**ASSET PURCHASE AGREEMENT**

THIS AGREEMENT is made as of the \_\_\_\_\_ day of November, 2018.

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

**WHEREAS:**

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

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

1. Definitions

The following terms have the following meanings:

* + 1. "**Agreement**" means this Asset Purchase Agreement made as of the date first written above;
    2. "**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, (a) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, (b) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively, in the foregoing clauses (a) and (b), "**Law**") in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.
    3. "**Books and Records**" means all books, records, files and papers used or intended for use in connection with the ownership of the Purchased Assets, including title documentation, manuals, sales and advertising materials, and all other documents and data (technical or otherwise) relating to the Purchased Assets, and all copies and recordings of the foregoing;
    4. "**Business Day**" means any day other than a Saturday, Sunday, or any other statutory holiday in Alberta;
    5. "**Claim**" means any right or claim of any person that may be asserted or made in whole or in part against the Vendor, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including any right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, together with any other rights or claims of any kind that, if unsecured, would be a provable claim in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, had 236 Inc. become bankrupt;
    6. "**Closing**" means the completion of the Transaction in accordance with this Agreement;
    7. "**Closing Date**" means three days after the granting of the Vesting Order or the date on which the conditions precedent set forth in Sections 12, 13, and 14 are fulfilled or waived, or as otherwise agreed upon in writing by the Vendor and the Purchaser;
    8. "**Closing Time**" means 12:00 noon on the Closing Date;
    9. "**Court**" means the Alberta Court of Queen's Bench;
    10. "**Deposit**" has the meaning ascribed thereto in Section 9.1;
    11. "**ETA**" means the *Excise Tax Act*, RSC, 1985, c E-15 and the regulations thereto;
    12. "**Encumbrance**" means any encumbrance against or interest in the Purchased Assets of any kind whatsoever and includes, without limitation, a security interest, mortgage, lien, pledge, assignment, charge, title retention agreement, option, trust or deemed trust (whether contractual, statutory, or otherwise arising), licence, and any covenant or other agreement, restriction, or limitation relating to the Purchased Assets or the transfer of the Purchased Assets to the Purchaser pursuant to this Agreement, and includes Competing Proprietary Claims;
    13. "**Final Order**" means an order issued by the Court in these Receivership Proceeding which: (i) is not subject to a stay of execution or an application or request for a stay of execution, and, if the deadline for filing any such application or request is designated by statute or regulation, such deadline, including any extensions thereof, has passed; and (ii) is not then under appeal or other form of judicial review, is not subject to an application for leave to appeal or other form of judicial review, and the deadline for filing any notice of appeal or application for appeal or other form of judicial review, including any extensions thereof, has passed;
    14. "**Governmental Authority**" means any Canadian, foreign, domestic, federal, territorial, provincial, state, municipal, or local governmental authority, quasi-governmental authority, instrumentality, court, government, or self-regulatory organization, bureau, commission, tribunal, or organization or any regulatory, administrative, or other agency, or any political or other subdivision, department, or branch of any of the foregoing having jurisdiction with respect to 236 Inc., the Purchased Assets, or any other matter that is the subject of this Agreement;
    15. "**GST/HST**" means any goods and services tax/harmonized sales tax imposed under Part IX of the ETA;
    16. "**Interim Period**" means the period from the date of this Agreement to the Closing Date;
    17. "**ITA**" means the *Income Tax Act* (Canada) RSC, 1985, c 1 (5th Supp.)
    18. "**Legal Proceeding**" means any litigation, action, application, demand, suit, investigation, hearing, Claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any court or other tribunal or Governmental Authority and includes any appeal or review thereof and any application for leave for appeal or review;
    19. "**Obligations**" means any indebtedness, liabilities and obligations, whether present, future, direct, indirect, liquidated or contingent, whether due or to become due, owed by 236 Inc. to any person;
    20. "**Party**" or "**Parties**" mean either the Vendor or the Purchaser, as appropriate in the context, or both;
    21. "**Person**" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.
    22. "**Property**" has the meaning ascribed thereto in the recitals hereto;
    23. "**Purchase Price**" has the meaning ascribed thereto in Section 7 hereof;
    24. "**Purchased Assets**" means those assets enumerated in Schedule "A" hereto;
    25. "**Purchaser's Solicitors**" means [⚫];
    26. "**Receivership Order**" has the meaning ascribed thereto in the recitals hereto;
    27. "**Receivership Proceeding**" means the receivership proceeding in which Alvarez & Marsal Canada Inc. was appointed the Receiver of all of the current and future assets, undertakings, and properties of 236 Inc., being Court of Queen's Bench of Alberta Court File Number 1803-09581;
    28. "**Taxes**" means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, mining taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties;
    29. "**Transfer Taxes**" means all applicable Taxes, including where applicable, all GST/HST payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording or transfer fees payable in connection with the instruments of transfer provided for in this Agreement;
    30. "**Transaction**" means the purchase and sale of the Purchased Assets and all other transactions contemplated by this Agreement;
    31. "**Vendor's Solicitors**" means Blake, Cassels & Graydon LLP; and
    32. "**Vesting Order**" means an Order of the Court made in the Receivership Proceeding in form and content satisfactory to the Purchaser and the Vendor, each acting reasonably, approving the entry into this Agreement by the Vendor and the consummation of the Transaction contemplated hereby, and vesting in the Purchaser or its nominee(s) all right, title, and interest of 236 Inc. in and to the Purchased Assets free and clear of all Encumbrances upon payment of the Purchase Price.
  1. **Schedules**

