

COURT FILE NUMBERS 1803 - 09581

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF BANK OF MONTREAL  
(APPLICANT)

DEFENDANT LADACOR AMS LTD.,  
(RESPONDENT) NOMADS PIPELINES CONSULTING LTD.,  
2367147 ONTARIO INC., and  
DONALD KLISOWSKY

DOCUMENT SECOND REPORT OF THE RECEIVER



October 16, 2018

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**RECEIVER**  
ALVAREZ & MARSAL CANADA INC.  
Bow Valley Square IV  
Suite 1110, 250 - 6<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3H7  
Attention: Orest Konowalchuk / Chad Artem  
Telephone: (403) 538-4736 / (403) 538-7518  
Email: [okonowalchuk@alvarezandmarsal.com](mailto:okonowalchuk@alvarezandmarsal.com) /  
[cartem@alvarezandmarsal.com](mailto:cartem@alvarezandmarsal.com)

**COUNSEL TO RECEIVER**  
BLAKE, CASSELS & GRAYDON LLP  
3500, 855 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4J8  
Attention: Ryan Zahara / James Reid  
Phone: (403) 260-9628 / (403) 260-9731  
Fax: (403) 260-9700  
Email: [ryan.zahara@blakes.com](mailto:ryan.zahara@blakes.com) / [james.reid@blakes.com](mailto:james.reid@blakes.com)  
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ALVAREZ & MARSAL

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## INTRODUCTION

1. On May 18, 2018 (the “**Receivership Date**”), pursuant to an order of the Court of Queen’s Bench of Alberta (the “**Court**”) granted in these proceedings (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed 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 (the “**Property**”), in respect of Ladacor AMS Ltd. (“**Ladacor**”), Nomads Pipelines Consulting Ltd. (“**Nomads**”) and 2367147 Ontario Inc. (“**236 Inc.**”) (collectively, the “**Debtors**” and each individually a “**Debtor**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”), section 13(2) of the *Judicature Act*, RSA 2000, c J-2 and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c.P-7 (“**PPSA**”).
2. The Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, manage, operate and carry on the business of the Debtors and to take possession and control of the Property (as defined in the Receivership Order) of Debtors and any and all proceeds, receipts and disbursements arising out of or from the Debtors, and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business.
3. The purpose of this Second Report of the Receiver (the “**Second Report**” or “**this Report**”) is to provide this Honourable Court with the Receiver’s comments on:
  - a. the proposed asset purchase agreement from the Sioux Lookout First Nations Health Authority (“**SLFNHA**”) to purchase the Hotel (as defined below) owned by 236 Inc. (the “**SLFNHA Stalking Horse APA**”);

- b. a sales and solicitation process proposed by the Receiver to solicit offers from parties interested in acquiring the Hotel (the “**Hotel Stalking Horse Sale Process**”);
  - c. an analysis of the break fee considered in the Hotel Stalking Horse Sale Process;
  - d. the selection of a marketing agent to assist the Receiver to advertise and sell the Hotel as part of the Hotel Stalking Horse Sale Process;
  - e. the Receiver’s application for the sealing of the Confidential Appendix 1 to this Report (the “**Sealing Order**”);
  - f. the approval of the proposed interim distribution of funds recovered by the Receiver to Bank of Montreal (“**BMO**”); and
  - g. the Receiver’s conclusion and recommendations.
3. Capitalized words or terms not defined or ascribed a meaning in the Second Report are as defined or ascribed a meaning in the Receivership Order or the First Report of the Receiver dated October 2, 2018 (the “**First Report**”).
4. All references to dollars are in Canadian currency.

## **TERMS OF REFERENCE**

5. In preparing this Second Report, the Receiver has relied upon information obtained prior to the Receivership Proceedings by Alvarez & Marsal Canada ULC in its role as financial advisor (as discussed in the First Report), representations of certain former management and former employees of the Debtors; and financial and other information contained in the Debtors' books and records, which were produced and maintained principally by the Debtors. The Receiver has not performed an audit, review or other verification of such information.

## BACKGROUND

6. Nomads' principal business is investments and the manufacturing and production of advanced modular buildings and structures. These advanced modular buildings and structures were constructed from sea cans. Nomads is owned by Mr. Donald Klisowsky (97.28%) and Mr. Sam Klisowsky (2.72%) through the issuance of Class A common shares.
7. Ladacor is a wholly-owned subsidiary of Nomads and is also in the business of manufacturing and production of advanced modular buildings and structures. For accounting and financial reporting purposes, the Receiver understands that Nomads and Ladacor combined their financial records and did not separate their assets and liabilities but were in the process of doing so prior to the Receivership Date.
8. Ladacor is the borrower of funds from BMO of approximately \$4.7 million as at the Receivership Date and each of Nomads, 236 Inc. and Donald Klisowsky have guaranteed to BMO the indebtedness of Ladacor.
9. 236 Inc. is a corporation registered to do business in the Province of Ontario. 236 Inc.'s principal business activity is operating a hotel, which is part of the Days Inn franchise and is currently operating as the Days Inn Sioux Lookout (the “**Hotel**”) in Sioux Lookout, Ontario. The Hotel opened on December 8, 2014 and is a 60-room, limited-service type hotel, that includes a 2,200 sq. ft. meeting space, a fitness facility and approximately 95 outdoor surface parking spaces. Nomads owns 90% of the Class A common shares of 236 Inc. as an investment and the remaining 10% is owned by J. Steenhof & Associates Ltd.
10. Further background to each of the Debtors and their operations are contained in the materials filed in support of the Receivership Order. These documents and other publicly filed Court materials, including the First Report, in these proceedings have been posted on the Receiver's website at: [www.alvarezandmarsal.com/ladacor](http://www.alvarezandmarsal.com/ladacor) (the “**Receiver’s Website**”).

## THE HOTEL STALKING HORSE SALE PROCESS

### SLFNHA Stalking Horse APA

11. In advance of a broad sales solicitation process, the Receiver entered discussions with SLFNHA to explore the possibility of participating as a stalking horse bidder for the Hotel, which would be, in the Receiver's opinion, an effective method to maximize the value of 236 Inc., including the Hotel itself.
12. Subject to approval by the Court, SLFNHA has agreed to participate in a Hotel Stalking Horse Sale Process through the SLFNHA Stalking Horse APA. SLFNHA and the Receiver negotiated and entered into the SLFNHA Stalking Horse APA dated October 16, 2018 for the purchase of the Hotel.
13. A copy of the SLFNHA Stalking Horse APA is attached herein as Appendix A.
14. The SLFNHA Stalking Horse APA contains a purchase price (the "**Hotel Purchase Price**") of \$5.0 million, which is subject to Court approval.

### Requirement for a Court approved process

15. The Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things:
  - a. engage, among other things, consultants, appraisers, agents and experts to assist the Receiver in exercising its powers and duties;
  - b. market any or all of the Property, including advertising and soliciting for offers in respect of the Property and negotiating such terms and conditions as the Receiver may deem appropriate; and
  - c. apply for any vesting order or other orders necessary to convey the Property or any part of parts thereof to a purchaser or purchasers

thereof, free and clear of any liens or encumbrances affecting such Property.

16. Notwithstanding the power to market and sell Property included in the Receivership Order, the Receiver is requesting the Court to approve the Hotel Stalking Horse Sale Process as:
  - a. in the circumstances, a Court approved Hotel Stalking Horse Sale Process will provide clarity and consistency to stakeholders involved in the Receivership proceedings and most notably the potential purchasers of the Hotel; and
  - b. the Court will ultimately be requested by the Receiver to respectfully approve offers and vest property interests, and the Receiver wishes to include the Court at an early stage.
17. BMO has reviewed the proposed Hotel Stalking Horse Sale Process and the Receiver understands that BMO has no objection to the proposed Hotel Stalking Horse Sale Process.

#### **Selection of the Marketing Agent**

18. In order to carry out the sale of the Hotel, the Receiver undertook a process to select an experienced expert and independent marketing agent.
19. The selection of a marketing agent included, but was not limited to:
  - (i) considering marketing agents previously utilized by the Receiver on other insolvency files; (ii) the Receiver's past experience in dealing with certain marketing agents for similar types of assets; (iii) independence and ability to work closely with the Receiver and significant stakeholders (if required); (iv) familiarity with the hotel industry and underlying issues in that industry and with assets such as the Hotel; and (v) the marketing agent's overall experience to market these assets.

20. The Receiver canvassed and received proposals from three experienced marketing agents, including Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”). JLL’s proposal was more comprehensive and demonstrated their capabilities and experience in selling hotels in remote (suburban) areas of Ontario, Canada. In addition, JLL had a more competitive pricing structure consistent with recent market transactions.
21. In the circumstances, the JLL proposal was considered most suitable and was accepted by the Receiver, subject to Court approval. A copy of the JLL engagement agreement (the “**JLL Engagement Agreement**”), which redacts the success fee component is attached as Appendix B.
22. The success fee in the JLL Engagement Agreement is based on the greater of a minimum fixed fee if no offer is received that is superior to the SLFNHA Stalking Horse APA and a percentage of the ultimate transaction value in excess of the SLFNHA Stalking Horse APA.
23. The success fee component of the JLL Engagement Agreement has been redacted as it is commercially-sensitive and may lead to speculation by potential purchasers with respect to the JLL’s preliminary views regarding the value of the Hotel. The Receiver will make an unredacted copy of the JLL Engagement Agreement available to the Court at the application and, if the Court so orders, will file a confidential copy of this Report with an unredacted copy of the JLL Engagement Agreement in a sealed envelope.

### **Summary of the proposed Hotel Stalking Horse Sale Process**

24. The Hotel Stalking Horse Sale Process is attached to the SLFNHA Stalking Horse APA as Schedule C, and is attached as Appendix C to this Second Report. An overview of the major components contemplated in the Hotel Stalking Horse Sale Process is set out as follows:
  - a. the Receiver and/or its marketing agent (hereinafter, the Receiver) will prepare a non-confidential teaser letter (the “**Teaser**”) describing

the Hotel Stalking Horse Sale Process and Confidentiality Agreement (the “CA”). The Teaser and CA will be posted on the Receiver’s Website as soon as practicable following this Honourable Court’s approval of the Hotel Stalking Horse Sale Process;

- b. advertisement of the Hotel Stalking Horse Sale Process will be published in the Globe and Mail and potentially other advertisements as deemed appropriate by the Receiver;
- c. all potential bidders (the “**Potential Bidders**”) that have executed the CA, in reasonable form acceptable to the Receiver, will be provided with, among other things:
  - i. the confidential information memorandum (the “**CIM**”) describing the Hotel Stalking Horse Sale Process and SLFNHA APA; and
  - ii. access to any further due diligence materials as deemed appropriate by the Receiver,
- d. the deadline for receipt, by the Receiver, of final binding bids (“**Final Bids**”) in the form of an asset purchase agreement will be noon MT on Wednesday, November 28, 2018 (the “**Bid Deadline**”);
- e. immediately following the Bid Deadline, the Receiver will review the Final Bids to assess whether any of the Final Bids constitute a qualified bid as set out in the Hotel Stalking Horse Sale Process (a “**Qualified Bid**”);
- f. the Receiver will make it clear in the marketing documents that the consideration in any Qualified Bid must be in excess of the Hotel Purchase Price (\$5.0 million) as per the SLFNHA Stalking Horse APA, the break fee of \$125,000 (the “**Hotel Break Fee**”), one Minimum Incremental Overbid (defined below) plus any amount

necessary to pay the Receivership charges the purchaser is obligated to pay under the SLFNHA Stalking Horse APA;

- g. if the Receiver determines that: (a) no Qualified Bid was received; or (b) at least one Qualified Bid was received but it is not likely that the transactions (other than the Stalking Horse Bid) contemplated in any such Qualified Bids will provide greater consideration than the Stalking Horse Bid, the Stalking Horse Bid shall be deemed to be the Successful Bid and the Stalking Horse Bidder shall be the Successful Bidder, and the Receiver shall terminate the Sales Procedure and seek to implement the Stalking Horse Bid, including, by filing an application with the Court within 5 Business Days of such termination seeking approval to implement the Stalking Horse Bid;
- h. if the Receiver, determines that (a) one or more Qualified Bids were received, and (b) it is likely that the transactions contemplated by one or more Qualified Bids will be consummated, the Hotel Stalking Horse Sale Process will not be terminated, an Auction (as defined below) will be held, and the Receiver will promptly notify all Qualified Bidders by no later than 6:00 pm MT on the day after the Bid Deadline, including the Stalking Horse Bidder, that they are entitled to participate in the Auction;
- i. if the Auction is to be held, the Receiver will conduct an Auction (the “**Auction**”), at 9:00 am MT on November 30, 2018 at the offices of the Receiver’s counsel or at another location as communicated by the Receiver; and
- j. the Auction will include the following key elements;
  - i. At least 12 hours prior to the Auction, each Qualified Bidder who has submitted a Qualified Bid, and SLFNHA, must inform the



Receiver whether it intends to participate in the Auction (the “**Auction Bidders**”);

- ii. at least 12 hours prior to the Auction, the Receiver will provide copies of the Qualified Bid which it believes is the highest or otherwise best Qualified Bid (the “**Starting Bid**”) to all Auction Bidders;
- iii. the Receiver, the representatives of the Auction Bidders, and such other persons permitted by the Receiver are the only parties entitled to attend the Auction (and the Receiver has the discretion to authorize parties to attend via teleconference);
- iv. auction Bidders will be required to confirm at the outset that they have not engaged in any collusion with any other Auction Bidders with respect to the bidding or any sale;
- v. each incremental bid shall provide cash value of at least \$25,000 (the “**Minimum Incremental Overbid**”);
- vi. at the end of the Auction, the Receiver shall select the highest bid (the “**Successful Auction Bid**”); and
- vii. once a definitive agreement has been negotiated and settled in respect of the Successful Auction Bid, the Receiver shall apply to this Honourable Court to approve the Successful Auction Bid.

#### **RECEIVER’S COMMENTS ON THE HOTEL STALKING HORSE SALE PROCESS AND THE SLFNHA STALKING HORSE APA**

25. The Receiver supports the SLFNHA Stalking Horse APA and Hotel Stalking Horse Sale Process based upon the following criteria:
- a. the SLFNHA Stalking Horse APA sets a floor price of \$5.0 million for the Hotel, including a 10% non-refundable deposit of \$500,000;

- b. the Hotel Stalking Horse Sale Process, including the Auction if required, is based upon an established form of sales process in previous insolvency filings of a similar nature, that provides for a fair and transparent process for participants and is designed to maximize value for stakeholders;
- c. the Minimum Incremental Overbid of \$25,000 appears consistent within other incremental minimum bid levels in similar court approved sale processes;
- d. based on the break fee analysis presented below in this Report, representing 2.5% of the Hotel Purchase Price, the Minimum Incremental Overbid is reasonable; and
- e. the Receiver believes the consideration in the SLFNHA Stalking Horse APA is commercially reasonable, in the best interests of the 236 Inc. creditors and other stakeholders and will seek to maximize available recovery to creditors.

#### **BREAK FEE ANALYSIS**

26. The SLFNHA APA contemplates a Break Fee of \$125,000 representing approximately 2.5% of the Hotel Purchase Price, which would be payable in the event that a Qualified Bid becomes the Successful Auction Bid approved by this Honourable Court, or in the event that the transaction is not completed for any other reason than as a result of a breach by the buyer or the non-satisfaction of the mutual conditions. The Receiver has analyzed the Break Fee as compared to the overall estimated transaction value, and recent break fees in other insolvency filings previously approved by this Honourable Court and by Courts in other provincial jurisdictions, as outlined in the table below, and believes that the quantum of the Break Fee is reasonable in the circumstances to compensate SLFNHA for the time, costs and expenses in relation to entering the SLFNHA Stalking Horse APA.

Hotel Stalking Horse Sale Process Break Fee Analysis				Table 1.0
Insolvency Matter	Break Fee ("BF")	Estimated Transaction Value ("TV")	BF as % of TV	Notes
EarthRenew et al.	150,000	5,100,000	2.94%	<i>a</i>
Tesla Exploration Ltd. et al.	811,500	27,050,000	3.00%	<i>b</i>
Walton International et al.	1,022,000	34,080,000	3.00%	<i>c</i>
Petrowest - Nu-Northern	71,200	3,560,000	2.00%	<i>d</i>
Parallel Energy	3,500,000	100,000,000	3.50%	<i>e</i>
2220277 Ontario Inc. (Hotel)	150,000	12,000,000	1.25%	<i>f</i>
Aralez et al.	2,762,500	62,500,000	4.42%	<i>g</i>
236 Inc. - Hotel	125,000	5,000,000	2.50%	<i>h</i>

- a. Purchase and Sale agreement between RSM Richter Inc. as Receiver of EarthRenew Companies and 0890241 B.C. Ltd with a contemplated purchase price of \$5.1 million and the Priority Debt (defined as indebtedness arising out of the Receiver's Charge and any other charges created under the Appointment Order) and a transaction break fee of \$150,000 which received Court approval on January 28, 2011;
- b. Purchase and Sale Agreement between Ernst & Young Inc., as Receiver of Tesla Exploration Ltd et al, and Echo Seismic Ltd., with a purchase price \$27.05 million a break free of \$811,500, which received Court approval on October 4, 2016;
- c. Purchase and Sale Agreement between Walton International Group Inc., and the City of Calgary with a purchase price of \$34.08 million and a break fee of \$1.02 million, which received Court approval on July 28, 2017;
- d. Nu-Northern Stalking Horse APA between Ernst & Young Inc., as Receiver of Petrowest and in agreement with Crown Capital, with an estimated break fee of \$71,200 and transaction value of \$3.56 million;

- e. Purchase and Sale Agreement regarding Parallel Energy Trust, and KPMG as CCAA Monitor, with a purchase price of approximately \$100 million and a break fee of \$3.5 million, inclusive of expense reimbursement of \$500,000, filed in and around January 2016;
- f. Purchase and Sale Agreement between A. Farber & Partners Inc., as Receiver of 2220277 Ontario Inc. (650 Bay St. Hotel/Restaurant) and 650 Bay Holdco Inc., with an estimated purchase price of \$12.0 million and break fee of \$150,000 filed October 3, 2017;
- g. Canadian Stalking Horse Agreement, between Aralez Canada and the Stalking Horse Bidders, whereas Richter Advisory Group Inc., acting as CCAA Monitor, with respect to an estimated \$62.5 million purchase price and a break fee of \$2,187,500 and expense reimbursement fee of \$575,000; and
- h. proposed SLFNHA APA between the Receiver and SLFNHA with an estimated purchase price of \$5.0 million and a break fee of \$125,000, subject to Court approval.

