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JUDICIAL CENTRE	CALGARY
APPLICANTS	ROYAL BANK OF CANADA
RESPONDENTS	PEOPLE EXPRESS TRANSPORT LTD.
	AND IN THE MATTER OF THE RECEIVERSHIP OF PEOPLE EXPRESS TRANSPORT LTD.
DOCUMENT	<b>FIRST REPORT OF THE RECEIVER</b> <b>MAY 17, 2021</b>
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## TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>3</b>
<b>TERMS OF REFERENCE .....</b>	<b>4</b>
<b>BACKGROUND AND OVERVIEW .....</b>	<b>5</b>
<b>INITIAL ACTIVITIES OF THE RECEIVER .....</b>	<b>6</b>
<b>OPERATIONAL UPDATE .....</b>	<b>10</b>
<b>SECURITY REVIEW .....</b>	<b>20</b>
<b>PROPOSED SALE OF TRAILERS .....</b>	<b>23</b>
<b>RECEIPTS AND DISBURSMENTS .....</b>	<b>25</b>
<b>REQUEST TO COMPEL DELIVERY OF UNITS .....</b>	<b>27</b>
<b>APPROVAL OF THE RECEIVER'S AND ITS COUNSEL'S FEES AND COSTS</b>	<b>28</b>
<b>PROPOSED INCREASE OF THE RECEIVER'S CHARGE .....</b>	<b>29</b>
<b>AMENDMENT OF THE CONSENT RECEIVERSHIP ORDER .....</b>	<b>29</b>
<b>RECEIVER'S ONGOING ACTIVITIES AND FUTURE COURSE OF ACTION</b>	<b>30</b>
<b>RECEIVER'S RECOMMENDATIONS .....</b>	<b>30</b>

## APPENDICES

<b>APPENDIX A</b>	Receiver Certificates
<b>APPENDIX B</b>	Alberta Personal Property Registry
<b>APPENDIX C</b>	Redacted Ocean Trailer APA
<b>APPENDIX D</b>	Letter to RPM
<b>APPENDIX E</b>	Email to RPM
<b>APPENDIX F</b>	Summary of Professional Fees

## INTRODUCTION

1. Effective April 22, 2021 (the “**Receivership Date**”), pursuant to a consent order granted by the Court of Queen’s Bench of Alberta (the “**Court**”) in Action No. 2101-02280 (the “**Consent Receivership Order**”), Alvarez & Marsal Canada Inc. was appointed the receiver and manager (the “**Receiver**”), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the “**Property**”) of People Express Transport Ltd. (“**People Express**” or the “**Company**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) and section 13(2) of the *Judicature Act*, RSA 2000, c J-2, in the within action (the “**Receivership Proceedings**”).
2. The Consent Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, take possession and control of the Property and of any and all proceeds, receipts and disbursements arising out of or from the Property, and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business subject to Court approval, as necessary.
3. The purpose of this first report of the Receiver (the “**Report**” or the “**First Report**”) is to provide this Honourable Court with information in respect of the following matters:
  - a) an overview and background of the Company;
  - b) the initial activities of the Receiver since the Receivership Date;
  - c) an operational update of the Company since the Receivership Date;
  - d) the security review conducted by the Receiver’s independent counsel, Torys LLP the “**Receiver’s Counsel**”), with respect to the security granted by Royal Bank of Canada (“**RBC**”), the senior secured lender to the Company, and other secured creditors;

- e) the Receiver's application for an order approving the sale of certain trailers of the Company;
  - f) the Receiver's application for an order sealing the First Confidential Supplemental Report, dated May 17, 2021 to this First Report;
  - g) the Receiver's request for an order compelling the release of certain of the Company's assets currently held by RPM Trailer Repair Service Ltd. ("**RPM**");
  - h) the actual cash flow results for the period from April 22, 2021 to May 14, 2021 (the "**Reporting Period**");
  - i) approval of the Receiver's actions, activities and conduct, and approval of the Receiver's fees and disbursements and those of the Receiver's Counsel;
  - j) the Receiver's application for an increase to the Receiver's Charge (as defined in the Consent Receivership Order);
  - k) the Receiver's application to amend certain paragraphs of the Consent Receivership Order; and
  - l) the Receiver's conclusions and recommendations.
4. Unless otherwise set forth herein, capitalized words or terms not defined or ascribed a meaning in this Report are as defined or ascribed the meaning set out in the Consent Receivership Order.
5. All references to dollars are in Canadian currency unless otherwise noted.

## **TERMS OF REFERENCE**

6. In preparing this Report, the Receiver has relied primarily upon information obtained through the representations of certain shareholders, management and former employees of People Express. In addition, where applicable, the Receiver

has relied on the Company's books and records, which were produced and maintained principally by the Company.

7. While the Receiver has reviewed certain financial information in respect of the Company for reasonableness, the Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of the Company's financial information that would wholly or partially comply with Canadian Auditing Standards ("CASs") pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of financial information.

## **BACKGROUND AND OVERVIEW**

8. People Express is a corporation incorporated pursuant to the laws of the Province of Alberta with a registered office in Calgary, Alberta.
9. People Express operated a business specializing in the transport of temperature sensitive products throughout North America. The primary assets of People Express consisted of approximately 280 motor vehicles and trailers. A number of these motor vehicles and trailers are subject to leasing and financing agreements with various third-parties. The Company leased office and yard space located at 4220 67 Ave NE, Calgary, AB. The lease arrangement expired on April 30, 2021 and the Receiver made arrangements with the new landlord, effective May 1, 2021, to occupy the premises until May 7, 2021. The Receiver has now vacated the sub-leased premises and has removed all of the Company's assets, books and records.
10. As at the Receivership Date, the Company employed 131 employees and contractors, of which approximately 34 employees were foreign workers on closed and open permits. All employees and contractors were terminated as at the Receivership Date, with a select group of former employees being employed by the Receiver as independent contractors, as discussed further below.
11. Mr. Gurpreet Brar, Mr. Gurbaj Sandhu and Mr. Charanpreet Brar are the directors of People Express and each hold 33.3% of the voting shares in People Express. Mr.

G. Brar, Mr. Sandhu and Mr. C. Brar have also personally guaranteed a portion of the indebtedness owing by People Express to RBC.

12. Based on the Receiver's review of the Company's books and records, People Express owed RBC over \$10.7 million as at the Receivership Date.
13. Further background information regarding the Company and its financial circumstances is contained in the materials filed in support of and relating to the Consent Receivership Order. These documents and other relevant information have been posted by the Receiver on its website, including the Consent Receivership Order and various application materials at: [www.alvarezmarsal.com/petl](http://www.alvarezmarsal.com/petl) (the "**Receiver's Website**").

#### **INITIAL ACTIVITIES OF THE RECEIVER**

14. Since the Receivership Date, the Receiver's activities with respect to the Company have included, but are not limited to, the following:
  - a) attending and taking possession and control of the Property, which included, among other things, engaging the services of a locksmith to change the keys to the premises, contacting an IT contractor to restrict computer access and set codes as appropriate, hiring a third party security firm to monitor activity of the Company's premises 24 hours per day and generally securing and safeguarding the Property;
  - b) mailing the notices required by sections 245 and 246 of the BIA to the People Express creditors and the Office of the Superintendent of Bankruptcy on April 29, 2021 (the "**Receiver's Notice**"). A copy of the Receiver's Notice can be found on the Receiver's Website;
  - c) making arrangements with the primary leaseholder regarding temporary occupancy of the lease space, as discussed above;
  - d) developing an immediate understanding of the Company's operations to determine the amount of deliveries in transit throughout North

America and evaluating whether or not to complete or cancel contracted loads, including assessing all logistical challenges and risks facing the Receiver;

- e) evaluating the Company's current and upcoming obligations to deliver various products to its customers and determining whether to continue to operate or ceasing operations after all current deliveries in-transit have been completed;
- f) engaging the services of third-party transportation companies to assist the Receiver in transporting the Company's trucks and trailers to an alternate secure storage facility to ensure their safekeeping and security;
- g) arranging for the delivery of various trucks and trailers located in the United States and arranging for their delivery over the US/Canada border into the Receiver's possession;
- h) arranging a third party IT services provider to change administrative access from former management to the Receiver on the network and email exchange, limit access as directed by the Receiver, as well as have the IT provider host the Company server offsite with remote access available for the Receiver and the Receiver's contractors;
- i) confirming all known Company corporate bank accounts and providing the respective bank representatives, at RBC, ATB Financial and ICICI Bank, with notices to freeze all accounts (for deposit only) as well as request that any funds held within those accounts be wired to the Receiver's trust account;
- j) notifying Liebel Insurance Group Corp. ("**Liebel**") of the Consent Receivership Order and confirming arrangements for continuation of the insurance coverage and adding the Receiver as an additional insured, beneficiary and loss-payee to the various policies;

- k) arranging and attending initial meetings with employees to explain the powers and duties of the Receiver, its role as an officer of the Court, notifying them of their termination due to the Receivership Proceedings, discussing their potential eligibility under the Wage Earner Protection Program (“**WEPP**”) and discussing proposed terms of retention of certain individuals as contractors to assist the Receiver during the Receivership Proceedings;
- l) attending various conference calls with the secured creditor and its legal counsel concerning the cessation of operations and providing various financial and other updates of the Company and other matters arising in the Receivership Proceedings;
- m) updating the books and records of the Company, including an initial review of accounts receivables and accounts payables with the assistance from a contractor who was a former employee of the Company;
- n) notifying customers of the Receivership Proceedings and requesting that any outstanding accounts are to be paid to the Receiver directly;
- o) contacting various lessors with interests registered with the Personal Property Registry (Alberta) and the Personal Property Registry (British Columbia) to understand their position with respect to the Receivership Proceedings;
- p) notifying the Company’s benefit provider(s) of the Receivership Proceedings and requesting that policies be cancelled effective April 22, 2021;
- q) contacting various counterparties with garage keepers’ liens registered with the Personal Property Registry (Alberta) and the Personal Property Registry (British Columbia) to understand their position with respect to the Receivership Proceedings;



- r) discussing with certain parties regarding their interest in acquiring all or a portion of the Property of People Express;
- s) engaging and providing instructions to the Receiver's Counsel in respect of the Receivership Proceedings;
- t) engaging and providing instructions to the Receiver's special purpose independent legal counsel, Mathews, Dinsdale & Clark LLP ("**MDC LLP**"), which is a law firm that specializes in employment law;
- u) delivering numerous demands for the return of Company assets from various individuals and companies;
- v) various calls with the Canada Revenue Agency ("**CRA**") respecting the Receivership Proceedings, the Receiver's duties and the coordination of an audit of the Company's books and records with respect to source deduction and GST accounts;
- w) engaging GD Auctions & Appraisals ("**GD Auctions**") to conduct a desktop appraisal for the Company's leased equipment with registrations subject to the Personal Property Registry (Alberta) for purposes of conducting a lease equity analysis (the "**GD Desktop Appraisal**");
- x) undertaking the day to day management of the Company regarding the recovery of Company Property, providing direction to contractors, ensuring timely payment of trade creditors for services requested, rendered and approved by the Receiver; and
- y) attending numerous and on-going meetings and discussions with various creditors (or their representatives), legal counsel to the Receiver, interested parties and other stakeholders regarding the Receivership Proceedings.

