

District of British Columbia
Division No. 3 - Vancouver
Court No. B-230269
Estate No. 11-2960200

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TANTALUS LABS LTD.

ORDER MADE AFTER APPLICATION

(Approval of Asset Transaction, Share Transaction, Auction Process, and Amend Success Fee)

BEFORE THE HONOURABLE

MR. JUSTICE MILMAN

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)
)

August 25, 2023

ON THE APPLICATION of the Applicant, Tantalus Labs Ltd. ("**Tantalus**"), coming on for hearing in person at Vancouver, British Columbia, on the 25th day of August, 2023; AND ON HEARING Jessica R. Reid, counsel for the Applicant, Edith Chen, counsel for the Proposal Trustee, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Second Affidavit of Dan Sutton, made on July 9, 2023 (the "**Second Sutton Affidavit**"), the Fifth Affidavit of Dan Sutton, made on July 25, 2023, the Sixth Affidavit of Dan Sutton, made on July 25, 2023, filed under Sealing Order, the Seventh Affidavit of Dan Sutton, made on August 23, 2023 (the "**Seventh Sutton Affidavit**"), the Second Report of the proposal trustee, Ernst & Young Inc. (the "**Proposal Trustee**"), filed July 26, 2023, and the Third Report of the Proposal Trustee, to be filed (the "**Trustee's Report**"); AND UPON BEING ADVISED that the secured creditor who is likely to be affected by the transactions herein was given notice; AND pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended (the "**BIA**"), the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

Service

1. The time for service of the Notice of Application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this Notice of Application is properly returnable today, and no other than those persons served is entitled to service of the Notice of Application.

Approval of the Asset Transaction

2. The sale transaction (the “**Asset Transaction**”) contemplated by the binding asset purchase letter, dated July 29, 2023, as amended by an amending agreement, dated August 4, 2023, and as further amended by an amending agreement, dated August 17, 2023 (together, the “**Asset Agreement**”), between Tantalus and Atlantic Cultivation Limited (“**Atlantic**”), copies of which are attached as Exhibit “A” to the Seventh Sutton Affidavit, is hereby approved and the Asset Agreement is commercially reasonable. The execution of the Asset Agreement by Tantalus is hereby authorized and approved, and Tantalus 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 Asset Transaction and for the conveyance to Atlantic of the assets described in the Asset Agreement (the “**Purchased Assets**”).

3. Upon a certificate substantially in the form attached as Schedule “B” hereto (the “**Asset Certificate**”) being filed with this Honourable Court with such modifications as are necessary to comply with paragraph 7 hereof and confirming:

- (a) the payment by Atlantic of the Purchase Price (as defined in the Asset Agreement); and
- (b) the Asset Transaction has been completed to the satisfaction of the Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver in respect of Tantalus, as applicable,

all of Tantalus’ right, title and interest in and to the Purchased Assets described in the Asset Agreement shall vest absolutely in Atlantic 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, 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, 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.

- 4. 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 Asset 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.
- 5. The Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver in respect of Tantalus, as applicable, is to file with the Court a copy of the Asset Certificate forthwith after delivery thereof.
- 6. The Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver in respect of Tantalus, as applicable, with the consent of Atlantic and The Sungrown Mortgage Corporation (the

“**Lender**”), shall be at liberty to extend the of the Closing Date (as defined in Asset Agreement) to such later date as those parties may agree without the necessity of a further Order of this Court.

7. In the event that the within Notice of Intention to Make a Proposal proceedings (the “**NOI Proceedings**”) cease and the Proposal Trustee is replaced by a trustee in bankruptcy or a court or privately-appointed receiver in respect of Tantalus, such trustee in bankruptcy or court or privately-appointed receiver shall have all power and authority necessary to complete the Asset Transaction where the Asset Transaction closes after August 27, 2023.

8. Notwithstanding:

(a) these proceedings;

(b) any applications for a bankruptcy order in respect of Tantalus 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 Tantalus, the vesting of the Purchased Assets in Atlantic pursuant to this Order shall be binding on any trustee in bankruptcy or any court or privately-appointed receiver that may be appointed in respect of Tantalus and shall not be void or voidable by creditors of Tantalus, 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.