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

**SCHEDULES**

|  |  |
| --- | --- |
| Schedule "A" | Purchased Assets |
| Schedule "B" | Form of Vesting Order |

1. Construction
   1. This Agreement has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party does not apply to the construction or interpretation of this Agreement.
2. Certain Rules of Interpretation
   1. In this Agreement:
      1. headings are inserted for convenience of reference only and will not affect the interpretation of this Agreement;
      2. the division into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement;
      3. the expressions "**hereof**", "**herein**", "**hereto**", "**hereunder**", "**hereby**" and similar expressions refer to this Agreement and not to any particular portion of this Agreement;
      4. "**including**" or "**includes**" means "**including (or includes) but is not limited to**" and is not to be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it;
      5. references to any legislation, statutory instrument or regulation or a section thereof are references to the legislation, statutory instrument, regulation or section as amended, re-enacted, consolidated or replaced from time to time; and
      6. words in the singular include the plural and vice-versa and words in one gender include all genders.
3. Performance on Business Days
   1. If any action is required to be taken pursuant to this Agreement on or by a specified date that is not a Business Day, the action is valid if taken on or by the next succeeding Business Day.
4. Currency and Payment
   1. In this Agreement, unless specified otherwise, references to dollar amounts or "**$**" are to Canadian dollars, and any payment is to be made by an official bank draft drawn on a Canadian chartered bank, wire transfer or any other method (other than cash payment) that provides immediately available funds.
5. Purchase and Sale of the Purchased Assets
   1. Subject to the timely fulfillment or waiver of the conditions precedent set forth in Sections 12, 13, and 14, including the granting of the Vesting Order, and the terms and conditions of this Agreement, on the Closing Date, the Vendor agrees to sell, assign, and transfer to the Purchaser, and the Purchaser agrees to purchase from the Vendor, all right, title, and interest of 236 Inc. in and to the Purchased Assets free and clear of all Encumbrances at the Closing Time.
6. Purchase Price
   1. The amount payable by the Purchaser to the Vendor for the Purchased Assets will be **$[⚫]** (the "**Purchase Price**").
   2. Purchase Price Allocation. The Purchase Price Allocation shall be as follows:
      1. To the land - $
      2. To the building - $
      3. To the chattels - $
7. Payment of the Purchase Price
   1. The Purchase Price shall be paid to the Vendor by the Purchaser on the Closing Date.
8. Deposit
   1. The Parties acknowledge that a deposit in the amount of **$[⚫]**, representing **ten percent (10%)** of the Purchase Price, has been provided by the Purchaser to the Vendor on or before **[INSERT DATE]**, and is being held in a non-interest-bearing trust account, to be released only in accordance with the provisions of this Section 9. The Deposit shall be held in trust by the Vendor until one of the following events occur:
      1. if Closing occurs, the Deposit shall be credited to the Vendor at Closing for its own account absolutely and be applied as partial payment of the Purchase Price;
      2. if Closing does not occur due to a breach of this Agreement by the Purchaser or the failure of the Purchaser to fulfill the conditions in Sections 12.1(a) through 12.1(c) (provided that for greater certainty, with respect to the conditions in Sections 12.1(a) through 12.1(c), such failure is due to matters within the reasonable control of the Purchaser, as applicable) the Deposit (along with any interest earned thereon) shall be forfeited by the Purchaser to the Vendor (and for the account of the Vendor absolutely);
      3. if Closing does not occur due to any reason other than as addressed by Section 9.1(b), the Deposit shall be paid to the Purchaser for the account of the Purchaser absolutely; and
      4. if the Purchaser is not ultimately the Successful Bidder (as that term is defined in the Sales Procedure set out in Schedule "C") than the Receiver acknowledges that it will be required to return the Deposit to the Purchaser in accordance with the terms of the Sales Procedure;
   2. In the event of termination of this Agreement under Section ‎9.1(b) pursuant to which the Vendor shall be entitled to retain the Deposit, the Parties agree that the amount of the Deposit constitutes a genuine pre estimate of liquidated damages representing the Vendor's losses and liabilities as a result of Closing not occurring and agree that the Vendor shall not be entitled to recover from the Purchaser any amounts that are in excess of the Deposit as a result of Closing not occurring. The Purchaser hereby waives any claim or defence that the amount of the Deposit is a penalty or is otherwise not a genuine pre estimate of the Vendor's damages.