## **OPERATIONAL UPDATE**

15. Since the Receivership Date, the Receiver identified certain select former employees of the Company and hired them as independent contractors to assist the Receiver in winding down operations and arranging to recover assets located throughout North America.
16. The Receiver determined forthwith, shortly after the Consent Receivership Order was granted, that no new cargo services would be contracted by the Company from customer locations, other than cargo that was currently in transit throughout North America. Specifically, the Receiver made arrangements for cargo loads “in transit” to be delivered to their final customer destination, which were largely deliveries coming back from the United States to Western Canadian retail customers. Upon completion of the final delivery, each driver was asked to return their respective truck and trailer to the People Express yard. On May 7, 2021, the Receiver completed the Company’s final cargo delivery and cancelled the Company’s cargo specific insurance coverage.

## **Employees and Contractors**

### Overview

17. As at the Receivership Date, People Express had a total of 131 staff and management, including 87 employees and 44 contractors. The Receiver is still determining amounts owed to each of the employees and contractors for unpaid wages as at the Receivership Date. As previously discussed, the Receiver engaged certain former employees as independent contractors and entered into separate independent contractor agreements with them. The engagement of these individuals was to provide assistance to the Receiver for the cessation of operations, asset retrieval and certain other administrative duties required of the Receiver.

### Payroll Records

18. The books and records are not complete, and the Receiver has been advised by many of the Company's employees' and contractors that they have not been paid for 2-3 months. The Company's payroll accountant is living in India and it has been challenging for the Receiver to gather information from the accountant in a timely manner. The Receiver is working diligently to obtain the required information in order to update and complete the employee payroll records, T4 statements, record of employment and information to complete WEPP statements. Information regarding the employees' eligibility on the WEPP will be provided to the employees when it becomes available in due course, and the Receiver will report back to this Court on this matter and overall payroll matters.

### Temporary Foreign Workers

19. On the Receivership Date, the Receiver was approached by multiple employees advising that they were foreign workers sponsored by People Express. The Receiver investigated this matter further and became aware that People Express employed 34 temporary foreign workers, of which approximately 25 were on a "closed permit" and the remaining were on "open permits". The Receiver continues to investigate the quantum of these temporary foreign workers as the records are not complete and former management has not been able to confirm this information.
20. The Receiver has worked closely with its special purpose independent counsel, MDC LLP, in reviewing the forms of the foreign worker contract information and have prepared the termination letters for all employees, in particular the foreign workers, to ensure the employees have the appropriate information so that they can deal with their personal immigration and employment related matters.
21. The Receiver understands that the foreign workers have accessed immigration consultants and representatives to assess their current situation. The Receiver remains available to assist these foreign workers as required in providing any additional information they may need.

### **Canada Revenue Agency (Potential Priority Payables)**

22. The Receiver understands that there are no amounts owing with respect to source deductions per its communication with the Company's former management. The Receiver intends to facilitate any review conducted by CRA should they be required to do so. The Receiver will be reviewing what may be outstanding in terms of unfiled GST returns "pre-receivership" and will file them as required.
23. The Receiver submitted its request to the CRA to gain access to the accounts and to close the "pre-receivership" GST account effective April 22, 2021 and open a new "post-receivership" account for post-filing GST obligations.
24. The Receiver has been in communication with the CRA and is coordinating a time for the CRA to conduct an audit on the Company's books and records with respect to source deduction and GST accounts.

### **Leasing & Financing Agreements**

#### Office and Yard Lease

25. As previously discussed, People Express sub-leased an office and yard in the northeast of Calgary from Ms. Manjit Knonobaur Brar. The Receiver was advised that the lease was to expire on April 30, 2021. The Receiver therefore made arrangements with People Driving Academy Inc., the new tenant who was set to take over the same leased space effective May 1, 2021, to pay occupancy rent of \$7,000 for the month of May 2021, to allow sufficient time for the Receiver to vacate the property.
26. The Receiver vacated the space on May 7, 2021, after all of the Company's property had been secured at an offsite location.

#### Equipment – Trucks

27. As at the Receivership Date, People Express had leasing and/or financing agreements with four (4) separate third-parties in respect of forty-two (42)

individual trucks. A number of these individual trucks have or had garage keepers' liens registered against them. The four leasing/financing companies are:

- a) Daimler Truck Financial and Mercedes-Benz Financial Services Canada Corporation – 25 trucks;
- b) VFS Canada Inc.– nine trucks;
- c) Wells Fargo Equipment Finance Company – four trucks; and
- d) Calmont Leasing Ltd. (“**Calmont**”) – four trucks.

28. The Receiver has communicated with each of these four lessors with respect to the status of their trucks and the Receiver's intention regarding next steps related to these assets. A further discussion on these trucks and their associated agreements is included in the Security Review section below.

#### Equipment – Trailers

29. As at the Receivership Date, People Express had leasing and/or financing agreements with two (2) separate third-parties encompassing forty-two (42) individual trailers. The two leasing/financing companies are:

- a) Essex Lease Financial Corporation (“**Essex**”) – 23 trailers; and
- b) Hitachi Capital Canada Corp.– 19 trailers.

30. The Receiver has communicated with each of these two lessors with respect to the status of their trailers and the Receiver's intention on these assets. A further discussion on these trailers and their associated agreements is included in the Security Review section below.

### Equipment – Personal Motor Vehicles

31. As at the Receivership Date, People Express had leasing and/or financing agreements with three (3) separate third-parties encompassing four (4) individual personal motor vehicles. The three leasing/financing companies are:
- a) The Bank of Nova Scotia (“**Scotiabank**”) – two vehicles;
  - b) WS Leasing Ltd. (“**WS Leasing**”) – one vehicle; and
  - c) TD Auto Finance (Canada) Inc. (“**TD**”) – one vehicle.
32. The Receiver has communicated directly with WS Leasing with respect to its two vehicles and made multiple attempts in contacting Scotiabank and TD (via telephone and subsequently facsimilia) without no response back from these institutions yet. A further discussion on these personal motor vehicles and their associated agreements is included in the Security Review section below.

### **Possession of Property**

33. As discussed, the Receiver engaged the services of certain contract cargo drivers to move the Company assets (trucks and trailers) from various locations throughout North America, (including the former leased yard of People Express), to a new staging location. Specifically, the Receiver made arrangements to rent a secured, third-party yard location with appropriate security in place to ensure the safekeeping of the Property.
34. As at the date of this report the Receiver has identified the whereabouts of certain of People Express’ Property as follows:
- a) 149 trucks and trailers are in the possession of the Receiver at its secured facility;
  - b) 22 trailers are the Purchased Assets subject to the Ocean Trailer APA (as defined below) in the possession of Ocean Trailer;

- c) 15 trucks and trailers have been located by the Receiver throughout North America and are considered to be held at secure locations, for example, at customer locations or mechanical shops awaiting repairs. The Receiver is working with those in possession of these assets to get them returned to the Receiver's secured facility as soon as possible;
- d) 12 trucks are being held by parties who have registered garage keepers' liens with the Alberta Personal Property Registry. The Receiver is working with those parties to assess the validity of the garage keepers' liens;
- e) four trailers are being held in the possession of creditors without garage keepers' liens. The Receiver and its counsel continue to be in communications with these three parties to facilitate the return of the trailers to the Receiver;
- f) 5 personal vehicles are in the possession of Mr. Brar or his immediate family members. The Receiver continues to attempt to contact the leasing companies with respect to these specific vehicles, as the Receiver understands Mr. Brar may have refinanced these vehicles directly; and
- g) 27 trucks and trailers have been released to the leasing/financing companies, Essex and Calmont.

35. The Receiver further understands that there are six units that have not been located by the Receiver at this point; however, the Receiver continues to work with its contractors to locate these particular assets that belong to People Express (the **“Remaining Assets”**).

36. The Receiver has faced various challenges in recovering a few of the trailers. These challenges relate to certain companies and/or individuals who currently remain in possession of People Express' Property but are unwilling to return the assets in question to the Receiver. One particular individual is subject to the Receiver's

application in seeking an order to compel the release of the trailer to the Receiver as discussed further below.

### Books and Records

37. As at the Receivership Date, the Receiver engaged the services of one of the Company's former accountants to assist in updating the Company's books and records.
38. Summarized in the table below is the estimated net book value from the Company's balance sheet as at April 22, 2021. The asset values listed in the below chart are recorded on a "net book value" basis and have not been audited or have not otherwise been verified as to its accuracy. The net book values for each of the listed assets may not approximate their market and/or realizable value and these values may differ significantly.
39. The figures listed in the below chart are updated figures from what was initially provided to the Receiver and as recorded in the Receiver's Notice. As discussed, these figures may be subject to further updates and/or changes.

People Express Transport Ltd. - In Receivership Preliminary Balance Sheet, as at April 22, 2021 \$CAD	
	Estimated Book Value
<b>Assets<sup>1</sup></b>	
Cash	191,442
Accounts Receivable	3,265,308
Inventory	250,375
Intercompany Receivables	942,735
Prepaid Expenses	335,082
Net Fixed Assets	13,938,603
Other	2,152,327
<b>Total Assets</b>	<b>21,075,872</b>
<b>Liabilities<sup>2</sup></b>	
Secured creditors	10,741,857
Unsecured creditors	1,452,906
<b>Total Liabilities</b>	<b>12,194,763</b>
<b>Note 1:</b> Realizable values may materially differ from the above estimated book value.	
<b>Note 2:</b> Liabilities may materially differ from the above estimated book value.	



40. The Company's most significant assets appear to be its accounts receivables, intercompany receivables and fixed assets. The Receiver is currently investigating the collectability and anticipated realization of the Company's assets and anticipates that the values realized (on all assets) will differ substantially from what has been listed within the preliminary balance sheet, as at April 22, 2021.

41. Highlights of the Company's key assets are as follows:

a) **Accounts Receivable / Intercompany (related party) Receivables.**

The Receiver has made inquiries of the Company's accounts receivable clerk (who is now engaged by the Receiver as an independent contractor), logistics manager and the Company's accountant respecting the Company's accounts receivables and intercompany receivables. Based on the Receiver's preliminary review of the Company's accounts receivables, and, in particular, its intercompany (related party) receivables, the Receiver has noted certain irregularities and concerns surrounding the existence, completeness and/or collectability of the accounts receivables and intercompany receivables. The Receiver anticipates conducting a more thorough review and investigation of all of these receivables and will report to the Court with its findings;

b) **Inventory.** During the initial days of the Receiver taking possession of the Company's assets, the Receiver could not identify nor locate any inventory that would have any material value. The Receiver continues to review the Company's inventory asset listing, but does not anticipate that there will be recoveries of any material nature relating to the Company's recorded inventory on its books and records;

c) **Net Fixed Assets.** As discussed above, the Receiver has identified and collected numerous trucks and trailers to date and it is in the process of collecting further assets over the coming weeks. Once the Receiver has collected all of the Company's fixed assets it will determine the best

course of action to maximize the realization of these assets. The Receiver anticipates that the realizable value of the Company's fixed assets will likely differ substantially from what has been listed within the preliminary balance; and

- d) **Other assets.** The Receiver is currently gathering information to determine what makes up this asset category and if there are any opportunities for the Receiver to realize upon these assets.