Approval of the Share Transaction

9. The sale transaction (the “**Share Transaction**”) contemplated by the Share Purchase Agreement, dated August 22, 2023 (the “**Share Agreement**”), between Tantalus and Yaletown Innovation Growth II Limited Partnership (“**Yaletown LP**”), acting by its general partner Yaletown Innovation Growth II GP Inc., a copy of which is attached as Exhibit “D” to the Seventh Sutton Affidavit, is hereby approved and the Share Agreement is commercially reasonable. The execution of the Share Agreement by Tantalus is hereby authorized and approved, and Tantalus 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 Share Transaction and for the conveyance to Yaletown LP of the assets described in the Share Agreement (the “**Purchased Shares**”).
10. Upon a certificate substantially in the form attached as **Schedule “C”** hereto (the “**Share Transaction Certificate**”), being filed with this Honourable Court with such modifications as are necessary to comply with paragraph 15 hereof and confirming:

- (a) the payment by Yaletown LP of the Purchase Price (as defined in the Share Agreement); and
- (b) that the Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver in respect of Tantalus, as applicable, has received written confirmation on behalf of the Vendor (as defined in the Share Agreement) and from Yaletown LP, or their respective counsel, that all conditions precedent to the completion of the Share Agreement have been satisfied or waived,

all of Tantalus' right, title and interest in and to the Purchased Shares described in the Share Agreement shall vest absolutely in Yaletown LP in fee simple, free and clear of and from any and all Claims including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by Order of this Court in these NOI Proceedings; and (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, for greater certainty, this Court orders that all of the encumbrances affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares.

11. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Shares shall stand in the place and stead of the Purchased Shares, and from and after the delivery of the Share Transaction Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Shares with the same priority as they had with respect to the Purchased Shares immediately prior to the sale, as if the Purchased Shares had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
12. The Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver in respect of Tantalus, as applicable, is to file with the Court a copy of the Share Transaction Certificate forthwith after delivery thereof.
13. Subject to the terms of the Share Agreement, possession of the Purchased Shares, including any share certificates representing the Purchased Shares, shall be delivered in accordance with the Share Agreement to Yaletown LP on the Closing Date (as defined in the Share Agreement).
14. The Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver in respect of Tantalus, as applicable, with the consent of Yaletown LP and the Lender, shall be at liberty to extend the Closing Date (as defined in the Share Agreement) to such later date as those parties may agree without the necessity of a further Order of this Court.
15. In the event that the within NOI Proceedings cease and the Proposal Trustee is replaced by a trustee in bankruptcy or a court or privately-appointed receiver in respect of Tantalus, such trustee in bankruptcy or court or privately-appointed receiver shall have all power and authority necessary to complete the Share Transaction where the Share Transaction closes after August 27, 2023.

16. Notwithstanding:

- (a) these proceedings;
- (b) any applications for a bankruptcy order in respect of Tantalus 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 Tantalus,

the vesting of the Purchased Shares in Yaletown LP pursuant to this Order shall be binding on any trustee in bankruptcy or any court or privately-appointed receiver that may be appointed in respect of Tantalus and shall not be void or voidable by creditors of Tantalus, 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.

Approval to sell Auction Process

- 17. The transactions contemplated under the auction proposal, dated July 17, 2023 (the "**Auction Agreement**") with Able Solutions Inc., operating as Able Auctions (the "**Auctioneer**"), for the sale of all the remaining personal property of Tantalus, but excluding any personal property of Tantalus that is sold as part of a transaction involving the real property of Tantalus (the "**Auction Assets**"), by way of auction (an "**Auction**") and the execution by Tantalus of the Auction Agreement are hereby authorized and approved, with such minor amendments as Tantalus, the Proposal Trustee, or the Lender may deem necessary.
- 18. Tantalus is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Auction Agreement and conveyance of the Auction Assets to the purchaser(s) or nominees of the Auction Assets at Auction (each an "**Auction Purchaser**").
- 19. Upon:
 - (a) the Auctioneer completing a sale to an Auction Purchaser at the Auction of one or more Auction Assets,
 - (b) receipt by the Auctioneer from such Auction Purchaser of the purchase price determined at the Auction; and
 - (c) delivery by the Auctioneer to such Auction Purchaser of a bill of sale or similar evidence of purchase and sale (each, a "**Purchaser's Bill of Sale**") (each an "**Auction Transaction**" and collectively, the "**Auction Transactions**"),

and upon the Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver in respect of Tantalus, as applicable, determining that all Auction Transactions to Auction Purchasers have closed to the satisfaction of Tantalus, such Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver, and the terms of this Order, the Proposal Trustee, trustee in

bankruptcy, or a court or privately-appointed receiver in respect of Tantalus, as applicable, shall file with this Honourable Court one or more certificates substantially in the form attached as **Schedule "D"** hereto with such modifications as are necessary to comply with paragraph 20 hereof and confirming:

- (d) the payment by the Auction Purchaser of the purchase price outlined in the Purchaser's Bill of Sale for the applicable Auction Assets; and
- (e) the Auction Transaction has been completed to the satisfaction of the Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver in respect of Tantalus, as applicable,

all of Tantalus' right, title and interest in and to the applicable Auction Assets shall vest absolutely in the name of the respective Auction Purchaser, free and clear of and from any and all Claims including, including, without limiting the generality of the foregoing, 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, for greater certainty, this Court orders that all of the encumbrances affecting or relating to the Auction Assets are hereby expunged and discharged as against the Auction Assets.