9. Transfer Taxes
   1. The Purchase Price is exclusive of any applicable Transfer Taxes. Subject to Section 11(a), the Purchaser shall pay to the Vendor upon Closing or, where permitted by Applicable Law, directly to the appropriate Governmental Authorities, all Transfer Taxes, registration charges and transfer fees payable by it in respect of the purchase and sale of the Purchased Assets under this Agreement, and, on request of the Vendor, the Purchaser shall furnish to the Vendor proof of direct payment to a Governmental Authority.
   2. GST/HST Certificate and Indemnity. In respect of any GST/HST to be self-assessed by the Purchaser, the Purchaser shall deliver to the Vendor a GST/HST certificate and indemnity in form agreeable to the Vendor.
   3. GST/HST Gross-Up. If any payment made by the Vendor or the Purchaser as the result of a breach, modification or termination of this Agreement is deemed by the ETA to include GST/HST, or is deemed by any applicable provincial or territorial legislation to include a similar value-added or multi-staged tax, the amount of such payment shall be increased accordingly.
   4. The Purchaser shall indemnify and save harmless the Vendor from any amounts, including interest and penalties, that may be assessed against the Vendor arising out of the failure of the Purchaser to pay, when due, any taxes described in this Section 10.
10. Tax Elections
    * 1. Section 167 Tax Election. If available, at the Closing, the Vendor and the Purchaser shall execute jointly an election under Section 167 of the ETA, to have the sale of the Purchased Assets take place on a GST/HST-free basis under Part IX of the ETA. The Purchaser shall file the elections in the manner and within the time prescribed by the relevant legislation. Notwithstanding anything to the contrary in this Agreement, the Purchaser shall indemnify and hold harmless the Vendor in respect of any GST/HST, penalties, interest and other amounts which may be assessed against the Vendor as a result of the transactions under this Agreement not being eligible for such election or as a result of the Purchaser’s failure to file the election within the prescribed time.
      2. Section 20(24) Tax Election. The Purchaser and the Vendor shall, if applicable, jointly execute and file an election under Section 20(24) of the ITAin the manner required by Section 20(25) of the ITA and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the ITA and under any other applicable provincial or territorial statute, as to such amount paid by the Vendor to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendor acknowledge that a portion of the Purchased Assets transferred by the Vendor pursuant to this Agreement and having a value equal to the amount elected under Section 20(24) of the ITA and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the Vendor as a payment for the assumption of such future obligations by the Purchaser.
      3. Section 56.4 Tax Election. At the request of the Vendor and to the extent permitted by the ITA, the Parties shall make, and the Vendor shall file, any election or amended election in prescribed form (or such other form as the Purchaser or the Vendor may reasonably request) and within the prescribed time limits pursuant to Section 56.4(7) of the ITA proposed by the Minister of Finance (Canada) as it reads on the date of this Agreement or any amended or successor provision thereto, and any analogous provision of provincial or territorial Tax legislation.
11. Conditions in Favour of the Purchaser
    1. The obligations of the Purchaser under this Agreement are subject to the fulfillment of the following conditions precedent:
       1. Each of the representations and warranties of the Vendor set forth in Section 16 shall be true and correct as if restated on and as of the Closing Date;
       2. the covenants and obligations contained in this Agreement to be complied with by the Vendor on or before the Closing Time shall have been complied with and not been breached in any material respect; and
       3. the Vendor has caused to be delivered to the Purchaser, all as reasonably requested and prepared by the Purchaser all Books and Records, deeds, conveyances, bills of sale, assurances, transfers, assignments and any other documentation or action which in the opinion of the Purchaser are necessary or reasonably required to transfer the Purchased Assets to the Purchaser with good and marketable title, free and clear of all Encumbrances, in each case duly executed by the Vendor and in form and substance satisfactory to the Purchaser, acting reasonably.