### **Corporate Insurance**

- 42. People Express has a comprehensive corporate insurance policy ("**Corporate Insurance Policy**") in place with Liebel, which consists of commercial general liability, excess liability and automobile liability insurance that expires on December 1, 2021 and motor truck cargo and non-owned trailer insurance that expires on November 19, 2021.
- 43. The annual insurance premiums were \$747,359 and are financed through First Insurance Funding of Canada. The monthly premiums to be paid throughout the Receivership Proceedings is expected to be approximately \$130,000, which will decrease over time as operations of People Express have ceased and very few of the Company's assets are remaining to be transported back to the Receiver's storage yard. All equipment (trucks and trailers) will be held within the Receiver's secured storage yard until it is sold. The Receiver conducted a preliminary review of the Corporate Insurance Policy, and based on its review, the Receiver believes that the Corporate Insurance Policy appears to be adequate and appropriate.
- 44. The Receiver has requested to be named the beneficiary and the first loss-payee of the Corporate Insurance Policy. The Receiver is not aware of any directors' and officers' insurance in place as at the Receivership Date.

## **Receiver's Borrowings**

45. Pursuant to paragraph 21 of the Consent Receivership Order, the Receiver has been empowered to borrow up to \$500,000 (or such greater amount as the Court may further order) (the “**Receiver's Borrowings**”).
46. On April 26, 2021, the Receiver issued Receiver's Certificate No. 1 in the amount of \$200,000 to RBC and received and utilized these funds in the Receivership Proceedings.
47. On April 28, 2021, the Receiver issued Receiver's Certificate No. 2 in the amount of \$300,000 to RBC and received and has partially utilized these funds in the Receivership Proceedings.
48. Receiver's Certificate No. 1 and Receiver's Certificate No. 2 are collectively referred to as the “**Receiver's Certificates**”. The Receiver's Certificates are attached hereto as Appendix ‘A’.
49. The terms of the Receiver's Certificates include interest calculated and compounded monthly not in advance on the last day of each month at a notional rate of 5% above the prime commercial lending rate of RBC from time to time, which, in the Receiver's view, is commercially reasonable in the circumstances.
50. Pursuant to paragraph 21 of the Consent Receivership Order, the Receiver's Certificates have a charge over the Property of People Express by way of a fixed and specific charge as security for the payment of the monies borrowed, together with interest and charges, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, but subordinate in priority to the Receiver's Charge (as defined below) and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

## SECURITY REVIEW

### RBC Security Review

51. The Receiver's Counsel performed a review of the RBC security, related security and loan documentation and has determined that, subject to the comments and qualifications set forth in the subject Security Review Memorandum, each loan document noted therein constitutes a legal, and binding obligation of People Express enforceable against People Express in accordance with its terms, in favour of RBC, and that the subject security documents create a valid security interest in favour of RBC in the personal property described therein in which People Express presently has rights and are sufficient to create a valid security interest in favour of RBC in any such personal property.
52. Subject to the comments in the following paragraphs, the Receiver is not aware of any other claimant that may have priority over RBC's security, other than potential "super priority" claims with respect to CRA and the Receiver's Charge as set out in the Consent Receivership Order.

### Other Leasing & Financing Agreements Review

53. As outlined and discussed above, as at the Receivership Date, People Express had leasing and/or financing agreements with various companies, other than RBC (the "**Non-RBC Leased Assets**").
54. The Receiver conducted the following analysis to determine its position with respect to the Non-RBC Leased Assets:
- a) the Receiver compared the forced liquidation value from the GD Desktop Appraisal to the buyout value remaining under each of the Non-RBC Leased Asset under the respective leasing agreements (in addition to the estimated repair, retrieval and storage costs and accounting for any valid garage keepers' liens) to determine if any

equity remained within any of the Non-RBC Leased Assets that the Receiver could realize upon for the benefit of the receivership estate; and

- b) arranged for the Receiver's Counsel to complete a security review on each of the financing agreements relating to the Non-RBC Leased Assets.

55. Based on its review (with the exception of the leased assets with Scotiabank and TD, as discussed further below), the Receiver determined that:

- a) no equity existed on the Non-RBC Leased Assets; and
- b) each financing agreement entered into by the Company with the companies listed above relating to the Non-RBC Leased Assets constituted a legal, and binding obligation of People Express enforceable against People Express in accordance with its terms, in favour of the lessor and that the security documents created a valid security interest in favour of the lessor in the personal property described therein and were sufficient to create a valid security interest in favour of the lessor in any such personal property.

56. As a result, the Receiver determined that it has no further interest in the Non-RBC Leased Assets (with the exception of the leased assets with Scotiabank and TD as discussed further below) and is currently making arrangements with the financing and leasing companies to execute a full and final irrevocable release and waiver ("**Release**"). Once the Release is executed by each of the applicable financing and leasing companies, the Receiver will allow the financing and leasing companies to collect their respective assets wherever they may be situated and at their own risk and expense.

#### Scotiabank

57. People Express had leasing and/or financing agreements with Scotiabank

encompassing two (2) personal motor vehicles, including a 2017 Porsche Cayenne and a 2020 Ram 1500.

58. The Receiver has made reasonable attempts to contact Scotiabank via telephone and subsequently via fax on multiple occasions, requesting copies of the leasing and/or financing agreements (so that the Receiver's Counsel could assess the validity and enforceability of their security) and payout statements (so that the Receiver could assess if there is any equity value realizable for the benefit of the estate). As at the date of this Report, the Receiver has yet to receive anything further from Scotiabank.
59. The Receiver understands that Mr. C. Brar, director of People Express, has been in contact with Scotiabank wishing to take over the leases or refinance these personal motor vehicles directly.

#### TD

60. People Express had a leasing or financing agreements with TD encompassing one (1) personal motor vehicle, which was a 2019 Infiniti QX60.
61. The Receiver has made reasonable attempts to contact TD via telephone and subsequently fax on multiple occasions, requesting copies of the leasing or financing agreement (so that the Receiver's Counsel could assess the validity and enforceability of the security) and a payout statement (so that the Receiver could assess if there is any equity value realizable for the benefit of the estate). As at the date of this Report, the Receiver has yet to receive anything further from TD.
62. The Receiver understands that Mr. C. Brar, director of People Express, has been in contact with TD to take over the lease or refinance this personal motor vehicle directly.

#### WS Leasing

63. People Express had a leasing or financing agreements with WS Leasing encompassing one (1) personal motor vehicle. This vehicle is a 2017 Maserati

Quattroporte S.

64. The Receiver has been in communication with WS Leasing and understands that Mr. C. Brar, has been in contact with WS Leasing to take over the lease or refinance this personal motor vehicle directly.

### **Garage Keepers' Liens**

65. The Receiver's counsel identified various garage keepers' lienholders who registered garage keepers' liens against one or more of People Express' Property. This includes Property owned by People Express as well as the leased or financed Property.
66. The Receiver's counsel has written to all identified garage keepers' lienholders, with respect to those who registered garage keepers' liens against one or more of People Express' Property which was leased or financed, to notify of the Receiver's intent to release its' interest in certain Property back to those lessors with valid and enforceable security and no equity value realizable for the benefit of the receivership estate, and has also requested the necessary documentation / confirmations / information from certain of these claimants to determine the validity of their liens.
67. The Receiver has yet to finalize its approach with respect to the garage keepers' liens registered against one or more of People Express' owned Property.

### **PROPOSED SALE OF TRAILERS**

68. Pursuant to paragraph 3(l)(ii) of the Consent Receivership Order, the Receiver is empowered and authorized to sell the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court in respect of any transaction in which the purchase price exceeds \$150,000.
69. On April 28, 2021, the Receiver received an unsolicited offer from C. Keay Investments Ltd., operating as Ocean Trailer ("**Ocean Trailer**"), to purchase 22

trailer units. The Alberta Personal Property Registry search results of the trailers Ocean Trailer offered to purchase is provided Appendix ‘B’.

70. The Receiver negotiated the purchase price with Ocean Trailer and on May 17, 2021, the Receiver and Ocean Trailer entered into an asset purchase agreement, which is subject to Court approval (the “**Ocean Trailer APA**”). A copy of the redacted version of the Ocean Trailer APA is attached as Appendix ‘C’.
71. Due to the confidential nature of the information provided in the offer received on the 22 trailers from Ocean Trailer, the Receiver is concerned that, if the information about the Ocean Trailer offer is disclosed to the third parties prior to the closing of the sale transaction in respect of the trailers, the disclosure could materially jeopardize the sale or if the sale does not close could materially jeopardize subsequent efforts to re-market the 22 trailers. As such, the Receiver is respectfully of the view that it is appropriate for this Honourable Court to seal the First Supplemental Confidential Report in accordance with the proposed form of the Restricted Court Access Order accompanying the Receiver’s application (the “**Restricted Court Access Order**”) as it contains:
  - a) the Receiver’s analysis on the Ocean Trailer APA
  - b) the Ocean Trailer APA; and
  - c) an appraisal conducted by GD Auction dated May 11, 2021 specifically on the trailers in the Ocean Trailer APA (the “**GD Auction Ocean Appraisal**”).
72. The Receiver considered the following when it reviewed the Ocean Trailer offer, and it believes that the approval of the Ocean Trailer APA is in the best interest of all stakeholders for all of these reasons:
  - a) subject to approval of this Court, the Receiver is authorized to sell the Property of the Company in accordance with paragraph 3(l) of the Consent Receivership Order;



- b) the Receiver acted in good faith and with due diligence and has made significant efforts to obtain the best price for the Purchased Assets;
- c) a sizeable deposit of 20% of the purchase price will be provided, which is non-refundable with the exception of certain circumstances, wherein 15% of the purchase price may be refundable to Ocean Trailer; however, 5% of the purchase price will be retained by the Receiver under all circumstances;
- d) RBC is a secured lender on these 22 trailers and RBC is supportive of the Ocean Trailer APA. As previously mentioned, RBC has valid and enforceable security over these 22 trailers;
- e) RBC is supportive that, should the Ocean Trailer APA be approved by this Honourable Court, the proceeds from these sales are to be used by the Receiver in the Receivership Proceedings; [NTD: RBC to confirm]
- f) the Ocean Trailer APA was negotiated between parties at arm's length in good faith and is commercially reasonable under the circumstances; and
- g) after considering the GD Auction Ocean Appraisal, and the cost and potential liability of moving the trailers, existing and future storing costs, securing and insuring the equipment and the potential further cost of marketing the trailers and conducting a sales process for the trailers, the Receiver is of the opinion that the offer submitted by Ocean Trailer is a commercially reasonable "as is, where is" offer.