## **HOTEL APPRAISAL**

- 27. On June 12, 2018, the Receiver engaged the services of HVS Consulting and Valuation Services (“**HVS**”) doing business as MM&R Valuation Services, Inc., a reputable external appraisal company that specializes in the appraisal of commercial and hospitality companies. A copy of the Receiver’s most recent appraisal on the Hotel (the “**Appraisal**”) is attached as Confidential Appendix 1 to this Report.
- 28. The Receiver utilized the Appraisal to assist in establishing, negotiating and ultimately determining the appropriateness of the Hotel Purchase Price as part of the SLFNHA Stalking Horse APA. As a result, in comparing the valuation results included in the Appraisal, the Receiver believes that the Hotel Purchase Price appears reasonable under the circumstances.

29. Confidential Appendix 1 contains confidential information of a commercial nature which, if disclosed to third parties prior to the closing of the sale, could materially jeopardize the sale or if the sale does not close could materially jeopardize the value that could subsequently be obtained. Accordingly, the Receiver is respectfully of the view that it is appropriate that this Honourable Court grant a Sealing Order in relation to the Confidential Appendix 1.

## **CONCLUSION AND RECOMMENDATIONS**

30. The Receiver is of the view that JLL is an experienced, well qualified and well-known marketing agent and that it should serve as marketing agent under the Hotel Stalking Horse Sale Process. The Receiver therefore seeks the approval of JLL Engagement Agreement to assist with and facilitate the Hotel Stalking Horse Sale Process.
31. The proposed Hotel Stalking Horse Sale Process is in the best interests of the stakeholders for the following reasons:
- a. the SLFNHA Stalking Horse APA sets a floor price of \$5.0 million for the Hotel, including a 10% non-refundable deposit of \$500,000;
  - b. the Hotel Stalking Horse Sale Process provides a fair and transparent process which will be conducted in such a manner to give potential bidders equal access to the sale process and acquisition of the Hotel;
  - c. no stakeholder appears to be prejudiced by the process. The main stakeholder, BMO, has been consulted and, to the Receiver's knowledge, have no objection to the Hotel Stalking Horse Sale Process; and
  - d. the Marketing Agent has extensive experience in marketing hotel assets and has been engaged in similar receivership situations using a similar process.

32. Accordingly, the Receiver respectfully requests this Honourable Court's approval of:

- e) the JLL Engagement Agreement;
- f) the SLFNHA Stalking Horse APA;
- g) the Hotel Stalking Horse Sale Process; and
- h) the sealing of Confidential Appendix 1 on the Court record.

All of which is respectfully submitted this 16<sup>th</sup> day of October, 2018.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Receiver of the Debtors and not in  
its personal or corporate capacity**



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



Chad Artem, CPA, CA, CBV  
Senior Manager

## **APPENDIX A**

### **SLFNHA Stalking Horse APA**

## ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of the 16<sup>th</sup> day of October, 2018.

**BETWEEN:** **ALVAREZ & MARSAL CANADA INC. LIT**, solely in its capacity as Court-appointed receiver and manager of **2367147 ONTARIO INC.**, and not in its personal or corporate capacity (the "**Vendor**");

**AND:** **SIOUX LOOKOUT FIRST NATIONS HEALTH AUTHORITY** (the "**Purchaser**");

### WHEREAS:

- A. Pursuant to a receivership order (the "**Receivership Order**") granted on May 18, 2018 in the Receivership Proceeding, the Court of Queen's Bench of Alberta in Court File No. 1803-09581 Alvarez & Marsal Canada Inc. was appointed receiver and manager (in such capacity, the "**Receiver**") of all of the current and future assets, undertakings, and properties (collectively, the "**Property**") of 2367147 Ontario Inc. ("**236 Inc.**"); and
- B. The Vendor wishes to sell to the Purchaser all of Vendor's right, title, and interest in and to the Days Inn Hotel (the "**Hotel**") and all of the equipment and assets necessary for the operation of the Hotel (the "**Purchased Assets**") located in Sioux Lookout, Ontario at the municipal address, 3 Sturgeon River Road, and the Purchaser wishes to purchase all of Vendor's right, title, and interest in and to the Purchased Assets on and subject to the terms and conditions of this Agreement;

**IN CONSIDERATION** of the premises and covenants, agreements, representations, warranties, and payments contained in this Agreement, the Vendor and the Purchaser agree as follows:

### 1. Definitions

The following terms have the following meanings:

- (a) "**Agreement**" means this Asset Purchase Agreement made as of the date first written above;
- (b) "**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, (a) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, (b) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively, in the foregoing clauses (a) and (b), "**Law**") in each case relating or applicable to such Person, property, transaction, event or other matter and also



includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

- (c) **"Books and Records"** means all books, records, files and papers used or intended for use in connection with the ownership of the Purchased Assets, including title documentation, manuals, sales and advertising materials, and all other documents and data (technical or otherwise) relating to the Purchased Assets, and all copies and recordings of the foregoing;
- (d) **"Business Day"** means any day other than a Saturday, Sunday, or any other statutory holiday in Alberta;
- (e) **"Claim"** means any right or claim of any person that may be asserted or made in whole or in part against the Vendor, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including any right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, together with any other rights or claims of any kind that, if unsecured, would be a provable claim in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, had 236 Inc. become bankrupt;
- (f) **"Closing"** means the completion of the Transaction in accordance with this Agreement;
- (g) **"Closing Date"** means three days after the granting of the Vesting Order or the date on which the conditions precedent set forth in Sections 12, 13, and 14 are fulfilled or waived, or as otherwise agreed upon in writing by the Vendor and the Purchaser;
- (h) **"Closing Time"** means 12:00 noon on the Closing Date;
- (i) **"Court"** means the Alberta Court of Queen's Bench;
- (j) **"Deposit"** has the meaning ascribed thereto in Section 9.1;
- (k) **"ETA"** means the *Excise Tax Act*, RSC, 1985, c E-15 and the regulations thereto;

- (l) **"Encumbrance"** means any encumbrance against or interest in the Purchased Assets of any kind whatsoever and includes, without limitation, a security interest, mortgage, lien, pledge, assignment, charge, title retention agreement, option, trust or deemed trust (whether contractual, statutory, or otherwise arising), licence, and any covenant or other agreement, restriction, or limitation relating to the Purchased Assets or the transfer of the Purchased Assets to the Purchaser pursuant to this Agreement, and includes Competing Proprietary Claims;
- (m) **"Final Order"** means an order issued by the Court in these Receivership Proceeding which: (i) is not subject to a stay of execution or an application or request for a stay of execution, and, if the deadline for filing any such application or request is designated by statute or regulation, such deadline, including any extensions thereof, has passed; and (ii) is not then under appeal or other form of judicial review, is not subject to an application for leave to appeal or other form of judicial review, and the deadline for filing any notice of appeal or application for appeal or other form of judicial review, including any extensions thereof, has passed;
- (n) **"Governmental Authority"** means any Canadian, foreign, domestic, federal, territorial, provincial, state, municipal, or local governmental authority, quasi-governmental authority, instrumentality, court, government, or self-regulatory organization, bureau, commission, tribunal, or organization or any regulatory, administrative, or other agency, or any political or other subdivision, department, or branch of any of the foregoing having jurisdiction with respect to 236 Inc., the Purchased Assets, or any other matter that is the subject of this Agreement;
- (o) **"GST/HST"** means any goods and services tax/harmonized sales tax imposed under Part IX of the ETA;
- (p) **"Interim Period"** means the period from the date of this Agreement to the Closing Date;
- (q) **"ITA"** means the *Income Tax Act* (Canada) RSC, 1985, c 1 (5th Supp.)
- (r) **"Legal Proceeding"** means any litigation, action, application, demand, suit, investigation, hearing, Claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any court or other tribunal or Governmental Authority and includes any appeal or review thereof and any application for leave for appeal or review;
- (s) **"Obligations"** means any indebtedness, liabilities and obligations, whether present, future, direct, indirect, liquidated or contingent, whether due or to become due, owed by 236 Inc. to any person;
- (t) **"Party"** or **"Parties"** mean either the Vendor or the Purchaser, as appropriate in the context, or both;



- (u) **"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.
- (v) **"Property"** has the meaning ascribed thereto in the recitals hereto;
- (w) **"Purchase Price"** has the meaning ascribed thereto in Section 7 hereof;
- (x) **"Purchased Assets"** means those assets enumerated in Schedule "A" hereto;
- (y) **"Purchaser's Solicitors"** means Peter T. Hollinger;
- (z) **"Receivership Order"** has the meaning ascribed thereto in the recitals hereto;
- (aa) **"Receivership Proceeding"** means the receivership proceeding in which Alvarez & Marsal Canada Inc. was appointed the Receiver of all of the current and future assets, undertakings, and properties of 236 Inc., being Court of Queen's Bench of Alberta Court File Number 1803-09581;
- (bb) **"Sales Procedure"** is defined in Schedule "C" attached hereto;
- (cc) **"Stalking Horse Approval Order"** means an Order of the Court substantially in the form attached hereto as Schedule "B" made in the Receivership Proceeding in form and content satisfactory to the Purchaser and the Vendor, each acting reasonably, which, among other things, approves a stalking horse sale process and approves this Agreement as the stalking horse bid, subject to such amendments as are deemed appropriate by the Receiver, including providing for payment by a third party offeror of a deposit equal to 10% of the purchase price for the Purchased Assets;
- (dd) **"Taxes"** means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, mining taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties;
- (ee) **"Transfer Taxes"** means all applicable Taxes, including where applicable, all GST/HST payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording or transfer fees payable in connection with the instruments of transfer provided for in this Agreement;

- (ff) **"Transaction"** means the purchase and sale of the Purchased Assets and all other transactions contemplated by this Agreement;
- (gg) **"Vendor's Solicitors"** means Blake, Cassels & Graydon LLP; and
- (hh) **"Vesting Order"** means an Order of the Court made in the Receivership Proceeding in form and content satisfactory to the Purchaser and the Vendor, each acting reasonably, approving the entry into this Agreement by the Vendor and the consummation of the Transaction contemplated hereby, and vesting in the Purchaser or its nominee(s) all right, title, and interest of 236 Inc. in and to the Purchased Assets free and clear of all Encumbrances upon payment of the Purchase Price.

## **1.1 Schedules**

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

### **SCHEDULES**

Schedule "A"	Purchased Assets
Schedule "B"	Form of Stalking Horse Approval Order
Schedule "C"	Sales Procedure

## **2. Construction**

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

## **3. Certain Rules of Interpretation**

### **3.1** In this Agreement:

- (a) headings are inserted for convenience of reference only and will not affect the interpretation of this Agreement;
- (b) the division into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement;
- (c) the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement and not to any particular portion of this Agreement;

- (d) **"including"** or **"includes"** means **"including (or includes) but is not limited to"** and is not to be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it;
- (e) references to any legislation, statutory instrument or regulation or a section thereof are references to the legislation, statutory instrument, regulation or section as amended, re-enacted, consolidated or replaced from time to time; and
- (f) words in the singular include the plural and vice-versa and words in one gender include all genders.

#### **4. Performance on Business Days**

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

#### **5. Currency and Payment**

- 5.1** In this Agreement, unless specified otherwise, references to dollar amounts or "\$" are to Canadian dollars, and any payment is to be made by an official bank draft drawn on a Canadian chartered bank, wire transfer or any other method (other than cash payment) that provides immediately available funds.

#### **6. Purchase and Sale of the Purchased Assets**

- 6.1** Subject to the timely fulfillment or waiver of the conditions precedent set forth in Sections 12, 13, and 14, including the granting of the Vesting Order, and the terms and conditions of this Agreement, on the Closing Date, the Vendor agrees to sell, assign, and transfer to the Purchaser, and the Purchaser agrees to purchase from the Vendor, all right, title, and interest of 236 Inc. in and to the Purchased Assets free and clear of all Encumbrances at the Closing Time.

#### **7. Purchase Price**

- 7.1** The amount payable by the Purchaser to the Vendor for the Purchased Assets will be **\$5,000,000** (the "**Purchase Price**").
- 7.2** Purchase Price Allocation. The Purchase Price Allocation shall be as follows:
  - (a) To the land - **\$90,000.00**
  - (b) To the building - **\$4,810,000.00**
  - (c) To the chattels - **\$100,000.00**

#### **8. Payment of the Purchase Price**

- 8.1** The Purchase Price shall be paid to the Vendor by the Purchaser on the Closing Date.



## **9. Deposit**

**9.1** The Parties acknowledge that a deposit in the amount of **\$500,000**, representing **ten percent (10%)** of the Purchase Price, has been provided by the Purchaser to the Vendor on or before October 16, 2018, and is being held in an interest-bearing trust account, to be released only in accordance with the provisions of this Section 9, which shall include any interest thereon. The Deposit shall be held in trust by the Vendor until one of the following events occur:

- (a) if Closing occurs, the Deposit (along with any interest earned thereon) shall be credited to the Vendor at Closing for its own account absolutely and be applied as partial payment of the Purchase Price;
- (b) if Closing does not occur due to a breach of this Agreement by the Purchaser or the failure of the Purchaser to fulfill the conditions in Sections 12.1(a) through 12.1(c) (provided that for greater certainty, with respect to the conditions in Sections 12.1(a) through 12.1(c), such failure is due to matters within the reasonable control of the Purchaser, as applicable) the Deposit (along with any interest earned thereon) shall be forfeited by the Purchaser to the Vendor (and for the account of the Vendor absolutely);
- (c) if Closing does not occur due to any reason other than as addressed by Section 9.1(b), the Deposit (along with any interest earned thereon) shall be paid to the Purchaser for the account of the Purchaser absolutely; and
- (d) if the Purchaser is not ultimately the Successful Bidder (as that term is defined in the Sales Procedure set out in Schedule "C") than the Receiver acknowledges that it will be required to return the Deposit to the Purchaser in accordance with the terms of the Sales Procedure;

**9.2** In the event of termination of this Agreement under Section 9.1(b) pursuant to which the Vendor shall be entitled to retain the Deposit, the Parties agree that the amount of the Deposit constitutes a genuine pre estimate of liquidated damages representing the Vendor's losses and liabilities as a result of Closing not occurring and agree that the Vendor shall not be entitled to recover from the Purchaser any amounts that are in excess of the Deposit as a result of Closing not occurring. The Purchaser hereby waives any claim or defence that the amount of the Deposit is a penalty or is otherwise not a genuine pre estimate of the Vendor's damages.

## **10. Transfer Taxes**

**10.1** The Purchase Price is exclusive of any applicable Transfer Taxes. Subject to Section 11(a), the Purchaser shall pay to the Vendor upon Closing or, where permitted by Applicable Law, directly to the appropriate Governmental Authorities, all Transfer Taxes, registration charges and transfer fees payable by it in respect of the purchase and sale of the Purchased Assets under this Agreement, and, on request of the Vendor, the Purchaser shall furnish to the Vendor proof of direct payment to a Governmental Authority.

- 10.2** GST/HST Certificate and Indemnity. In respect of any GST/HST to be self-assessed by the Purchaser, the Purchaser shall deliver to the Vendor a GST/HST certificate and indemnity in form agreeable to the Vendor.
- 10.3** GST/HST Gross-Up. If any payment made by the Vendor or the Purchaser as the result of a breach, modification or termination of this Agreement is deemed by the ETA to include GST/HST, or is deemed by any applicable provincial or territorial legislation to include a similar value-added or multi-staged tax, the amount of such payment shall be increased accordingly.
- 10.4** The Purchaser shall indemnify and save harmless the Vendor from any amounts, including interest and penalties, that may be assessed against the Vendor arising out of the failure of the Purchaser to pay, when due, any taxes described in this Section 10.

