

COURT FILE NUMBER 1903 23164

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ATB FINANCIAL

Clerk's Stamp

DEFENDANTS 1847845 ALBERTA LTD., 1814905 ALBERTA LTD., 1816665  
ALBERTA LTD., 1847034 ALBERTA LTD. HEOLEE  
ENTERPRISES INC., JAI HOON IN, MYEONG SU CHONG,  
KWANG RAE KIM, HAE SUK LEE, JINHEE CHUNG also known  
as JIN HEE CHUNG, WOORYOUNG HEO also known as WOO  
YOUNG HEO, KYOUNGOK LEE also known as KYUNGOK  
LEE, SANGKYUN CHOI also known as SANG KYUN CHOI

DOCUMENT **FIRST REPORT OF THE RECEIVER**  
**BDO CANADA LIMITED**  
**OCTOBER 28, 2024**

ADDRESS FOR  
SERVICE AND  
CONTACT  
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**FIRST REPORT OF THE RECEIVER  
BDO CANADA LIMITED  
OCTOBER 28, 2024**

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## **INTRODUCTION**

1. On July 15, 2024 (the “**Receivership Date**”), ATB Financial (“**ATB**”) sought and obtained an Order (the “**Receivership Order**”) from the Court of King’s Bench of Alberta (the “**Court**”) appointing BDO Canada Limited as receiver and manager (the “**Receiver**”) without security, of all the current and future assets, undertakings and properties of 1847845 Alberta Ltd. (“**184 AB**” or the “**Company**”).
2. On July 2, 2024, Mr. Ashton Boisselle of ATB filed an Affidavit (the “**Initial Boisselle Affidavit**”) in support of ATB’s application for the appointment of a Receiver leading to the Receivership Order.
3. Prior to the Initial Boisselle Affidavit, Mr. David Horen of ATB filed an Affidavit (the “**Initial Horen Affidavit**”) on November 18, 2019 in support of a previous application for the appointment of BDO Canada Limited as Receiver from a previous application for the appointment of a Receiver which was adjourned *sine die* pursuant to an Order of the Court dated December 3, 2019.
4. The purpose of this report (the “**First Report**”) is to provide the Court with:
  - a. Information pertaining to the Company, including its financial position and material assets;
  - b. Information regarding the Receiver’s former engagement as financial advisor to ATB in respect of the Company;
  - c. The activities of the Receiver since the Receivership Date;
  - d. An overview of the sales process undertaken prior to the date of Receivership Order in respect of the Hotel, together with the Receiver’s further sale efforts through the engagement of Colliers Macaulay Nicholls Inc. (“**Colliers**”) as the Receiver’s listing agent, all of which led to the Receiver entering into an asset purchase agreement (the “**Kastel APA**”) as between the Receiver and Kastel Holdings Ltd. (“**Kastel**”), conditional on, *inter alia*, the receipt of the approval of this Honourable Court. A redacted copy of the Kastel APA is attached hereto as Appendix “A”.
  - e. The receipts and disbursements of the Receiver since the granting of the Receivership Order;
  - f. The Receiver’s recommendations thereon.

5. Concurrent with the filing of this First Report, the Receiver will be filing a confidential supplement (the “**Confidential Supplement**”) detailing confidential and commercially sensitive information with respect to the sales process and the Receiver’s comments with respect to its expectations of value, both of which would have a material effect on any subsequent transaction for the Hotel in the event the transaction contemplated by the Kastel APA does not close.
6. In the event the Kastel APA does not close, the Hotel may be subject to further marketing and the Receiver’s ability to obtain the highest and best price possible in the circumstances would be severely compromised due to the confidential and commercially sensitive information being in the public domain. Disclosure of the information contained in the Confidential Supplement would cause irreparable prejudice to the creditors and other stakeholders of the Company. As a result, the Receiver will be seeking a further order sealing the Confidential Supplement until the Receiver files a certificate confirming that each transaction has closed, if this Court so grants such requested relief.
7. Capitalized terms not defined in this First Report are as defined in the Receivership Order, the Initial Boisselle Affidavit or the Initial Horen Affidavit, as the context may require.
8. All references to currency are in Canadian dollars unless otherwise noted.
9. This document, together with other information regarding these proceedings, will be posted by the Receiver to its website at <https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/1847845-alberta-ltd-tamarack>.

#### **TERMS OF REFERENCE**

10. In preparing this First Report, the Receiver has relied upon unaudited financial information and books and records of the Company and discussions with Colliers and Mr. Thomas Koh (“**Mr. Koh**”) on behalf of the Company. The Receiver has not performed an audit, review or other verification of such information. Accordingly, the Receiver does not express an opinion or any other form of assurance on the information presented herein.
11. The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party because of the circulation, publication, reproduction, or use of the First Report.



## **FINANCIAL ADVISORY ENGAGEMENT**

12. As outlined in the Initial Boisselle Affidavit, one of the conditions of an agreement between the Defendants and ATB was the appointment of Hardie & Kelly Inc. (“**H&K**”) to provide a business review of the Hotel for ATB as Financial Advisor to ATB (the “**Financial Advisor**”) as consented to by the Company (the “**FA Engagement**”). Following a merger between H&K and BDO, BDO assumed carriage of the FA Engagement, therefore references to Financial Advisor shall refer collectively to H&K and BDO in such capacity.
13. The FA Engagement contains an acknowledgement that the Company would not object to the appointment of the Financial Advisor and that the Financial Advisor can be appointed as receiver, receiver and manager, agent, Trustee or otherwise of the Company and that such appointment shall not be a conflict of interest by virtue of the FA Engagement.

## **BACKGROUND**

14. 184 AB is a private company that was registered in Alberta on September 16, 2014. A search of the Alberta Corporate Registry System (the “**Corporate Registry**”) as at October 25, 2024 indicates the following:
  - a. The Company’s voting shareholders, together with their respective indicated shareholdings, are as follows:
    - i. 1816665 Alberta Ltd. (49.99%);
    - ii. 1847034 Alberta Ltd. (35.27%);
    - iii. Hoelee Enterprises Inc. (14.74%); and
  - b. Sang Kyun Choi is listed as the sole director of the Company.

## **FINANCIAL POSITION**

### **Assets**

15. The substantial asset of 184 AB is a 63 room hotel operating in Rocky Mountain House, Alberta, as the Tamarack Motor Inn (the “**Hotel**”) as more fully described below.

## Liabilities

### Creditors claiming a security interest

16. As outlined in the Initial Horen Affidavit, ATB registered a security interest over 184 AB arising from a general security agreement as against all present and after acquired personal property of the Company which was registered on November 5, 2014. The Initial Boisselle Affidavit describes that ATB is owed \$3,270,453 as of May 22, 2024, plus daily accruing interest. In addition, on November 3, 2023, ATB registered a Writ of Enforcement with respect to an original judgement amount of \$3,733,963.
17. In addition to the above indebtedness, ATB has advanced an incremental \$200,000 to the Receiver through one Receiver's Certificate, secured by the Receiver's Borrowing's Charge, as defined in the Receivership Order providing priority over all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act* (the "BIA").
18. Based on a personal property registry search dated October 25, 2024, the Receiver notes the following other parties with registered security interests:
  - a. Agriculture Financial Services Corporation ("AFSC") registered a security agreement on November 5, 2014, claiming a security interest over, all present and after acquired personal property of 184 AB. In addition, on January 14, 2021, AFSC registered a Writ of Enforcement on January 14, 2021 with respect to an original judgement amount of \$458,929;
  - b. Hudson Energy Canada Corp. registered a Writ of Enforcement on September 16, 2022 with respect to an original judgement amount of \$73,215.95; and
  - c. His Majesty the King in Right of Alberta registered a Writ of Enforcement on April 24, 2024 with respect to an original judgement amount of \$65,518.31.

### Priority creditors

### Employees / WEPP

19. As detailed herein, pursuant to the termination of all employees by the Receiver as at the date of Receivership, the Receiver satisfied all wage arrears and any severance obligations, if applicable, of the employees, therefore there are no outstanding Wage or WEPP obligations outstanding.

#### Canada Revenue Agency – Source deductions and GST

20. As noted below, the books and records of the Company were incomplete as of the date of the Receivership Order and the Receiver is continuing its efforts to work with Canada Revenue Agency to complete a trust examination to confirm the amount, if any, of any resulting source deductions and/or GST deemed trust which may exist in a priority to that of ATB.
21. The results of these trust audits will be obtained prior to the Receiver bringing forward any proposed distribution of sales proceeds for the approval of the Court.

#### Property taxes

22. The 2024 property taxes for the Hotel were due July 31, 2024 which have been paid by the Receiver and are reflected in its statement of receipts and disbursements provided below. There were no pre receivership amounts owing for property taxes.