    2. The Purchaser may, in its sole discretion, waive any of the foregoing conditions. Any waiver by the Purchaser must be in writing and delivered to the Vendor's Solicitors.
12. Conditions in Favour of the Vendor
    1. The obligations of the Vendor under this Agreement are subject to the fulfillment of the following conditions precedent:
       1. each of the representations and warranties of the Purchaser set forth in Section 17 shall be true and correct as if restated on and as of the Closing Date;
       2. the covenants and obligations contained in this Agreement to be complied with by the Purchaser on or before the Closing Time shall have been complied with and not been breached in any material respect; and
       3. the Purchaser has, as at the Closing Time: (i) delivered and paid the Purchase Price to the Vendor, and (ii) paid and delivered all taxes applicable to the Transaction.
    2. The Vendor may, in its sole discretion, waive either of the foregoing conditions. Any waiver by the Vendor must be in writing and delivered to the Purchaser's Solicitors.
13. Mutual Conditions
    1. The obligations of the Parties under this Agreement are subject to the following mutual conditions precedent:
       1. the security charging the Purchased Assets shall not have been reinstated or redeemed prior to the Closing Date;
       2. the Vesting Order shall have been obtained and shall be a Final Order, unless the Purchaser has provided written consent that Closing occur despite the Vesting Order not being a Final Order; and
       3. there shall be in effect no order, injunction, judgment, decree, ruling, writ, assessment, or arbitration award of the Court or other court of competent jurisdiction or of a relevant Governmental Authority prohibiting the consummation of the transactions contemplated hereby and which has not been withdrawn or terminated.
    2. The Parties may agree to amend or waive any the foregoing conditions. Any amendment or waiver by the Parties must be in writing and delivered to the Purchaser's Solicitors and the Vendor's Solicitors.
14. Representations and Warranties of the Vendor
    1. The Vendor represents and warrants to the Purchaser as follows, with the intent that the Purchaser will rely on these representations and warranties in entering into this Agreement, and in concluding the purchase and sale contemplated by this Agreement:
       1. subject to obtaining and pursuant to the Vesting Order, the Vendor has the power, authority and capacity to enter into this Agreement, subject to its terms, and the authority to execute all instruments required by this Agreement to be delivered by it, and to perform its obligations hereunder and thereunder;
       2. 236 Inc. is registered for GST/HST purposes under Part IX of the ETA and its registration number is # 81791 1845 RT0002**;** and
       3. the Vendor is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act.*
15. Representations and Warranties of the Purchaser
    1. The Purchaser represents and warrants to the Vendor as follows, with the intent that the Vendor will rely on these representations and warranties in entering into this Agreement, and in concluding the purchase and sale contemplated by this Agreement:
       1. the Purchaser has the power and capacity to enter into this Agreement and carry out its terms;
       2. the Purchaser is a corporation duly incorporated, validly existing, and in good standing under the *Business Corporations Act* **[INSERT PROVINCE]**, and has the power and capacity to enter into this Agreement and carry out its terms;
       3. the execution and delivery of this Agreement and the completion of the transaction contemplated by this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Purchaser, and this Agreement constitutes a legal, valid, and binding obligation of the Purchaser.
       4. this Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. There is no Legal Proceeding in progress, pending against or threatened against or affecting either Purchaser, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting either Purchaser which, in any such case, affects adversely or might affect adversely the ability of either Purchaser to enter into this Agreement or to perform its obligations hereunder;
       5. Purchaser is not a "non-Canadian" within the meaning of the *Investment Canada Act*, RSC 1985, c 28 (1st Supp);
       6. Purchaser shall, or upon Closing shall be, registered for HST purposes under Part IX of the ETA, and shall provide its registration numbers to the Vendor at or prior to Closing; and
       7. the Vendor will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the Transaction because of any action taken by, or agreement or understanding reached by, the Purchaser or either of them.
