## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** made effective as of the \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2018.

**BETWEEN:**

**ALVAREZ & MARSAL CANADA INC. LIT,** in its capacity as receiver and manager (the “**Receiver**”) of 2367147 ONTARIO INC. (collectively, “**236 Inc.**”), and not in its personal or corporate capacity,

-and-

**JONES LANG LaSALLE REAL ESTATE SERVICES INC.**

(the “**Sales Agent**”)

-and-

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(the "**Recipient**")

**WHEREAS**:

1. The Receiver was appointed pursuant to a Receivership Order granted on May 18, 2018 in the receivership proceeding of the Court of Queen’s Bench of Alberta in Court file no. 1803-09581 of all of the current and future assets, undertakings and properties of 236 Inc. (the “**Property**” or the “**Company**”);
2. The Receiver was directed pursuant to the October 24, 2018 order (the "**Sales Procedure Order**") to conduct a sales process;
3. The Sales Agent was appointed pursuant to the Sales Procedure Order to act on behalf of the Receiver to market and sell the Property.
4. The Recipient is desirous of evaluating a possible transaction(s) (the "**Transaction**") with or involving the Property and, as such, has obtained and/or will from time to time hereafter obtain, certain information relating to the assets, undertaking, properties and business of the Company;
5. The Receiver, through its Sales Agent, is willing to make certain Confidential Information available to the Recipient for the sole purpose of permitting the Recipient to consider, evaluate, and if a Transaction proceeds, implement a Transaction (the "**Permitted Purpose**") all subject to the terms and conditions of this Agreement (as defined below);
6. As a pre-condition to the Receiver, the Sales Agent and their representatives or agents providing information concerning the Company and the Property to the Recipient, the Receiver and Sales Agent require, and the Recipient has agreed, to execute and deliver to the Receiver and Sales Agent, a confidentiality agreement in form and substance satisfactory to the Receiver and the Sales Agent;

**NOW, THEREFORE,** in consideration of these premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Recipient covenants and agrees with the Receiver and the Sales Agent as follows:

1. Definitions
	1. "**Affiliate**" means, as to any Person, any other Person which, directly or indirectly, controls, or is controlled by, or is under common control with, such Person and, for this purpose, "control" (including "controlled by" and "under common control with"), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise;
	2. "**Confidential Information**" means:
		1. all data and information, in whatever form communicated or maintained, whether orally, in writing, electronically, in computer readable form or otherwise, that the Receiver, the Sales Agent or any of their Representatives discloses or has disclosed to, or that is gathered by inspection by, the Recipient or any of the Recipient's Representatives, whether provided before or after the date of this Agreement, including, information that contains or otherwise reflects information concerning the Company, the Property, the business or affairs, operations, prospects, activities, and intellectual property rights of the Company and specifically includes, without limitation, all data, records, reports, studies, projections, knowledge, patents, theories, information (financial, corporate, business or otherwise), intellectual property, designs, drawings, plans, opportunities, prototypes, specifications, manuals, photographs, software, hardware, equipment, printouts, reports, market research, business plans, customer lists, supply sources, trade secrets, information relating to existing and potential financiers and investors, trade lists, processes, techniques, ideas, improvements, innovations, know-how, research and development, calculations, opinions, and documents, and any information provided to the Receiver, the Sales Agent or any of their Representatives by third parties under circumstances in which the Receiver, the Sales Agent or any of their respective Representatives has an obligation to protect the confidentiality of such information, including all information received by the Receiver and/or the Receiver's Representatives or the Sales Agent in connection with the Company, the Property, or its business and disclosed and communicated to, or gathered by, the Recipient or any of the Recipient's Representatives;
		2. all plans, proposals, reports, analyses, notes, studies, forecasts, compilations or other information, in any form, that are based on, contain or reflect any Confidential Information regardless of the identity of the Person preparing same (“**Notes**”);
		3. the existence and terms of this Agreement and any other agreements related to a possible Transaction;
		4. the fact that information has been disclosed or made available to the Recipient or the Recipient's Representatives; and
		5. the fact that discussions or negotiations are or may be taking place with respect to a possible Transaction, the proposed terms of any such Transaction and the status of any discussions or negotiations under this Agreement or in connection with any possible Transaction;