#### *Unsecured creditors*

23. The Receiver notes that the books and records of the Company are substantially incomplete, therefore the Receiver has not been able to obtain a complete listing of its creditors, but used a draft listing provided by the Company for purposes of the Receiver's statutory receiver's notice.
24. As the Receiver anticipates a material shortfall to the secured creditors, it is not anticipating a distribution to unsecured creditors.

#### Employees

25. At the date of Receivership, the Hotel had 4 employees. Of these employees, the Receiver determined that three were engaged under the terms of temporary work permits issued by Immigration, Refugees and Citizenship Canada.
26. In reviewing the status of these individuals' eligibility to work in Canada in consultation with its legal counsel, and subsequent discussions with the immigration consultant who placed such individuals with the Company, it was determined that these individuals were no longer eligible to work in Canada given a change to their occupation at the Company.
27. As a result, the Receiver terminated the employment of these individuals, providing a full payout of amounts outstanding together with a monetary allowance for the cost of return travel to their country of birth and free accommodation at the Hotel for a two week period

following the termination of their employment. The last remaining employee was related to former Management and resigned shortly after the granting of the Receivership Order.

#### **DESCRIPTION OF THE HOTEL**

28. The Hotel is located on an 1.86 acre (+/- 81,027 square foot) parcel of land that bears the civic address of 4904, 45<sup>th</sup> Street, Rocky Mountain House, Alberta and operates as the “Tamarack Motor Inn”, which is independently owned and does not operate under a specific hotel brand. The Receiver understands that the Hotel was built in 1980 and expanded in 1999.
29. The Hotel offers, or previously offered, the following amenities:
  - a. Full service restaurant and dining room – closed by the Company prior to the granting of the Receivership Order;
  - b. Sports pub and lounge – closed by the Company prior to the granting of the Receivership Order;
  - c. Sauna – closed by the Company and not in operation as at the date of the Receivership Order;
  - d. Guest laundry room; and
  - e. Vending area.
30. Prior to the date of Receivership, a retail liquor store was operated through a lease to a third party on an adjacent part of the building, accessible from the exterior. However, this store ceased operating prior to the granting of the Receivership Order and is now empty.
31. The Hotel has 63 guest rooms in a variety of configurations, including single rooms, double rooms, business suites and a honeymoon suite.
32. The Receiver will be providing this Honourable Court with additional confidential information pertaining to the Hotel and its financial position through its Confidential Supplement.

#### **BOOKS AND RECORDS**

33. In response to a request for the books and records of the Company, the Receiver has been provided with limited documentation and in the Receiver’s view, the books and records as provided by the Company are incomplete and the Receiver is working to update them to the extent required to facilitate the requisite CRA deemed trust audits.

## **ACTIVITIES OF THE RECEIVER**

34. Subsequent to the granting of the Receivership Order, the Receiver has, *inter alia*:
- a) Following discussions with ATB, retained Integrated Hospitality Management Ltd. (“**IHM**”) to provide operations management support with respect to day-to-day administration of hotel operations;
  - b) Attended to the Hotel to meet with representatives of IHM and employees of 184 AB, to tour the property and complete other procedures with respect to obtaining custody and control of the Hotel;
  - c) Sourced and obtained insurance coverage given the Receiver’s understanding that the Hotel was operating without current insurance coverage;
  - d) Consulted with legal counsel and ultimately terminating the employment of workers deemed ineligible and working with IHM to identify and retain replacement labour;
  - e) Completed statutory notifications to known and identified potential creditors pursuant to Sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
  - f) Contacted Canada Revenue Agency (“**CRA**”) to set up a new GST and payroll account and holding discussions with CRA in light of required trust audits and the impact of available books and records on such audit;
  - g) Liaised with IHM to understand and respond to numerous required repair and maintenance expenditures as well as assessment of required capital improvements;
  - h) Liaised with Colliers to administer the Sales Process, including negotiations and discussions with interested parties prior to Collier’s engagement, culminating in the Receiver negotiating and executing the Kastel APA;
  - i) Communicated with affected stakeholders, including employees, creditors and respective counsel; and
  - j) Attended to various other administrative matters as it pertains to the Receivership.

## **DETAILS OF THE RECEIVER’S SALES PROCESS**

### *Pre-Receivership Marketing and Receiver’s consideration of such process*

35. Through its previous engagement as Financial Advisor, the Receiver is aware that the Hotel has been marketed for sale for a significant period of time prior to the granting of the Receivership Order with such marketing commencing as early as 2020 with Mr. Koh as co-listing agent.

36. At the Receivership Date, Mr. Koh advised that there were two current offers (the “**Pre-Receivership Offers**”) for the Hotels at the date of receivership as disclosed and discussed in the Confidential Supplement.
37. Prior to engaging Colliers, the Receiver spoke with representatives of both parties who submitted the Pre-Receivership Offers to advise of the Receivership and to assess the ability of the Receiver to close either transaction in accordance with the terms of the Receivership Order at an acceptable level of risk to the estate given the financial position of the Hotel and availability of ongoing financing should the transaction fail to close. The Receiver communicated to these parties that in order for the Receiver to complete the transaction, it would need to be in a form acceptable to the Receiver and subject to the approval of the Court.
38. In consultation with ATB, the Receiver ultimately determined that given the conditionality of the Pre-Receivership Offers and potential closing risk in light of both the lack of available due diligence materials and required capital improvements as detailed in the Confidential Supplement, the Receiver deemed it in the best interest of the estate to administer a relatively expedited sales process to seek a transaction with minimal conditions and minimal closing risk, capable of being closed on an expedited timeline at the best price possible in the circumstances.
39. During the engagement of Colliers, the Pre-Receivership Offers were communicated to Colliers who spoke with representatives for each party in the administration of the sales process, with Colliers advising that one party ultimately declined to submit an offer while one party submitted an offer outside of the Final Bid Deadline (as defined and discussed below), which was ultimately deemed by the Receiver to be inferior to the Kastel APA in any event. Details of this offer are provided in the Confidential Supplement.

*Summary of non-commercially sensitive aspects of the Colliers sales process*

40. Colliers formally launched the Receiver’s sales process on September 10<sup>th</sup>, 2024 with a broadcast message to its initial investors list, together with parties identified by the Receiver through previous transactions regarding similar properties. Mr. Koh was also advised of the Receiver’s sales process and encouraged to have parties participate through contacting Colliers. Colliers undertook a secondary launch and blast on September 19<sup>th</sup> which collective efforts lead to 17 parties executing a Confidentiality Agreement.

41. Colliers advised interested parties, including Mr. Koh, of a bid deadline of October 1<sup>st</sup>, 2024 (the “**Tender Date**”) at which date the Receiver received executed letters of intent from multiple parties (the “**LOI Parties**”) as discussed in the Confidential Supplement.
42. The form of LOI executed by the LOI Parties contained a provision that the Vendor (as defined therein) may accept an offer prior to the Tender Date and the Vendor is not obligated to accept either this LOI or any other LOI and may also waive the compliance with the bidding rules, and all of this shall be in the Vendor’s sole discretion.
43. While the Receiver was reviewing and deliberating between the LOI’s submitted, Mr. Koh advised Colliers that he was contacted by an interested party seeking to potentially make an offer.
44. Notwithstanding that this interest was made subsequent to the Tender Date, the Receiver extended the Tender Date and advised the LOI Parties that they were provided a further opportunity to re-submit their best and final offer in a form of Purchase and Sale Agreement provided by the Receiver no later than October 15, 2024 (the “**Final Bid Deadline**”). Colliers also provided Mr. Koh with the opportunity to extend such deadline to his new interested party.
45. Following the Final Bid Deadline, the Receiver received multiple offers for the Hotel as described in the Confidential Supplement leading the Receiver to enter into the Kastel APA, conditional upon the approval of this Honourable Court.

#### **KASTEL APA**

46. The Receiver will be disclosing to the Court the confidential and commercially sensitive terms of the Kastel APA, including the contemplated purchase price, through the Confidential Supplement.
47. A copy of the Kastel APA with the purchase price redacted is attached as Appendix “A” and a summary of the non-commercially sensitive material terms of the Kastel APA are as follows:
  - a. Kastel will purchase the Hotel on an “as is, where is” basis;
  - b. Provides that closing will occur on the date that is the later of:
    - i. Ten Business Days after the date of granting the Approval and Vesting Order (the “**AVO**”);

- ii. The date that is ten business days following the resolution, dismissal or withdrawal of an appeal properly brought by a party with standing to appeal the AVO;
    - iii. November 29, 2024; or
    - iv. Such other date as the parties may agree in writing from time to time.
  - c. Deposit of \$300,000; and
  - d. Conditional only upon Court approval;
48. While the Receiver has provided a detailed rationale for the Kastel APA in its Confidential Supplement, it re-confirms for this non-confidential report that it is of the opinion that the Kastel APA is reasonable and appropriate in the circumstances, as:
- a) the sales process has been conducted by individuals at Colliers specializing in the marketing and sale of hospitality assets;
  - b) The Hotel was adequately exposed to the market, including through both the Receiver's sales process as well as the period of time which the Hotel was marketed prior to the Receivership. As a result, it is unlikely whether a further extension of the process would identify any potential purchasers who have not already been made aware of the fact that the Hotel is available for sale. Colliers has advised that it is their professional opinion that following the exposure generated by their marketing process that the Kastel APA is the best offer in the circumstances;
  - c) a further and extended sales process does not appear practicable given the potential uncertainty for operating losses and uncertain ability for the Receiver to obtain funding for such operating losses as well as imminent capital requirements; and
  - d) The sales process was conducted efficiently with integrity and good faith and there has been no unfairness in the sales process conducted, or in the negotiations of the Kastel APA.
49. The Receiver has been in frequent contact with ATB, the first ranking secured creditor and financier of the Receiver's Borrowings during the course of these proceedings. The Receiver understands that, notwithstanding the deficiency ATB is forecasted to incur, in the circumstances, ATB is supportive of the Kastel APA and is not supportive of continuing to fund ongoing operations or capital improvements beyond those already funded, as described more fully in the Confidential Supplement to the First Report.