16. Covenants of the Vendor
    1. The Vendor will consult with the Purchaser at all reasonable times with respect to the status of the Purchased Assets and the Receivership Proceeding.
    2. Upon payment of the Purchase Price by the Purchaser at the Closing Time, and subject to the terms of this Agreement, the Vendor will transfer and assign to the Purchaser all of 236 Inc.'s right, title, and interest in and to the Purchased Assets in accordance with the terms of the Vesting Order.
    3. On the Closing Date, the Vendor shall deliver, and shall cause to be delivered, to the Purchaser the Books and Records and all documents (except, in the case of those required by applicable law to be retained by the Vendor, copies thereof) and other data, technical or otherwise, which are in the possession of the Vendor at the Closing Date, relating materially to the Purchased Assets. The Purchaser shall permit the Receiver, and its authorized representatives, reasonable access to those documents while they are in the Purchaser's possession or control solely to the extent that access is required by the Receiver to perform its obligations under this Agreement or under applicable law, but the Purchaser shall not be responsible or liable to the Vendor or the Receiver for, or as a result of, any loss or destruction of or damage to any such documents and other data unless that destruction, loss or damage is caused by the Purchaser's gross negligence or wilful misconduct. The Receiver shall be responsible for all reasonable out-of-pocket costs and expenses incurred, directly or indirectly, by the Purchaser in connection with any access contemplated by this Section 18.3.
    4. Notwithstanding the immediately foregoing Section 18.3, the Receiver shall be entitled to retain copies of any documents or other data delivered to the Purchaser pursuant to this Agreement provided that those documents or data are reasonably required and only used or relied on by the Receiver to perform its obligations under this Agreement or under applicable law.
    5. Subject to the terms of this Agreement, the Vendor will use all commercially reasonable efforts to take or cause to be taken all other actions, and do or cause to be done all other things, necessary or appropriate to obtain the Vesting Order and to consummate the transactions contemplated by this Agreement.
    6. From the date of this Agreement until completion of the transaction contemplated herein, the Vendor covenants to maintain the Purchased Assets in a commercially reasonable manner, to ensure that the Purchased Assets are insured, and to ensure that such insurance coverage of the Purchased Assets is maintained in good standing up to and including the Closing Date, after that time the Vendor shall have no further obligation to insure the Purchased Assets.
    7. From the date of this Agreement until completion of the transaction contemplated herein, and except as contemplated by this Agreement, the Vendor will not sell, transfer, or otherwise dispose of, or agree to sell, transfer, pledge, lease, encumber, or otherwise dispose of, any Purchased Assets, or enter into any agreement or transaction which would result in the creation of any Encumbrance on any of the Purchased Assets.
17. As is, Where is.
    1. Notwithstanding any other provision of this Agreement, the Purchaser acknowledges, agrees and confirms that:
       1. except for the representations and warranties of the Vendor set forth in Section 16 and the covenants of the Vendor set forth in Section 18, it is entering into this Agreement, acquiring the Purchased Assets on an "**as is, where is**" basis as they exist as of the Closing Time and will accept the Purchased Assets in their state, condition and location as of the Closing Time except as expressly set forth in this Agreement and the sale of the Purchased Assets is made without legal warranty and at the risk of the Purchaser;
       2. it has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets as it deemed appropriate, and based solely thereon, has determined to proceed with the Transaction;
       3. except as expressly stated in Section 16, neither the Vendor nor its Representatives have made or are making, and the Purchaser is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Purchased Assets, the Vendor's right, title or interest in or to the Purchased Assets, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts and/or components, latent defects, quality, quantity or any other thing affecting any of the Purchased Assets, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any Applicable Law in any jurisdiction, which the Purchaser confirms do not apply to this Agreement and are hereby waived in their entirety by the Purchaser;