- 20. The Auction Transactions are hereby approved and ratified and it is hereby declared that the Auction Transactions are commercially reasonable.
- 21. In the event that the within NOI Proceedings cease and the Proposal Trustee is replaced by a trustee in bankruptcy or a court or privately-appointed receiver in respect of Tantalus, such trustee in bankruptcy or court or privately-appointed receiver shall have all power and authority necessary to complete the Auctions Transactions where the Auction Transactions close after August 27, 2023.

Success Fee

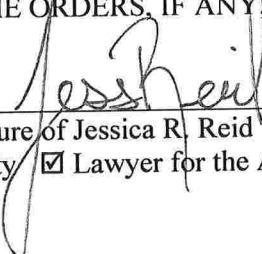
- 22. The success fee in the KERP, which is described at paragraph 7 in the Order Made after Application granted by Justice Fitzpatrick on July 13, 2023 (the "**KERP Order**"), and as amended by the Order Made after Application by Justice Fitzpatrick on July 27, 2023, is deleted and replaced by the following:
 - 7. Where the KERP Participants have become entitled to a Success Fee in accordance with the terms and conditions of the KERP, which is described in Confidential Exhibit "A" of the Second Affidavit of Dan Sutton, made on July 9, 2023, the Success Fee shall be reduced by the amount of any commission fees of a third party selling agent, including BC Farm and Ranch Realty Corp. and Able Solutions Inc., operating as Able Auctions (each, a "**Selling Agent**"), where such commissions are payable to a Selling Agent for the Selling Agent's successful sale of any of the remaining assets in the possession of Tantalus, including the federally licensed cannabis production facility located in Maple Ridge, British Columbia and the lands legally described as:

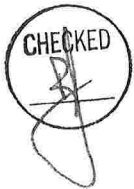
Parcel Identifier 012-642-444, Lot 1, Except
 Firstly: The North West 3 Chains By (6.67) Chains Having a Frontage of 3 Chains on
 the West Boundary and (6.67) Chains on the North Boundary

Secondly: Part Subdivided by Plan 15215; Section 5 Township 5 New Westminster District Plan 2410.

23. 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 the Proposal Trustee 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.
24. The Proposal Trustee 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.
25. Endorsement of this Order by counsel appearing on this Notice of Application, except for counsel for the Applicant, is hereby dispensed with.

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


 Signature of Jessica R. Reid
☐ Party ☒ Lawyer for the Applicant



BY THE COURT

Milman, J.


 REGISTRAR IN BANKRUPTCY

Schedule "A"

(List of Counsel)

[illegible]

Schedule "B"

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TANTALUS LABS LTD.

CERTIFICATE
(Asset Transaction)

RECITALS

- A. Tantalus Labs Ltd. (the "**Vendor**") commenced these proceedings by filing a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended on June 28, 2023 (the "**NOI**").
- B. Ernst & Young Inc. was appointed as proposal trustee in respect of the NOI proceedings of the Vendor (in such capacity, the "**Proposal Trustee**");
- C. Pursuant to an Order of the Honourable Mr. Justice Milman of the Supreme Court of British Columbia (the "**Court**") dated August 25, 2023 (the "**Approval and Vesting Order**"), the Court approved the sale transaction (the "**Asset Transaction**") contemplated by the binding asset purchase letter, dated effective July 29, 2023, as amended by an amending agreement, dated August 4, 2023, and as further amended by an amending agreement, dated August 17, 2023 (collectively, the "**Asset Agreement**"), between the Vendor and Atlantic Cultivation Limited (the "**Purchaser**"), a copy of which is attached as Exhibit "A" to the Seventh Affidavit of Dan Sutton, dated August 23, 2023, and provided for the vesting in the Purchaser of the Vendor's right, title and interest in and to the assets described in the Asset Agreement (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver of Tantalus, as applicable, to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price outlined in the Asset Agreement for the Purchased Assets; and (ii) the Asset Transaction has been completed to the satisfaction of the Proposal Trustee.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Agreement.