## **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

50. The Receiver has provided as **Appendix “B”** an interim statement of receipts and disbursements, reflecting transactions as at October 24, 2024.

## **PROFESSIONAL FEES**

51. The Receiver and its counsel have deferred the payment of professional fees pending a sale of the Hotel, but have accrued but unpaid work in process and accounts receivable at September 30, 2024 of approximately \$76,532 and \$10,994 respectively.
52. The Receiver believes that the foregoing fees are appropriate and reasonable in the circumstances with the time incurred with respect to the activities outlined herein.

## **RECOMMENDATIONS**

53. The Receiver respectfully recommends that this Honourable Court approve:
- a. the activities and fees of the Receiver and its counsel as currently before the Court;
  - b. the sale of the Hotel to Kastel upon the terms substantially in the Kastel APA and vest the Assets in and to Kastel, in accordance with the terms therein;
  - c. the Interim SRD; and
  - d. the sealing of the Confidential Supplement until the filing of the Receiver’s Certificate confirming the closing of the transaction contemplated by the Kastel APA.

All of which is respectfully submitted this 28<sup>th</sup> day of October, 2024.

### **BDO Canada Limited**

In its capacity as Receiver of 1847845 Alberta Ltd.  
and not in its personal or corporate capacity.

Per: 

Kevin Meyler  
Senior Vice President

## **APPENDIX “A”**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of the 25th day of October, 2024 (the “**Effective Date**”) among:

**BDO CANADA LIMITED**, in its capacity as court-appointed receiver of **1847845 ALBERTA LTD.** and not in its personal or corporate capacity

(the “**Vendor**”)

– and –

**KASTEL HOLDINGS LTD.** and/or new company to be incorporated for the purchase

(the “**Purchaser**”)

**WHEREAS** pursuant to the Order of the Honourable Justice D. R. Mah of the Alberta Court of King's Bench (the “**Court**”) issued on July 15, 2024 (the “**Receivership Order**”) in Action No. 1903 23164 (the “**Receivership Proceedings**”), BDO Canada Limited (the “**Receiver**”) was appointed receiver and manager of 1847845 Alberta Ltd. (the “**Debtor**”).

**AND WHEREAS** the Purchaser desires to purchase, accept and assume from the Vendor, all of the Vendor's right, title, interest and obligation in and to the Purchased Assets and Assumed Liabilities, subject to and in accordance with the terms and conditions set forth in this Agreement.

**AND WHEREAS** the transactions contemplated by this Agreement are subject to the approval of the Court and will be consummated pursuant to the Approval and Vesting Order to be entered by the Court in the Receivership Proceedings.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties hereto (collectively, the “**Parties**”, and each, a “**Party**”) hereby acknowledge and agree as follows:

### **ARTICLE 1 INTERPRETATION**

#### **1.1 Definitions**

Unless something in the subject matter or context is inconsistent therewith, the terms defined herein shall have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to “**control**” another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term “**controlled**” shall have a similar meaning.

“**Agreement**” means this asset purchase agreement, as may be amended and restated from time to time in accordance with the terms hereof.

**“Applicable Law”** means, in relation to any Person, property or circumstance, all laws, statutes, rules, regulations, official directives and orders of Governmental Authorities (whether administrative, legislative, executive or otherwise), including judgments, orders and decrees of courts, commissions or bodies exercising similar functions, as amended, and includes the provisions and conditions of any permit, licence or other governmental or regulatory authorization, that are in effect as at the relevant time and are applicable to such person, property or circumstance.

**“Approval and Vesting Order”** means an order by the Court, in substantially the same form as the Alberta Template Approval and Vesting Order, among other things, approving and authorizing the Transaction and vesting in the Purchaser (or as it may direct) all the right, title, interest and obligation of the Vendor in and to the Purchased Assets, free and clear from any Encumbrances other than the Permitted Encumbrances and the Assumed Liabilities.

**“Assigned Contracts”** means those Contracts set out and listed in Schedule “C”. For certainty, the Assigned Contracts do not include the Excluded Contracts.

**“Assignment and Assumption Agreement”** means an assignment and assumption agreement, in form and substance satisfactory to the Parties, acting reasonably, evidencing the assignment to the Purchaser of the Vendor’s rights, benefits, interests and obligations in, to and under the Assigned Contracts and the assumption by the Purchaser of all of the Assumed Liabilities under or in respect of the Assigned Contracts.

**“Assignment Order”** means an Order of the Court issued in form and substance satisfactory to the Parties, each acting reasonably, assigning to the Purchaser the Vendor’s right, benefit and interest in and to any of the Assigned Contracts for which any necessary consent to assign has not been obtained, in form and substance satisfactory to the Parties, acting reasonably.

**“Assumed Liabilities”** means: (a) Liabilities specifically and expressly designated by the Purchaser as assumed Liabilities in Schedule “D”; (b) all Liabilities relating to the Purchased Assets arising on or after the Closing Time; (c) all Assumed Environmental Liabilities; and (d) all Liabilities which relate to the Assigned Contracts, and in the case of (a), (b) and (d) solely in respect of the period from and after the Closing Time and not relating to any default existing prior to or as a consequence of Closing. For certainty, the Assumed Liabilities do not include the Excluded Liabilities.

**“Assumed Environmental Liabilities”** has the meaning set out in Section 9.1(a) hereof.

**“Authorization”** means any authorization, approval, consent, concession, exemption, licence, lease, grant, permit, franchise, right, privilege or no-action letter from any Governmental Authority having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person’s property or business and affairs (including any zoning approval or building permit) or from any Person in connection with any easements, contractual rights or other matters.

**“Bill of Sale”** means a general conveyance and bill of sale, in form and substance satisfactory to the Parties, acting reasonably, evidencing the assignment to the Purchaser of the Vendor’s rights, benefits, and interests in, to and under the Purchased Assets.

**“Books and Records”** means the Vendor’s files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), which are in the possession of the Vendor (if any) and are materially relevant to the Assigned Contracts or the Purchased Assets.

**“Business Day”** means a day on which banks are open for business in Calgary, Alberta, but does not include a Saturday, Sunday or statutory holiday in the Province of Alberta.

**“Casualty”** has the meaning set out in Section 4.6

**“Cash Purchase Price”** has the meaning set out in Section 3.2(b).

**“Claims”** means claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, arbitrations, information or other similar processes, assessments or reassessments, judgments, debts, indebtedness, liabilities, obligations, guarantees, warranties, expenses, costs, damages or losses, contingent or otherwise (whether contractual, statutory, or otherwise), of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether arising by subrogation, set-off, right of indemnification or otherwise), whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including loss of value, professional fees, including fees and disbursements of legal counsel, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing and any civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, audit, chose in or cause of action, suit, default, assessment, litigation, prosecution, third party action, arbitral proceeding or proceeding, complaint or allegation, by or before any Person.

**“Closing”** means the completion of the Transactions confirmed by issuance of the Receiver’s Certificate.

**“Closing Date”** means, subject to the terms hereof, the date that is the later of (a) ten (10) Business Days after the date the Approval and Vesting Order is granted by the Court; (b) the date that is ten (10) Business Days following the final resolution, dismissal or withdrawal of an appeal properly brought by a party with standing to appeal the Approval and Vesting Order; (c) November 29, 2024; or (d) such other date as the Parties may agree to in writing from time to time.

**“Closing Time”** means 12:01 a.m. (Calgary time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

**“Contracts”** means all pending and executory contracts, agreements, leases, deeds, mortgages, licences, instruments, notes, commitments, undertakings, indentures, joint ventures, understandings, arrangements and all other legally binding arrangements (whether oral or written) to which the Vendor is a party or by which the Vendor is bound or in which the Vendor has, or will at Closing have, any rights or by which any of its property or assets are or may be affected.