       4. all written and oral information obtained from the Receiver or its Representatives, including in any teaser letter, asset listing, confidential information memorandum or other document made available to the Purchaser (including in certain "**data rooms**", management presentations, site visits and diligence meetings or telephone calls), with respect to the Purchased Assets has been obtained for the convenience of the Purchaser only, and neither the Receiver nor its Representatives have made any representation or warranty, express or implied, statutory or otherwise as to the accuracy or completeness of any such information; and
       5. any information regarding or describing the Purchased Assets in this Agreement (including the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by the Vendor, the Receiver or their Representatives, or any other Person concerning the completeness or accuracy of such information or descriptions.
    2. Notwithstanding anything to the contrary herein, the Purchaser hereby expressly acknowledges that if any consents of: (i) any Governmental Entities are required to effect the transfer of any of the Purchased Assets; or (ii) any lessees are required to effect the transfer of any of the leases or licences to be acquired by the Purchaser pursuant to this Agreement, then it is the sole responsibility of the Purchaser to obtain any such consents, and the granting of any such consents shall not be a condition precedent to the Purchaser's obligations under this Agreement, including the payment of the Purchase Price. At the request and cost of the Purchaser, both before and after the Closing Date, the Vendor will assist the Purchaser in its efforts to obtain any consents required of any Government Entities or lessees in order to complete the sale and transfer of the Purchased Assets pursuant to this Agreement.
18. Investigation
    1. During the Interim Period, the Vendor shall permit the Purchaser and its authorized representatives to make such investigations, inspections, surveys or tests of the Purchased Assets, as the Purchaser deems reasonably necessary or desirable to familiarize itself with the Purchased Assets. Without limiting the generality of the foregoing, the Vendor shall, to the extent reasonably possible and at no cost to the Vendor provide the Purchaser with free and unrestricted access to (i) all documents relating to information scheduled or required to be disclosed under this Agreement, and (ii) the Books and Records in the possession of the Vendor.
    2. At the Purchaser's request and at no cost to the Vendor, the Vendor shall execute, or cause to be executed, such consents, authorizations and directions as may be necessary to permit any inspection of any of the Purchased Assets and to enable the Purchaser or its authorized representatives to obtain full access to all files and records relating to any of the Purchased Assets maintained by Governmental Authorities and self-regulating authorities.
19. Conduct Prior to Closing
    1. Without in any way limiting any other obligations of the Vendor hereunder, during the Interim Period, but subject to any order or direction made by the Court: 
       1. the Vendor shall not, without the prior written consent of the Purchaser, enter into any transaction or refrain from doing any action that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of the Vendor under this Agreement;
       2. the Vendor shall take all necessary corporate action, steps and proceedings to approve or authorize, validly and effectively, the execution and delivery of this Agreement and the other agreements and documents contemplated hereby and to complete the transfer of the Purchased Assets to the Purchaser; and
       3. the Vendor shall use commercially reasonable efforts to satisfy the conditions contained in Sections 16.1 and 18.
20. Notification of Certain Matters
    1. During the Interim Period, the Vendor shall, provided the Vendor has actual knowledge of the event or occurrence, give prompt notice in writing to the Purchaser of:
       1. the occurrence, or failure to occur, of any event, which occurrence or failure would be likely to cause any of the representations or warranties of the Vendor contained in this Agreement to be untrue or inaccurate during the Interim Period;
       2. any notice or communication from any Person alleging that the consent of such Person is or may be required in connection with the Transaction;
       3. any notice or communication from any Governmental Authority in connection with the Transaction;
       4. any Proceeding commenced or threatened against the Vendor or relating to or involving or otherwise affecting the Vendor which relates to the consummation of the Transaction; and
       5. any failure by the Vendor to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied under this Agreement.
    2. The giving of any notice under this Section 22 does not in any way change or modify the representations and warranties of the Vendor, or the conditions to the obligations of the Purchaser, contained in this Agreement or otherwise affect the remedies available to the Purchaser under this Agreement.
21. Covenants of the Purchaser
    1. At the Closing Time, the Purchaser will pay the Purchase Price to the Vendor. The Purchaser will be liable for and shall pay all applicable taxes in accordance with Section 10.
    2. At the Closing Time, the Purchaser will assume and thereafter perform all obligations and liabilities arising from and in connection with the Purchased Assets that accrue from and after the Closing Time.
    3. The Purchaser shall preserve and keep the Books and Records acquired by it pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any laws applicable to such Books and Records. The Purchaser shall make such Books and Records, as well as electronic copies of such Books and Records (to the extent reasonably feasible), available to the Vendor, their respective successors, and any trustee in bankruptcy, and shall permit any of the foregoing persons to take copies of such Books and Records as they may require.
22. Termination
    1. This Agreement may be terminated by notice given prior to or at the Closing Time as follows:
       1. by mutual written agreement of the Parties;
       2. by the Purchaser by notice in writing to the Vendor if the Vendor has failed to comply in any material respect with any of its obligations under this Agreement (other than those to be performed at the Closing Time) for a period of three Business Days (or a lesser period specified by the Purchaser if the Closing Date is to occur within three Business Days after the giving of such notice) after the Purchaser shall have notified the Vendor of such failure to comply in writing;
       3. by the Purchaser by notice in writing to the Vendor if any conditions specified in Sections 12 or 14 have not been satisfied by the Closing Time and the Purchaser has not, in the case of Section 12, and the Parties have not, in the case of Section 14, waived such conditions by such time;
       4. by the Purchaser in accordance with Section 25.2(b);
       5. by the Vendor by notice in writing to the Purchaser if the conditions specified in Sections 13 or 14 have not been satisfied by the Closing Time and the Vendor has not, in the case of Section 13, and the Parties have not, in the case of Section 14, waived such conditions by such time; or
       6. by either of the Parties on written notice to the other, provided such Party is not in material breach of its obligations under this Agreement, if the Vesting Order has not been pronounced and entered by December **31**, 2018.
23. Risk
    1. The Purchased Assets will be at the Vendor's risk until the completion of the transaction contemplated herein on the Closing Date and thereafter at the Purchaser's risk.
    2. If, before the Closing, any of the Purchased Assets is lost, damaged or destroyed or is appropriated, expropriated or seized by any Governmental Authority, then:
       1. the Parties shall agree on an adjustment to the Purchase Price to account for such loss, damage, destruction, appropriation, expropriation or seizure; or
       2. if such loss, damage, destruction, appropriation, expropriation or seizure is materially adverse to the Purchaser, as determined by the Purchaser, acting reasonably, then the Purchaser, at its sole discretion may terminate this Agreement.
24. Closing
    1. Subject to the terms and conditions of this Agreement, and the satisfaction or the waiver of the conditions precedent in Sections 12, 13, and 14, the purchase and sale of the Purchased Assets will be completed at the Closing Time at the offices of the Vendor's Solicitors.
    2. At the Closing Time the Purchaser will deliver, or cause to be delivered to the Vendor:
       1. the Purchase Price;
       2. duly executed election referred to in Section 11(a), if applicable; and
       3. other tax Election forms required by Section 11.
    3. At the Closing Time the Vendor shall deliver, or cause to be delivered to the Purchaser:
       1. a Court-certified copy of the Vesting Order;
       2. all of 236 Inc.'s right, title, and interest in and to the Purchased Assets, in accordance with the Vesting Order;
       3. duly executed election referred to in Section 11(a), if applicable;
       4. other tax Election forms required by Section 11.
       5. the Books and Records; and
       6. all such assignments, instruments of transfer, deeds, assurances, consents, registrations, and other documents executed by the Vendor as requested by the Purchaser in respect of transferring the Purchased Assets to the Purchaser and registrations in connection therewith;