THE UNDERSIGNED CERTIFIES the following:

1. The Purchaser has paid purchase price outlined in the Asset Agreement for the Purchased Assets;
2. The Asset Transaction has been completed to the satisfaction of the undersigned; and
3. This Certificate was delivered by the undersigned at _____ [TIME] on _____, 2023.

**Ernst & Young Inc., solely in its capacity as the
[Proposal Trustee] of Tantalus Labs Ltd.**

Per: _____

Name:

Title:

Schedule "C"

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TANTALUS LABS LTD.

CERTIFICATE
(Share Transaction)

RECITALS

A. Tantalus Labs Ltd. (the "**Vendor**") commenced these proceedings by filing a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended on June 28, 2023 (the "**NOI**").

B. Ernst & Young Inc. was appointed as proposal trustee in respect of the NOI proceedings of the Vendor (in such capacity, the "**Proposal Trustee**");

C. Pursuant to an Order of the Honourable Mr. Justice Milman of the Supreme Court of British Columbia (the "**Court**") dated August 25, 2023 (the "**Approval and Vesting Order**"), the Court approved the sale transaction (the "**Share Transaction**") contemplated by the share purchase agreement, dated August 22, 2023 (the "**Share Agreement**") between the Vendor and Yaletown Innovation Growth II Limited Partnership (the "**Purchaser**"), a copy of which is attached as Exhibit "D" to the Seventh Affidavit of Dan Sutton, dated August 23, 2023, and provided for the vesting in the Purchaser of the Vendor's right, title and interest in and to the assets described in the Share Agreement (the "**Purchased Shares**"), which vesting is to be effective with respect to the Purchased Shares upon the delivery by the Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver of Tantalus, as applicable, to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price outlined in the Share Agreement for the Purchased Shares; and (ii) receipt of written confirmation on behalf of the Vendor from the Purchaser, or their respective counsel, that all conditions precedent to the completion of the Share Agreement have been satisfied or waived.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Share Agreement.

THE UNDERSIGNED CERTIFIES the following:

1. The Purchaser has paid the purchase price outlined in the Share Agreement for the Purchased Shares;
2. That it has received written confirmation on behalf of the Vendor and from the Purchaser, or their respective counsel, that all conditions precedent to the completion of the Share Agreement have been satisfied or waived; and
3. This Certificate was delivered by the undersigned at _____ [TIME] on _____, 2023.

**Ernst & Young Inc., solely in its capacity as the
[Proposal Trustee] of Tantalus Labs Ltd.**

Per: _____

Name:

Title:

Schedule "D"

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TANTALUS LABS LTD.

CERTIFICATE
(Auction Purchaser)

RECITALS

- A. Tantalus Labs Ltd. (the "**Vendor**") commenced these proceedings by filing a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended on June 28, 2023 (the "**NOI**").
- B. Ernst & Young Inc. was appointed as proposal trustee in respect of the NOI proceedings of the Vendor (in such capacity, the "**Proposal Trustee**");
- C. Pursuant to an Order of the Honourable Mr. Justice Milman of the Supreme Court of British Columbia (the "**Court**") dated August 25, 2023 (the "**Approval and Vesting Order**"), the Court approved the auction (the "**Auction**") contemplated by the auction proposal, dated July 17, 2023 (the "**Auction Agreement**") with Able Solutions Inc., operating as Able Auctions (the "**Auctioneer**"), a copy of which is attached as Exhibit "G" to the Seventh Affidavit of Dan Sutton, dated August 23, 2023, and provided for the vesting in the respective purchaser (the "**Auction Purchaser**") of any Tantalus assets made available for purchase at the Auction (the "**Auction Assets**") of the Vendor's right, title and interest in and to the Auction Assets, which vesting is to be effective with respect to the Auction Assets upon the delivery by the Proposal Trustee, trustee in bankruptcy, or a court or privately-appointed receiver of Tantalus, as applicable, to the respective Auction Purchaser of a certificate or certificates confirming: (i) the payment by the Auction Purchaser of the purchase price outlined in the bill of sale or similar evidence of purchase and sale for the respective Auction Assets (the "**Bill of Sale**"); and (ii) the Auction has been completed to the satisfaction of the Proposal Trustee.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Auction Agreement.

THE UNDERSIGNED CERTIFIES the following:

1. Each of the Auction Purchasers has paid the purchase price outlined in the respective Bill of Sale for the respective Auction Assets;
2. The Auction has been completed to the satisfaction of the undersigned; and
3. This Certificate was delivered by the undersigned at _____ [TIME] on _____, 2023.

**Ernst & Young Inc., solely in its capacity as the
[Proposal Trustee] of Tantalus Labs Ltd.**

Per: _____

Name:

Title: