locations and determine whether receivables due to the Debtor can be recovered.
25. Richter Inc. (Mr. Olivier Benchaya CPA, CIRP, LIT) confirmed to Petitioner that it is able and willing to act as Receiver if this Court grants the present motion and names an Receiver herein.

#### **IX. ALTERNATIVE CONCLUSION : APPOINTMENT OF RICHTER INC. AS INTERIM RECEIVER**

26. In the event that this Honourable Court deems it inappropriate to immediately appoint Richter Inc. as receiver pursuant to section 243 BIA, the Bank requests that this Court appoint Richter Inc. as interim receiver with the powers sought for in the draft interim receivership order (Exhibit R-3).
27. As interim receiver, Richter Inc. will, at a minimum, be able to take the steps immediately required to preserve the Property Assets until its eventual appointment as Receiver pursuant to section 243 of the BIA.

#### **X. CONCLUSION**

28. Considering the above, Petitioner submits to this Honourable Court that it is appropriate, that Richter Inc. be appointed as receiver with the powers contained in the proposed Receivership Order (**Exhibit R-1**).
29. Given the urgency of the matter, the Petitioner requests that the normal delays for service and presentation be reduced, if and to the extent necessary, that the

service and presentation of the present motion be held to be valid for all purposes and that the judgment rendered hereon be executory notwithstanding appeal.

30. This motion is well founded in fact and in law.

**THEREFORE, PLAINTIFF PRAYS THIS HONOURABLE COURT TO:**

- [1] **GRANT** the present *Motion for the Appointment of a Receiver* (hereinafter the "**Motion**");
- [2] **REDUCE** and **WAIVE** all delays and requirements to serve the Motion;
- [3] **ORDER** that the time for service of the present Motion be abridged and that the Motion is properly presentable and **DECLARE** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARE** that all parties are relieved of any further requirement for service of the Motion;
- [4] **ISSUE** a Receivership Order substantially in the form of the draft order communicated as Exhibit R-1 in support of the Motion;
- [5] **ORDER** the provisional execution of the Receivership Order notwithstanding appeal;

**SUBSIDIARILY**

- [6] **ISSUE** an Interim Receivership Order substantially in the form of the draft order communicated as Exhibit R-3 in support of the Motion;
- [7] **ORDER** the provisional execution of the Interim Receivership Order notwithstanding appeal;

**THE WHOLE** without costs save in case of contestation.

Montréal, October 4, 2024

*Borden Ladner Gervais*

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**Borden Ladner Gervais LLP**

Lawyers for Petitioner

The Toronto-Dominion Bank

Mtre. Isabelle Desharnais

Mtre. Daphné Pomerleau-Normandin

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O/File: 245603-000138

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**AFFIDAVIT**

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I, the undersigned, **VITALY KORMAKOV**, Account Manager, Financial Restructuring Group for The Toronto-Dominion Bank, having its place of business at 1350 René-Lévesque Blvd. West, 7<sup>th</sup> Floor, in the City of Montreal, province of Quebec, H3G 1T4, having been duly sworn, do depose and solemnly affirm that:


1. I am a representative of the Petitioner and duly authorized for the purposes hereof;
2. All the facts alleged in the *Motion for the Appointment a Receiver* to which this affidavit is attached are true.

**AND I HAVE SIGNED**

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Vitaly Kormakov

SWORN BEFORE ME over video teleconference  
This 4<sup>th</sup> day of October, 2024. The affiant was located  
In Montreal, Québec, while the commissioner,  
Dominique Delisle, was located in Montreal, Québec.



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**Commissioner of Oaths for the Province  
of Quebec and outside of Québec (no. 223,428)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

No.: **500-11-**

IN THE MATTER OF THE RECEIVERSHIP  
OF:

**MAÏS SOUFFLÉ BAD MONKEY INC. /  
BAD MONKEY PROCORN INC.**

Debtor/Respondent

vs.

**THE TORONTO-DOMINION BANK**

Petitioner

and

**RICHTER INC.**

Proposed Receiver

---

**NOTICE OF PRESENTATION  
COMMERCIAL (COURTROOM 16.10)**

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**TO: MAÏS SOUFFLÉ BAD MONKEY INC./ BAD MONKEY POPCORN INC.**  
c/o André La Forge, director  
c/o Giovanni Giove, director  
9900, Louis-H. La Fontaine Blvd.  
Montréal, Qc H1J2 W3  
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[john@badmonkeyinc.com](mailto:john@badmonkeyinc.com)

**Mr. Olivier Benchaya CPA, CIRP, SAI  
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**SUPERINTENDANT OF  
BANKRUPTCY CANADA**  
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**9047-2176 QUÉBEC INC.  
(Groupe Molida)  
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**AGENCE DU REVENU DU QUÉBEC  
MINISTRE DU REVENU DU  
QUÉBEC**

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**AGENCE DU REVENU DU CANADA  
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## **PRESENTATION OF THE PROCEEDING**

**TAKE NOTE** that the *Motion for the Appointment of a Receiver* will be presented in the Commercial Practice Division of the Superior Court, in Courtroom 16.10 of the Montréal Courthouse, on **October 7, 2024**, at **8h45**, or as soon as counsel may be heard.