## **RECEIPTS AND DISBURSMENTS**

73. The following is a statement of the Receiver's receipts and disbursements within the Receiver's operating trust account:

People Express Transport Ltd. - In Receivership Interim Statement of Receipts & Disbursements for the period from April 22, 2021 to May 14, 2021 \$CAD	
	Total
<b>Opening Cash</b>	
Cash in bank	170,110
<b>Receipts</b>	
Accounts receivable	224,409
Receiver's borrowings	500,000
GST collected	11,811
<b>Total Receipts</b>	<b>736,220</b>
<b>Disbursements</b>	
Fuel	149,695
Insurance	136,922
Contractor payments	45,025
Repairs & maintenance	16,724
Rent	7,200
Security	4,800
Appraisal fees	2,500
GST paid	1,294
Miscellaneous	651
Bank charges	68
Professional fees and costs	70
<b>Total Disbursements</b>	<b>364,948</b>
<b>Net Cash Flow</b>	<b>371,272</b>
<b>Opening Cash</b>	<b>170,110</b>
<b>Net Cash Flow</b>	<b>371,272</b>
<b>Closing Cash</b>	<b>541,382</b>

74. Opening cash balance collected from accounts held with RBC, ATB Financial and ICICI Bank totalled \$170,110.
75. Receipts collected during the Reporting Period was approximately \$736,000, which comprised of Receiver's Borrowings and the collection of certain accounts receivables.
76. Disbursements paid during the Reporting Period were approximately \$365,000, which primarily related to fuel, insurance, repairs and maintenance, insurance, rent and other miscellaneous costs.

77. The professional fees and costs incurred by the Receiver and its counsel since the Receivership Date to May 7, 2021 total approximately \$349,600, which are anticipated to be paid as cash flow permits. Further discussion on Court approval of such fees and costs are discussed further below.
78. Total available cash on hand with the Receiver as at May 14, 2021 was approximately \$541,000.

#### **REQUEST TO COMPEL DELIVERY OF UNITS**

79. On May 4, 2021, the Receiver became aware that two People Express trailers (Unit 1503 – VIN 1UYVS25368U545303 and Unit 1565 – VIN 1UYVS2532H2950019) were in the possession of RPM. On the same day, the Receiver contacted RPM to discuss the assets in RPM's possession and asked for the trailers to be returned. RPM informed the Receiver they would not release the assets until payment was made of an outstanding invoice owing from People Express in the amount of \$5,514.93.
80. The Receiver requested that the Receiver's Counsel review whether the purported outstanding invoice owed to RPM would constitute a priority payment or an amount that may be subject to a lien. Based on its review/information in its possession, the Receiver's Counsel determined that RPM's claim related to the outstanding balance against People Express is likely an unsecured claim and that RPM currently has no special priority attached against the two trailers based on its review of the Alberta Personal Property Registry search results conducted against the Company dated April 29, 2021.
81. As a result, on May 4, 2021, the Receiver's Counsel sent a letter to RPM formally requesting the return of trailers back to the Receiver. A copy of the letter sent to RPM is attached as Appendix 'D'. The Receiver nor the Receiver's Counsel received any response from RPM on the letter delivered by the Receiver's Counsel to RPM.

82. On May 13, 2021, the Receiver delivered further communication to RPM informing that the Receiver will be filing materials with this Honourable Court on May 17, 2021 seeking an order to compel RPM to deliver the trailers back to the Receiver. A copy of the email sent to RPM is attached as Appendix ‘E’. The Receiver received a response from RPM by way of voicemail stating they will not release any property until the outstanding invoice is paid.
83. The Receiver respectfully requests this Honourable Court provide an order that compels RPM to deliver the trailers immediately back to the Receiver as it is in unlawful possession of the subject People Express assets.

#### **APPROVAL OF THE RECEIVER’S AND ITS COUNSEL’S FEES AND COSTS**

84. The Receiver seeks approval from this Honourable Court of its fees and disbursements from the April 14, 2021 to May 7, 2021 and those of its legal counsel’s fees and disbursements from April 19, 2021 to May 7, 2021 (the “**Interim Taxation Period**”), pursuant to paragraph 19 of the Consent Receivership Order.
85. The total fees and disbursements of the Receiver during the Interim Taxation Period total \$261,368.72 (excluding GST) (the “**Receiver’s Fees and Costs**”). The total fees and disbursements of the Receiver’s Counsel, during the Interim Taxation Period total \$88,218.11 (excluding GST) (the “**Receiver’s Counsel’s Fees and Costs**”). A summary of the Receiver’s and the Receiver’s Counsel’s Fees and Disbursements are attached as Appendix ‘F’.
86. The accounts of the Receiver and the Receiver’s Counsel outline the date of the work completed, the description of the work completed, the length of time taken to complete the work and the name of the individual who completed the work. Copies of the invoices will be made available to the Court at its direction, if necessary.
87. The Receiver respectfully submits that its professional fees and disbursements and those of the Receiver’s Counsel are fair and reasonable in the circumstances and as outlined in this Report and respectfully requests that this Honourable Court approve the Receiver’s Fees and Costs and the Receiver’s Counsel’s Fees and Costs.

## **PROPOSED INCREASE OF THE RECEIVER'S CHARGE**

88. Pursuant to paragraph 18 of the Consent Receivership Order, a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA, of \$250,000, was granted by this Honourable Court, as security for the professional fees and disbursements incurred at the normal rates and charges of the Receiver and its legal counsel, both before and after the making of the Consent Receivership Order (the “**Receiver’s Charge**”).
89. The activities of the Receiver and its legal counsel have been cumbersome both before and after the commencement of the Receivership Proceedings. The Receiver’s and the Receiver’s Counsel’s fees incurred during the Interim Taxation Period and subsequently remain unpaid. The Receiver does not intend at this time to increase the borrowing capacity under the Receiver’s Borrowing Charge, but rather intends to rely on the Receiver’s Charge until the closing of the Ocean Trailer APA, subject to Court approval, or when sufficient funds are available within the receivership estate to satisfy the Receiver’s and its counsel’s fees and costs.
90. As such, the Receiver respectfully seeks approval from this Honourable Court to increase the Receiver’s Charge by an additional \$250,000 to an aggregate amount of \$500,000 (the “**Proposed Receiver’s Charge Increase**”).

## **AMENDMENT OF THE CONSENT RECEIVERSHIP ORDER**

91. The Receiver respectfully requests that this Honourable Court amend paragraph 17 of the Consent Receivership Order by adding the words:

“in the Receiver’s possession or control at the time a claim is made”

at the conclusion of the first sentence thereof in order to further clarify that the limit of the Receiver’s liability will be reduced as the Company’s Property is realized upon and distributions are made to the creditors of People Express.

## **RECEIVER'S ONGOING ACTIVITIES AND FUTURE COURSE OF ACTION**

92. The Receiver's next steps include, but are not limited to the following:

- a) continued efforts with respect to locating, transporting and securing the Remaining Assets;
- b) close the transaction with Ocean Trailer, subject to Court approval;
- c) finalize WEPP calculations and forms and provide all former employees with WEPP package;
- d) coordinate an audit on source deductions and GST with the CRA;
- e) investigate the existence, completeness and collectability of accounts receivable and intercompany (related party) accounts receivable;
- f) continued communication with the Company's customers and ongoing efforts to collect on the trade accounts receivable;
- g) establish an effective strategy to maximize recoveries on the Company's fixed assets and obtain Court approval of such a process; and
- h) various other administrative tasks relating to the Receivership Proceedings.

## **RECEIVER'S RECOMMENDATIONS**

93. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court approve:

- a) the Ocean Trailer APA and the associated Approval and Vesting Order;
- b) the Restricted Court Access Order;

- c) the Receiver's Fees and Costs and the Receiver's Counsels Fees and Costs;
- d) the Proposed Receiver's Charge Increase;
- e) an order compelling the release of the trailers held by RPM to the Receiver;
- f) the proposed amendment to the Consent Receivership Order; and
- g) the actions, activities and conduct of the Receiver to date as set out in this Report.

All of which is respectfully submitted this 17<sup>th</sup> day of May, 2021.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Court-appointed Receiver and Manager of  
People Express Transport Ltd.  
and not in its personal or corporate capacity**



Orest Konowalchuk, CPA, CA, CIRP, LIT  
Senior Vice President



Cassie Riglin, CPA, CA, CIRP, LIT  
Senior Vice President

**APPENDIX A**  
**Receiver Certificates**

*[See attached]*



## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. 1

AMOUNT \$200,000

1. THIS IS TO CERTIFY that Alvarez and Marsal Canada Inc., the interim receiver and receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of People Express Transport Ltd. appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the 22<sup>nd</sup> day of April, 2021 (the "**Order**") made in action numbers 2101-02280, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$200,000, being part of the total principal sum of \$500,000 that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the 26<sup>th</sup> day of each month after the date hereof at a notional rate per annum equal to the rate of 5% per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at 335 – 8<sup>th</sup> Ave SW, Calgary, AB T2P 1C9.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 26<sup>th</sup> day of April, 2021

Alvarez and Marsal Canada Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

  
Per: \_\_\_\_\_  
Name: Orest Konowalchuk, LIT  
Title: Senior Vice President

## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. 2

AMOUNT \$300,000

1. THIS IS TO CERTIFY that Alvarez and Marsal Canada Inc., the interim receiver and receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of People Express Transport Ltd. appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the 22<sup>nd</sup> day of April, 2021 (the "**Order**") made in action numbers 2101-02280, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$200,000, being part of the total principal sum of \$500,000 that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the 26<sup>th</sup> day of each month after the date hereof at a notional rate per annum equal to the rate of 5% per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at 335 – 8<sup>th</sup> Ave SW, Calgary, AB T2P 1C9.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 29<sup>th</sup> day of April, 2021

Alvarez and Marsal Canada Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

  
Per: \_\_\_\_\_  
Name: Orest Konowalchuk, LIT  
Title: Senior Vice President

## **APPENDIX B**

### **Alberta Personal Property Registry (Ocean Trailer Purchase Assets)**

For search results, please visit: <https://torys.sharefile.com/d-sb2b624e8659147728e3db86c2e10ef61>

## **APPENDIX C**

### **Redacted Ocean Trailer APA**

**ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court-appointed receiver and  
manager of all of the assets, undertakings and properties of PEOPLE EXPRESS  
TRANSPORT LTD. and not in its personal capacity and without personal or corporate  
liability**

**- and -**

**C. KEAY INVESTMENTS LTD.**

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**Asset Purchase Agreement**

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## **ASSET PURCHASE AGREEMENT**

THIS AGREEMENT made the 17<sup>th</sup> day of May, 2021

BETWEEN:

**ALVAREZ & MARSAL CANADA INC.**, solely in its capacity as receiver and manager of the undertaking, property and assets of People Express Transport Ltd.

(hereinafter called the “**Vendor**”)

OF THE FIRST PART

— and —

**C. KEAY INVESTMENTS LTD.**, a corporation incorporated under the laws of the Province of British Columbia

(hereinafter called the “**Purchaser**”)

OF THE SECOND PART

WHEREAS:

- (a) Alvarez & Marsal Canada Inc. (the “**Receiver**”) was appointed receiver and manager of the assets, undertakings and properties of People Express Transport Ltd. (the “**Corporation**”) pursuant to a Consent Receivership Order (the “**Consent Receivership Order**”) granted by Madam Justice L.B. Ho of the Court of Queen’s Bench of Alberta (the “**Court**”) dated April 22, 2021;
- (b) it is a provision of the Consent Receivership Order that the Receiver has the power to sell all or any part of the property, assets, and undertaking of the Corporation, subject to, under certain circumstances, certain conditions;
- (c) the Corporation had prior to the appointment of the Receiver carried on business specializing in the transport of temperature sensitive products throughout western Canada; and
- (d) subject to an order being issued by the Court approving the sale, the Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, certain assets owned by the Corporation, more particularly described in Article 1 hereof.