**“Court”** has the meaning set out in the recitals hereto.

**“Cure Costs”** means (a) with respect to any Assigned Contract for which a required consent to assignment has not been obtained and is to be assigned to the Purchaser in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Vendor’s monetary defaults existing as at the Closing Date under the applicable Assigned Contract (or such other amounts as may be agreed by the Purchaser and the counterparty to the Assigned Contract, but not more than the monetary defaults); and (b) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Assigned Contract by any of the Vendor to the Purchaser (which amount shall be set out on the form of contractual consent

agreed to by the applicable Vendor and the counterparty to such Assigned Contract and approved by the Receiver, provided that such amount shall not be more than the monetary defaults under such contract).

**“Debtor”** has the meaning set out in the recitals hereto.

**“Deposit”** has the meaning set out in Section 3.2(a).

**“Effective Date”** has the meaning set out in the preamble hereto.

**“Encumbrance”** means any legal notation, charge, lien, interest or other encumbrance or title defect of whatever kind or nature, regardless of form, whether or not registered or registrable and whether or not consensual or arising by law (statutory or otherwise), including any security interest, lien, Claim, charge, right of retention, deemed trust, judgment, writ of seizure, writ of execution, notice of seizure, notice of execution, notice of sale, hypothec, reservation of ownership, pledge, encumbrance, mortgage or right of a third party (including any contractual rights such as purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual right) or encumbrance of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of creating a security interest in, against or affecting the Purchased Assets (including any conditional sale or title retention agreement, or any capital or financing lease).

**“Environmental Laws”** has the meaning set out in Section 9.1(b).

**“Environmental Liabilities”** has the meaning set out in Section 9.1(c).

**“ETA”** means the *Excise Tax Act*, RSC 1985, c E-15 and the regulations thereunder.

**“Excluded Assets”** means all of Vendor's right, title and interest in the properties, rights, assets and undertakings that are not identified as Purchased Assets.

**“Excluded Contracts”** means all Contracts that are not identified as Assigned Contracts.

**“Excluded Liabilities”** means all Liabilities of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or in equity and whether arising by subrogation, set-off, right of indemnification or otherwise) of or against the Vendor that are not Assumed Liabilities.

**“Governmental Authority”** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

**“GST”** means the goods and services tax and harmonized sales tax imposed under Part IX of the ETA and any provincial, territorial or foreign legislation imposing a similar value added or multi-staged tax.

**“Interim Period”** means the period between the date of this Agreement and the Closing Date.

**“Lands”** means those lands and all improvements and buildings located thereon as described in Schedule “A” attached hereto.

**"Legal Proceeding"** means any litigation, action, application, 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 to appeal or review.

**"Liability"** means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, legal, beneficial or equitable, present or future, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person, and includes, without limiting the generality of the foregoing, any debt, dues, guarantee, surety, indemnity obligation or other obligation.

**"Losses"** means all actions, causes of action, losses, costs, Claims, damages, penalties, assessments, charges, expenses, and other liabilities and obligations which a Party suffers, sustains, pays or incurs, including reasonable legal fees and other professional fees and disbursements on a full- indemnity basis.

**"Order"** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**"Organizational Documents"** means any trust document, charter, certificate or articles of incorporation or amalgamation, articles of amendment, articles of association, articles of organization, articles of continuance, bylaws, as amended, partnership agreement or similar formation or governing documents of a Person (excluding individuals).

**"Outside Date"** means December 15, 2024 or such earlier or later date as the Parties may agree upon in writing.

**"Parties"** has the meaning set out in the recitals hereto.

**"Party"** has the meaning set out in the recitals hereto.

**"Permitted Encumbrances"** means, collectively, the following Encumbrances in respect of the Purchased Assets:

- (a) the reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown, including, without limitation, the reservation of any mines and minerals in the Crown or in any other Person and any implied conditions set out in the *Land Titles Act* (Alberta) as amended, replaced or restated from time to time or any other similar Applicable Law;
- (b) encumbrances given as security to a public utility or any Governmental Authority when required in the ordinary course of business;
- (c) all rights reserved to or vested in any Governmental Authority pursuant to Applicable Law to control or regulate the Purchased Assets in any manner, including any unregistered, undetermined or inchoate liens, levies or claims in favour of the Crown, any province or municipality or any other Governmental Authority;
- (d) rights of expropriation, access or use or any similar right conferred or reserved by any Applicable Law;

- (e) applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, servicing or industrial agreements, utility agreements, airport zoning regulations, cost sharing reciprocal agreements and building and zoning restrictions and other similar agreements;
- (f) any easements, servitudes, rights-of-way, licences, agreements, restrictions that run with the land (including, without limitation, easements, rights-of-way and agreements for railways, sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
- (g) Encumbrances which will be vested out or otherwise discharged at Closing pursuant to the Approval and Vesting Order;
- (h) Encumbrances permitted or created pursuant to the terms of this Agreement;
- (i) the following specific instruments registered against title to the Lands:
  - (i) Registration Number 992 091 280 – Utility Right of Way, Grantee: Atco Gas and Pipelines Ltd.
  - (ii) Registration Number 012 080 781 – Caveat re: Encroachment Agreement pursuant to Municipal Government Act, Caveator: The Town of Rocky Mountain House; and
- (j) the additional Encumbrances listed on Schedule “B”.

**“Person”** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.

**“Personal Information”** means any factual or subjective information, recorded or not, about an employee, contractor, agent, consultant, officer, director, executive, client, customer, supplier or natural person who is a natural person or a natural person who is a shareholder or employee of the Vendor, or about any other identifiable individual, including any record that can be manipulated, linked or matched by a reasonably foreseeable method to identify an individual.

**“Purchase Price”** has the meaning set out in Section 3.1.

**“Purchased Assets”** means all of Vendor's right, title and interest, if any, in and to the Lands and the properties, rights, assets and undertakings listed in Schedule “A”. For certainty, the Purchased Assets do not include the Excluded Assets.

**“Purchaser”** has the meaning set out in the preamble hereto.

**“Purchaser’s Solicitors”** means MLT Aikins LLP.

**“Receiver”** has the meaning set out in the recitals hereto.

**“Receiver’s Certificate”** has the meaning set out in Section 6.1(e).

**“Receivership Order”** has the meaning set out in the recitals hereto.



**“Receivership Order”** has the meaning set out in the recitals hereto.

**“Representative”** means, in respect of a Person, each director, officer, employee, agent, legal counsel, accountant, consultant, contractor, professional advisor and other representative of such Person and its Affiliates.

**“Sanctions”** has the meaning set out in Section 7.2(i).

**“Sanctioned Person”** has the meaning set out in Section 7.2(i).

**“Taxes”** means, with respect to any Person, all national, federal, provincial, local or other taxes, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties and any Liability for the payment of any amounts of the type described in this paragraph as a result any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any Person, and includes, without limitation, property taxes, income taxes, branch taxes, profit taxes, capital gains taxes, gross receipt taxes, windfall profit taxes, value added taxes, severance taxes, ad valorem taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, transmission fees, withholding or similar taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/PST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority.

**“Third Party”** means any Person who is not a Party.

**“Transactions”** means all of the transactions contemplated by this Agreement, including the purchase and sale transaction whereby the Purchaser will acquire the Purchased Assets.

**“Transaction Taxes”** means all applicable Taxes, including any applicable GST/PST/HST, payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording, transfer or transmission fees payable in connection with the instruments of transfer provided for in this Agreement.

**“Vendor”** has the meaning set out in the preamble hereto.

**“Vendor’s Solicitors”** means MLT Aikins LLP.

### **1.1 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

### **1.2 General Construction**

The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular section hereof. The expression “Section” or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

### **1.3 Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including, without limitation,” and such terms as “includes” have

similar meanings and the term “third party” means any other Person other than the Vendor, Receiver, or the Purchaser, or any Affiliates thereof.

#### **1.4 Currency**

All references in this Agreement to dollars, monetary amounts, or to \$, are expressed in Canadian currency unless otherwise specifically indicated.

#### **1.5 Statutes**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

#### **1.6 Schedules**

The following schedules are attached hereto and incorporated in and form part of this Agreement:

##### **SCHEDULES**

<u>Schedule “A”</u>	-	Purchased Assets
<u>Schedule “B”</u>	-	Permitted Encumbrances
<u>Schedule “C”</u>	-	Assigned Contracts
<u>Schedule “D”</u>	-	Assumed Liabilities

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement will apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

#### **1.7 Interpretation if Closing Does Not Occur**

If Closing does not occur, each provision of this Agreement which presumes that the Purchaser has acquired the Purchased Assets and assumed the Assumed Liabilities shall be construed as having been contingent upon Closing having occurred.