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

1. Receiver Liability
   1. The Purchaser hereby expressly acknowledges and agrees that Alvarez & Marsal Canada Inc. LIT is acting only in its representative capacity as Court-appointed receiver and manager of the Purchased Assets and shall have no personal liability under or as a result of entering into or carrying out the transaction which is the subject of this Agreement except in such capacity and without limitation to the generality of the foregoing Alvarez & Marsal Canada Inc. LIT shall have no liability under or as a result of entering into or carrying out of such transaction in its personal capacity.
2. Further Assurances
   1. The Parties will execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.
3. Notice

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

1. Legal Advice
   1. The Parties have each consulted with and been advised by their own solicitors before entering into this Agreement, have read same, and know the contents thereof.
2. Expenses
   1. Each Party shall pay all of its own expenses (including taxes imposed on those expenses) incurred in the authorization, negotiation, preparation, execution and performance of this Agreement and the Transaction, including all fees and expenses of its legal counsel, bankers, investment bankers, brokers, accountants or other representatives or consultants.
3. No Third Party Beneficiary
   1. This Agreement is solely for the benefit of the Parties and no third party accrues any benefit, claim or right of any kind pursuant to, under, by or through this Agreement.
4. Entire Agreement
   1. This Agreement constitutes the entire agreement between the Parties and there are no representations or warranties, express or implied, statutory or otherwise and no collateral agreements other than as expressly set forth or referred to in this Agreement.
5. Amendment
   1. No amendment of this Agreement will be binding unless made in writing by both Parties.
6. Severability
   1. If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited, or unenforceable, that provision will, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition, or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to the other Parties or circumstances.
7. Assignment
   1. This Agreement may not be assigned by any Party hereto without the prior written consent of the other Party hereto, which consent may be arbitrarily withheld, provided that the Purchaser may designate one or more nominees to take title in and to the Purchased Assets, or any part thereof, by giving the Vendor written notice of such assignment at least two clear Business Days prior to the date of the hearing of the application for the Vesting Order.
8. Time of the Essence
   1. Time will be of the essence of this Agreement.
9. Applicable Law and Court Jurisdiction
   1. This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable therein, and the Parties hereby attorn to the jurisdiction of the Alberta Court of Queen's Bench, Judicial District of Calgary.
10. Successors and Assigns
    1. This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
11. Counterparts
    1. This Agreement may be signed in counterparts and each such counterpart will constitute an original document, and such counterparts, taken together, will constitute one and the same instrument. A counterpart may be delivered by email or any other form of electronic transmission.

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

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

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | | **[INSERT NAME OF PURCHASER]** | |
|  |  | By: |  |
|  |  |  | Name: |
|  | Title: |

|  |  |  |  |
| --- | --- | --- | --- |
|  | |  | |
|  |  | By: |  |
|  |  |  | Name: |
|  | Title: |

# Schedule "A"

## Purchased Assets

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

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

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

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

# Schedule "B"

## Form of Vesting Order