Now therefore this Agreement witnesses that in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each party to the other, the Parties hereto agree as follows:

### **ARTICLE 1**

#### **PURCHASE AND SALE OF ASSETS**

Section 1.01 Assets. Subject to the terms and conditions of this Agreement, the Purchaser agrees to purchase from the Vendor, and the Vendor agrees to sell to the Purchaser, subject to the terms and conditions hereof, all of its right, title and interest, if any, in and to the following property, assets, and undertaking as at the Time of Closing (as this term is hereinafter defined), and which shall be collectively referred to hereinafter as the “**Assets**”:

- (a) all machinery and equipment listed in Schedule “A” attached hereto and forming part of this Agreement.

Section 1.02 Transfer of Assets.

- (a) Provided that Closing (as this term is hereinafter defined) occurs, and subject to the terms and conditions of this Agreement, possession, risk, beneficial and legal ownership of the Assets shall transfer from the Vendor to the Purchaser on the Closing Date (as this term is hereinafter defined).
- (b) Notwithstanding anything in this Agreement to the contrary or any other information provided to the Purchaser (including, without limitation, the confidential information memorandum, data room information, or herein, or otherwise, as applicable), the Parties acknowledge that although the Vendor has provided such information, they recognize that there may be unintended omissions or mis-descriptions contained therein, including property which may be listed in Schedule “A” but which does not exist and/or is missing as of the Closing Date. As such, the Parties acknowledge that if such property does not exist and/or is missing, or is otherwise mischaracterized/misdescribed, the Vendor shall not be in breach of this Agreement, nor shall: (i) any condition to Closing be unsatisfied; (ii) the Purchase Price (as this term is hereinafter defined) be adjusted; or (iii) the Closing delayed. For certainty, “**Closing**” means the transfer of possession, risk, beneficial and legal ownership of the Assets from the Vendor to the Purchaser, the exchange of the closing documents and payment of the Purchase Price by the Purchaser to the Vendor, and all other items and consideration required to be delivered on the Closing Date pursuant hereto, the closing and consummation of the Transaction (as this term is hereinafter defined).

Section 1.03 Assumption of Liabilities.

- (a) In determining the Purchase Price, the Parties have taken into account the Purchaser’s assumption of responsibility for the payment of all costs for existing or future liabilities related to the Assets that are not vested off title to the Assets in accordance with the Approval and Vesting Order (collectively, the “**Assumed Liabilities**”) associated with the Assets, as set forth in this Agreement, and the absolute release of the Vendor and the Corporation of all and any responsibility or liability therefor.
- (b) Subject to Closing, the Purchaser hereby agrees to: (i) assume, discharge, perform and fulfil the Assumed Liabilities from and after the Closing Date; and (ii) indemnify and save harmless the Vendor from all Claims, Losses and Liabilities, damages, and other amounts arising directly or indirectly out of or in connection with the Assumed Liabilities. For certainty, “**Claims**” means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a solicitor and client basis and other professional fees and disbursements, interest, demands and

actions of any nature or any kind whatsoever, whether known or unknown, whether asserted, threatened, pending, contingent or existing, and whether based on contract, tort, statute or other legal or equitable theory of recovery, and "Claim" means any one of the foregoing. "**Losses and Liabilities**" means, in relation to a matter, any and all: (i) losses, costs, damages, expenses and charges (including all penalties, assessments and fines) which a Party suffers, sustains, pays or incurs, directly or indirectly, in connection with such matter and includes costs of legal counsel (on a full indemnity basis) and other professional advisors and reasonable costs of investigating and defending Claims arising from the matter, regardless of whether such Claims are sustained and includes taxes payable on any settlement payment or damage award in respect of such matter; and (ii) liabilities and obligations (whether under common law, in equity, under applicable law or otherwise; whether tortious, contractual, vicarious, statutory or otherwise; whether absolute or contingent; and whether based on fault, strict liability or otherwise) which a Party suffers, sustains, pays or incurs as a result of or in connection with such matter, but excluding indirect, incidental, consequential, exemplary, special or punitive losses or damages suffered, sustained, paid or incurred by a Party.

- (c) It is understood and agreed that the Purchaser understands that there are or may be liens (including garage keepers' liens) registered against the Assets that are transferred to the Purchaser, and this Transaction does not invalidate such lien(s). The Purchaser hereby acknowledges such liens will continue to subsist and such lien claimants' rights under the applicable legislation and/or regulations will not be affected by this Transaction.

## ARTICLE 2

### PURCHASE PRICE & DEPOSIT

Section 2.01 Purchase Price. The purchase price for the Assets shall be \$ [REDACTED] plus the assumption of the Assumed Liabilities (the "**Purchase Price**"), plus GST in the amount of \$ [REDACTED] ("**GST Payment**"), and PST, as applicable.

Section 2.02 Allocation of Purchase Price. As between the Vendor and the Purchaser, the Purchase Price shall be allocated among the Assets in accordance with the calculation of the Purchase Price set out in Schedule "A" to this Agreement.

Section 2.03 Payment of Deposit and Purchase Price. The Purchaser shall pay the Purchase Price as follows:

- (i) by paying \$ [REDACTED] at the time of submission of this offer, by wire payable to the Vendor, to the wire details set forth in Schedule "B" attached hereto, upon execution by the Purchaser of this Agreement, as a non-refundable deposit (the "**Deposit**"), which amount, will be held by the Vendor pending closing and credited toward the Purchase Price on Closing; and
- (ii) by paying an amount equal to the balance of the Purchase Price plus applicable taxes, if any, on closing by wire transfer made payable to the Vendor, to the wire details set forth in Schedule "B" attached hereto.

Section 2.04 Non-refundable Deposit.

- (i) Subject to section 2.04(iii) below, for certainty, the Purchaser shall not, under any circumstances, be entitled to have the Deposit together with any accrued interest thereon



returned to the Purchaser, notwithstanding whether the Purchaser validly terminates this Agreement. In all circumstances other than as set forth in section 2.04(iii), the Deposit and any other payments made by the Purchaser shall be forfeited to the Vendor on account of its liquidated damages, not as a penalty, and the Assets may be resold by the Vendor without prejudice to any claims which the Vendor may have against the Purchaser by reason of such default.

- (ii) The Purchaser expressly waives any present or future right, at law or in equity, that would prohibit or may prohibit the retention of the Deposit as liquidated damages by the Vendor in connection with Closing not occurring after the satisfaction or waiver of the conditions precedent in favour of the Purchaser set forth in this Agreement and the Purchaser and the Vendor expressly covenant and agree that:
  - a. this Agreement and all of the Transactions occurring or potentially occurring thereby, including without limitation the potential retention of the Deposit by the Vendor in the manner contemplated in this Agreement, are the product of an arm's length negotiations between sophisticated business people represented by counsel;
  - b. there has been a course of conduct between the Vendor and the Purchaser giving specific consideration to all of the Transactions occurring herein including, without limitation, the potential retention of the Deposit by the Vendor in the manner contemplated in this Agreement;
  - c. the Purchaser be and is hereby estopped from making any Claim to challenge the retention of the Deposit by the Vendor in the manner contemplated by this Agreement;
  - d. the Purchaser's agreement to allow the Vendor to retain the Deposit as contemplated by herein was a material inducement to the Vendor entering into this Agreement with the Purchaser; and
  - e. the Vendor would have elected to sell, convey and transfer the Assets to a different person and the Vendor and the Purchaser would not have entered into this Agreement had the Vendor and the Purchaser not agreed to allow the Vendor to retain the Deposit in the manner contemplated herein.
- (iii) The Purchaser shall be entitled to a return of 75% of the Deposit, specifically, in the amount of \$[REDACTED], if any of the following take place:
  - a. A Closing of the Transaction does not occur as a sole result of the breach of an obligation or term of this Agreement by the Vendor; or
  - b. The Court does not grant the Approval and Vesting Order as contemplated in section 5.01(c),

provided that the Receiver shall be entitled to retain 25% of the Deposit, in the amount of \$[REDACTED].

Section 2.05 Transfer Taxes. The Purchaser shall pay at the Time of Closing, in addition to the Purchase Price, all applicable federal and provincial sales and transfer taxes exigible in connection with this transaction. Where applicable at the sole opinion of the Vendor, the Purchaser shall furnish the Vendor with such purchase exemption certificates, elections and other documentation, which are in form and content satisfactory to the Vendor, together with a written indemnity satisfactory to the Vendor. Such indemnity shall hold the Vendor harmless from any costs, expenses or damages suffered

by the Vendor as a result of the failure by the Purchaser either to pay any taxes exigible in accordance with this section, whether arising from reassessment or otherwise, or to file the appropriate certificates, elections or other documentation required of it, pursuant to the taxation statutes governing the granting of such exemptions. For certainty, the Purchaser does hereby indemnify the Vendor and the Corporation against any Claims which may arise in connection with such transfer taxes (including, without limitation, applicable provincial sales tax), and the Purchaser hereby further agrees to pay all such amounts including interest and penalties, if any, upon written request by the Vendor.

Section 2.06 Waiver of Storage Costs and Fees. The Purchaser hereby confirms that should the Transaction complete, any storage costs, fees and expenses related to the Assets are hereby waived. For certainty, the Purchaser fully and irrevocably releases and forever discharges the Vendor from all liabilities and obligations relating in any way to storage of the Assets existing and incurred up to the date of Closing to the Purchaser.

### ARTICLE 3

#### PURCHASER'S REPRESENTATIONS

Section 3.01 Purchaser's Representations. The Purchaser hereby represents and warrants to and in favour of the Vendor that:

- (a) the Purchaser is and will be at the Time of Closing, a corporation validly incorporated and existing under the laws of British Columbia and has the requisite power and authority to enter into this Agreement and to complete the transaction (the "**Transaction**") of purchase and sale of the Assets as contemplated in this Agreement;
- (b) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (c) the Purchaser has entered into this Agreement and will be completing this Transaction on its own account, not as agent;
- (d) the Purchaser is not, and it and its permitted assigns will not, at the Time of Closing, be a non-Canadian person ("**Non-Canadian**") within the meaning of the *Investment Canada Act* (Canada), or, if the Purchaser or its permitted assign is a Non-Canadian, and the transaction is not reviewable under the *Investment Canada Act*, the Purchaser will file a duly completed notification within thirty (30) days after closing and provide a true copy thereof to the Vendor; and
- (e) the Purchaser has not incurred any obligation or liability, contingent or otherwise, for broker's or finder's fees in respect of the Transaction for which the Vendor or the Corporation shall have any obligations or liability.

### ARTICLE 4

#### TITLE

Section 4.01 Title Documents. The Vendor shall not be required to furnish or produce any abstract,

deed, survey, declaration or other document or evidence of title with respect to the Assets, except those in its possession.

Section 4.02 “As Is, Where Is”, “Without Recourse”. Notwithstanding anything contained herein, the Purchaser confirms that it has entered into this Agreement on the basis that:

- (a) the Purchaser has conducted or will conduct its own investigations of the title to the Assets;
- (b) the Purchaser has and shall be deemed to have inspected the Assets, satisfied itself with respect to the Assets and all matters and things connected with or in any way related to the Assets, and to have relied entirely upon its own investigations and inspections in entering into this Agreement and accepting the Assets;
- (c) the description of the Assets contained herein is for the purpose of identification only;
- (d) the Purchaser is purchasing the Assets on an “as is, where is”, and “without recourse” basis;
- (e) the Assets are being purchased as they will exist and at their location on the Time of Closing, and no adjustments will be allowed to the Purchaser for any change in condition, value, quantity or quality of the Assets; and
- (f) the Vendor has made no representations, warranties, statements or promises and has not agreed to any condition with respect to the Assets, whether statutory (including, without limitation, under the *Sale of Goods Act* (Alberta)), express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, all of which are expressly excluded, as to:
  - (i) title, including, without limitation, the existence, validity, registration, enforceability or priority of any mortgages, charges, liens, encumbrances, security interests, claims or demands of whatsoever nature or kind affecting or in any way relating to any or all of the Assets;
  - (ii) the existence, condition, merchantability, description, fitness for any particular purpose or use, suitability, durability, marketability, condition, quantity or quality thereof of any or all of the Assets;
  - (iii) the presence or absence of contaminants on, in or about the Assets; the discharge of contaminants from, on, or in relation to the Assets; the existence, state, nature, identity, extent or effect of any administrative orders, control orders, stop orders, compliance orders or any other orders, proceedings or actions under the environmental legislation, or any other applicable law in relation to the Assets; nor the existence, state, nature, kind, identity, extent or effect of any liability on the Purchaser to fulfill any obligations with respect to the environmental condition or quality of the Assets. The Purchaser acknowledges that it accepts the Assets subject to the environmental condition and any contamination, whether or not such environmental condition or contamination is known to the Vendor prior to the Time of Closing, and acknowledges that the Purchaser will have no recourse against the Vendor for any such pre-existing environmental conditions or contaminations;
  - (iii) the accuracy or completeness of any data room information or any other data or information supplied by the Vendor or the Corporation or any of their respective representatives in connection with the Assets;
  - (iii) the ability of the Purchaser to obtain any necessary approval from any governmental authority in order for the Purchaser to operate the Assets; or

- (iv) any other matter or thing whatsoever in respect of any or all of the Assets.

Section 4.03 Absolute Waiver. As part of the Purchaser's agreement to purchase the Assets and to accept the Assets in "as-is, where-is" condition, and not as a limitation on such agreement, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor and/or a Vendor Entity in respect of the Assets or the Transaction or pursuant to any warranty, express or implied, of any kind or type relating to the Assets or any other assets, or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights. For certainty, "**Vendor Entity**" means the Vendor and its Representatives, and each of their respective successors and assigns; and "**Representatives**" means, with, respect to any Party, the respective directors, officers, servants, agents, advisors, employees, consultants and representatives of that Party.

The Vendor shall not be responsible or liable for any misrepresentation, lack of disclosure or incorrect or incomplete disclosure of any nature whatsoever or failure to investigate the Assets on the part of any broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of the Vendor or any third party.

Section 4.04 Assignment of Contracts. Nothing in this Agreement shall be construed as an attempt to assign any contractual rights forming part of the Assets that are not assignable in whole or in part without the consent of the other party to such contract, unless the consent has been given or the assignment is otherwise lawful.

## ARTICLE 5 CONDITIONS

Section 5.01 Conditions of the Purchaser. The obligation of the Purchaser to complete the purchase of the Assets is subject to the following conditions being fulfilled, or performed, at or prior to the Time of Closing:

- (a) the Vendor shall have complied with and performed all of its covenants and obligations contained in this Agreement;
- (b) no action or proceeding, at law or in equity, shall have been commenced or threatened by any person, firm, company, government, regulatory body or agency to enjoin, restrict or prohibit the Transactions; and
- (c) the Vendor shall apply to the Court for an order approving the sale by the Vendor to the Purchaser of the Assets in accordance with the provisions of this Agreement, and vesting title to the Assets in the Purchaser in the form Approval and Vesting Order attached as Schedule C to this Agreement. The Purchaser, at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order, including, without limitation, such information as the Court may require to reasonably evaluate the Purchaser's financial ability to perform its obligations hereunder. If the Court shall not have granted the Approval

and Vesting Order before the Time of Closing or such other date as agreed upon by the parties, this Agreement shall automatically be terminated. It is expressly acknowledged by the Purchaser that the Vendor shall have no obligation to the Purchaser, at law or in equity or otherwise, to accept or recommend to the Court for approval the highest or any offer for any of the Assets, including this Agreement. Thereafter, it is a further condition that the right to appeal or to seek leave to appeal from the Approval and Vesting Order shall have expired and all appeal proceedings, if any, shall have been dismissed, quashed or permanently stayed without a further right of appeal or to seek leave to appeal.

The foregoing conditions are for the exclusive benefit of the Purchaser, and any condition may be waived by it in whole or in part. Any such waiver is only binding on the Purchaser if it is made in writing. If the Purchaser refuses to waive one of the foregoing conditions, which are for its exclusive benefit, and such condition cannot be complied with by the Vendor, then either the Vendor or the Purchaser may, on notice in writing to the other party, rescind this Agreement and the parties shall have no further rights and remedies against each other.

Section 5.02 Conditions of the Vendor. The obligation of the Vendor to complete the Transactions is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true and correct and the Purchaser shall have delivered to the Vendor satisfactory evidence to that effect (provided that acceptance of such evidence and completion of the Transactions shall not be a waiver of such representations and warranties), and the Vendor shall have received a certificate from an officer of the Purchaser substantially in the form attached hereto as Schedule "E" dated as of the Closing Date;
- (b) the Purchaser shall have complied with and performed all of its covenants and obligations contained in this Agreement;
- (c) no action or proceeding, at law or in equity, shall have been commenced or threatened by any person, firm, company, government, regulatory body or agency to enjoin, restrict or prohibit the Transactions;
- (d) none of the Assets shall have been redeemed by any person entitled to redeem them pursuant to the *Personal Property Security Act* (Alberta) or any other statute or rule of law or equity;
- (e) the Purchaser shall have paid the Purchase Price and GST Payment in full to the Vendor; and
- (f) the Vendor shall have obtained the Approval and Vesting Order in the manner contemplated in subparagraph c of section 5.01 of this Agreement and the right to appeal or to seek leave to appeal from the Approval and Vesting Order shall have expired with all appeal proceedings, if any, having been dismissed, quashed or permanently stayed without further right of appeal or to seek leave of appeal.

The foregoing conditions are for the exclusive benefit of the Vendor, and any condition may be waived by it in whole or in part. Any such waiver is only binding on the Vendor if it is made in writing. If the Vendor refuses to waive one of the foregoing conditions, which are for its exclusive benefit, and such condition cannot be complied with by the Purchaser, then either the Vendor or the Purchaser may, on notice in writing to the other party, rescind this Agreement and the parties shall have no further rights and remedies against each other.

Section 5.03 Termination Obligations. If the Purchaser or the Vendor validly terminates this Agreement in accordance with Sections 5.01 or 5.02, then:

- (i) all the obligations of both the Vendor and the Purchaser pursuant to this Agreement shall be at an end; and
- (iii) neither party shall have any right to specific performance or other remedy against, or any right to recover damages or expenses from the other.

For certainty, the Purchaser shall not, under any circumstances (except in accordance with section 2.04(iii)) be entitled to have the Deposit together with any accrued interest thereon returned to the Purchaser, notwithstanding whether the Purchaser validly terminates this Agreement.

Section 5.04 Breach by the Purchaser. If the Purchaser fails to complete the Transaction in accordance with the terms of this Agreement, then the Vendor may, by notice to the Purchaser, elect to treat the Agreement as having been repudiated by the Purchaser. In all circumstances, the Deposit and any other payments made by the Purchaser shall be forfeited to the Vendor on account of its liquidated damages, not as a penalty, and the Assets may be resold by the Vendor without prejudice to any claims which the Vendor may have against the Purchaser by reason of such default.

## ARTICLE 6

### CLOSING

Section 6.01 Place of Closing. The completion of this transaction as it relates to the purchase of the Assets shall take place electronically on the 15<sup>th</sup> day of June (the “**Closing Date**”), or such earlier or later time or date as the parties may agree in writing (such time being referred to herein as the “**Time of Closing**”).

Section 6.02 Deliveries on Closing by the Vendor. The Vendor shall deliver to the Purchaser at the Time of Closing:

- (a) an executed copy of the General Conveyance, substantially in the form attached as Schedule D hereto;
- (b) the Approval and Vesting Order issued and entered by the Court of Queen’s Bench; and
- (c) all other documents contemplated by this Agreement to effectually complete the Transaction.

Section 6.03 Deliveries on Closing by the Purchaser. The Purchaser shall deliver to the Vendor at the Time of Closing:

- (a) an executed copy of the General Conveyance, substantially in the form attached as Schedule D hereto;
- (b) the Purchase Price (less the Deposit), together with the GST Payment, by way of wire transfer, details of which are set forth in Schedule “B”, attached hereto, made payable to the Vendor;
- (c) evidence satisfactory to the Vendor that the Purchaser has complied with the provisions of paragraph 2.05 of this Agreement; and

- (d) all other documents contemplated by this Agreement to effectually complete the Transactions.

## **ARTICLE 7**

### **LIABILITIES AND INDEMNITIES**

Section 7.01 General Indemnity. If Closing occurs, the Purchaser shall, without any further necessary action on the part of the Vendor or the Purchaser:

- (a) assume, perform, pay, discharge and be liable to the Vendor for; and
- (b) as a separate covenant, save and hold harmless and indemnify the Vendor, and the Corporation and each other Vendor Entity from and against;

all Losses and Liabilities suffered, sustained, paid or incurred by any of them to the extent arising or accruing on or after the Closing Date and which relate to the Assets, and/or the Assumed Liabilities, including but not limited to all Losses and Liabilities attributable to the operation, ownership, use, construction or maintenance of the Assets arising or accruing on or after the Closing Date, together with any liens registered against the Assets. The Purchaser's indemnity obligation set forth in this Section 7.01 shall survive the Closing Date indefinitely.

Section 7.02 No Merger. There shall not be any merger of any liability or indemnity hereunder in any assignment, conveyance, transfer or document delivered pursuant hereto notwithstanding any rule of law, equity or statute to the contrary and all such rules are hereby waived.

Section 7.03 Holding of Indemnities. The Vendor will hold the indemnities contained in Section 7.01 in trust on behalf of all of the other Vendor Entities and may enforce the same on their behalf.

## **ARTICLE 8**

### **CONFIDENTIALITY, PUBLIC ANNOUNCEMENTS AND SIGNS**

Section 8.02 Confidentiality.

- (a) The Purchaser may not disclose the contents of this Agreement, including the name of the Vendor, Receiver or the Corporation, or any information concerning negotiations leading to this Agreement and the Transaction, without the prior written consent of the Receiver.
- (b) Prior to Closing, all information obtained by the Purchaser from the Vendor respecting the Assets shall be retained in confidence by it and used by it only for the purposes of this Transaction.