**11. Tax Elections**

- (a) Section 167 Tax Election. If available, at the Closing, the Vendor and the Purchaser shall execute jointly an election under Section 167 of the ETA, to have the sale of the Purchased Assets take place on a GST/HST-free basis under Part IX of the ETA. The Purchaser shall file the elections in the manner and within the time prescribed by the relevant legislation. Notwithstanding anything to the contrary in this Agreement, the Purchaser shall indemnify and hold harmless the Vendor in respect of any GST/HST, penalties, interest and other amounts which may be assessed against the Vendor as a result of the transactions under this Agreement not being eligible for such election or as a result of the Purchaser's failure to file the election within the prescribed time.
- (b) Section 20(24) Tax Election. The Purchaser and the Vendor shall, if applicable, jointly execute and file an election under Section 20(24) of the ITA in the manner required by Section 20(25) of the ITA and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the ITA and under any other applicable provincial or territorial statute, as to such amount paid by the Vendor to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendor acknowledge that a portion of the Purchased Assets transferred by the Vendor pursuant to this Agreement and having a value equal to the amount elected under Section 20(24) of the ITA and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the Vendor as a payment for the assumption of such future obligations by the Purchaser.
- (c) Section 56.4 Tax Election. At the request of the Vendor and to the extent permitted by the ITA, the Parties shall make, and the Vendor shall file, any election or amended election in prescribed form (or such other form as the Purchaser or the Vendor may reasonably request) and within the prescribed time limits pursuant to Section 56.4(7) of the ITA proposed by the Minister of Finance (Canada) as it reads on the date of this Agreement or any amended or successor



provision thereto, and any analogous provision of provincial or territorial Tax legislation.

## **12. Conditions in Favour of the Purchaser**

**12.1** The obligations of the Purchaser under this Agreement are subject to the fulfillment of the following conditions precedent:

- (a) Each of the representations and warranties of the Vendor set forth in Section 16 shall be true and correct as if restated on and as of the Closing Date;
- (b) the covenants and obligations contained in this Agreement to be complied with by the Vendor on or before the Closing Time shall have been complied with and not been breached in any material respect; and
- (c) the Vendor has caused to be delivered to the Purchaser, all as reasonably requested and prepared by the Purchaser all Books and Records, deeds, conveyances, bills of sale, assurances, transfers, assignments and any other documentation or action which in the opinion of the Purchaser are necessary or reasonably required to transfer the Purchased Assets to the Purchaser with good and marketable title, free and clear of all Encumbrances, in each case duly executed by the Vendor and in form and substance satisfactory to the Purchaser, acting reasonably.

**12.2** The Purchaser may, in its sole discretion, waive any of the foregoing conditions. Any waiver by the Purchaser must be in writing and delivered to the Vendor's Solicitors.

## **13. Conditions in Favour of the Vendor**

**13.1** The obligations of the Vendor under this Agreement are subject to the fulfillment of the following conditions precedent:

- (a) each of the representations and warranties of the Purchaser set forth in Section 17 shall be true and correct as if restated on and as of the Closing Date;
- (b) the covenants and obligations contained in this Agreement to be complied with by the Purchaser on or before the Closing Time shall have been complied with and not been breached in any material respect; and
- (c) the Purchaser has, as at the Closing Time: (i) delivered and paid the Purchase Price to the Vendor, and (ii) paid and delivered all taxes applicable to the Transaction.

**13.2** The Vendor may, in its sole discretion, waive either of the foregoing conditions. Any waiver by the Vendor must be in writing and delivered to the Purchaser's Solicitors.

## **14. Mutual Conditions**



**14.1** The obligations of the Parties under this Agreement are subject to the following mutual conditions precedent:

- (a) the security charging the Purchased Assets shall not have been reinstated or redeemed prior to the Closing Date;
- (b) the Vesting Order shall have been obtained and shall be a Final Order, unless the Purchaser has provided written consent that Closing occur despite the Vesting Order not being a Final Order; and
- (c) there shall be in effect no order, injunction, judgment, decree, ruling, writ, assessment, or arbitration award of the Court or other court of competent jurisdiction or of a relevant Governmental Authority prohibiting the consummation of the transactions contemplated hereby and which has not been withdrawn or terminated.

**14.2** The Parties may agree to amend or waive any the foregoing conditions. Any amendment or waiver by the Parties must be in writing and delivered to the Purchaser's Solicitors and the Vendor's Solicitors.

**15. Stalking Horse, Expense Reimbursement, and Break Fee**

**15.1** The Parties acknowledge and agree that this Agreement shall stand as a stalking horse bid and shall be irrevocable. The Purchaser shall be permitted, but not obligated, to make a subsequent bid in the sales process initiated by the Receiver in accordance with the Stalking Horse Approval Order, and if: (i) the Purchaser is not the successful bidder, and (ii) the Purchased Assets are sold to another bidder other than the Purchaser or an affiliate or nominee of the Purchaser, the Purchaser shall be entitled to an expense reimbursement and break fee in the aggregate amount of **\$125,000**, payable from the sale proceeds of the Purchased Assets.

**15.2** The Receiver shall take all steps necessary to seek the Stalking Horse Approval Order as soon as practicable after execution of this Agreement, and in any event by no later than October 31, 2018.

**16. Representations and Warranties of the Vendor**

**16.1** The Vendor represents and warrants to the Purchaser as follows, with the intent that the Purchaser will rely on these representations and warranties in entering into this Agreement, and in concluding the purchase and sale contemplated by this Agreement:

- (a) subject to obtaining and pursuant to the Vesting Order, the Vendor has the power, authority and capacity to enter into this Agreement, subject to its terms, and the authority to execute all instruments required by this Agreement to be delivered by it, and to perform its obligations hereunder and thereunder;
- (b) 236 Inc. is registered for GST/HST purposes under Part IX of the ETA and its registration number is # 81791 1845 RT0002; and

- (c) the Vendor is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act*.

## **17. Representations and Warranties of the Purchaser**

**17.1** The Purchaser represents and warrants to the Vendor as follows, with the intent that the Vendor will rely on these representations and warranties in entering into this Agreement, and in concluding the purchase and sale contemplated by this Agreement:

- (a) the Purchaser has the power and capacity to enter into this Agreement and carry out its terms;
- (b) the Purchaser is a corporation duly incorporated, validly existing, and in good standing under the *Business Corporations Act* (Ont.), and has the power and capacity to enter into this Agreement and carry out its terms;
- (c) the execution and delivery of this Agreement and the completion of the transaction contemplated by this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Purchaser, and this Agreement constitutes a legal, valid, and binding obligation of the Purchaser.
- (d) this Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. There is no Legal Proceeding in progress, pending against or threatened against or affecting either Purchaser, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting either Purchaser which, in any such case, affects adversely or might affect adversely the ability of either Purchaser to enter into this Agreement or to perform its obligations hereunder;
- (e) Purchaser is not a "non-Canadian" within the meaning of the *Investment Canada Act*, RSC 1985, c 28 (1<sup>st</sup> Supp);
- (f) Purchaser shall, or upon Closing shall be, registered for HST purposes under Part IX of the ETA, and shall provide its registration numbers to the Vendor at or prior to Closing; and
- (g) the Vendor will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the Transaction because of any action taken by, or agreement or understanding reached by, the Purchaser or either of them.

## **18. Covenants of the Vendor**

**18.1** The Vendor will consult with the Purchaser at all reasonable times with respect to the status of the Purchased Assets and the Receivership Proceeding.

**18.2** Upon payment of the Purchase Price by the Purchaser at the Closing Time, and subject to the terms of this Agreement, the Vendor will transfer and assign to the Purchaser all of



236 Inc.'s right, title, and interest in and to the Purchased Assets in accordance with the terms of the Vesting Order.

- 18.3** On the Closing Date, the Vendor shall deliver, and shall cause to be delivered, to the Purchaser the Books and Records and all documents (except, in the case of those required by applicable law to be retained by the Vendor, copies thereof) and other data, technical or otherwise, which are in the possession of the Vendor at the Closing Date, relating materially to the Purchased Assets. The Purchaser shall permit the Receiver, and its authorized representatives, reasonable access to those documents while they are in the Purchaser's possession or control solely to the extent that access is required by the Receiver to perform its obligations under this Agreement or under applicable law, but the Purchaser shall not be responsible or liable to the Vendor or the Receiver for, or as a result of, any loss or destruction of or damage to any such documents and other data unless that destruction, loss or damage is caused by the Purchaser's gross negligence or wilful misconduct. The Receiver shall be responsible for all reasonable out-of-pocket costs and expenses incurred, directly or indirectly, by the Purchaser in connection with any access contemplated by this Section 18.3.
- 18.4** Notwithstanding the immediately foregoing Section 18.3, the Receiver shall be entitled to retain copies of any documents or other data delivered to the Purchaser pursuant to this Agreement provided that those documents or data are reasonably required and only used or relied on by the Receiver to perform its obligations under this Agreement or under applicable law.
- 18.5** Subject to the terms of this Agreement, the Vendor will use all commercially reasonable efforts to take or cause to be taken all other actions, and do or cause to be done all other things, necessary or appropriate to obtain the Stalking Horse Approval Order and the Vesting Order and to consummate the transactions contemplated by this Agreement.
- 18.6** From the date of this Agreement until completion of the transaction contemplated herein, the Vendor covenants to maintain the Purchased Assets in a commercially reasonable manner, to ensure that the Purchased Assets are insured, and to ensure that such insurance coverage of the Purchased Assets is maintained in good standing up to and including the Closing Date, after that time the Vendor shall have no further obligation to insure the Purchased Assets.
- 18.7** From the date of this Agreement until completion of the transaction contemplated herein, and except as contemplated by this Agreement, the Vendor will not sell, transfer, or otherwise dispose of, or agree to sell, transfer, pledge, lease, encumber, or otherwise dispose of, any Purchased Assets, or enter into any agreement or transaction which would result in the creation of any Encumbrance on any of the Purchased Assets.
- 19. As is, Where is.**
- 19.1** Notwithstanding any other provision of this Agreement, the Purchaser acknowledges, agrees and confirms that:

- (a) except for the representations and warranties of the Vendor set forth in Section 16 and the covenants of the Vendor set forth in Section 18, it is entering into this Agreement, acquiring the Purchased Assets on an "**as is, where is**" basis as they exist as of the Closing Time and will accept the Purchased Assets in their state, condition and location as of the Closing Time except as expressly set forth in this Agreement and the sale of the Purchased Assets is made without legal warranty and at the risk of the Purchaser;
- (b) it has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets as it deemed appropriate, and based solely thereon, has determined to proceed with the Transaction;
- (c) except as expressly stated in Section 16, neither the Vendor nor its Representatives have made or are making, and the Purchaser is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Purchased Assets, the Vendor's right, title or interest in or to the Purchased Assets, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts and/or components, latent defects, quality, quantity or any other thing affecting any of the Purchased Assets, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any Applicable Law in any jurisdiction, which the Purchaser confirms do not apply to this Agreement and are hereby waived in their entirety by the Purchaser;
- (d) all written and oral information obtained from the Receiver or its Representatives, including in any teaser letter, asset listing, confidential information memorandum or other document made available to the Purchaser (including in certain "**data rooms**", management presentations, site visits and diligence meetings or telephone calls), with respect to the Purchased Assets has been obtained for the convenience of the Purchaser only, and neither the Receiver nor its Representatives have made any representation or warranty, express or implied, statutory or otherwise as to the accuracy or completeness of any such information; and
- (e) any information regarding or describing the Purchased Assets in this Agreement (including the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by the Vendor, the Receiver or their Representatives, or any other Person concerning the completeness or accuracy of such information or descriptions.

**19.2** Notwithstanding anything to the contrary herein, the Purchaser hereby expressly acknowledges that if any consents of: (i) any Governmental Entities are required to effect



the transfer of any of the Purchased Assets; or (ii) any lessees are required to effect the transfer of any of the leases or licences to be acquired by the Purchaser pursuant to this Agreement, then it is the sole responsibility of the Purchaser to obtain any such consents, and the granting of any such consents shall not be a condition precedent to the Purchaser's obligations under this Agreement, including the payment of the Purchase Price. At the request and cost of the Purchaser, both before and after the Closing Date, the Vendor will assist the Purchaser in its efforts to obtain any consents required of any Government Entities or lessees in order to complete the sale and transfer of the Purchased Assets pursuant to this Agreement.

## **20. Investigation**

- 20.1** During the Interim Period, the Vendor shall permit the Purchaser and its authorized representatives to make such investigations, inspections, surveys or tests of the Purchased Assets, as the Purchaser deems reasonably necessary or desirable to familiarize itself with the Purchased Assets. Without limiting the generality of the foregoing, the Vendor shall, to the extent reasonably possible and at no cost to the Vendor provide the Purchaser with free and unrestricted access to (i) all documents relating to information scheduled or required to be disclosed under this Agreement, and (ii) the Books and Records in the possession of the Vendor.
- 20.2** At the Purchaser's request and at no cost to the Vendor, the Vendor shall execute, or cause to be executed, such consents, authorizations and directions as may be necessary to permit any inspection of any of the Purchased Assets and to enable the Purchaser or its authorized representatives to obtain full access to all files and records relating to any of the Purchased Assets maintained by Governmental Authorities and self-regulating authorities.

## **21. Conduct Prior to Closing**

- 21.1** Without in any way limiting any other obligations of the Vendor hereunder, during the Interim Period, but subject to any order or direction made by the Court:
- (a) the Vendor shall not, without the prior written consent of the Purchaser, enter into any transaction or refrain from doing any action that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of the Vendor under this Agreement;
  - (b) the Vendor shall take all necessary corporate action, steps and proceedings to approve or authorize, validly and effectively, the execution and delivery of this Agreement and the other agreements and documents contemplated hereby and to complete the transfer of the Purchased Assets to the Purchaser;
  - (c) the Vendor shall use commercially reasonable efforts to satisfy the conditions contained in Sections 16.1 and 18; and
  - (d) the Vendor shall undertake to do general repairs and maintenance in the normal course, including the repair of the shingles (weather permitting) on the roof up to

the amount of \$10,000. The Vendor shall have no other obligation to do any further repairs or general maintenance to the Purchased Assets. If the Vendor has been unable to repair the roof prior to the Closing Date, the sum of \$10,000.00 will be deducted from the Purchase Price.

## **22. Notification of Certain Matters**

**22.1** During the Interim Period, the Vendor shall, provided the Vendor has actual knowledge of the event or occurrence, give prompt notice in writing to the Purchaser of:

- (a) the occurrence, or failure to occur, of any event, which occurrence or failure would be likely to cause any of the representations or warranties of the Vendor contained in this Agreement to be untrue or inaccurate during the Interim Period;
- (b) any notice or communication from any Person alleging that the consent of such Person is or may be required in connection with the Transaction;
- (c) any notice or communication from any Governmental Authority in connection with the Transaction;
- (d) any Proceeding commenced or threatened against the Vendor or relating to or involving or otherwise affecting the Vendor which relates to the consummation of the Transaction; and
- (e) any failure by the Vendor to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied under this Agreement.

**22.2** The giving of any notice under this Section 22 does not in any way change or modify the representations and warranties of the Vendor, or the conditions to the obligations of the Purchaser, contained in this Agreement or otherwise affect the remedies available to the Purchaser under this Agreement.

## **23. Covenants of the Purchaser**

**23.1** At the Closing Time, the Purchaser will pay the Purchase Price to the Vendor. The Purchaser will be liable for and shall pay all applicable taxes in accordance with Section 10.

**23.2** At the Closing Time, the Purchaser will assume and thereafter perform all obligations and liabilities arising from and in connection with the Purchased Assets that accrue from and after the Closing Time.

**23.3** The Purchaser shall preserve and keep the Books and Records acquired by it pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any laws applicable to such Books and Records. The Purchaser shall make such Books and Records, as well as electronic copies of such Books and Records (to the extent reasonably feasible), available to the Vendor, their respective successors,

and any trustee in bankruptcy, and shall permit any of the foregoing persons to take copies of such Books and Records as they may require.

## **24. Termination**

**24.1** This Agreement may be terminated by notice given prior to or at the Closing Time as follows:

- (a) by mutual written agreement of the Parties;
- (b) by the Purchaser by notice in writing to the Vendor if the Vendor has failed to comply in any material respect with any of its obligations under this Agreement (other than those to be performed at the Closing Time) for a period of three Business Days (or a lesser period specified by the Purchaser if the Closing Date is to occur within three Business Days after the giving of such notice) after the Purchaser shall have notified the Vendor of such failure to comply in writing;
- (c) by the Purchaser by notice in writing to the Vendor if any conditions specified in Sections 12 or 14 have not been satisfied by the Closing Time and the Purchaser has not, in the case of Section 12, and the Parties have not, in the case of Section 14, waived such conditions by such time;
- (d) by the Purchaser in accordance with Section 25.2(b);
- (e) by the Vendor by notice in writing to the Purchaser if the conditions specified in Sections 13 or 14 have not been satisfied by the Closing Time and the Vendor has not, in the case of Section 13, and the Parties have not, in the case of Section 14, waived such conditions by such time; or
- (f) by either of the Parties on written notice to the other, provided such Party is not in material breach of its obligations under this Agreement, if the Stalking Horse Approval Order has not been pronounced and entered by October 31, 2018, or the Vesting Order has not been pronounced and entered by December 31, 2018.

## **25. Risk**

**25.1** The Purchased Assets will be at the Vendor's risk until the completion of the transaction contemplated herein on the Closing Date and thereafter at the Purchaser's risk.