### **ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES**

#### **2.1 Purchase and Sale of the Purchased Assets**

Subject to the terms and conditions of this Agreement, effective as of the Closing Time, the Vendor shall sell, assign and transfer the Purchased Assets and Assumed Liabilities to the Purchaser, and the Purchaser shall purchase, accept, assume and receive from the Vendor, all of the Purchased Assets and Assumed Liabilities. For certainty, the Purchased Assets: (a) shall be free and clear of all Encumbrances that are not Permitted Encumbrances and (b) do not include the Excluded Assets.

## 2.2 Assumption of Assumed Liabilities

At the Closing Time, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Liabilities hereunder other than the Assumed Liabilities, except as required under Applicable Law.

## 2.3 Assignment of Contracts

- (a) Cure Costs. To the extent that any Cure Costs are payable with respect to any Assigned Contract, the Purchaser shall: (i) where such Assigned Contract is assigned pursuant to an Assignment Order, pay all such Cure Costs in accordance with the Assignment Order; and (ii) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay all such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty. The Cure Costs as paid by the Purchaser shall be in addition to the Cash Purchase Price received by the Vendor for the Purchased Assets.
- (b) Assignment. At the Closing Time, on and subject to the terms and conditions of this Agreement (including Section 2.3(c) below), the Approval and Vesting Order and the Assignment Order (if applicable), all of the Vendor's rights, benefits, interests and obligations in, to and under the Assigned Contracts shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.
- (c) Where Consent Required. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assigned Contract to the extent such Assigned Contract is not assignable under Applicable Law, or the terms of the applicable Assigned Contract provide that it is not assignable without the consent of another Person, unless such consent has been obtained or the assignment is subject to an Assignment Order.
- (d) No Adjustment. For greater certainty, if the consent of any Person is required to assign an Assigned Contract, but such consent is not obtained prior to Closing and such Contract is not assigned pursuant to an Assignment Order, such Contract shall not form part of the Assigned Contracts and: (i) neither Party shall be considered to be in breach of this Agreement; (ii) the failure to assign or otherwise transfer such Assigned Contract shall not be a condition to Closing; (iii) the Purchase Price shall not be subject to any adjustment; and (iv) the Closing shall not be delayed.

## ARTICLE 3 PURCHASE PRICE

### 3.1 Purchase Price

- (a) The purchase price payable by the Purchaser for the Purchased Assets shall be [REDACTED], subject to adjustment as provided in this Agreement (the "**Purchase Price**"). For certainty, the Purchase Price shall be exclusive of applicable Taxes.
- (b) The Purchase Price shall be adjusted to proportionally allocate between the Parties all Taxes, local improvement charges, utilities, pre-paid rent and interest in accordance with Section 3.6 of this Agreement.

- (c) The adjustments shall be for the Vendor's account as to both revenue and expenses up to 12:01 a.m. on the Closing Date, and thereafter for the Purchaser's account.
- (d) The Purchase Price shall be exclusive of the Cure Costs and the adjustment specified in Section 3.6 of this Agreement.

### 3.2 Satisfaction of Purchase Price

The Purchaser shall satisfy the purchase, at the Closing Time, in accordance with the following:

- (a) Deposit. The Parties acknowledge that the Purchaser has paid a deposit to the Vendor concurrent with the execution hereof in the amount of \$300,000 (the "**Deposit**"), representing █████% of the Purchase Price, by wire transfer of immediately available funds to a trust account specified by the Receiver, and such Deposit shall be credited against the Purchase Price at Closing.
- (b) Cash Purchase Price. An amount equal to the remaining Purchase Price less the Deposit, plus any Transaction Taxes (the "**Cash Purchase Price**"), as adjusted pursuant to Section 3.6, shall be paid by the Purchaser to the Vendor via certified cheque, bank draft or wire transfer or immediately available funds at the Closing Time.
- (c) Cure Costs. The Cure Costs shall be paid by the Purchaser to the Vendor's Solicitors or to a trust account specified by the Receiver, or at the direction of the Vendor to the applicable counterparties, at or prior to Closing.
- (d) Assumed Liabilities. An amount equal to the amount of the remaining Assumed Liabilities which the Purchaser shall assume on the Closing Date, and which shall be satisfied by the Purchaser becoming liable for and performing the Assumed Liabilities.

### 3.3 Deposit

- (a) If Closing occurs in accordance with the terms and conditions of this Agreement, the Deposit shall be credited against the Purchase Price, in partial satisfaction of the Purchaser's obligation to pay the Purchase Price at Closing.
- (b) If this Agreement is terminated:
  - (i) pursuant to Sections 6.1, 6.2 or 8.1(b), the Deposit shall be returned to the Purchaser; or
  - (ii) for any other reason, the Deposit shall be forfeited by the Purchaser and retained by the Vendor; and
  - (iii) in the event of termination of this Agreement under Section 8.1 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.

### **3.4 Allocation of the Purchase Price**

The Vendor and the Purchaser agree to allocate the Purchase Price to the Purchased Assets held by the Vendor for tax purposes in a manner to be agreed to by the Parties, each acting reasonably, at least three (3) days before Closing, and to report the sale and purchase of the Purchased Assets for all federal, provincial and local tax purposes in a manner consistent with such allocation.

### **3.5 Section 167 Tax Election.**

If available and requested by the Purchaser on 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-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.

### **3.6 Adjustments**

- (a) Adjustments for the Purchased Assets shall be made as of the Closing Date and the Purchase Price will be adjusted accordingly. Except as otherwise provided in this Agreement, the Vendor will be responsible for all expenses and will be entitled to all revenues accrued with respect to the Purchased Assets for the period ending on the day before the Closing Date and, for the period from and including the Closing Date, the Purchaser will be responsible for all expenses and will be entitled to all revenues accruing with respect to the Purchased Assets. All real property taxes and local improvement levies that are not being recovered under the Assigned Contracts, shall be adjusted as at the Closing Date for the calendar year of sale.
- (b) A Statement of Adjustments will be delivered to the Purchaser by the Vendor at least five (5) Business Days prior to the Closing Date and shall have annexed to it details of the calculations used to arrive at all debits and credits on the Statement of Adjustments. The Vendor will give the Purchaser and its representatives copies of all working papers and back-up materials (where available) requested by the Purchaser in writing, acting reasonably, in order to verify the Statement of Adjustments.

## **ARTICLE 4 COVENANTS**

### **4.1 Closing Date**

- (a) The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing.
- (b) Each of the Parties shall, as promptly as possible, make, or cause to be made, all filings and submissions, as applicable, required under any Applicable Law to effect the Closing.

### **4.2 Interim Period**

During the Interim Period, except as otherwise expressly contemplated or permitted by this Agreement or the Approval and Vesting Order, the Vendor shall, unless consented to by the Purchaser, continue to maintain the operations of the Vendor in substantially the same manner as conducted on the Effective Date and in compliance with Applicable Laws in all material respects.

#### **4.3 Access During Interim Period**

During the Interim Period, the Vendor shall, subject to any confidentiality, privacy or safety restrictions, give, or cause to be given, to the Purchaser, and its representatives, reasonable access during normal business hours to the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Purchased Assets as the Purchaser reasonably deems necessary or desirable to further familiarize itself with the Purchased Assets. Without limiting the generality of the foregoing: (a) the Purchaser and its representatives shall be permitted reasonable access during normal business hours to all documents relating to information scheduled or required to be disclosed under this Agreement and which are included in the data room; and (b) the Purchaser and its representatives shall be permitted to contact and discuss the Transactions contemplated herein with Governmental Authorities and the Vendor's customers and contractual counterparties. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk and cost, during normal business hours, and without undue interference with the Vendor's operations and the Vendor shall co-operate reasonably in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser.

#### **4.4 Assigned Contracts**

- (a) The Purchaser, with the Vendor's consent, will request any consents necessary to permit the assignment to the Purchaser of the Assigned Contracts. The Vendor will provide its reasonable cooperation to assist the Purchaser to obtain such consents, including providing financial and other information of the Vendor requested by the Purchaser or party to such Assigned Contract. For certainty, the Purchaser will be responsible for all Cure Costs in respect of any Assigned Contracts.
- (b) Nothing in this Agreement will constitute an agreement to assign or an attempted assignment of any non-assignable rights or any Contracts for which any requisite consent or approval has not been obtained or which as a matter of Applicable Law or by its terms is not assignable.

#### **4.5 Insurance Matters**

Until Closing, the Vendor shall keep in full force and effect all existing insurance policies and give any notice or present any claim under any such insurance policies consistent with past practice of the Vendor and the Vendor in the ordinary course of business.

#### **4.6 Risk of Loss**

The Purchased Assets shall be at the risk of the Vendor until Closing. If, between the date hereof and Closing, any of the Purchased Assets are destroyed, lost or materially damaged (each a "**Casualty**"), the Purchaser shall still complete the purchase of the Purchased Assets on an "as is, where is" basis without any adjustment to the Purchase Price payable hereunder and take an assignment from the Vendor of all insurance proceeds payable to the Vendor in respect of the Casualty. For greater certainty, in no event shall the aggregate total of the insurance proceeds assigned to the Purchaser in accordance with this Section and the fair market value of Purchased Assets exceed the Purchase Price.

#### **4.7 Indemnity**

The Purchaser hereby indemnifies the Vendor, the Receiver (in its personal and corporate capacity) and their respective representatives, and saves them fully harmless against, and will reimburse or compensate them for, any Losses arising from, in connection with or related in any manner whatsoever to:

- (a) any Transaction Taxes (including penalties and interest) which may be assessed against any of the Vendor, including, notwithstanding anything to the contrary in this Agreement, any Taxes which may be assessed against any of the Vendor in the event that any election made pursuant to Section 3.5 is challenged by the relevant Tax authority as being inapplicable to the transactions under this Agreement, or as a result of the Purchaser's failure to file such elections within the prescribed time;
- (b) the Purchaser's access in accordance with Section 4.3; and
- (c) the Purchaser's failure to pay when due and failure to perform and discharge the Assumed Liabilities in accordance with their terms.

#### **4.8 Personal Information Privacy**

The Purchaser shall at all times comply with all Applicable Laws governing the protection of personal information with respect to Personal Information disclosed or otherwise provided to the Purchaser by the Vendor and Receiver under this Agreement. The Purchaser shall only collect, use or disclose such Personal Information for the purposes of investigating the Purchased Assets as contemplated in this Agreement and completing the transactions contemplated in this Agreement. The Purchaser shall safeguard all Personal Information collected from the Vendor and/or the Receiver in a manner consistent with the degree of sensitivity of the Personal Information and maintain at all times the security and integrity of the Personal Information. The Purchaser shall not make copies of the Personal Information or any excerpts thereof or in any way re-create the substance or contents of the Personal Information if the purchase of the Purchased Assets is not completed for any reason and shall return all Personal Information to the Vendor or destroy such Personal Information at the Vendor's request.

### **ARTICLE 5 CLOSING ARRANGEMENTS**

#### **5.1 Closing**

Closing shall take place on the Closing Date effective as of the Closing Time electronically (or as otherwise determined by mutual agreement of the Parties in writing), by the exchange of deliverables (in counterparts or otherwise) by electronic transmission in PDF format.

#### **5.2 Vendor Closing Deliveries**

At or before the Closing Time, the Vendor shall deliver or cause to be delivered to the Purchaser the following:

- (a) the Purchased Assets, with delivery to occur *in situ* wherever such Purchased Assets are located at the Closing Time;
- (b) a certified true copy of the Approval and Vesting Order, as issued and entered by the Court;
- (c) a true copy of any Assignment Order, if applicable, in respect of any Assigned Contracts for which consents to assignment were required but not obtained;
- (d) a statement of adjustment for the Purchased Assets in accordance with Section 3.6;
- (e) the Bill of Sale, duly executed by the Vendor;
- (f) the Assignment and Assumption Agreement, duly executed by the Vendor;

- (g) the election referred to in Section 3.5 of this Agreement, if applicable;
- (h) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

### **5.3 Purchaser's Closing Deliveries**

At or before the Closing, the Purchaser shall deliver or cause to be delivered to the Receiver the following:

- (a) the Cash Purchase Price referred to in Section 3.2(b), including the payment of all Transaction Taxes (if any) required to be paid on Closing, which shall be paid to the Receiver in trust;
- (b) the Bill of Sale, duly executed by the Purchaser;
- (c) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (d) the Cure Costs referred to in Section 3.2(c);
- (e) bring-down certificate executed by a senior officer of the Purchaser (without personal liability) dated as of the Closing Date, in form and substance satisfactory to the Vendor, acting reasonably, certifying that: (i) all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing Date as if made on and as of such date or, if made as of a date specified therein, as of such date; and (ii) all of the terms and conditions set out in this Agreement to be complied with or performed by the Purchaser at or prior to Closing have been complied with or performed by the Purchaser in all material respects;
- (f) the election referred to in Section 3.5 of this Agreement, if applicable;
- (g) a GST indemnity and undertaking certificate;
- (h) proof the Purchaser is a GST Registrant under the ETA as of the Closing Date;
- (i) proof of insurance for the full value of the Purchased Assets;
- (j) proof of commitment of title insurance for the full value of the Purchased Assets; and,
- (k) such other agreements, documents and instruments as may be reasonably required by the Vendor to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

### **5.4 Possession**

The Vendor shall provide and the Purchaser will have possession of the Purchased Assets on the Closing Date, free from all Encumbrances, except for the Permitted Encumbrances. The Vendor shall deliver to the Purchaser on the Closing Date any keys, combinations, codes and other similar such items and information relating to the Purchased Assets, if any.



## **5.5 Title Insurance**

The Purchaser shall obtain title insurance coverage with a reputable title insurance provider in order to allow for the unconditional release of the Purchase Price on the Closing Date, notwithstanding that the Approval and Vesting Order may not be registered against title to the Lands as at such date. The Vendor shall use commercially reasonable efforts to assist the Purchaser in obtaining such title insurance coverage. The cost of obtaining any title insurance in connection with the purchase of the Purchased Assets shall be at the sole cost of the Purchaser.

## **ARTICLE 6 CONDITIONS OF CLOSING**

### **6.1 Mutual Conditions of Closing**

The obligation of the Parties to complete the Transaction is subject to the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:

- (a) Approval and Vesting Order. The Court shall have pronounced the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated and no Legal Proceeding shall have been commenced by a party with standing to appeal same which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably.
- (b) Assignment Order. The Court shall, if applicable, have pronounced the Assignment Order, which Assignment Order shall not have been stayed, set aside, or vacated and no Legal Proceeding shall have been commenced by a party with standing to appeal same which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably.
- (c) No Order. No Applicable Law and no judgment, injunction, order or decree shall have been issued by a Governmental Authority (other than the Court or other court with standing) or otherwise in effect that restrains or prohibits the completion of the Transaction.
- (d) No Restraint. No motion, action or proceedings shall be pending by or before a Governmental Authority (other than the Court or other court with standing) to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (e) Receiver's Certificate. The Receiver shall have provided an executed certificate of the Receiver substantially in the form attached to the Approval and Vesting Order (the “**Receiver's Certificate**”) confirming that all other conditions to Closing have either been satisfied or waived by both the Purchaser and the Vendor.

The foregoing conditions are for the mutual benefit of the Parties. If any condition set out in this Section 6.1 is not satisfied, performed or mutually waived on or prior to the Closing Date, any Party may elect on written notice to the other Parties to terminate this Agreement.

### **6.2 Purchaser's Conditions of Closing**

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Vendor's Deliverables. The Vendor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 5.2.
- (b) No Breach of Representations and Warranties. Except as such representations and warranties may be affected by the occurrence of events or transactions specifically contemplated by this Agreement, each of the representations and warranties contained in Section 7.1 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
- (c) No Breach of Covenants. The Vendor shall have performed, in all material respects, all covenants, obligations and agreements contained in this Agreement required to be performed by the Vendor on or before the Closing Date.

The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 6.2 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. In the event any condition set out in this Section 6.2 is not satisfied or performed by the Closing Date, the Purchaser may elect on written notice to the Vendor to terminate the Agreement.

### **6.3 Vendor's Conditions of Closing**

The obligation of the Vendor to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Purchaser's Deliverables. The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Receiver at the Closing all the documents and payments contemplated in Section 5.3.
- (b) No Breach of Representations and Warranties. Each of the representations and warranties contained in Section 7.2 shall be true and correct in all material respects (i) as of the Closing Date as if made on and as of such date, or (ii) if made as of a date specified therein, as of such date.
- (c) No Breach of Covenants. The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition in this Section 6.3 may be waived by the Vendor in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. If any condition set forth in this Section 6.3 is not satisfied or performed by the Closing Date, the Vendor may elect on written notice to the Purchaser to terminate the Agreement.

### **6.4 Receiver's Certificate**

The Parties acknowledge and agree that the Receiver shall be entitled to deliver to the Purchaser, and file with the Court, the executed Receiver's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Receiver shall have no Liability to the Parties in connection therewith. The Parties further acknowledge and agree that upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived, the Receiver

may deliver the executed Receiver's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Receiver's written confirmation that all such funds have been received, the Receiver's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and Warranties of the Vendor**

The Vendor hereby represents and warrants to and in favour of the Purchaser as of the date hereof and as of the Closing Time, and acknowledges that, the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Authority. Subject to Court approval of this Agreement, it has the authority to sell the Purchased Assets to the Purchaser on the terms and conditions of this Agreement.
- (b) Residency. The Vendor is not a non resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada).

### **7.2 Representations and Warranties of the Purchaser**

The Purchaser hereby represents and warrants to and in favour of the Vendor as of the date hereof and as of the Closing Time, and acknowledges that, the Vendor is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Incorporation and Status. The Purchaser is a corporation incorporated and existing under the Province of Alberta as of the date hereof, is in good standing under such act and has the power and authority to enter into, deliver and perform its obligations under this Agreement.
- (b) Corporate Authorization. The execution, delivery and performance by the Purchaser of this Agreement has been authorized by all necessary corporate action on the part of the Purchaser.
- (c) No Conflict. The execution, delivery and performance by the Purchaser of this Agreement do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of the Organizational Documents of the Purchaser.
- (d) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms subject only to the Approval and Vesting Order.
- (e) Proceedings. There are no Legal Proceedings pending, or to the knowledge of the Purchaser, threatened against the Purchaser, before any Governmental Authority, which prohibit or seek to enjoin, delay, restrict or prohibit the Closing of the Transaction, as contemplated by this Agreement, or which would reasonably be expected to delay, restrict or prevent the Purchaser from fulfilling any of its obligations set forth in this Agreement.

- (f) Funding Available. The Purchaser has available sufficient funding to enable the Purchaser to consummate the purchase of the Purchased Assets on the terms set forth herein and otherwise to perform all of the Purchaser's obligations under this Agreement. For certainty, such funding shall not be conditional on either: (i) title to the Purchased Assets being transferred to the Purchaser or other third party prior to the Purchase Price being advanced to the Vendor and the Receiver's Certificate being issued; and (ii) security being registered against the Purchased Assets prior to Closing.
- (g) Excise Tax Act. The Purchaser is registered under Part IX of the *Excise Tax Act* (Canada) with registration number 76946 6335 RG0001.
- (h) Residency. The Purchaser is not a non-Canadian Person within the meaning of the *Investment Canada Act* (Canada) nor a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada).
- (i) No Sanctions. None of the Purchaser, any of its subsidiaries or, to the knowledge of the Purchaser, any director, officer, agent, employee, Affiliate or representative of the Purchaser or any of its subsidiaries is, or is controlled or 50% or more owned by or is acting on behalf of, an individual or entity (a "**Sanctioned Person**") currently the subject of applicable economic sanctions including those administered or enforced by the government of Canada, the United States of America, or the United Kingdom (collectively, "**Sanctions**"). None of the Purchaser or any of its subsidiaries is located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions. To the Purchaser's knowledge, neither it nor any of its subsidiaries has engaged in any dealings or transactions with or for the benefit of a Sanctioned Person. The Purchaser has procedures and policies in place designed to ensure compliance with Sanctions.

### 7.3 "As is, Where is"

(1) Except as contemplated in Section 7.1, the Purchaser acknowledges and agrees that it is purchasing the Purchased Assets and assuming the Assumed Liabilities on an "as is, where is" basis and on the basis that the Purchaser has conducted to its satisfaction an independent inspection, investigation and verification of the Purchased Assets, Assumed Liabilities and all other relevant matters and has determined to proceed with the Transaction contemplated herein and will accept the same at the Closing Time in their then current state, condition, location, and amounts, subject to all Permitted Encumbrances.

(2) Except as otherwise expressly provided in Section 7.1, no representation, warranty or condition whether statutory (including under *The Sale of Goods Act* (Alberta), *The International Conventions Implementation Act* (Alberta), the *International Sale of Goods Contracts Convention Act* (Canada) or any other Canadian (including federal, provincial or municipal) or international acts which may be applicable to the subject matter pursuant to the provisions of this Agreement, including but not limited to the United Nations Convention on Contracts for the International Sale of Goods), or express or implied, oral or written, legal, equitable, conventional, collateral, arising by custom or usage of trade, or otherwise is or will be given by the Vendor or the Receiver including as to title, outstanding liens or encumbrances, description, fitness for purpose, merchantability, merchantable quality, quantity, condition (including physical, financial and environmental condition), use or zoning, occupancy or habitability, suitability for development, permitting, eligibility for permitting, existence of any parts or components, latent or known defects, state of repair or lack of repair, any regulatory approvals or authorizations needed to complete the purchase of the Purchased Assets, suitability, durability, assignability, or marketability thereof or any other matter or thing whatsoever, and all of the same are expressly excluded and disclaimed and any rights pursuant to such statutes have been waived by the Purchaser. Without limiting the generality of the foregoing, the Purchaser acknowledges and agrees that neither the Vendor or the Receiver has made any representation, warranty or

covenant that any of the Purchased Assets are or can be made operational within a specified time frame or will achieve any particular result, level of service, use, production capacity or actual production if made operational. The Purchaser acknowledges and agrees that it has relied entirely and solely on its own investigations as to the matters set out above and in determining to purchase the Purchased Assets and assume the Assumed Liabilities pursuant to this Agreement.

(3) The description of the Purchased Assets and Assumed Liabilities contained herein is for the purpose of identification only and the inclusion of any item in such description does not confirm the existence of any such items or that any such item is owned by the Vendor. Except as otherwise explicitly set forth in Section 7.1 no representation, warranty or condition has been given by the Vendor or the Receiver concerning the completeness or accuracy of such descriptions and the Purchaser acknowledges and agrees that any other representation, warranty, statements of any kind or nature, express or implied, (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Vendor or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Vendor.

(4) Any documents, materials and information provided by the Vendor or Receiver to the Purchaser with respect to the Purchased Assets or Assumed Liabilities (including any confidential information memorandums, management presentations, or material made available in the electronic data room) have been provided to the Purchaser solely to assist the Purchaser in undertaking its own due diligence, and the Vendor and/or Receiver have not made and are not making any representations or warranties, implied or otherwise, to or for the benefit of the Purchaser as to the accuracy and completeness of any such documents, materials or information or the achievability of any valuations, estimates or projections. The Purchaser acknowledges that it has not and will not rely upon any such documents, materials or information in any manner, whether as a substitute for or supplementary to its own due diligence, searches, inspections and evaluations. The Vendor and/or Receiver and their respective Affiliates, directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information. The Purchaser further acknowledges that the use of the documents may not be possible without the Purchaser obtaining reliance or other assurances from the author of such documents directly and further that the documents may be subject to copyright or other property rights which may preclude their use by the Purchaser in whole or in part.

## **ARTICLE 8 TERMINATION**

### **8.1 Grounds for Termination**

This Agreement may be terminated prior to the Closing Date:

- (a) by the Vendor upon written notice to the Purchaser if:
  - (i) the Closing has not occurred by the Outside Date; or
  - (ii) the Purchaser has breached its obligations under this Agreement and has not cured such breach within three (3) Business Days of receiving notice thereof from Vendor;provided in each case that the failure to close, as applicable, is not caused by a breach of this Agreement by the Vendor; or
- (b) by the Purchaser upon written notice to the Vendor if: (i) the Closing has not occurred by the Outside Date; or (ii) the Vendor has breached its obligations under this Agreement and has not cured such breach within five (5) Business Days of receiving notice thereof from

Purchaser; provided in each case that the failure to close, as applicable, is not caused by a breach of this Agreement by the Purchaser.

## **8.2 Effect of Termination.**

If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder; except for the provisions of Sections 4.7 (Indemnity), 4.8 (Personal Information Privacy), 10.3 (Public Announcements) and 10.9 (Governing Law) and those provisions of this Agreement that by their express terms state they will survive the termination of this Agreement.

## **ARTICLE 9 ENVIRONMENTAL MATTERS**

### **9.1 Defined Terms**

For the purpose of this Agreement:

- (a) **“Assumed Environmental Liabilities”** means all Environmental Liabilities arising or accruing before, on or after the Closing Date and related to or in connection with the Purchased Assets;
- (b) **“Environmental Laws”** means all statutes, regulations, ordinances, by-laws, and codes, now or hereafter in existence in Canada (whether federal, provincial or municipal) relating to the protection and preservation of the environment, occupational health and safety, transportation of dangerous goods or hazardous substances, including, without limitation, the *Environmental Protection and Enhancement Act* (Alberta), as amended, replaced, or restated from time to time;
- (c) **“Environmental Liabilities”** means all Claims, Losses and Liabilities, damages or expenses (whether accrued, actual, contingent, latent or otherwise), whenever arising, which relate to the Purchased Assets, or arise from or in connection with past, present or future operations in respect thereof or which relate to or are associated with the environment, including, without limitation, Losses and Liabilities related to or arising from:
  - (i) the non-compliance with, the breach of, or any liability under the applicable Environmental Laws;
  - (ii) presence, transportation, storage, use or disposal of toxic or hazardous substances;
  - (iii) release, spill, escape, emission, leak, discharge, migration or dispersal of toxic or hazardous substances; and
  - (iv) removal, assessment, monitoring, sampling, response, abatement, clean-up, investigation, reporting of pollution or contamination of, or damage or other adverse effects to the environment,

including, without limitation, liabilities to compensate Third Parties for damages, Losses and Liabilities resulting from the items described in items (i) through (iv) above and, for purposes of this Agreement, "the environment" includes, without limitation, the air, the surface and subsurface of the earth, bodies of water (including, without limitation, rivers, streams, lakes, aquifers, groundwater) and plant and animal life (including humans).

## **9.2 Assumption of Environmental Liabilities**

The Purchaser acknowledges that insofar as the environmental condition of the Purchased Assets is concerned, and without limiting the generality of Section 7.3, it will acquire the Purchased Assets on an "as is, where is" and "without recourse" basis. The Purchaser acknowledges that it has had the opportunity to inspect and assess the environmental condition of the Purchased Assets, including for certainty the Lands, and that it is not relying upon any representation or warranty of the Vendor, its Affiliates or their respective Representatives as to the environmental condition of the Purchased Assets, Environmental Liabilities or. The Purchaser further agrees that it shall be solely liable and responsible for any and all Losses and Liabilities which the Vendor, its Affiliates or their respective Representatives may suffer, sustain, pay or incur, as a result of any matter or thing arising out of, resulting from, attributable to or connected with any Assumed Environmental Liabilities. Once Closing has occurred and without limiting the foregoing, the Purchaser shall be solely responsible for all Assumed Environmental Liabilities, hereby releases the Vendor from any Claims the Purchaser may have against the Vendor with respect to all such Assumed Environmental Liabilities, and acknowledges its indemnification obligations described in Section 4.7. The Purchaser and the Vendor acknowledge and agree that the Environmental Liabilities are future costs and obligations associated with ownership of the Purchased Assets that are tied and connected to the ownership of the Purchased Assets such that they are embedded with the Purchased Assets. The Purchaser acknowledges and agrees that these covenants shall survive Closing.

## **ARTICLE 10 GENERAL**

### **10.1 Access to Books and Records**

For a period of six (6) years from the Closing Date or for such longer period as may be reasonably required for the Vendor (or any trustee in bankruptcy of the estate of the Vendor) to comply with Applicable Law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement, but the Purchaser is not responsible or liable for any accidental loss or destruction of, or damage to, any such Books and Records. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement, the Vendor (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendor, including the Receiver) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.

### **10.2 Notice**

Any notice or other communication under this Agreement shall be in writing and may be delivered by read-receipted email, addressed:

- (a) in the case of the Purchaser, as follows:

**Kastel Holdings Ltd.**  
177 Wolf Willow Cres.  
Edmonton, AB T5T 1T3  
Attention: Boris Javorski  
Email: boris@kastelholdings.com

with a copy (which shall not constitute notice) to:

**MLT Aikins LLP**  
Suite 2200, 10235 – 101st Street

Edmonton, AB T5J 3G1  
Attention: Aleem Popatia  
**MLT Aikins LLP**  
Suite 2200, 10235 – 101st Street  
Edmonton, AB T5J 3G1  
Email: [apopatia@mltaikins.com](mailto:apopatia@mltaikins.com)

(b) in the case of the Vendor, as follows:

**BDO Canada Limited**  
110, 5800 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2H 0H2  
Attention: Kevin Meyler  
Email: [kmeyler@bdo.ca](mailto:kmeyler@bdo.ca)

with a copy (which shall not constitute notice) to:

**MLT Aikins LLP**  
2100, 222 3<sup>rd</sup> Ave SW  
Calgary, AB T2P 0B4  
Attention: Ryan Zahara  
Email: [rzahara@mltaikins.com](mailto:rzahara@mltaikins.com)

Any such notice or other communication, if transmitted by email before 5:00 p.m. (Calgary time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Calgary time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission. In the case of a communication by email or other electronic means, if an autoreply is received indicating that the email is no longer monitored or in use, delivery must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that any communication originally delivered by electronic means shall be deemed to have been given on the date stipulated above for electronic delivery.

Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party. A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

### **10.3 Public Announcements**

The Vendor and Receiver shall be entitled to disclose this Agreement to the Court and parties in interest in the Receivership Proceedings and this Agreement may be posted on the Receiver's website maintained in connection with the Receivership Proceedings at: <https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/1847845-alberta-ltd-tamarack>.

Other than as provided in the preceding sentence or statements made in Court (or in pleadings filed therein) or where required to meet timely disclosure obligations of the Vendor or any of its Affiliates under Applicable Laws or stock exchange rules, the Parties shall not issue (prior to or after the Closing) any press release or make any public statement or public communication with respect to this Agreement or the Transactions contemplated hereby without the prior consent of the other Parties, which shall not be unreasonably withheld or delayed.



#### **10.4 Time**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Parties.

#### **10.5 Survival**

All representations, warranties and covenants of Vendor contained in this Agreement shall merge and terminate on Closing. Notwithstanding the foregoing, the representations, warranties and covenants of the Purchaser contained herein shall not merge on Closing and shall survive and remain in full force and effect.

#### **10.6 Benefit of Agreement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

#### **10.7 Entire Agreement**

This Agreement and the attached Schedules hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Receiver and the Purchaser.

#### **10.8 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

#### **10.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and each of the Parties irrevocably attorn to the exclusive jurisdiction of the Court in the Receivership Proceedings, and any appellate courts of the Province of Alberta therefrom.

#### **10.10 Assignment**

This Agreement may be assigned by the Purchaser prior to the issuance of the Approval and Vesting Order and Assignment Order (if applicable), in whole or in part, without the prior written consent of the Vendor or the Receiver, provided that: (a) such assignee is a related party or subsidiary of the Purchaser; (b) the Purchaser provides prior notice of such assignment to the Vendor and Receiver; and (c) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment; provided, however, that any such assignment shall not relieve the Purchaser of its obligations hereunder.

#### **10.11 Further Assurances**

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

#### **10.12 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

#### **10.13 Severability**

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

#### **10.14 Waiver**

No failure on the part of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by statute or otherwise conferred. No waiver by any Party of any breach (whether actual or anticipated) of any of the terms, conditions, representations or warranties contained herein shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party and made in accordance with the Agreement. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

#### **10.15 Receiver's Capacity**

In addition to all of the protections granted to the Receiver under the Receivership Order or any other order of the Court in these Receivership Proceedings, the Purchaser acknowledges and agrees that the Receiver, acting in its capacity as court-appointed receiver and not in its corporate or personal capacity, will have no Liability to the Purchaser in connection with this Agreement or the Transaction contemplated herein.

#### **10.16 Post-Closing Wind-up of Receivership Proceedings**

Notwithstanding any other provision of this Agreement, nothing in this Agreement shall operate to restrict in any way the rights of the Receiver to distribute any of the assets or otherwise wind up the Receivership Proceedings as it may determine in its sole discretion after the Closing, even if doing so may impair the Vendor's ability to provide or perform any further cooperation, assistance or further assurances as may otherwise be provided under this Agreement.

#### **10.17 Electronic Signatures**

Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the Effective Date.

**BDO CANADA LIMITED, IN ITS  
CAPACITY AS COURT-APPOINTED  
RECEIVER OF 1847845 ALBERTA LTD.  
AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY**

Per:



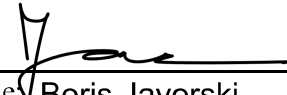
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Name: Kevin Meyler

Title: Senior Vice President

**KASTEL HOLDINGS LTD.**

Per:



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Name: Boris Javorski

Title: Director

## **SCHEDULE "A"**

### **PURCHASED ASSETS**

#### **Lands:**

PLAN 0121120

BLOCK 33

LOT 7

EXCEPTING THEREOUT ALL MINES AND MINERALS

AREA: 0.753 HECTARES (1.86 ACRES) MORE OR LESS

#### **Assets:**

- All goods, furniture, equipment and fixtures pertaining to the hotel, restaurant and dining room
- Reservations and customer bookings for stays to be completed after Closing

**SCHEDULE "B"**  
**PERMITTED ENCUMBRANCES**

Nil.

## **SCHEDULE “C”**

### **ASSIGNED CONTRACTS**

Each of the following agreements, including all amendments, change orders and any other modifications thereto:

<b>Contract</b>	<b>Counterparty/ies</b>
Nil.	Nil.

**SCHEDULE “D”**  
**ASSUMED LIABILITIES**

Nil.

## **APPENDIX “B”**



**In the Matter of the Receivership of**  
**1847845 Alberta Ltd. O/A Tamarack Motor Inn**  
**Statement of Receipts and Disbursements**  
**From the date of the Receivership Order to October 24, 2024**

**Receipts**

Motel revenues	\$	245,885
Advance from secured creditors		200,000
GST collected		12,133
Cash in bank		4,088
Hotel levy collected		697
Miscellaneous receipts		482
Interest earned		28
		<hr/>
		463,313

**Disbursements**

Hotel management fees		108,540
Insurance		57,491
Contractor expense		55,979
Property tax		44,915
Payroll		43,612
Utilities		15,402
GST paid		12,704
Operating expense		8,240
Repair and maintenance		7,109
Bank charges		885
		<hr/>
		354,876

<b>Cash in trust as October 24, 2024</b>	<b>\$</b>	<b><u>108,437</u></b>
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