Section 8.02 Public Announcements. If the Purchaser intends to issue a press release or other public disclosure of this Agreement, the terms hereof or the Transaction post-Closing, the Purchaser shall provide the Receiver with an advance copy of any such press release or other public disclosure with sufficient time to enable the Receiver to review such press release or other public disclosure and provide its written consent to such press release or other public disclosure, not to be unreasonably withheld.

Section 8.03 Signs. Within thirty (30) days following the Closing Date, the Purchaser shall remove the names of the Vendor, the Corporation and predecessors from all signs located on the Assets. If the

Purchaser fails to comply with the foregoing, the Vendor shall have the right, at its discretion, to remove its name as aforesaid and the Purchaser shall be responsible for and shall reimburse such Vendor for all reasonable costs incurred by such Vendor in so doing.

## **ARTICLE 9**

### **MISCELLANEOUS**

Section 9.01 Title and Risk. The Assets shall remain at the risk of the Vendor to the extent of its interest, until completion of the Transactions. Pending closing, in the event of damage to any of the Assets prior to the Time of Closing, the Purchaser shall complete the Transactions without reduction of the Purchase Price, in which event proceeds of insurance or compensation shall be payable to the Purchaser (up to a maximum cap equal to the Purchase Price, and all funds above the Purchase Price shall be retained by the Vendor). For certainty, the Purchaser cannot rescind this Agreement even in the event of substantial damage to the Assets.

Section 9.02 Obligations to Survive. Notwithstanding the completion of the Transactions set out in this Agreement or the delivery of documents pursuant to this Agreement, the obligations, covenants, representations and warranties of the Parties hereto shall survive the completion of the Transactions and shall remain in full force and effect and shall not merge as a result thereof.

Section 9.03 Receiver's Capacity. The Parties hereto agree that the Receiver acts solely in its capacity as receiver and manager of the undertaking, property and assets of the Corporation, and that the Receiver and its directors, officers, agents, representatives, servants or employees shall have no personal or corporate liability under or as a result of this Agreement, or at common law, or by statute, or equity or otherwise in connection herewith.

Section 9.04 Further Assurances. Each of the Parties hereto from and after the Time of Closing shall, from time to time, and at the request and expense of the party requesting the same, do all such further acts and things and execute and deliver such further instruments, documents, matters, papers and assurances as may be reasonably requested for more effectually carrying out the true intent and meaning of this Agreement.

Section 9.05 Time of the Essence. Time shall be of the essence of this Agreement.

Section 9.06 Currency. All references in this Agreement to monetary amounts, unless indicated to the contrary, are to Canadian currency.

Section 9.07 Notices. Any notice, demand or other communication required or permitted to be given to any party hereunder shall be given in writing and addressed as follows:

In the case of the Vendor:

Alvarez & Marsal Canada Inc.  
250 6 Ave South West, Suite 1100  
Calgary, AB T2P 3H7

Attention: Orest Konowalchuk and Cassie Riglin  
Facsimile No.: (403) 538 7551



Email: [okonowalchuk@alvarezandmarsal.com](mailto:okonowalchuk@alvarezandmarsal.com) & [criglin@alvarezandmarsal.com](mailto:criglin@alvarezandmarsal.com)

with a copy to:

Torys LLP  
525 - 8th Avenue SW, 46th Floor  
Calgary, Alberta T2P 1G1

Attention: Kyle Kashuba  
Email: [kkashuba@torys.com](mailto:kkashuba@torys.com)

In the case of the Purchaser:

C. Keay Investments Ltd.  
Attention: Mike Keay and John Cox  
Facsimile No.: (604) 940-0210  
Email: [johnc@oceantailer.com](mailto:johnc@oceantailer.com)

with a copy to:

Miller Thomson LLP  
Attention: Bryan A. Hosking  
Facsimile No.: 780.424.5866  
Email: [bhosing@millერთhompson.com](mailto:bhosking@millერთhompson.com)

Any such notice shall be deemed to be sufficiently given if personally delivered or sent by facsimile or electronic transmission, and in each case shall be deemed to have been received by the other party on the same day on which it was delivered or sent by facsimile or electronic transmission, if such day is a business day, and, if not, on the next following business day.

Section 9.08 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes any and all prior negotiations, understandings and agreements between the parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the parties intended to be bound thereby.

Section 9.09 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta, and the laws of Canada applicable therein. Each of the parties hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta.

Section 9.10 Singular, Plural and Gender. Words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders. The term "person", as used herein, shall have the meaning ascribed to it pursuant to the *Business Corporations Act* (Alberta).

Section 9.11 Headings. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation hereof.

Section 9.12 Successors and Assigns. This Agreement shall be binding upon, and enure to the benefit of, the Parties hereto and their respective successors and permitted assigns. No party may assign its rights or obligations under this Agreement without the prior written consent of the other party. No

assignment, transfer, or other disposition of this Agreement or the Assets or any portion of the Assets shall relieve the Purchaser from its obligations to the Vendor herein. The Vendor shall have the option to claim performance or payment of the obligations from the Purchaser or the assignee or transferee, and to bring proceedings in the event of default against either or all of them, provided that nothing herein shall entitle the Vendor to receive duplicate performance or payment of the same obligation.

Section 9.13 Dissolution of the Corporation. The Purchaser acknowledges and agrees that nothing in this Agreement shall operate to prohibit or diminish in any way the right of the Corporation or the Vendor to dissolve, wind-up, make an assignment in bankruptcy in any manner or at any time subsequent to the Closing Date as it may determine in their sole discretion, which may be exercised without regard to the impact any such action may have on the Vendor's ability to fulfil its obligations under this Agreement that survive Closing.

Section 9.14 Independent Legal Advice. Each of the Parties to this Agreement acknowledges that it has had the time and opportunity to obtain independent legal advice with respect to the execution of this Agreement, or has waived that opportunity, and each of the Parties to this Agreement has read, understands and agrees with all of the terms and conditions contained in this Agreement.

Section 9.15 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document and all counterparts and adopting instruments will be construed together and will constitute one and the same agreement.

Executed at Calgary, Alberta, this 17th day of May, 2021.

**ALVAREZ & MARSAL CANADA INC.**, solely  
in its capacity as court-appointed receiver and  
manager of all of the assets, undertakings and  
properties of **PEOPLE EXPRESS  
TRANSPORT LTD.** and not in its personal  
capacity and without personal or corporate liability



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Name: Orest Konowalchuk, LIT

Title: Senior Vice President

**C. KEAY INVESTMENTS LTD.**

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Name: Mike Keay

Title: Vice-President

assignment, transfer, or other disposition of this Agreement or the Assets or any portion of the Assets shall relieve the Purchaser from its obligations to the Vendor herein. The Vendor shall have the option to claim performance or payment of the obligations from the Purchaser or the assignee or transferee, and to bring proceedings in the event of default against either or all of them, provided that nothing herein shall entitle the Vendor to receive duplicate performance or payment of the same obligation.

Section 9.13 Dissolution of the Corporation. The Purchaser acknowledges and agrees that nothing in this Agreement shall operate to prohibit or diminish in any way the right of the Corporation or the Vendor to dissolve, wind-up, make an assignment in bankruptcy in any manner or at any time subsequent to the Closing Date as it may determine in their sole discretion, which may be exercised without regard to the impact any such action may have on the Vendor's ability to fulfil its obligations under this Agreement that survive Closing.

Section 9.14 Independent Legal Advice. Each of the Parties to this Agreement acknowledges that it has had the time and opportunity to obtain independent legal advice with respect to the execution of this Agreement, or has waived that opportunity, and each of the Parties to this Agreement has read, understands and agrees with all of the terms and conditions contained in this Agreement.

Section 9.15 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document and all counterparts and adopting instruments will be construed together and will constitute one and the same agreement.

Executed at Delta, BC this 17th day of May, 2021.

**ALVAREZ & MARSAL CANADA INC.**, solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of **PEOPLE EXPRESS TRANSPORT LTD.** and not in its personal capacity and without personal or corporate liability

\_\_\_\_\_  
Name: Orest Konowalchuk, LIT

Title: Senior Vice President

**C. KEAY INVESTMENTS LTD.**

\_\_\_\_\_  
Name: Mike Keay *Tom Lok*  
Title: ~~Vice President~~ *Chief Financial Officer*

## Schedule "A"

## Assets

PXNL1001 - 81746	LJRC41374LT005424 [REDACTED]	2020	CIMC	40'	Trailer	just chassis
PXNL1002 - 81109	LJRC41370LT002116 [REDACTED]	2020	CIMC	40'	Trailer	just chassis
PXNL1003 - 81105 and genset	LJRC41373LT002112 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1004 - 81106 and genset	LJRC41375LT002113 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1005 - 81107 and genset	LJRC41377LT002114 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1005 - 81108 and genset	LJRC41379LT002115 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1007 - 81112 and genset	LJRC41376LT002119 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1008 - 81113 and genset	LJRC41372LT002120 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1009 - 81733 and genset	LJRC41376LT005411 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1010 - 81734 and genset	LJRC41378LT005412 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1011 - 81735 and genset	LJRC4137XLT005413 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1012 - 81736 and genset	LJRC41371LT005414 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1013 - 81737 and genset	LJRC41373LT005415 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1014 - 81738 and genset	LJRC41375LT005416 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis
PXNL1015 - 81739 and genset	LJRC41377LT005417 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer	chassis

PXNL1016 - 81740 and genset	LJRC41379LT005418 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer chassis
PXNL1017 - 81741 and genset	LJRC41370LT005419 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer chassis
PXNL1018 - 81742 and genset	LJRC41377LT005420 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer chassis
PXNL1019 - 81743 and genset	LJRC41379LT005421 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer chassis
PXNL1020 - 81744 and genset	LJRC41370LT005422 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer chassis
PXNL1021 - 81745 and genset	LJRC41372LT005423 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer chassis
PXNL1022 - 81747 and genset	LJRC41376LT005425 [REDACTED]	2020	CIMC	40' TRIDEM	Trailer chassis
					<b>Total Purchase Price</b>
[REDACTED]					

## Schedule "B"

## Vendor's Wire Transfer Details

Wiring Funds to RBC in CAD Funds  
(Alvarez & Marsal Canada  
Inc., Receiver for People  
Transport Ltd.)

**Receiving Client's Name**  
**As shown on bank records**

Alvarez & Marsal Canada Inc.,  
Receiver for People Transport Ltd.

**Client's Full Address**

Suite 1110, 250 - 6<sup>th</sup> Ave SW, Calgary  
AB T2P 3H7

**Branch Transit  
Number**

02319

**Bank  
Number**

003

**Account  
Number**

106 320 5

**Swift Code**

ROYCCAT2

**Bank Name**

Royal Bank of Canada

**Bank Address**

Bow Valley Square 3  
255 5 Ave SW Calgary, AB  
T2P 3G6  
Canada

**Bank Phone Number**

(403) 292-2048

**Schedule “C”**

**Approval and Vesting Order**

*[To be in a form substantially similar to that attached to the Receiver’s Application materials, filed on or around May 17, 2021 in connection with the Approval and Vesting Order related to this Transaction.]*

## Schedule “D”

### General Conveyance

This General Conveyance made this [15<sup>th</sup>], day of [June], 2021.