## **HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL IN PRACTICE DIVISION**

The contact information to join the calling of the roll of room 16.10 is as follows:

**using Teams:** open the permanent link established for room **[16.10](#)**<sup>1</sup>.

You must then enter your name and click “Join Now”. To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Lawyers:

Mtre. [Name], [Surname], ([name of the party being represented])

Trustees:

[Name], [Surname] (trustee)

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<sup>1</sup> The permanent links for the Montreal courthouse rooms can also be found in the document entitled [Liens TEAMS pour rejoindre les salles du Palais de justice de Montréal en matière commerciale, civile et familiale](#) under the heading *Audiences virtuelles* found on the Superior Court of Québec website at : <http://www.tribunaux.qc.ca/c-superieure/index-cs.html>

Superintendent: [Name], [Surname] (superintendent)

Parties not represented by a lawyer: [Name], [Surname] (specify: plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

For persons attending a public hearing: Simply indicate "public".

**by telephone:**

Canada, Québec (Charges will apply): +1 581-319-2194

Canada (Toll free): (833) 450-1741

Conference ID: 820 742 874#

**by videoconference:** [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)

VTC Conference ID: 11973653703

**in person:** if and only if you do not have access to one of the above-mentioned technological means. You may then go to room 16.10 of the Montreal Courthouse, located at:

1 Notre-Dame St. East, Montréal, Québec

**FAILURE TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL**

**TAKE NOTE** that if you wish to contest the proceeding, you must inform in writing the party that initiated the proceeding at the contact information indicated in this notice of presentation at least 48 hours before the date of presentation of the proceeding and participate in the virtual calling of the roll. Otherwise, a judgment may be rendered against you during the presentation of the proceeding, without further notice or delay.

**OBLIGATIONS**

Duty of cooperation

**TAKE NOTE** that you are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and to make sure that relevant evidence is preserved (*Code of Civil Procedure*, art. 20).

Dispute prevention and resolution processes

**TAKE NOTE** that before referring your dispute to the Court, you must consider private dispute prevention and resolution processes, which consist of negotiation between the



parties as well as mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 2).

**PLEASE GOVERN YOURSELF ACCORDINGLY.**

Montréal, October 4, 2024

*Borden Ladner Gervais*

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**Borden Ladner Gervais LLP**

Lawyers for Petitioner

The Toronto-Dominion Bank

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Mtre. Daphné Pomerleau-Normandin

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O/File: 245603-000138

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

No.: **500-11-**

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IN THE MATTER OF THE RECEIVERSHIP  
OF:

**MAÏS SOUFFLÉ BAD MONKEY INC. /  
BAD MONKEY PROCORN INC.**

Debtor/Respondent

vs.

**THE TORONTO-DOMINION BANK**

Petitioner

and

**RICHTER INC.**

Proposed Receiver

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**LIST OF EXHIBITS**

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- EXHIBIT R-1:** Draft Receivership Order;
- EXHIBIT R-2:** compared version of the draft Order;
- EXHIBIT R-3:** Draft Interim Receivership Order;
- EXHIBIT R-4:** Copy of the Statement of Information on Legal Persons at the Quebec Business Register relating to the Debtor;
- EXHIBIT R-5:** Copy of the Credit Agreement;
- EXHIBIT R-6:** Copy of the Master Equipment Leasing Contract no. T000006433 on July 5, 2021;
- EXHIBIT R-7:** Statement of Account;
- EXHIBIT R-8:** Copy of Hypothec 19-0979986-0001;
- EXHIBIT R-9:** Copy of Hypothec 20-1114167-0001;

- EXHIBIT R-10:** RPMRR Certified Statements of Rights;
- EXHIBIT R-11:** Copy of the *New Forbearance Agreement* was executed on January 13, 2023;
- EXHIBIT R-12:** Amendment no.1 to the New Forbearance Agreement;
- EXHIBIT R-13:** Amendment no.2 to the New Forbearance Agreement;
- EXHIBIT R-14:** Amendment no.3 to the New Forbearance Agreement;
- EXHIBIT R-15:** Copy of the notices of non-compliance default delivered by the Bank to the Debtor on December 4, 2023 and on February 14, 2024;
- EXHIBIT R-16:** Copy of the Notice of Termination by Gestion Immobilière Teracon Inc.;
- EXHIBIT R-17:** Copy of 244 Notice;
- EXHIBIT R-18:** Copy of the Demand Letter and Prior Notice.

Montréal, October 4, 2024

*Borden Ladner Gervais*

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**Borden Ladner Gervais LLP**

Lawyers for Petitioner

The Toronto-Dominion Bank

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O/File: 245603-000138

SUPERIOR COURT  
(Commercial Division)  
(Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3)  
DISTRICT OF MONTRÉAL  
No.:

**IN THE MATTER OF THE RECEIVERSHIP OF:**

**MAÏS SOUFFLÉ BAD MONKEY INC. / BAD  
MONKEY POPCORN INC.**

Debtor / Respondent

-and-

**THE TORONTO DOMINION BANK**

Petitioner

-and-

**RICHTER INC.**

Proposed Receiver

**MOTION FOR THE APPOINTMENT  
OF A RECEIVER  
(Sections 2767 C.c.Q. and 243 BIA)**

ORIGINAL

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