**25.2** If, before the Closing, any of the Purchased Assets is lost, damaged or destroyed or is appropriated, expropriated or seized by any Governmental Authority, then:

- (a) the Parties shall agree on an adjustment to the Purchase Price to account for such loss, damage, destruction, appropriation, expropriation or seizure; or
- (b) if such loss, damage, destruction, appropriation, expropriation or seizure is materially adverse to the Purchaser, as determined by the Purchaser, acting



reasonably, then the Purchaser, at its sole discretion may terminate this Agreement.

## **26. Closing**

**26.1** Subject to the terms and conditions of this Agreement, and the satisfaction or the waiver of the conditions precedent in Sections 12, 13, and 14, the purchase and sale of the Purchased Assets will be completed at the Closing Time at the offices of the Vendor's Solicitors.

**26.2** At the Closing Time the Purchaser will deliver, or cause to be delivered to the Vendor:

- (a) the Purchase Price;
- (b) duly executed election referred to in Section 11(a), if applicable; and
- (c) other tax Election forms required by Section 11.

**26.3** At the Closing Time the Vendor shall deliver, or cause to be delivered to the Purchaser:

- (a) a Court-certified copy of the Vesting Order;
- (b) all of 236 Inc.'s right, title, and interest in and to the Purchased Assets, in accordance with the Vesting Order;
- (c) duly executed election referred to in Section 11(a), if applicable;
- (d) other tax Election forms required by Section 11.
- (e) the Books and Records; and
- (f) all such assignments, instruments of transfer, deeds, assurances, consents, registrations, and other documents executed by the Vendor as requested by the Purchaser in respect of transferring the Purchased Assets to the Purchaser and registrations in connection therewith;

and the Purchaser shall be entitled to possession of the Purchased Assets, in accordance with the Vesting Order, upon payment of the Purchase Price in accordance with this Agreement.

## **27. Receiver Liability**

**27.1** The Purchaser hereby expressly acknowledges and agrees that Alvarez & Marsal Canada Inc. is acting only in its representative capacity as Court-appointed receiver and manager of the Purchased Assets and shall have no personal liability under or as a result of entering into or carrying out the transaction which is the subject of this Agreement except in such capacity and without limitation to the generality of the foregoing Alvarez & Marsal Canada Inc. shall have no liability under or as a result of entering into or carrying out of such transaction in its personal capacity.



**28. Further Assurances**

- 28.1** The Parties will execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.

**29. Notice**

- 29.1** All notices required or permitted to be given under this Agreement will be in writing and delivered by courier or email as follows:

**30. Legal Advice**

- 30.1** The Parties have each consulted with and been advised by their own solicitors before entering into this Agreement, have read same, and know the contents thereof.

**31. Expenses**

- 31.1** Each Party shall pay all of its own expenses (including taxes imposed on those expenses) incurred in the authorization, negotiation, preparation, execution and performance of this Agreement and the Transaction, including all fees and expenses of its legal counsel, bankers, investment bankers, brokers, accountants or other representatives or consultants.

**32. No Third Party Beneficiary**

- 32.1** This Agreement is solely for the benefit of the Parties and no third party accrues any benefit, claim or right of any kind pursuant to, under, by or through this Agreement.

**33. Entire Agreement**

- 33.1** This Agreement constitutes the entire agreement between the Parties and there are no representations or warranties, express or implied, statutory or otherwise and no collateral agreements other than as expressly set forth or referred to in this Agreement.

**34. Amendment**

- 34.1** No amendment of this Agreement will be binding unless made in writing by both Parties.

**35. Severability**

- 35.1** If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited, or unenforceable, that provision will, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition, or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to the other Parties or circumstances.

**36. Assignment**

- 36.1** This Agreement may not be assigned by any Party hereto without the prior written consent of the other Party hereto, which consent may be arbitrarily withheld, provided that the Purchaser may designate one or more nominees to take title in and to the Purchased Assets, or any part thereof, by giving the Vendor written notice of such assignment at least two clear Business Days prior to the date of the hearing of the application for the Vesting Order.

**37. Time of the Essence**

- 37.1** Time will be of the essence of this Agreement.

**38. Applicable Law and Court Jurisdiction**

- 38.1** 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, and the Parties hereby attorn to the jurisdiction of the Alberta Court of Queen's Bench, Judicial District of Calgary.

**39. Successors and Assigns**

- 39.1** This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**40. Counterparts**

- 40.1** This Agreement may be signed in counterparts and each such counterpart will constitute an original document, and such counterparts, taken together, will constitute one and the same instrument. A counterpart may be delivered by email or any other form of electronic transmission.

***[Remainder of page intentionally left blank]***

AS EVIDENCE OF THEIR AGREEMENT the Parties have executed this Agreement as of the day and year first written above.

**ALVAREZ & MARSAL CANADA  
INC.**, solely in its capacity as court-  
appointed receiver and manager of  
**2367147 ONTARIO INC.**, and not in its  
personal or corporate capacity



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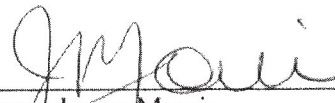
Name: Orest Konowalchuk, CPA, CA, CFP, LIT  
Title: Senior Vice President

**SIOUX LOOKOUT FIRST NATIONS  
HEALTH AUTHORITY**



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Name: Brian Calleja  
Title: Director of Finance



---

Name: James Morris  
Title: Executive Director

**Schedule "A"**  
**Purchased Assets**

**Legal Description:** PLC43386 SEC DKF; Lots 72 through 82 Plan M-126 (PIN42043-1778) and Lots Lots 83 through 90 Plan M-126; all in the Municipality of Sioux Lookout, Ontario

**Personal Property Assets:** All personal property of 2367147 Ontario Inc. whether tangible or intangible including, without limitation:

- chattels of every nature or kind whatsoever, such as furniture, equipment, tools, utensils, vehicles, linens and fabrics
- inventory
- any other personal property of 2367147 Ontario Inc. used in the operation of the business of Days Inn Hotel

Also attached for reference is a listing of the assets (the "Asset List") of the Hotel. The Asset List will have to be confirmed for completeness and accuracy by the Purchaser and the Vendor prior to Closing.

**Days Inn Sioux Lookout**  
**List of assets**  
**As of October 11, 2018**

Description	Quantity
2016 Dodge Grand Caravan CVP - shuttle van	1
Land, building, parking lot, exterior parking lot lighting	1
Signage	2
King beds	6
Queen beds	96
Rectangular conference tables	18
Round conference tables	9
Conference chairs	159
Room desks	60
Desk chairs	60
Arm chairs	64
Dressers	60
Night stands	60
Alarm clocks	63
Short room lamps	60
Long lamps	62
Bathroom vanities	62
Mirrors	140
Towel racks	60
Duvets	107
Bed sheets	214
Queen bed skirts	54
King bed skirts	108
Queen bed scarves	108
King bed scarves	6
Pillows	354
Towels	240
Face cloths	240
43" TV's	61
Room art pieces	120
Lobby art pieces	3
Centrepiece art	1
Treadmill	1
Elliptical	1
Weight rack set	1
Computers	5
Monitors	6
Nook tables	8
Nook chairs	32
Dishwasher	1
Coffee warmers	4
Small tea/hot water warmers	2
Misc. kitchen utensils and bowls	1
Bar stand	1
Bar stools	4
Fridges	2
Double kitchen sink	1
Single kitchen sink	1
Vacuums	5
Cleaning carts	4
Baggage cart	2
Mini Bar fridges	62
Couch	1
small round tables	4
coffee table	1
end Tables	4
electrical fireplace	1
plastic industrial shelving racks	20
Industrial washer	2
Industrial dryer	1
ice machines	2
pop machine	1
vending machine	2
small cooler window fridge	1
display case	1
wood cabinet	1
filing cabinets	2
Office Desk	1

***Leased Assets (not owned by 236 Inc.)***

Coffee machines in room are under contract with Van Houtte we 60 in house  
Sunkist Juice Machine in brekafast area under contract with Nestle  
Coffee machine on kitchen floor under contract with Nestle, still not hooked up  
Mother parkers coffee machine in brekafast area



**Schedule "B"**

**Form of Stalking Horse Approval Order**

COURT FILE NUMBER 1803-09581  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF **BANK OF MONTREAL**  
DEFENDANT **LADACOR AMS LTD., NOMADS PIPELINE  
CONSULTING LTD., 2367147 ONTARIO INC. and  
DONALD KLISOWSKY**  
DOCUMENT **ORDER (Stalking Horse Purchase and Sale  
Agreement and Sales Procedure)**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT **BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
Ryan Zahara  
3500, 855 – 2<sup>nd</sup> Street S.W.  
Calgary, AB T2P 4J8  
Telephone: 403-260-9628  
Facsimile: 403-260-9700  
Email: ryan.zahara@blakes.com

File No: 99766/12

DATE ON WHICH ORDER WAS PRONOUNCED: October 24, 2018  
NAME OF JUDGE WHO MADE THIS ORDER: Justice K.G. Nielsen  
LOCATION OF HEARING: Edmonton, Alberta

UPON the application of Alvarez & Marsal Canada Inc. in its capacity as the receiver and manager (the "**Receiver**") of the undertaking, property and assets of Ladacor AMS Ltd., Nomads Pipeline Consulting Ltd. and 2367147 Ontario Inc. (collectively, the "**Debtors**" and each a "**Debtor**") for an order: (i) approving the stalking horse purchase and sale agreement dated October 16, 2018 (the "**SH PSA**") between the Receiver, in its capacity as Court appointed receiver and manager of the Debtors, and Sioux Lookout First Nations Health Authority. (the "**Purchaser**"), which is appended as Appendix B to the Second Report of the Receiver dated October 16, 2018 (the "**Second Report**"), and the transactions contemplated thereby; (ii) approving the break fee set out in the SH PSA, (iii) approving the form of the sales procedure (the "**Sales Procedure**") attached hereto as Appendix "A"; and (iv) approving the retention of a sales agent by the Receiver;

**AND UPON HAVING READ** the Second Report and such other material in the pleadings and proceedings as deemed necessary;

**AND UPON HEARING** the submissions of counsel for the Receiver and any other interested parties appearing at the within application; **AND UPON** hearing counsel for the Receiver and any other counsel present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Service of notice of the Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of the Application, and time for service of the Application is abridged to that actually given.

**APPROVAL OF RECEIVER'S ACTIONS**

2. The actions, conduct, and activities of the Receiver, as outlined in the Second Report, are hereby approved.

**APPROVAL OF SALES AGENT**

3. The agreement between the Receiver and Jones Lang LaSalle Real Estate Services, Inc. (the "**Sales Agent**") engaging the Sales Agent to market and sell the Assets is hereby approved.

**APPROVAL OF THE STALKING HORSE PSA AND SALES PROCEDURE**

4. The agreement of purchase and sale for the Assets (as defined in the SH PSA), attached to the Second Report, between the Receiver and the Purchaser is hereby approved.

5. The Receiver and its Sales Agent are authorized and directed to implement the Sales Procedure that are attached as Appendix "A" to this Order and do all such things as are reasonably necessary to conduct and give full effect to the Sales Procedure.

**APPROVAL OF BREAK FEE**

6. The quantum of the break fee set out in the SH PSA and terms such break fee is payable in accordance with the terms of the SH PSA are also hereby approved.

## **SERVICE**

7. Service of this Order on the service list by e-mail, facsimile, registered mail, courier, or personal delivery shall constitute good and sufficient service of this Order, and no persons other than those on the Service List are entitled to be served with a copy of this Order.

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**J.C.Q.B.A.**



## **Appendix “A” – Sales Procedure**

## Schedule "C"

### **Sales Procedure**

Pursuant to an order (the "**Receivership Order**") of the Court of Queen's Bench of Alberta (the "**Court**") dated May 18, 2018, Alvarez & Marsal Canada Inc. LIT was appointed as receiver (the "**Receiver**") over the property, assets and undertakings of 2367147 Ontario Inc. (the "**Company**") in Court File No.1803-09581 (the "**Receivership Proceedings**").

Pursuant to a stalking horse approval order (the "**SHA Order**") dated October \_\_, 2018, the Court approved an asset purchase agreement (the "**Purchase Agreement**") between the Receiver and **Sioux Lookout First Nation Health Authority** (the "**Stalking Horse Bidder**"), contemplating an offer to, subject to certain conditions, purchase the hotel property, including all assets necessary for the operation of the hotel (the "**Hotel**") of the Company located at the municipal address of 3 Sturgeon River Road, Sioux Lookout, Ontario and the sale procedures, in accordance with the terms and conditions set forth herein (as such process may be amended, restated or supplemented pursuant to the terms herein, the "**Sale Procedures**").

The SHA Order and these Sale Procedures shall exclusively govern the process for soliciting and selecting bids for the sale of the Hotel.

### Definitions

1. All capitalized terms used herein shall have the meanings given to them in Appendix "A" hereto.

### Sale Process

2. These Sale Procedure describe, among other things, the Hotel available for sale, the opportunity for the acquisition of the Hotel, the manner in which interested parties (the "**Potential Bidders**") may gain access to or continue to have access to due diligence materials concerning the Hotel, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bid(s), and the process for obtaining approval of one or more Successful Bid(s) by the Court (collectively, the "**Sale Process**").
3. The Sale Process will be carried out by the Receiver (or its designated agent) in accordance with these Sale Procedures. In addition, the closing of any transaction may involve additional intermediate steps or transactions to facilitate consummation of such sale, including additional Court filings. In the event that there is a disagreement or clarification required as to the interpretation or application of these Sale Procedures or the responsibilities of the Receiver hereunder, the Court will have the jurisdiction to hear such matter and provide advice and directions, upon application of the Receiver with a hearing on no less than **3 Business Days'** notice.

### **Sale Opportunity**

4. The Receiver shall prepare a list of persons who may constitute Potential Bidders and shall distribute to each such person: (a) a non-confidential teaser (the "**Teaser**") describing the opportunity to acquire the Hotel; (b) a copy of the SHA Order (including the Sale Procedures); (c) a form of required Confidentiality Agreement acceptable to the Receiver. After execution of the Confidentiality Agreement in proper form Receiver will also distribute the Confidential Information Memorandum ("**CIM**") and provide the Potential Bidders and the Stalking Horse Bidder with access to a virtual data room ("**VDR**")

### **As Is, Where Is Sale**

5. The sale of the Hotel and the Business will be on an "**as is, where is**" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or any of its Representatives, except to the extent set forth in the relevant Definitive Agreement(s) with the Successful Bidder(s). Specifically, the representations, warranties, covenants or indemnities associated with the sale of the Purchased Assets shall not be materially more favourable to the Successful Bidder than those set out in the Stalking Horse APA.

### **Free of Any and All Claims and Interests**

6. All of the right, title and interest of the Company in and to the Hotel will be sold and transferred free and clear of all Security Interests, claims, options, and interests therein and there against (collectively, the "**Claims and Interests**") pursuant to the approval and vesting order an "Approval and Vesting Order") made by the Court. Contemporaneously with such Approval and Vesting Order(s) being made, all such Claims and Interests shall attach to the net proceeds of the sale of such Hotel (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the Definitive Agreement(s) with the Successful Bidder(s).

### **Solicitation of Interest**

7. As soon as reasonably practicable after the approval of this Order by the Court:
  - (a) the Receiver will prepare a list of potential bidders (the "**Known Potential Bidders**") for the Hotel. Concurrently, the Receiver will prepare a non-confidential initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders of the existence of the Solicitation Process and inviting the Known Potential Bidders to express their interest in making a bid for the Hotel in accordance with these Sale Procedures (each a "**Bid**").
  - (b) the Receiver shall cause a notice of the Sale Process contemplated by these Sale Procedures and such other relevant information which the Receiver considers appropriate to be published in the Globe and Mail and shall invite, pursuant to the Teaser, Bids from interested parties. The opportunity to acquire the Hotel and the Business will be posted on the Receiver's website as soon as practical following



the issuance of the SHA Order. At the discretion of the Receiver, the Receiver can additionally conduct a targeted marketing process to solicit interest from other interested parties.

- (c) the Receiver shall distribute to the Known Potential Bidders the Teaser Letter, as well as a draft form of confidentiality agreement (the "**Confidentiality Agreement**") that is satisfactory to the Receiver, each acting reasonably, and which shall inure to the benefit of any purchaser under a Bid pursuant to the Sales Process.

### **Participation Requirements**

- 8. Unless otherwise provided for herein, ordered by the Court, or agreed by the Receiver, in order to participate in the Sale Procedures and be considered for qualification as a Qualified Bidder, a Potential Bidder must, prior to the distribution of any confidential information, deliver to the Receiver:
  - (a) an executed Confidentiality Agreement, which shall enure to the benefit of any Successful Bidder(s) of the Hotel or any part thereof on the closing of the Successful Bid(s);
  - (b) a specific indication of the anticipated sources of capital for such Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow the Receiver to make, in its reasonable business or professional judgment, a determination as to the Potential Bidder's financial and other capabilities to consummate the proposed transaction;
  - (c) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the direct and indirect owners of the Potential Bidder and their principals; and
  - (d) a written acknowledgement of receipt of a copy of the SHA Order approving these Sale Procedures and agreeing to accept and be bound by the provisions contained therein.
- 9. A Potential Bidder that has satisfied all of the requirements described in Section 8 above and who the Receiver determines has a reasonable prospect of completing a transaction contemplated herein, will be deemed a Qualified Bidder and will be promptly notified of such classification by the Receiver. Notwithstanding these requirements, the Receiver may, in its sole discretion, designate any Potential Bidder as a Qualified Bidder.

### **Due Diligence**

- 10. The Receiver shall provide any person deemed to be a Qualified Bidder with access to the Data Room and further access to such due diligence materials and information relating to the Hotel, as the Receiver deems appropriate, including access to further information in the Data Room and management presentations, where appropriate.



11. The Receiver (and its Representatives) do not make any representations or warranties whatsoever, and shall have no liability of any kind whatsoever, as to the information or the materials provided through the due diligence process or otherwise made available to any Potential Bidder, Qualified Bidder, Qualified Final Bidder or Successful Bidder, with respect to the Hotel or any part thereof, the Company's Business, including any information contained in the Process Letter, Teaser, CIM or VDR and provided or made in any management presentations.
12. The Receiver reserves the right to limit any Qualified Bidder's access to any confidential information (including any information in the Data Room), where, in the Receiver's discretion, such access could negatively impact the Sale Procedures, the ability to maintain the confidentiality of confidential information, or the value of the Hotel. Requests for additional information are to be made to the Receiver. The Receiver shall not be obligated to furnish any due diligence information after the Bid Deadline.

### **PHASE 1**

#### **Bid Procedure**

##### ***Bid Deadline***

13. From the date of the SHA Order until the Bid Deadline, the Receiver, in accordance with the terms of the SHA Order, will solicit bids for the Hotel from Qualified Bidders and, from the date of its designation as a Qualified Bidder until the Bid Deadline, each Qualified Bidder will have the opportunity to make a Bid to the Receiver.
14. Each Qualified Bidder must deliver its Bid to the Receiver so as to be received by the Receiver not later than Noon (Calgary Time) on November 28, 2018 (the "**Bid Deadline**").

##### **Bid**

15. In assessing a Bid, the Receiver will consider the following things, among others, when determining whether such Bid constitutes a Qualified Bid:
  - (a) it includes a letter stating that the Bid is irrevocable until the earlier of: (i) 11:59 p.m. on the Business Day following the closing of a transaction with a Successful Bidder in respect of the Hotel or a part thereof; and (ii) thirty (30) Business Days following the Bid Deadline; provided, however, that if such Asset Bid is selected as a Successful Bid, it shall remain irrevocable until 11:59 p.m. (Calgary Time) on the Business Day following the closing of the Successful Bid or Successful Bids, as the case may be;
  - (b) it includes a duly authorized and executed purchase and sale agreement, substantially in the form of the Purchase Agreement (the "**Definitive Sale Agreement**"), specifying the Purchase Price, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements), as well

as copies of such materials marked (in the form of a blackline) to show the amendments and modifications to the Purchase Agreement and such ancillary agreements and the proposed Approval and Vesting Orders;

- (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
- (d) it provides for consideration at closing sufficient to satisfy the Qualified Consideration Requirement;
- (e) it includes evidence sufficient to allow the Receiver to make a reasonable determination as to the Qualified Bidder's (and its direct and indirect owners' and their principals') financial and other capabilities to consummate the transaction contemplated by the Asset Bid, which evidence could include but is not limited to evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution;
- (f) it is not conditioned on: (i) the outcome of unperformed due diligence by the Qualified Bidder; and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct any and all required due diligence prior to making its Bid;
- (g) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Bid, including the identification of the Qualified Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (h) it includes an acknowledgement and representation that the Qualified Bidder:
  - (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Hotel to be acquired and liabilities to be assumed in making its Asset Bid;
  - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Hotel to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Receiver or any of its Representatives, except as expressly stated in the Definitive Sale Agreement submitted by it;
  - (iii) confirms that the contemplated transaction will be made on an "**as is, where is**" and "**without recourse**" basis;
  - (iv) is a sophisticated party capable of making its own assessments in respect of making its Bid; and
  - (v) has had the benefit of independent legal advice in connection with its Bid;

- (i) it includes evidence of, in form and substance reasonably satisfactory to the Receiver, authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Bid;
- (j) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Receiver), or such other form acceptable to the Receiver, payable to the Receiver, in trust, in an amount equal to 10% percent of the proposed Purchase Price, to be held and dealt with in accordance with these Sale Procedures;
- (k) if the Qualified Bidder is an entity newly formed for the purpose of the transaction, the Bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Receiver, that names the Receiver as third - party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- (l) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of compliance or anticipated compliance with any and all applicable regulatory approvals, the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (m) it provides contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction; and
- (n) it contains other information reasonably requested by the Receiver.

#### **Stalking Horse Bid**

- 16. Pursuant to the SHA Order, the Stalking Horse Bid has been designated as such by the Receiver.
- 17. The Purchase Price under the Stalking Horse Bid will be **\$5,000,000** (collectively, the "**Stalking Horse Bid Price**").
- 18. The Stalking Horse Bidder shall be entitled to increase the consideration of the Stalking Horse Bid. For greater certainty, nothing in this Section 18 shall restrict the ability of the Stalking Horse Bidder to, as agreed to by the Receiver, make amendments to the Hotel to be acquired and/or liabilities to be assumed pursuant to the Stalking Horse Bid.
- 19. If the Stalking Horse Bid is terminated at any time during the Sale Process, and there is no Qualified Bid received that satisfies the Qualified Consideration Requirement, the Receiver shall apply to the Court to seek advice and directions as to the continuation, modification or termination of the Sale Process.

#### **Assessment of Qualified Bids**

- 20. All Bids that, in the opinion of the Receiver, meet the criteria set out in Sections 15 and 16, respectively, shall be deemed a "**Qualified Bid**" and, collectively, "**Qualified Bids**"



and each Qualified Bidder who has submitted a Qualified Bid shall hereinafter be referred to as a "**Qualified Final Bidder**". The Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Final Bidder for all purposes of these Sale Procedures.

21. The Receiver shall be entitled, either prior to or following the Bid Deadline, to seek to clarify the terms of any Qualified Bid submitted by a Qualified Final Bidder. The Receiver may also select any or all Qualified Bid(s) for further negotiation and/or clarification of any terms or conditions of such Qualified Bids, including the amounts offered, before identifying the highest or otherwise best Qualified Bid(s) received, as the case may be.
22. The Receiver may accept a revised or clarified Qualified Bid, provided that the initial Qualified Bid was received by the Receiver prior to the Bid Deadline.
23. The Receiver may waive compliance with any one or more of the items specified in Sections 15 and 16, and deem such non-compliant Bid to be a Qualified Bid; provided, however, that the Receiver shall not be entitled to waive the Qualified Consideration Requirement nor deem any Sale Proposal that fails to satisfy such requirements to be a Qualified Bid.
24. If the Receiver determines that: (a) no Qualified Bid was received; or (b) at least one Qualified Bid was received but it is not likely that the transactions (other than the Stalking Horse Bid) contemplated in any such Qualified Bids will provide greater consideration than the Stalking Horse Bid, the Stalking Horse Bid shall be deemed to be the Successful Bid and the Stalking Horse Bidder shall be the Successful Bidder, and the Receiver shall terminate these Sale Procedures and seek to implement the Stalking Horse Bid, including, by filing an application with the Court within 5 Business Days of such termination seeking approval to implement the Stalking Horse Bid.
25. If the Receiver, in accordance with section 22 above, determines that (a) one or more Qualified Bids were received, and (b) it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated, these Sale Procedures will not be terminated, the Auction will be held, and the Receiver will promptly notify all Qualified Bidders by no later than 6:00 p.m. MT on the day after the Bid Deadline, including the Stalking Horse Bidder, that they are entitled to participate in the Auction.

#### **Auction**

26. If, in accordance with section 27 above, the Auction is to be held, the Receiver will conduct an auction (the "**Auction**"), at 9:00 a.m. (Mountain Time) on November 30, 2018, at the offices of the Receiver's legal counsel, Blake, Cassels & Graydon LLP, Suite 3500, Bankers Hall East Tower, 855 – 2 Street SW, Calgary, Alberta, or such other location as shall be communicated by the Receiver in a timely manner to all entities entitled to attend at the Auction, which Auction may be adjourned by the Receiver, subject to continued compliance with completion of the Auction by the date set out in these Sale Procedures, to another time and place selected by the Receiver (provided that



notice thereof is sent to such entities). The Auction shall run in accordance with the following procedures:

- (a) at least 12 hours prior to the Auction, each Qualified Bidder who has submitted a Qualified Bid must inform the Receiver whether it intends to participate in the Auction (the Qualified Bidders who so inform the Receiver shall be referred to as the "**Auction Bidders**");
- (b) at least 12 hours prior to the Auction, the Receiver will provide copies of the Qualified Bid which it believes is the highest or otherwise best Qualified Bid (the "**Starting Bid**") to all Auction Bidders;
- (c) only representatives of the Auction Bidders, the Receiver, and the Stalking Horse Bidder (and the advisors to each of the foregoing entities) are entitled to attend the Auction in person;
- (d) at the commencement of the Auction each Auction Bidder shall be required to confirm that it has not engaged in any collusion with any other Auction Bidder with respect to the bidding or any sale;
- (e) only the Auction Bidders will be entitled to participate in the Auction and make any bids at the Auction; provided, however, that in the event that any Qualified Bidder elects not to attend and/or participate in the Auction, such Auction Bidder's Qualified Bid, as applicable, shall nevertheless remain fully enforceable against such Auction Bidder if it is selected as the Successful Bid at the conclusion of the Auction;
- (f) all Subsequent Bids presented during the Auction shall be made and received in one room on an open basis. All Auction Bidders will be entitled to be present for all Subsequent Bids at the Auction with the understanding that the true identity of each Auction Bidder at the Auction will be fully disclosed to all other Auction Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other Auction Bidders throughout the entire Auction;
- (g) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- (h) the Receiver may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids, requirements to bid in each round, and the ability of multiple Auction Bidders to combine to present a single bid) for conducting the Auction, provided that such rules are (i) not inconsistent with these Sale Procedures or any order of the Court made in the Receivership proceedings; and (ii) disclosed to each Auction Bidder at the Auction;
- (i) bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (a "**Subsequent Bid**") that the Receiver

determines is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid; in each case by at least the Minimum Incremental Overbid. Each bid at the Auction shall provide net value of at least \$25,000 (the "**Minimum Incremental Overbid**") over the Starting Bid or the Leading Bid, as the case may be; provided, however, that the Receiver shall retain the right to modify the increment requirements at the Auction, and provided, further that the Receiver, in determining the net value of any incremental bid, shall not be limited to evaluating the incremental dollar value of such bid and may consider other factors as identified in the "Selection Criteria" section of these Sale Procedures. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the bid (including the value and material terms thereof) that it believes to be the highest or otherwise best offer (the "**Leading Bid**"). A round of bidding will conclude after each Auction Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;

- (j) the Receiver reserves the right, in its reasonable business judgment to make one or more adjournments in the Auction of no more than 2 hours each, to among other things (i) facilitate discussions between the Receiver and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Receiver with such additional evidence as the Receiver, in its reasonable business judgment, may require, including that the Auction Bidder (including, as may be applicable, the Stalking Horse Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing overbid amount;
- (k) the Stalking Horse Bidder shall be permitted, in its sole discretion, to submit Subsequent Bids, provided, however, that such Subsequent Bids are made in accordance with these Sale Procedures. No other person is entitled to submit a stalking horse bid in whole or in part;
- (l) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed and the then Leading Bid will become the "**Successful Auction Bid**";
- (m) the Auction shall be closed within 1 Business Days of the start of the Auction unless extended by the Receiver; and
- (n) no bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction and the selection of the Successful Auction Bid.



**Selection Criteria – No Auction Process**

27. The Receiver will assess the Qualified Bids received, if any, and will determine whether the transactions contemplated by such Qualified Bids are likely to be consummated. Such assessments will be made as promptly as practicable after the Bid Deadline.
28. Evaluation criteria with respect to the assessment each Bid that is a Qualified Bid may include, but are not limited to items such as:
  - (a) the proposed Purchase Price and the net value (including assumed liabilities and other obligations to be performed or assumed by the Qualified Final Bidder) provided by such Qualified Bid;
  - (b) the claims likely to be created by such Qualified Bid in relation to other Qualified Bids;
  - (c) the counterparties to the Qualified Bid;
  - (d) the proposed revisions to the Purchase Agreement and the terms of the transaction documents;
  - (e) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction);
  - (f) the Property included or excluded from the Qualified Bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Property; and
  - (g) the likelihood and timing of consummating the Qualified Bid.
29. The Receiver will identify the highest or otherwise best Qualified Bid(s) received (each such Qualified Bid, the "**Successful Qualified Bid**"; together with a Successful Auction Bid, will be referred to interchangeably as the "**Successful Bid**"). The Qualified Final Bidder(s) or Auction Bidders who made the Successful Bid(s) are the "**Successful Bidder(s)**". The Receiver will notify the Qualified Final Bidders of the identities of the Successful Bidder(s). If the Stalking Horse Bid is deemed to be the highest and best Qualified Bid, then the Stalking Horse Bid will be the Successful Bid, as the case may be.

**Definitive Agreements**

30. The Receiver will finalize the Definitive Agreement(s) in respect of any Successful Bidder(s), conditional upon approval of the Court, by no later than 5:00 p.m. (Calgary Time) on December 20, 2018 or such later date or time as the Receiver may determine appropriate in consultation with the Successful Bidder(s) or Successful Auction Bidder.

**Approval Hearing**

31. As soon as reasonably possible following the Bid Deadline and, in any event, within **5** Business Days of the execution of the Definitive Agreement(s) by the Receiver and the

Successful Bidder(s), the Receiver shall apply to the Court (the "**Approval Hearing**") for the Approval and Vesting Order, which may, among other things, approve the Successful Bid(s), authorize the Receiver to enter into any and all necessary agreements with respect to the Successful Bidder(s) and/or vest title to Hotel or any part of it in the name of such Successful Bidder(s).

32. The Approval Hearing will be held on a date to be scheduled by the Court upon application by the Receiver, and in any event, not later than December 31, 2018 or such later date as the Receiver and the Successful Bidder(s) may agree.
33. All Qualified Bids (other than any Successful Bid(s)) shall be deemed rejected on and as of the date of closing of the Successful Bid or date upon which all Successful Bids have closed, as the case may be.
34. If, following approval of the Successful Bid(s) by the Court, the Successful Bidder(s) fail to consummate the transaction for any reason, then the Receiver shall be entitled to re-engage with the Qualified Final Bidder(s) to attempt to renegotiate the Qualified Bids without further order of the Court.

#### **Deposits**

35. All Deposits shall be retained by the Receiver and deposited in a non-interest bearing trust account. If there is Successful Bid, the Deposit(s) paid by each Successful Bidder whose Successful Bid is approved at the Approval Hearing shall be applied to the Purchase Price to be paid by that Successful Bidder upon closing of the approved Successful Bid and will be non-refundable. The Deposits of Qualified Final Bidders not selected as a Successful Bidder shall be returned to such Qualified Final Bidders within five (5) Business Days after the date on which their Qualified Bid is no longer irrevocable in accordance with these Sale Procedures. If there are no Successful Bid(s), all Deposits shall be returned to the respective Qualified Final Bidder(s) within two (2) Business Days of the date upon which these Sale Procedures are terminated.
36. In each case where:
  - (a) a Successful Bidder breaches any of its obligations under a Definitive Agreement;
  - (b) a Qualified Bidder or Qualified Final Bidder breaches its obligations under the terms of these Sale Procedures; or
  - (c) a Qualified Final Bidder fails to complete the transaction contemplated by its Qualified Bid:

the Deposit provided by the applicable party will be forfeited to the Receiver as liquidated damages and not as a penalty. The Receiver shall apply any forfeited Deposit in a manner the Receiver sees fit.

### **Notice**

37. The addresses used for delivering documents to the Receiver as prescribed by the terms and conditions of these Sale Procedures are set out in **Exhibit 1** hereto. All bids and/or associated documentation shall be delivered to the Receiver by electronic mail, personal delivery or courier. Interested Potential Bidders requesting information about the qualification process, including a form of Purchase Agreement, and information in connection with their due diligence, should contact the Receiver at the contact information contained in **Exhibit 1**.
38. The Receiver, after consultation with their advisors: (a) may reject, at any time any bid (other than the Stalking Horse Bid) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Receivership Order, these Sale Procedures or any orders of the Court applicable, or (iii) contrary to the best interests of the Company, their estates, and stakeholders as determined by the Receiver, acting reasonably; (b) in accordance with the terms hereof, may impose additional terms and conditions and otherwise seek to modify the Sale Procedures at any time in order to maximize the results obtained; and (c) in accordance with the terms hereof, may accept bids not in conformity with these Sale Procedures to the extent that the Receiver determines, in its reasonable business judgment.
39. Prior to the conclusion of the Auction, the Receiver may impose such other terms and conditions, on notice to the relevant bidders, as the Receiver may determine to be in the best interests of the estate and its stakeholders that are not inconsistent with any of the procedures in these Sale Procedures.
40. These Sale Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Company, the Receiver and any Known Potential Bidder, Potential Bidder, Qualified Bidder, Auction Bidder, Successful Auction Bidder or Successful Bidder, other than as specifically set forth in definitive agreements that may be executed by the Receiver.

### **No Amendment**

41. There will be no amendments to these Sale Procedures not contemplated herein without the approval of the Court, on notice to the service list in the Receivership Proceedings, subject to such non-material amendments as may be determined to by the Receiver.

### **Further Orders**

42. The Receivership Order, SHA Order, the Sale Procedures, and any other Orders of the Court made in the Receivership Proceedings relating to the Sale Procedures shall exclusively govern the process for soliciting and selecting Bids.
43. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.
44. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency.



45. Each Qualified Bidder, upon being declared as such under the Sale Procedures, shall be deemed to have irrevocably and unconditionally attorned and submitted to the jurisdiction of the Court in the Receivership Proceedings in respect of any action, proceeding or dispute in relation to the conduct or any aspect of the Sale Procedures and the Sale Process.
46. At any time during the Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its obligations and duties herein.

**Exhibit 1 – Addresses and Contact Information of the Receiver**

**Alvarez & Marsal Canada Inc. LIT**

Attention: Orest Konowalchuk

Phone: (403) 538-4736

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

Fax: (403) 538-7551

Bow Valley Square 4

Suite 1110, 250 6th Ave SW

Calgary, Alberta

T2P 3H7

**Appendix "A"**

**Defined Terms**

"**Approval Hearing**" is defined in Section 31.

"**Approval and Vesting Order**" is defined in Section 6.

"**Bid**" is defined in Section 7(a).

"**Bid Deadline**" is defined in Section 14.

"**Break Fee**" has the meaning given to it in the Purchase Agreement.

"**Business**" means the business being carried on by the Company.

"**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are open for business in the City of Calgary.

"**Claims and Interests**" is defined in Section 6.

"**Company**" is defined in the preamble.

"**Confidentiality Agreement**" means a confidentiality agreement in favour of the Receiver executed by a Potential Bidder, in form and substance satisfactory to the Receiver, which shall enure to the benefit of any Successful Bidder.

"**Court**" is defined in the preamble.

"**Data Room**" means a confidential virtual data room which contains documents furnished by the Company and a physical data room providing access to relevant technical information.

"**Definitive Agreements**" means all Definitive Sale Agreement(s).

"**Definitive Sale Agreement**" has the meaning set out in Section 15(b).

"**Deposit**" is defined in Section 15(j).

"**Filing Date**" means the date the Receiver was appointed over the Company, being May 18, 2018.

"**Potential Bidder**" is defined in Section 2.

"**Process Letter**" means a letter from the Receiver to Qualified Bidders outlining, among other things, the Sale Process and Sale Procedures timelines.

"**Property**" means all of the undertakings, property and assets of the Company.

"**Purchase Agreement**" is defined in the preamble.

"**Purchase Price**" means the price payable by a Successful Bidder for the selected Property pursuant to a Definitive Agreement.

"**Qualified Bidder**" is defined in Section 20 and "**Qualified Bidders**" means more than one of them.

"**Qualified Bid**" is defined in Section 20.

**"Qualified Consideration"** means consideration sufficient to repay immediately on closing: (a) the Secured Debt Repayment Requirement, any claims ranking senior in priority thereto that are or would be payable in the Receivership Proceedings, including the Priority Payables, and the Break Fee in cash.

**"Qualified Consideration Requirement"** means the requirement that any transaction, whether on its own, or in combination with one or more non-overlapping Qualified Bids for different Property, provides for consideration of at least the Qualified Consideration.

**"Qualified Final Bidder"** means a Qualified Bidder who has submitted a Qualified Bid

**"Receiver"** means Alvarez & Marsal Canada Inc. LIT, in its capacity as receiver and manager in the Receivership Proceedings and not in its personal or corporate capacity.

**"Receivership Proceedings"** is defined in the preamble.

**"Representatives"** when used with respect to a person means each director, officer, employee, consultant, contractor, financial advisor, legal counsel, accountant and other agent, adviser or representative of that person.

**"Sale Procedures"** is defined in the preamble.

**"Sale Process"** has the meaning set out in Section 2.

**"Sale Proposal"** means an offer to acquire all or part of the Property of the Company, or an offer to restructure, recapitalize or reorganize the Business and affairs of the Company as a going concern.

**"Security Interest"** means any mortgage, charge, pledge, assignment, hypothecation, title retention, finance lease or security interest, including any trust obligations, creating in favour of any creditor a right in respect of the Hotel.

**"SHA Order"** is defined in the preamble.

**"Stalking Horse Bid"** is defined in the preamble.

**"Stalking Horse Bidder"** is defined in the preamble.

**"Stalking Horse Bid Price"** is defined in Section 17.

**"Successful Auction Bid"** is defined in Section 26(l).

**"Successful Bid"** is defined in Section 29.

**"Successful Bidder"** is defined in Section 29 and **"Successful Bidders"** means more than one of them.

**"Superior Offer"** means a credible, reasonably certain and financially viable third party offer for the acquisition of all or substantially all of the Property of the Company, the terms of which offer are no less favourable and no more burdensome or conditional than the terms contained in the Purchase Agreement.

**"Teaser"** is defined in Section 4.

## **APPENDIX B**

### **Redacted JLL Engagement Agreement**



Jones Lang LaSalle Real Estate Services, Inc.  
Hotels & Hospitality Group/Canada  
22 Adelaide St. West, 26th Floor  
Toronto ON M5H 4E3  
tel +1 416 304 6000 fax +1 416 304 6001

Chad Artem, CPA, CA, CBV  
Director  
Alvarez & Marsal Canada Inc.  
250 6 Ave SW Suite 1110  
Calgary, Alberta  
cartem@alvarezandmarsal.com

**Re: DAYS INN SIOUX LOOKOUT**

Dear Chad:

Jones Lang LaSalle Real Estate Services, Inc., an Ontario corporation ("**JLL Canada**"), is pleased to confirm the agreement under which JLL Canada has been exclusively engaged by **Alvarez & Marsal Canada Inc.**, in its capacity as court appointed receiver and manager (the "**Receiver**") of 2367147 Ontario Inc. ("147 Ontario") and not in its personal or corporate capacity, to provide the services described below in connection with the Days Inn Hotel (the "**Hotel**") Sioux Lookout, located at 3 Sturgeon River Rd, Sioux Lookout, Ontario (the "**Property**").

1. SCOPE OF SERVICES

On the terms and subject to the conditions described in this letter agreement ("**Agreement**"), Receiver hereby engages JLL Canada as its exclusive and sole agent to arrange the sale or other disposition (the "**Transaction**") of 147 Ontario's interest in the Property to buyer(s), (individually or collectively a "**Prospective Buyer**") introduced by JLL Canada. The following representatives of JLL Canada's Hotels & Hospitality Group, together with such other representatives as may be required by local law, shall provide services to Receiver hereunder: Mark Sparrow, Luke Scheer and Ryan Tran (collectively, the "**Listing Team**").<sup>1</sup>

JLL Canada acknowledges that the Receiver will be seeking an order approving of the terms of this Agreement from the Court of Queen's Bench of Alberta (the "**Court**") and that this Agreement will not be binding or effective until such approval is obtained from the court.

The Receiver will also be seeking approval of a sale process and sale procedure (the "**Sales Process**") that sets out and approves a timeline for a sale of the Hotel and Property that JLL Canada will have to comply with those timelines as set out in the Sale Process.

JLL Canada acknowledges that Receiver's objective is to obtain the best terms suitable for the Hotel of 2367147 **Ontario Inc.** in connection with the Transaction and, in order to achieve that objective, JLL Canada shall perform the following services and responsibilities (the "**Services**");

1. Determination of Marketing Strategy

JLL Canada will evaluate and recommend to the Receiver the appropriate structure, including pricing, and marketing strategy for the Transaction. The primary considerations in determining this structure and strategy will be meeting Receiver's objective of completing the Transaction on the most favourable terms

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<sup>1</sup> If an out-of-province transaction, Listing Team should include name of the broker of record or other province licensed broker working on transaction.

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obtainable in a timely manner based on a review of the Property and an analysis of comparable transactions.

2. Preparation of Marketing Presentation

JLL Canada will prepare a comprehensive marketing presentation ("**Offering Memorandum**") which shall be subject to the approval of the Receiver. This Offering Memorandum will provide detailed information necessary for the analysis and evaluation of the Transaction. In addition to descriptive material, the Offering Memorandum will contain financial projections and may contain an explanation of the terms and conditions under which a Transaction will be pursued. The purchase price shall be agreed to by the Receiver and Prospective Buyer. JLL Canada to provide a complete list of potential buyers of the Property at the start and end of the engagement under this Agreement.

3. Creation and Implementation of Marketing Plan

During this phase of the engagement, representatives of JLL Canada will advertise and market the Property to Prospective Buyers. Prospective Buyers will be required to sign a confidentiality agreement in a form approved by the Receiver and then presented with a copy of the Offering Memorandum. Follow-up discussions and on-site property tours will be conducted by JLL Canada, as needed.

4. Preparation of Due Diligence Information

JLL Canada will coordinate the preparation of appropriate back-up material, which will be provided to qualified parties in addition to the Offering Memorandum in their detailed investigation of the Property. This information may include, but not be limited to, such items as document summaries, historic and forecasted financial statements, STR reports or competitive market performance summaries, physical property descriptions and site plans, and lease copies to the extent deemed reasonably appropriate by JLL Canada.

5. Contract Negotiations

The status of the marketing efforts, discussions, and terms and conditions of any offer received by Prospective Buyers will be systematically communicated to and discussed with the Receiver. Receiver shall refer all inquiries regarding the Transaction to JLL Canada, and JLL Canada will assist the Receiver in conducting all negotiations; provided, however, in no event shall JLL Canada have the authority to make any commitments or representations, enter into any agreements or sign any documents on behalf of the Receiver. All final terms and conditions of the Transaction will be subject to approval by Receiver in its sole discretion, and Receiver shall have the sole and absolute discretion to accept or reject any offer or to withdraw the Property from the market.

6. Transaction Closing

The final phase of JLL Canada's involvement will be to assist Receiver in the coordination of activities required to consummate the Transaction. This will include assistance in the resolution of due diligence and business issues and assistance in the satisfaction of closing requirements.


Receiver acknowledges and agrees, however, that JLL Canada is not an expert in and is not responsible for any legal, regulatory, tax, accounting, engineering, environmental or other technical matters, all of which shall be solely Receiver's responsibility; provided, however, JLL shall, based on its professional expertise, assist Receiver in connection with such matters, including giving Receiver recommendations as to experts to use for such matters and coordinating the work of such experts with the other parties working on the Transaction, but in no event shall

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JLL Canada have responsibility or liability for the work of such experts and Receiver agrees to hold JLL Canada harmless in this regard.

II. COOPERATION AND OBLIGATIONS OF RECEIVER

Receiver shall inform JLL Canada of the dates and nature of all communications (written and verbal) by Receiver with Prospective Buyers concerning the Transaction after the date hereof and shall refer all inquiries from such party to JLL Canada. Receiver shall also make available to JLL Canada such documents, materials and information regarding the Property which, in the reasonable professional judgment of JLL Canada, are necessary or appropriate for the proper marketing of the Transaction. In addition, Receiver agrees to review and verify the accuracy of the revenue and operating expenses for the Property and all financial and other factual data and other information included in the Offering Memorandum or any other materials submitted to or prepared by JLL Canada regarding the Property; and JLL Canada shall have no liability with respect to the use of any data or information provided by other parties. JLL Canada acknowledges that the sale of the Property is being done on an "as is, where is" basis and the sale must be approved by the Court of Queen's Bench Alberta. In addition, Receiver agrees to disclose to JLL Canada and the Listing Team at all times during the term of this Agreement all material third party claims and interests in the Property known to the Receiver and all relevant information that the Receiver is aware of concerning any latent physical defects in the land, building and improvements and any imperfection in, or disputes in connection with, legal title to the Property..



III. COMPENSATION

#### IV. EXPENSES

Receiver shall reimburse JLL Canada for all reasonable direct out-of-pocket costs and expenses incurred by JLL Canada within the scope of its engagement pursuant to this Agreement, including without limitation travel, lodging and meal expenses, and printing and production charges, provided that the aggregate amount of such out-of-pocket costs and expenses shall not exceed the sum of seven thousand, five hundred dollars (\$7,500.00) during the term of this Agreement (such amount hereinafter referred to as the "**Expense Cap**"), without Receiver's prior written approval. Up to ten (10%) percent of the total of such reimbursable expenses will be charged for administrative expenses incurred by JLL Canada (and shall be subject to the Expense Cap), including but not limited to express mail and courier services, telephone and related expenses, reproduction charges (exclusive of the cost of third party Offering Memorandum costs) and other similar expenses. In addition, JLL Canada shall be reimbursed by Receiver for any payments made by JLL Canada to third party consultants and professionals provided such third party consultants and professionals have been approved by Receiver with prior written consent from the Receiver (not to be unreasonably withheld or delayed). All reimbursable amounts shall be payable within thirty (30) days upon receipt by Receiver of any invoice from JLL Canada therefor.

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V. TERMINATION

The term of JLL Canada's engagement by Receiver shall begin as of the approval date from the court in a the Receivership proceedings and shall end on the earlier of:

- (a) Twelve (12) months from the execution of this Agreement; or
- (b) the date of the closing of a Transaction.

Upon termination of this Agreement, neither party will have any liability or continuing obligation to the other, except that: (i) any provision of this Agreement concerning rights or obligations of the parties with respect to representations, reimbursement, indemnification, the return or delivery of documents and other property, and confidentiality shall survive such termination; (ii) Receiver shall remain liable for JLL Canada's reasonable costs and expenses incurred up to the time of such termination pursuant to the terms of Article IV; and (iii) JLL Canada's right to payment of a Transaction Fee, if any, under this Agreement shall survive such termination.

VI. INDEMNIFICATION

Receiver shall indemnify, defend (with counsel reasonably acceptable to JLL Canada) and hold harmless JLL Canada, its affiliates, each person or entity deemed to control or to be controlled by JLL Canada, and their respective internal partners, shareholders, directors, officers and employees, against and from any and all losses, liabilities, and damages (including without limitation reasonable legal fees and disbursements) arising in connection with any third party action, claim, proceeding, or investigation relating to this engagement except such as may be imposed or incurred by reason of the gross negligence, willful misconduct, or fraud of JLL Canada (or any of its employees or agents) in the performance of the Services and provided that JLL Canada has acted within the scope of its authority under this Agreement.

JLL shall indemnify, defend (with counsel reasonably acceptable to Receiver) and hold harmless Receiver, each person or entity deemed to control or to be controlled by Receiver, and their respective internal partners, shareholders, directors, officers and employees, against and from any and all losses, liabilities, and damages (including without limitation reasonable legal fees and disbursements) arising in connection with any third party action, claim, proceeding, or investigation relating to this engagement which may be imposed or incurred by reason of the gross negligence, willful misconduct, or fraud of JLL Canada (or any of its employees or agents).

The foregoing indemnification obligations shall survive the expiration or early termination of this Agreement.

VII. GENERAL PROVISIONS

1. Notices. Any notice or other communication required or desired to be given to any party under this Agreement shall be in writing and shall be either: (a) delivered personally by hand; (b) sent by certified Canadian mail, return receipt requested; (c) sent by a nationally recognized overnight courier service; or (d) sent by email. All notices to either party shall be delivered to the following address provided either party may change such address by delivering notice to the other party in accordance with the provisions of this paragraph:

Notice to Receiver:  
Chad Artem, CPA, CA, CBV  
Director  
Alvarez & Marsal Canada  
250 6 Ave SW Suite 1110  
Calgary, Alberta

CA

cartem@alvarezandmarsal.com

Notice to JLL Canada:

Jones Lang LaSalle Real Estate Services, Inc.

22 Adelaide St. West, 26th Floor

Toronto ON M5H 4E3

Attention: Ryan Tran, VP, Mark Sparrow, EVP, Luke Scheer, EVP

Email: [ryan.tran@am.jll.com](mailto:ryan.tran@am.jll.com); [mark.sparrow@am.jll.com](mailto:mark.sparrow@am.jll.com); [luke.scheer@am.jll.com](mailto:luke.scheer@am.jll.com)

with a copy to:

Jones Lang LaSalle Real Estate Services, Inc.

22 Adelaide St. West, 26th Floor

Toronto ON M5H 4E3

Attention: Chief Counsel – Canada

Email: [paul.greven@am.jll.com](mailto:paul.greven@am.jll.com)

All notices shall be deemed given upon receipt or upon the date such receipt is refused by the party receiving such notice.

2. Confidentiality. JLL Canada agrees, for itself and all persons retained or employed by JLL Canada in performing its services, to hold in confidence and not to use or disclose to others any confidential or proprietary information of Receiver heretofore or hereafter disclosed to JLL Canada, which may become known to JLL Canada in the performance of, or as a result of, the Services, except where Receiver specifically, with prior written approval, authorizes JLL Canada to disclose any of the foregoing to others or such disclosure reasonably results from the performance of JLL Canada's duties hereunder; provided, however, that for purposes of this Agreement information shall not be deemed to be confidential if it is otherwise within the public domain or if JLL Canada has obtained such information from a source other than Receiver or its employees or agents.
3. Announcements. JLL Canada will not issue any press releases or announcements regarding the Transaction without the prior written approval (not to be unreasonably withheld) of Receiver as to the contents thereof.
4. Taxes. Prospective Buyer(s) shall be responsible for all federal (GST) and provincial taxes (for ex. HST, QST etc.) due and payable on the Transaction Fee or any other payments (including expenses) hereunder.
5. Interest; Litigation Costs. If any payment due hereunder is not paid when due, such payment shall bear interest at the rate of one and one-half percent (1 1/2%) per month from the date due to the date paid. In the event there is any litigation between Receiver and JLL Canada with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover its reasonable legal fees and disbursements in such litigation from the other party.
6. Brokers. JLL Canada shall not be required to deal with any other brokers or finders unless they are representing Prospective Buyer and have agreed to be paid by Prospective Buyer, and neither Receiver nor JLL Canada shall have any obligations for such brokers or finders. Except as set forth in the immediately preceding sentence, each party represents and warrants to the other party that it has not and will not deal with any other brokers or finders who are or will be entitled to any compensation with respect to the Transaction; and each party agrees to indemnify the other party for its breach of such representation and warranty.
7. Authority; Construction. Receiver represents and warrants that it is the Receiver of the Property, that it is duly authorized to enter into this Agreement and perform its obligations hereunder and that it is

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authorized to enter into the Transaction in accordance with the terms hereof. JLL Canada represents and warrants that it is duly authorized to enter into this Agreement and perform its obligations hereunder. The Agreement is intended to create an independent contractor relationship between JLL Canada and Receiver, and nothing herein shall be construed as creating an employer/employee or partnership relationship between the parties.

8. Assignment; Successors. Neither party shall assign their rights or obligations under this Agreement, in whole or in part, or any payments due or to become due under this Agreement without prior written consent of the other party (and any such attempted assignment or delegation shall be void); provided, however, either party may assign this Agreement to an affiliate or to an entity which succeeds to all or substantially all of the business of the assignor but no such assignment shall relieve the assignor of its obligations hereunder. Except as described in the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and assigns of the parties to this Agreement.
9. Dual Agency Representation. Receiver understands and agrees that, subject to Receiver's prior written approval, JLL Canada may solicit offers for the Property from clients of JLL Canada or its affiliates and that representatives of JLL, other than the Listing Team representing Receiver hereunder, may represent one or more other prospective purchasers and lenders to the Transaction. In addition, Receiver understands and acknowledges that JLL Canada or one of its affiliates may make an offer on behalf of itself for the Property. JLL Canada shall not be entitled to any compensation from Receiver, in addition to that set forth above, for representing itself or any other party.
10. Financings. Receiver understands that JLL Canada may be requested by potential purchasers to solicit offers from lenders for financing a Transaction with respect to the Property and that JLL Canada may, in addition to its representation of Receiver hereunder, represent one or more prospective purchasers and/or lenders in obtaining such financing. Receiver consents to such services by JLL Canada as long as JLL Canada discloses any such potential relationship to Receiver; provided, however, Receiver shall not be obligated to pay any fees or commissions to JLL Canada in connection with such financing, all of which shall be the sole responsibility of the purchaser. JLL Canada and this provision shall not preclude the Receiver from engaging in or soliciting any debt financing arrangements with potential lenders with respect to the Property. Similarly, JLL Canada shall not preclude any potential lenders from seeking and/or engaging in a potential debt financing transaction of the Property.
11. Limited Liability. Neither party shall be liable to the other for, and each party hereby waives any and all rights to claim against the other, any special, indirect, incidental, consequential, punitive or exemplary damages in connection with this Agreement, including, but not limited to, lost profits, even if such party has knowledge of the possibility of such damages. Except as provided under above clause VI, in no event shall JLL Canada's liability to Receiver exceed the fees paid to JLL Canada pursuant to this Agreement.
12. Counterparts; Electronic Copies. This Agreement may be executed in any number of separate counterparts and by facsimile signatures, each of which shall together be deemed an original, but the several counterparts shall together constitute one and the same instrument. In addition, the parties agree that (i) an electronic signature shall be considered an original signature, and (ii) a copy of the Agreement shall be considered an original instrument, and each, together or separately, shall become binding and enforceable as if original and the parties may rely on the same to prove the authenticity of the Agreement.
13. Governing Law and Disputes. This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles of such province. Any disputes initiated by either party shall occur in the Province of Ontario (City of Toronto).

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14. Waiver of Trial by Jury. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.
15. Currency. All dollar amounts referred to in this Agreement are stated in Canadian dollars.
16. OFAC and FINTRAC. Receiver represents and warrants that neither it nor any of its employees is a person or entity with whom U.S. entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the United States Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order or other governmental action. In addition, Receiver at all times agree to: i) comply with all legal requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and FINTRAC and ii) provide any and all reasonable assistance/information as soon as reasonably possible (but in no event no later than 5 business days) upon request by JLL Canada in order to allow it to do the same.
17. Privacy Consent. The Receiver hereby acknowledges that it has retained JLL Canada to provide the Services. As part of the Services, the Receiver hereby authorizes and expressly consents to the collection, use and disclosure by JLL Canada and the Listing Team, managing broker(s), associate broker(s) and representatives of JLL Canada, the provincial real estate board in which the Property is located, of relevant information about the Hotel and the Receiver in the context of the Hotel: i) for all purposes consistent with the listing, marketing and sale of the Property and ii) for enforcing codes of professional conduct and ethics for members of the board.
18. Local License. Receiver acknowledges and agrees that it has been advised by JLL Canada that it is only currently licensed and registered to carry out broker transactions ("trades in real estate") in the Provinces of BC, AB, ON and QC. Only if applicable, in order to carry out certain Services contemplated under this Agreement pertaining to property physically located in the other six (6) Canadian provinces and three (3) territories, Receiver acknowledges and agrees that JLL Canada may appoint a 3<sup>rd</sup> party broker to act as the "co-broker" on these certain transactions in order to be in compliance with any and all applicable laws of the local real estate broker authorities.
19. Complete Agreement. This Agreement, together with the Rider[s], Schedule[s] and Exhibits[s] attached, if any, contains the entire agreement between the parties and supersedes any prior discussions, negotiations, representations, or agreements, written or oral, between the parties hereto or any of their respective affiliates respecting the subject matter hereof. No alterations, additions, or other changes to this Agreement shall be made or binding unless made in writing and signed by both parties to this Agreement.

[Signature page follows]

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**Schedule “A” – List of Parties Exempted from Transaction Fees above Minimum**

1. Don Klisowsky;
2. J. Steenhof and J. Steenhof and Associates;
3. Sioux Lookout First Nations Health Authority.

If the foregoing accurately reflects our agreement, please execute this Agreement below and return it to the undersigned.

**JONES LANG LASALLE REAL ESTATE SERVICES, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AGREED and ACCEPTED

this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**ALVAREZ & MARSAL CANADA Inc., in its capacity as court appointed Receiver of 2367147 Ontario Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## **APPENDIX C**

### **Hotel Stalking Horse Process**

## **Sales Procedure**

Pursuant to an order (the "**Receivership Order**") of the Court of Queen's Bench of Alberta (the "**Court**") dated May 18, 2018, Alvarez & Marsal Canada Inc. LIT was appointed as receiver (the "**Receiver**") over the property, assets and undertakings of 2367147 Ontario Inc. (the "**Company**") in Court File No.1803-09581 (the "**Receivership Proceedings**").

Pursuant to a stalking horse approval order (the "**SHA Order**") dated October \_\_, 2018, the Court approved an asset purchase agreement (the "**Purchase Agreement**") between the Receiver and **Sioux Lookout First Nation Health Authority** (the "**Stalking Horse Bidder**"), contemplating an offer to, subject to certain conditions, purchase the hotel property, including all assets necessary for the operation of the hotel (the "**Hotel**") of the Company located at the municipal address of 3 Sturgeon River Road, Sioux Lookout, Ontario and the sale procedures, in accordance with the terms and conditions set forth herein (as such process may be amended, restated or supplemented pursuant to the terms herein, the "**Sale Procedures**").

The SHA Order and these Sale Procedures shall exclusively govern the process for soliciting and selecting bids for the sale of the Hotel.

### **Definitions**

1. All capitalized terms used herein shall have the meanings given to them in Appendix "A" hereto.

### **Sale Process**

2. These Sale Procedure describe, among other things, the Hotel available for sale, the opportunity for the acquisition of the Hotel, the manner in which interested parties (the "**Potential Bidders**") may gain access to or continue to have access to due diligence materials concerning the Hotel, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bid(s), and the process for obtaining approval of one or more Successful Bid(s) by the Court (collectively, the "**Sale Process**").
3. The Sale Process will be carried out by the Receiver (or its designated agent) in accordance with these Sale Procedures. In addition, the closing of any transaction may involve additional intermediate steps or transactions to facilitate consummation of such sale, including additional Court filings. In the event that there is a disagreement or clarification required as to the interpretation or application of these Sale Procedures or the responsibilities of the Receiver hereunder, the Court will have the jurisdiction to hear such matter and provide advice and directions, upon application of the Receiver with a hearing on no less than **3 Business Days'** notice.

### **Sale Opportunity**

4. The Receiver shall prepare a list of persons who may constitute Potential Bidders and shall distribute to each such person: (a) a non-confidential teaser (the "**Teaser**") describing the opportunity to acquire the Hotel; (b) a copy of the SHA Order (including the Sale Procedures); (c) a form of required Confidentiality Agreement acceptable to the Receiver. After execution of the Confidentiality Agreement in proper form Receiver will also distribute the Confidential Information Memorandum ("**CIM**") and provide the Potential Bidders and the Stalking Horse Bidder with access to a virtual data room ("**VDR**")

### **As Is, Where Is Sale**

5. The sale of the Hotel and the Business will be on an "**as is, where is**" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or any of its Representatives, except to the extent set forth in the relevant Definitive Agreement(s) with the Successful Bidder(s). Specifically, the representations, warranties, covenants or indemnities associated with the sale of the Purchased Assets shall not be materially more favourable to the Successful Bidder than those set out in the Stalking Horse APA.

### **Free of Any and All Claims and Interests**

6. All of the right, title and interest of the Company in and to the Hotel will be sold and transferred free and clear of all Security Interests, claims, options, and interests therein and there against (collectively, the "**Claims and Interests**") pursuant to the approval and vesting order an "Approval and Vesting Order") made by the Court. Contemporaneously with such Approval and Vesting Order(s) being made, all such Claims and Interests shall attach to the net proceeds of the sale of such Hotel (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the Definitive Agreement(s) with the Successful Bidder(s).

### **Solicitation of Interest**

7. As soon as reasonably practicable after the approval of this Order by the Court:
  - (a) the Receiver will prepare a list of potential bidders (the "**Known Potential Bidders**") for the Hotel. Concurrently, the Receiver will prepare a non-confidential initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders of the existence of the Solicitation Process and inviting the Known Potential Bidders to express their interest in making a bid for the Hotel in accordance with these Sale Procedures (each a "**Bid**").
  - (b) the Receiver shall cause a notice of the Sale Process contemplated by these Sale Procedures and such other relevant information which the Receiver considers appropriate to be published in the Globe and Mail and shall invite, pursuant to the Teaser, Bids from interested parties. The opportunity to acquire the Hotel and the Business will be posted on the Receiver's website as soon as practical following



the issuance of the SHA Order. At the discretion of the Receiver, the Receiver can additionally conduct a targeted marketing process to solicit interest from other interested parties.

- (c) the Receiver shall distribute to the Known Potential Bidders the Teaser Letter, as well as a draft form of confidentiality agreement (the "**Confidentiality Agreement**") that is satisfactory to the Receiver, each acting reasonably, and which shall inure to the benefit of any purchaser under a Bid pursuant to the Sales Process.

### **Participation Requirements**

- 8. Unless otherwise provided for herein, ordered by the Court, or agreed by the Receiver, in order to participate in the Sale Procedures and be considered for qualification as a Qualified Bidder, a Potential Bidder must, prior to the distribution of any confidential information, deliver to the Receiver:
  - (a) an executed Confidentiality Agreement, which shall enure to the benefit of any Successful Bidder(s) of the Hotel or any part thereof on the closing of the Successful Bid(s);
  - (b) a specific indication of the anticipated sources of capital for such Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow the Receiver to make, in its reasonable business or professional judgment, a determination as to the Potential Bidder's financial and other capabilities to consummate the proposed transaction;
  - (c) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the direct and indirect owners of the Potential Bidder and their principals; and
  - (d) a written acknowledgement of receipt of a copy of the SHA Order approving these Sale Procedures and agreeing to accept and be bound by the provisions contained therein.
- 9. A Potential Bidder that has satisfied all of the requirements described in Section 8 above and who the Receiver determines has a reasonable prospect of completing a transaction contemplated herein, will be deemed a Qualified Bidder and will be promptly notified of such classification by the Receiver. Notwithstanding these requirements, the Receiver may, in its sole discretion, designate any Potential Bidder as a Qualified Bidder.

### **Due Diligence**

- 10. The Receiver shall provide any person deemed to be a Qualified Bidder with access to the Data Room and further access to such due diligence materials and information relating to the Hotel, as the Receiver deems appropriate, including access to further information in the Data Room and management presentations, where appropriate.



11. The Receiver (and its Representatives) do not make any representations or warranties whatsoever, and shall have no liability of any kind whatsoever, as to the information or the materials provided through the due diligence process or otherwise made available to any Potential Bidder, Qualified Bidder, Qualified Final Bidder or Successful Bidder, with respect to the Hotel or any part thereof, the Company's Business, including any information contained in the Process Letter, Teaser, CIM or VDR and provided or made in any management presentations.
12. The Receiver reserves the right to limit any Qualified Bidder's access to any confidential information (including any information in the Data Room), where, in the Receiver's discretion, such access could negatively impact the Sale Procedures, the ability to maintain the confidentiality of confidential information, or the value of the Hotel. Requests for additional information are to be made to the Receiver. The Receiver shall not be obligated to furnish any due diligence information after the Bid Deadline.

### **PHASE 1**

#### **Bid Procedure**

##### ***Bid Deadline***

13. From the date of the SHA Order until the Bid Deadline, the Receiver, in accordance with the terms of the SHA Order, will solicit bids for the Hotel from Qualified Bidders and, from the date of its designation as a Qualified Bidder until the Bid Deadline, each Qualified Bidder will have the opportunity to make a Bid to the Receiver.
14. Each Qualified Bidder must deliver its Bid to the Receiver so as to be received by the Receiver not later than Noon (Calgary Time) on November 28, 2018 (the "**Bid Deadline**").

##### **Bid**

15. In assessing a Bid, the Receiver will consider the following things, among others, when determining whether such Bid constitutes a Qualified Bid:
  - (a) it includes a letter stating that the Bid is irrevocable until the earlier of: (i) 11:59 p.m. on the Business Day following the closing of a transaction with a Successful Bidder in respect of the Hotel or a part thereof; and (ii) thirty (30) Business Days following the Bid Deadline; provided, however, that if such Asset Bid is selected as a Successful Bid, it shall remain irrevocable until 11:59 p.m. (Calgary Time) on the Business Day following the closing of the Successful Bid or Successful Bids, as the case may be;
  - (b) it includes a duly authorized and executed purchase and sale agreement, substantially in the form of the Purchase Agreement (the "**Definitive Sale Agreement**"), specifying the Purchase Price, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements), as well

as copies of such materials marked (in the form of a blackline) to show the amendments and modifications to the Purchase Agreement and such ancillary agreements and the proposed Approval and Vesting Orders;

- (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
- (d) it provides for consideration at closing sufficient to satisfy the Qualified Consideration Requirement;
- (e) it includes evidence sufficient to allow the Receiver to make a reasonable determination as to the Qualified Bidder's (and its direct and indirect owners' and their principals') financial and other capabilities to consummate the transaction contemplated by the Asset Bid, which evidence could include but is not limited to evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution;
- (f) it is not conditioned on: (i) the outcome of unperformed due diligence by the Qualified Bidder; and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct any and all required due diligence prior to making its Bid;
- (g) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Bid, including the identification of the Qualified Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (h) it includes an acknowledgement and representation that the Qualified Bidder:
  - (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Hotel to be acquired and liabilities to be assumed in making its Asset Bid;
  - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Hotel to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Receiver or any of its Representatives, except as expressly stated in the Definitive Sale Agreement submitted by it;
  - (iii) confirms that the contemplated transaction will be made on an "**as is, where is**" and "**without recourse**" basis;
  - (iv) is a sophisticated party capable of making its own assessments in respect of making its Bid; and
  - (v) has had the benefit of independent legal advice in connection with its Bid;

- (i) it includes evidence of, in form and substance reasonably satisfactory to the Receiver, authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Bid;
- (j) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Receiver), or such other form acceptable to the Receiver, payable to the Receiver, in trust, in an amount equal to 10% percent of the proposed Purchase Price, to be held and dealt with in accordance with these Sale Procedures;
- (k) if the Qualified Bidder is an entity newly formed for the purpose of the transaction, the Bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Receiver, that names the Receiver as third - party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- (l) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of compliance or anticipated compliance with any and all applicable regulatory approvals, the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (m) it provides contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction; and
- (n) it contains other information reasonably requested by the Receiver.

#### **Stalking Horse Bid**

- 16. Pursuant to the SHA Order, the Stalking Horse Bid has been designated as such by the Receiver.
- 17. The Purchase Price under the Stalking Horse Bid will be **\$5,000,000** (collectively, the "**Stalking Horse Bid Price**").
- 18. The Stalking Horse Bidder shall be entitled to increase the consideration of the Stalking Horse Bid. For greater certainty, nothing in this Section 18 shall restrict the ability of the Stalking Horse Bidder to, as agreed to by the Receiver, make amendments to the Hotel to be acquired and/or liabilities to be assumed pursuant to the Stalking Horse Bid.
- 19. If the Stalking Horse Bid is terminated at any time during the Sale Process, and there is no Qualified Bid received that satisfies the Qualified Consideration Requirement, the Receiver shall apply to the Court to seek advice and directions as to the continuation, modification or termination of the Sale Process.

#### **Assessment of Qualified Bids**

- 20. All Bids that, in the opinion of the Receiver, meet the criteria set out in Sections 15 and 16, respectively, shall be deemed a "**Qualified Bid**" and, collectively, "**Qualified Bids**"



and each Qualified Bidder who has submitted a Qualified Bid shall hereinafter be referred to as a "**Qualified Final Bidder**". The Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Final Bidder for all purposes of these Sale Procedures.

21. The Receiver shall be entitled, either prior to or following the Bid Deadline, to seek to clarify the terms of any Qualified Bid submitted by a Qualified Final Bidder. The Receiver may also select any or all Qualified Bid(s) for further negotiation and/or clarification of any terms or conditions of such Qualified Bids, including the amounts offered, before identifying the highest or otherwise best Qualified Bid(s) received, as the case may be.
22. The Receiver may accept a revised or clarified Qualified Bid, provided that the initial Qualified Bid was received by the Receiver prior to the Bid Deadline.
23. The Receiver may waive compliance with any one or more of the items specified in Sections 15 and 16, and deem such non-compliant Bid to be a Qualified Bid; provided, however, that the Receiver shall not be entitled to waive the Qualified Consideration Requirement nor deem any Sale Proposal that fails to satisfy such requirements to be a Qualified Bid.
24. If the Receiver determines that: (a) no Qualified Bid was received; or (b) at least one Qualified Bid was received but it is not likely that the transactions (other than the Stalking Horse Bid) contemplated in any such Qualified Bids will provide greater consideration than the Stalking Horse Bid, the Stalking Horse Bid shall be deemed to be the Successful Bid and the Stalking Horse Bidder shall be the Successful Bidder, and the Receiver shall terminate these Sale Procedures and seek to implement the Stalking Horse Bid, including, by filing an application with the Court within 5 Business Days of such termination seeking approval to implement the Stalking Horse Bid.
25. If the Receiver, in accordance with section 22 above, determines that (a) one or more Qualified Bids were received, and (b) it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated, these Sale Procedures will not be terminated, the Auction will be held, and the Receiver will promptly notify all Qualified Bidders by no later than 6:00 p.m. MT on the day after the Bid Deadline, including the Stalking Horse Bidder, that they are entitled to participate in the Auction.

#### **Auction**

26. If, in accordance with section 27 above, the Auction is to be held, the Receiver will conduct an auction (the "**Auction**"), at 9:00 a.m. (Mountain Time) on November 30, 2018, at the offices of the Receiver's legal counsel, Blake, Cassels & Graydon LLP, Suite 3500, Bankers Hall East Tower, 855 – 2 Street SW, Calgary, Alberta, or such other location as shall be communicated by the Receiver in a timely manner to all entities entitled to attend at the Auction, which Auction may be adjourned by the Receiver, subject to continued compliance with completion of the Auction by the date set out in these Sale Procedures, to another time and place selected by the Receiver (provided that



notice thereof is sent to such entities). The Auction shall run in accordance with the following procedures:

- (a) at least 12 hours prior to the Auction, each Qualified Bidder who has submitted a Qualified Bid must inform the Receiver whether it intends to participate in the Auction (the Qualified Bidders who so inform the Receiver shall be referred to as the "**Auction Bidders**");
- (b) at least 12 hours prior to the Auction, the Receiver will provide copies of the Qualified Bid which it believes is the highest or otherwise best Qualified Bid (the "**Starting Bid**") to all Auction Bidders;
- (c) only representatives of the Auction Bidders, the Receiver, and the Stalking Horse Bidder (and the advisors to each of the foregoing entities) are entitled to attend the Auction in person;
- (d) at the commencement of the Auction each Auction Bidder shall be required to confirm that it has not engaged in any collusion with any other Auction Bidder with respect to the bidding or any sale;
- (e) only the Auction Bidders will be entitled to participate in the Auction and make any bids at the Auction; provided, however, that in the event that any Qualified Bidder elects not to attend and/or participate in the Auction, such Auction Bidder's Qualified Bid, as applicable, shall nevertheless remain fully enforceable against such Auction Bidder if it is selected as the Successful Bid at the conclusion of the Auction;
- (f) all Subsequent Bids presented during the Auction shall be made and received in one room on an open basis. All Auction Bidders will be entitled to be present for all Subsequent Bids at the Auction with the understanding that the true identity of each Auction Bidder at the Auction will be fully disclosed to all other Auction Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other Auction Bidders throughout the entire Auction;
- (g) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- (h) the Receiver may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids, requirements to bid in each round, and the ability of multiple Auction Bidders to combine to present a single bid) for conducting the Auction, provided that such rules are (i) not inconsistent with these Sale Procedures or any order of the Court made in the Receivership proceedings; and (ii) disclosed to each Auction Bidder at the Auction;
- (i) bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (a "**Subsequent Bid**") that the Receiver

determines is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid; in each case by at least the Minimum Incremental Overbid. Each bid at the Auction shall provide net value of at least \$25,000 (the "**Minimum Incremental Overbid**") over the Starting Bid or the Leading Bid, as the case may be; provided, however, that the Receiver shall retain the right to modify the increment requirements at the Auction, and provided, further that the Receiver, in determining the net value of any incremental bid, shall not be limited to evaluating the incremental dollar value of such bid and may consider other factors as identified in the "Selection Criteria" section of these Sale Procedures. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the bid (including the value and material terms thereof) that it believes to be the highest or otherwise best offer (the "**Leading Bid**"). A round of bidding will conclude after each Auction Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;

- (j) the Receiver reserves the right, in its reasonable business judgment to make one or more adjournments in the Auction of no more than 2 hours each, to among other things (i) facilitate discussions between the Receiver and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Receiver with such additional evidence as the Receiver, in its reasonable business judgment, may require, including that the Auction Bidder (including, as may be applicable, the Stalking Horse Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing overbid amount;
- (k) the Stalking Horse Bidder shall be permitted, in its sole discretion, to submit Subsequent Bids, provided, however, that such Subsequent Bids are made in accordance with these Sale Procedures. No other person is entitled to submit a stalking horse bid in whole or in part;
- (l) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed and the then Leading Bid will become the "**Successful Auction Bid**";
- (m) the Auction shall be closed within 1 Business Days of the start of the Auction unless extended by the Receiver; and
- (n) no bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction and the selection of the Successful Auction Bid.



**Selection Criteria – No Auction Process**

27. The Receiver will assess the Qualified Bids received, if any, and will determine whether the transactions contemplated by such Qualified Bids are likely to be consummated. Such assessments will be made as promptly as practicable after the Bid Deadline.
28. Evaluation criteria with respect to the assessment each Bid that is a Qualified Bid may include, but are not limited to items such as:
- (a) the proposed Purchase Price and the net value (including assumed liabilities and other obligations to be performed or assumed by the Qualified Final Bidder) provided by such Qualified Bid;
  - (b) the claims likely to be created by such Qualified Bid in relation to other Qualified Bids;
  - (c) the counterparties to the Qualified Bid;
  - (d) the proposed revisions to the Purchase Agreement and the terms of the transaction documents;
  - (e) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction);
  - (f) the Property included or excluded from the Qualified Bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Property; and
  - (g) the likelihood and timing of consummating the Qualified Bid.
29. The Receiver will identify the highest or otherwise best Qualified Bid(s) received (each such Qualified Bid, the "**Successful Qualified Bid**"; together with a Successful Auction Bid, will be referred to interchangeably as the "**Successful Bid**"). The Qualified Final Bidder(s) or Auction Bidders who made the Successful Bid(s) are the "**Successful Bidder(s)**". The Receiver will notify the Qualified Final Bidders of the identities of the Successful Bidder(s). If the Stalking Horse Bid is deemed to be the highest and best Qualified Bid, then the Stalking Horse Bid will be the Successful Bid, as the case may be.

**Definitive Agreements**

30. The Receiver will finalize the Definitive Agreement(s) in respect of any Successful Bidder(s), conditional upon approval of the Court, by no later than 5:00 p.m. (Calgary Time) on December 20, 2018 or such later date or time as the Receiver may determine appropriate in consultation with the Successful Bidder(s) or Successful Auction Bidder.

**Approval Hearing**

31. As soon as reasonably possible following the Bid Deadline and, in any event, within **5** Business Days of the execution of the Definitive Agreement(s) by the Receiver and the

Successful Bidder(s), the Receiver shall apply to the Court (the "**Approval Hearing**") for the Approval and Vesting Order, which may, among other things, approve the Successful Bid(s), authorize the Receiver to enter into any and all necessary agreements with respect to the Successful Bidder(s) and/or vest title to Hotel or any part of it in the name of such Successful Bidder(s).

32. The Approval Hearing will be held on a date to be scheduled by the Court upon application by the Receiver, and in any event, not later than December 31, 2018 or such later date as the Receiver and the Successful Bidder(s) may agree.
33. All Qualified Bids (other than any Successful Bid(s)) shall be deemed rejected on and as of the date of closing of the Successful Bid or date upon which all Successful Bids have closed, as the case may be.
34. If, following approval of the Successful Bid(s) by the Court, the Successful Bidder(s) fail to consummate the transaction for any reason, then the Receiver shall be entitled to re-engage with the Qualified Final Bidder(s) to attempt to renegotiate the Qualified Bids without further order of the Court.

#### **Deposits**

35. All Deposits shall be retained by the Receiver and deposited in a non-interest bearing trust account. If there is Successful Bid, the Deposit(s) paid by each Successful Bidder whose Successful Bid is approved at the Approval Hearing shall be applied to the Purchase Price to be paid by that Successful Bidder upon closing of the approved Successful Bid and will be non-refundable. The Deposits of Qualified Final Bidders not selected as a Successful Bidder shall be returned to such Qualified Final Bidders within five (5) Business Days after the date on which their Qualified Bid is no longer irrevocable in accordance with these Sale Procedures. If there are no Successful Bid(s), all Deposits shall be returned to the respective Qualified Final Bidder(s) within two (2) Business Days of the date upon which these Sale Procedures are terminated.
36. In each case where:
  - (a) a Successful Bidder breaches any of its obligations under a Definitive Agreement;
  - (b) a Qualified Bidder or Qualified Final Bidder breaches its obligations under the terms of these Sale Procedures; or
  - (c) a Qualified Final Bidder fails to complete the transaction contemplated by its Qualified Bid:

the Deposit provided by the applicable party will be forfeited to the Receiver as liquidated damages and not as a penalty. The Receiver shall apply any forfeited Deposit in a manner the Receiver sees fit.



### **Notice**

37. The addresses used for delivering documents to the Receiver as prescribed by the terms and conditions of these Sale Procedures are set out in **Exhibit 1** hereto. All bids and/or associated documentation shall be delivered to the Receiver by electronic mail, personal delivery or courier. Interested Potential Bidders requesting information about the qualification process, including a form of Purchase Agreement, and information in connection with their due diligence, should contact the Receiver at the contact information contained in **Exhibit 1**.
38. The Receiver, after consultation with their advisors: (a) may reject, at any time any bid (other than the Stalking Horse Bid) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Receivership Order, these Sale Procedures or any orders of the Court applicable, or (iii) contrary to the best interests of the Company, their estates, and stakeholders as determined by the Receiver, acting reasonably; (b) in accordance with the terms hereof, may impose additional terms and conditions and otherwise seek to modify the Sale Procedures at any time in order to maximize the results obtained; and (c) in accordance with the terms hereof, may accept bids not in conformity with these Sale Procedures to the extent that the Receiver determines, in its reasonable business judgment.
39. Prior to the conclusion of the Auction, the Receiver may impose such other terms and conditions, on notice to the relevant bidders, as the Receiver may determine to be in the best interests of the estate and its stakeholders that are not inconsistent with any of the procedures in these Sale Procedures.
40. These Sale Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Company, the Receiver and any Known Potential Bidder, Potential Bidder, Qualified Bidder, Auction Bidder, Successful Auction Bidder or Successful Bidder, other than as specifically set forth in definitive agreements that may be executed by the Receiver.

### **No Amendment**

41. There will be no amendments to these Sale Procedures not contemplated herein without the approval of the Court, on notice to the service list in the Receivership Proceedings, subject to such non-material amendments as may be determined to by the Receiver.

### **Further Orders**

42. The Receivership Order, SHA Order, the Sale Procedures, and any other Orders of the Court made in the Receivership Proceedings relating to the Sale Procedures shall exclusively govern the process for soliciting and selecting Bids.
43. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.
44. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency.

45. Each Qualified Bidder, upon being declared as such under the Sale Procedures, shall be deemed to have irrevocably and unconditionally attorned and submitted to the jurisdiction of the Court in the Receivership Proceedings in respect of any action, proceeding or dispute in relation to the conduct or any aspect of the Sale Procedures and the Sale Process.
46. At any time during the Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its obligations and duties herein.

**Exhibit 1 – Addresses and Contact Information of the Receiver**

**Alvarez & Marsal Canada Inc. LIT**

Attention: Orest Konowalchuk

Phone: (403) 538-4736

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

Fax: (403) 538-7551

Bow Valley Square 4

Suite 1110, 250 6th Ave SW

Calgary, Alberta

T2P 3H7

**Appendix "A"**

**Defined Terms**

"**Approval Hearing**" is defined in Section 31.

"**Approval and Vesting Order**" is defined in Section 6.

"**Bid**" is defined in Section 7(a).

"**Bid Deadline**" is defined in Section 14.

"**Break Fee**" has the meaning given to it in the Purchase Agreement.

"**Business**" means the business being carried on by the Company.

"**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are open for business in the City of Calgary.

"**Claims and Interests**" is defined in Section 6.

"**Company**" is defined in the preamble.

"**Confidentiality Agreement**" means a confidentiality agreement in favour of the Receiver executed by a Potential Bidder, in form and substance satisfactory to the Receiver, which shall enure to the benefit of any Successful Bidder.

"**Court**" is defined in the preamble.

"**Data Room**" means a confidential virtual data room which contains documents furnished by the Company and a physical data room providing access to relevant technical information.

"**Definitive Agreements**" means all Definitive Sale Agreement(s).

"**Definitive Sale Agreement**" has the meaning set out in Section 15(b).

"**Deposit**" is defined in Section 15(j).

"**Filing Date**" means the date the Receiver was appointed over the Company, being May 18, 2018.

"**Potential Bidder**" is defined in Section 2.

"**Process Letter**" means a letter from the Receiver to Qualified Bidders outlining, among other things, the Sale Process and Sale Procedures timelines.

"**Property**" means all of the undertakings, property and assets of the Company.

"**Purchase Agreement**" is defined in the preamble.

"**Purchase Price**" means the price payable by a Successful Bidder for the selected Property pursuant to a Definitive Agreement.

"**Qualified Bidder**" is defined in Section 20 and "**Qualified Bidders**" means more than one of them.

"**Qualified Bid**" is defined in Section 20.



**"Qualified Consideration"** means consideration sufficient to repay immediately on closing: (a) the Secured Debt Repayment Requirement, any claims ranking senior in priority thereto that are or would be payable in the Receivership Proceedings, including the Priority Payables, and the Break Fee in cash.

**"Qualified Consideration Requirement"** means the requirement that any transaction, whether on its own, or in combination with one or more non-overlapping Qualified Bids for different Property, provides for consideration of at least the Qualified Consideration.

**"Qualified Final Bidder"** means a Qualified Bidder who has submitted a Qualified Bid

**"Receiver"** means Alvarez & Marsal Canada Inc. LIT, in its capacity as receiver and manager in the Receivership Proceedings and not in its personal or corporate capacity.

**"Receivership Proceedings"** is defined in the preamble.

**"Representatives"** when used with respect to a person means each director, officer, employee, consultant, contractor, financial advisor, legal counsel, accountant and other agent, adviser or representative of that person.

**"Sale Procedures"** is defined in the preamble.

**"Sale Process"** has the meaning set out in Section 2.

**"Sale Proposal"** means an offer to acquire all or part of the Property of the Company, or an offer to restructure, recapitalize or reorganize the Business and affairs of the Company as a going concern.

**"Security Interest"** means any mortgage, charge, pledge, assignment, hypothecation, title retention, finance lease or security interest, including any trust obligations, creating in favour of any creditor a right in respect of the Hotel.

**"SHA Order"** is defined in the preamble.

**"Stalking Horse Bid"** is defined in the preamble.

**"Stalking Horse Bidder"** is defined in the preamble.

**"Stalking Horse Bid Price"** is defined in Section 17.

**"Successful Auction Bid"** is defined in Section 26(l).

**"Successful Bid"** is defined in Section 29.

**"Successful Bidder"** is defined in Section 29 and **"Successful Bidders"** means more than one of them.

**"Superior Offer"** means a credible, reasonably certain and financially viable third party offer for the acquisition of all or substantially all of the Property of the Company, the terms of which offer are no less favourable and no more burdensome or conditional than the terms contained in the Purchase Agreement.

**"Teaser"** is defined in Section 4.



## **CONFIDENTIAL APPENDIX 1**

### **Hotel Appraisal**