#### BETWEEN:

**ALVAREZ & MARSAL CANADA INC.**, solely in its capacity as Court-appointed receiver and manager of all of the assets, undertakings and properties of **PEOPLE EXPRESS TRANSPORT LTD.** (the “**Corporation**”) and not in its personal capacity and without personal or corporate liability (the “**Vendor**”)

- and -

**C. KEAY INVESTMENTS LTD.**, a corporation having an office in the Province of British Columbia (the “**Purchaser**”)

**WHEREAS** the Vendor and the Purchaser entered into that Asset Purchase Agreement dated May 17<sup>th</sup>, 2021 (the “**Agreement**”);

**AND WHEREAS** the Vendor has agreed to sell and convey the Corporation’s entire right, title, estate and interest in the Assets (if any) to the Purchaser and the Purchaser has agreed to purchase and accept all of the Corporation’s rights, title, estate and interest in and to the Assets (if any) in accordance with the terms and conditions contained in the Agreement;

**NOW THEREFORE** in consideration of the premises hereto and the covenants and agreements hereinafter set forth and contained, the Parties hereto covenant and agree as follows:

#### 1. Definitions

All capitalized terms not defined herein shall have the same meaning as set out in the Agreement.

#### 2. Conveyance

The Vendor, for the consideration provided for in the Agreement, the receipt and sufficiency of which is acknowledged by the Vendor, hereby sells, assigns, transfers and conveys the entire right, title, benefit and interest of the Corporation’s (whether absolute or contingent, legal or beneficial), and if any, in and to the Assets to the Purchaser, its successors and assigns, and the Purchaser purchases and accepts such interests from the Vendor, TO HAVE AND TO HOLD the same absolutely, subject to the terms of the Agreement.

#### 3. Effective Time

This General Conveyance and the transfer of title to and possession of the Corporation’s interest in and to the Assets will, subject to the terms of the Agreement, be effective as of the Closing Date.

#### 4. Subordinate Document

This General Conveyance is executed and delivered by the Parties pursuant to the Agreement for the purposes of the provisions of the Agreement, and the terms hereof shall be read in conjunction with the



terms of the Agreement. If there is a conflict between the provisions of the Agreement and this General Conveyance, the provisions of the Agreement shall prevail to the extent of the conflict.

5. **Enurement**

This General Conveyance enures to the benefit of and is binding upon the Parties and their respective administrators, trustees, receivers, successors and permitted assigns.

6. **Further Assurances**

Each Party shall, after the date of this General Conveyance, at the request of the other Party and without further consideration, do all further acts and execute and deliver all further documents which are reasonably required to perform and carry out the terms of this General Conveyance.

7. **Governing Law**

This General Conveyance will be governed by and construed in accordance with the laws of the Province of Alberta.

**IN WITNESS WHEREOF** the Parties have duly executed this General Conveyance.

**ALVAREZ & MARSAL CANADA INC.**, solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of **PEOPLE EXPRESS TRANSPORT LTD.** and not in its personal capacity and without personal or corporate liability

**C. KEAY INVESTMENTS LTD.**

Per: \_\_\_\_\_  
Name: Orest Konowalchuk, LIT  
Title: Senior Vice President

Per: \_\_\_\_\_  
Name: Mike Keay  
Title: Vice-President

## Schedule “E”

### Purchaser’s Officer’s Certificate

Attached to and made part of that Asset Purchase Agreement dated May 17, 2021.

Re: Section 5.02(a) of the Asset Purchase Agreement (“**Agreement**”) dated May 17, 2021, between ALVAREZ & MARSAL CANADA INC., solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PEOPLE EXPRESS TRANSPORT LTD. and not in its personal capacity and without personal or corporate liability, as the Vendor and C. KEAY INVESTMENTS LTD., as the Purchaser.

Unless otherwise stated, the definitions provided for in the Agreement are adopted in this Certificate.

I, Mike Keay, Vice-President, hereby certify on behalf of the Purchaser and not in any personal capacity that:

1. Each of the representations and warranties of the Purchaser contained in the Agreement is true and correct in all material respects as of the Closing Date.
2. All Closing conditions for the benefit of the Purchaser, pursuant to the Agreement, have been satisfied or waived.
3. This Certificate is made for and on behalf of the Purchaser and is binding upon it, and I am not incurring and will not incur any personal liability whatsoever with respect to it.
4. This Certificate is made with full knowledge that the Vendor is relying on the same for the Closing of the Transaction.

Dated this \_\_\_\_ day of June, 2021.

**C. KEAY INVESTMENTS LTD.**

Per: \_\_\_\_\_  
 Name: Mike Keay  
 Title: Vice-President

## **APPENDIX D**

### **Letter to RPM**

May 4, 2021

**WITHOUT PREJUDICE**

**VIA EMAIL ([INFO@RPMTRAILER.CA](mailto:INFO@RPMTRAILER.CA) & [PAULM@RPMTRAILER.CA](mailto:PAULM@RPMTRAILER.CA))**

**RPM Trailer Repair Service Ltd.**

285151 Kleysen Way  
Rocky View, AB  
T1X 0K1

**Attention:** Paul McCormick

Dear Mr. McCormick:

**Re: In the Matter of the Receivership of People Express Transport Ltd. (“People Express”);  
Return of Property of People Express**

We act as counsel to Alvarez & Marsal Canada Inc. in relation to the above-captioned matter concerning the receivership of People Express. On April 22, 2021, the Court of Queen’s Bench of Alberta granted an Order (the “**Consent Receivership Order**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 and section 13(2) of the *Judicature Act*, RSA 2000, c J-2 whereby Alvarez & Marsal Canada Inc. was appointed receiver and manager (“**Receiver**”), without security, of all of People Express’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”) (such proceedings referred to herein as the “**Receivership Proceedings**”). For further information related to the Receivership Proceedings, please visit: [www.alvarezandmarsal.com/PETL](http://www.alvarezandmarsal.com/PETL) (the “**Receiver’s Website**”).

We are writing to you concerning certain Property, specifically the following equipment described below (the “**Subject Property**”), which we understand may be and/or is in your possession:

- (a) Unit # 1565 – 2017 Utility Trailer VIN Number 1UYVS2532 H2950019; and
- (b) Unit # 1503 – 2008 Utility Trailer VIN Number 1UYVS2536 8U545303.

We understand that the Receiver has followed up with you requesting that you return the Subject Property; however, the Receiver has not yet received the Subject Property. As such, the Receiver hereby again demands that you immediately return the Subject Property and any other Property, documentation, and/or information owned or belonging to People Express in your possession in compliance with the law and the Consent Receivership Order.

The Receiver remains prepared to resolve any disputes with you by direct discussion and mutual agreement, and therefore, the Receiver invites an immediate discussion.

We trust that you understand the serious nature of this matter; therefore, we look forward to receiving confirmation that you have made or arranged to return the Subject Property within two (2) days of the date of this correspondence. Alternatively, the Receiver would be pleased to also make arrangements to pick up the Subject Property. If the Receiver does not receive the Subject Property by that time, the Receiver will consider pursuing this matter further, including commencing legal proceedings to address these issues and enforcing its rights without further delay. The Receiver hereby expressly reserves all available rights, remedies and claims in their entirety, any of which may be exercised or otherwise pursued at any time, and from time to time, in the sole and absolute discretion of the Receiver, as the case may be, in accordance with the law and in equity.

Further, with respect to your request for the payment of certain invoices, we note that pursuant to the Consent Receivership Order, which can be found on the Receiver's Website, any and all proceedings currently under way against or in respect of People Express or the Property are stayed and suspended pending further Order of the Court. Please see paragraph 8 of the Consent Receivership Order.

We trust that the foregoing is in order, but should you have any questions or concerns relating to the above, please do not hesitate to contact the undersigned to discuss the same.

Kindly govern yourselves accordingly.

Sincerely,



Kyle Kashuba

KDK/jw

cc: The Receiver, Alvarez & Marsal Canada Inc., Attention: Orest Konowalchuk, Cassie Riglin and Bryan Krol (via email)  
Torys LLP, Attention: Jessie Mann (via email)

## **APPENDIX E**

### **Email to RPM**

## Krol, Bryan

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**From:** Hilton, Trevor  
**Sent:** Thursday, May 13, 2021 1:47 PM  
**To:** paulm@rpmtrailer.ca; info@rpmtrailer.ca  
**Cc:** Mann, Jessie; Kashuba, Kyle; Krol, Bryan; Riglin, Cassie  
**Subject:** PETL Stolen Property

Hello,

Please note that we are filing Court materials tomorrow or on Monday and we intend to advise the Court of the Receiver's efforts to retrieve the Stolen Property, as well as details regarding your conduct and request an Order from the Court to compel you to return the Stolen Property. As such, we are once again requesting that you return the Stolen Property forthwith and contact me to advise when we can expect to receive same, as we will otherwise be proceeding with informing the Court about your conduct and potentially seeking a contempt order.

We look forward to hearing from you by no later than 4:00 pm today.

Thanks,

**Trevor Hilton**  
Analyst  
Alvarez & Marsal Canada  
Suite 1110, 250 6<sup>th</sup> Ave. S.W.  
Calgary, AB T2P 3H7  
Direct: +1 403 538 7538  
Mobile: +1 403 616 8575  
[AlvarezandMarsal.com](http://AlvarezandMarsal.com)

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## **APPENDIX F**

### **Summary of Professional Fees**



**People Express Transport Ltd. - In Receivership**  
**Summary of the Receiver's Fees & Disbursements**  
**April 14, 2021 to May 7, 2021**

**Invoices subject to approval by this Court**

<b>Invoice No.</b>	<b>Period</b>	<b>Fees</b>	<b>Disbursements</b>	<b>Total Fees &amp; Disbursements</b>	<b>GST</b>	<b>Total</b>
830743 - Invoice #1	April 14 to May 7, 2021	\$ 260,404.00	\$ 964.72	\$ 261,368.72	\$13,068.44	\$ 274,437.16
<b>TOTAL</b>		<b>\$ 260,404.00</b>	<b>\$ 964.72</b>	<b>\$ 261,368.72</b>	<b>\$13,068.44</b>	<b>\$ 274,437.16</b>

**People Express Transport Ltd. - In Receivership**  
**Summary of the Receiver's Legal Counsel (Torys LLP) Fees & Disbursements**  
**April 19, 2021 to May 7, 2021**

**Invoices subject to approval by this Court**

<b>Invoice No.</b>	<b>Period</b>	<b>Fees</b>	<b>Disbursements</b>	<b>Total Fees &amp; Disbursements</b>	<b>GST</b>	<b>Total</b>
1536778	April 19 to April 30, 2021	\$ 49,912.50	\$ 82.85	\$ 49,995.35	\$ 2,498.65	\$ 52,494.00
1536782	April 19 to April 30, 2021	\$ -	\$ 260.12	\$ 260.12	\$ 12.26	\$ 272.38
1537178	May 1 to May 7, 2021	\$ 37,306.50	\$ 656.14	\$ 37,962.64	\$ 1,889.65	\$ 39,852.29
<b>TOTAL</b>		<b>\$ 87,219.00</b>	<b>\$ 999.11</b>	<b>\$ 88,218.11</b>	<b>\$ 4,400.56</b>	<b>\$ 92,618.67</b>