"**Confidential Information**" does not include any information that:

* + 1. is available to the Recipient or the Recipient's Representatives on a non-confidential basis from a source other than the Receiver and the Sales Agent, the Company or any of the Receiver's Representatives or the Sales Agent’s Representatives, provided that such source is not known by the Recipient, after reasonable investigation, to be bound by a contractual, legal or fiduciary obligation of confidentiality to the Receiver or the Company or any other person with respect to such information; or
		2. is at the time of disclosure to the Recipient or thereafter becomes generally available to the public, other than as a result of a disclosure by the Recipient or any of the Recipient's Representatives in breach of this Agreement.

The foregoing exclusions do not apply to Confidential Information that is personal information.

* 1. "**Definitive Agreement**" means a binding definitive written agreement to consummate a Transaction;
	2. "**party**" means a party to this Agreement and "**parties**" means all parties to this Agreement;
	3. "**Permitted Purpose**" shall have the meaning set out in Recital D;
	4. "**Person**" is to be broadly interpreted to include any individual, corporation, company, partnership or limited partnership, limited liability company, trust or other group or entity or organization (including any court, government or agency, commission, board or authority thereof, federal, state or local, domestic, foreign or multinational);
	5. "**Representatives**" means, in respect of a party, such party’s agents, directors, officers, employees, representatives, consultants and advisers (including legal counsel); and
	6. "**Transaction**" shall have the meaning set out in Recital C.
1. As a condition to receiving the Confidential Information, the Recipient agrees to treat confidentially, and not to disclose, and to cause the Recipient’s Representatives to treat confidentially and not disclose (except as permitted herein), any Confidential Information.
2. The Recipient hereby recognizes and acknowledges the competitive value and confidential nature of the Confidential Information and the damage that would result to the Company and the Receiver, if any of the Confidential Information is disclosed to any third party. Accordingly, the Recipient hereby agrees that the Confidential Information will be used solely for the Permitted Purpose and not any other purpose.
3. The Recipient may disclose Confidential Information only to the limited group of the Recipient's Representatives, who are actually engaged in and need to know the Confidential Information for the Permitted Purpose, who have been informed of the confidential nature of the Confidential Information, and who agree to keep such information confidential and not use such Confidential Information for any purpose other than the Permitted Purpose. The Recipient shall ensure that each of the Recipient's Representatives will observe all terms and conditions of this Agreement. The Recipient further agrees that it shall be responsible for any breach of this Agreement by any of the Recipient's Representatives, and that the Recipient shall take all reasonable measures, including, without limitation, court proceedings, at the Recipient’s sole expense, to restrain the Recipient’s Representatives from making unauthorized disclosure or use of the Confidential Information.
4. The Confidential Information shall remain at all times the property of the Company. No rights to use, license, or otherwise exploit the Confidential Information are granted to the Recipient, by implication or otherwise, by virtue of Confidential Information being made available to the Recipient or any of the Recipient’s Representatives.
5. The Recipient acknowledges and agrees that the Receiver, the Sales Agent and the Company would not have an adequate remedy at law and would be irreparably damaged by any unauthorized disclosure or use of any Confidential Information or in the event that any of the provisions of this Agreement were not performed by the Recipient and the Recipient’s Representatives in accordance with their specific terms or were otherwise breached by the Recipient or any of the Recipient's Representatives. Without prejudice to the rights and remedies otherwise available to the Receiver or the Sales Agent, the Recipient agrees that the Receiver and/or the Sales Agent shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including an injunction or specific performance, in the event of any breach or threatened breach of the provisions of this Agreement by the Recipient or the Recipient's Representatives. Such remedies shall not be deemed to be exclusive remedies but shall be in addition to all other remedies available at law or equity to the Receiver or the Sales Agent. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that the Recipient or any of the Recipient's Representatives have breached this Agreement, then the Recipient shall be liable and pay to the Receiver and the Sales Agent the reasonable costs and expenses (including attorney's fees on a full indemnity solicitor and his own client basis) incurred by the Receiver and/or the Sales Agent in connection with such litigation, including any appeal therefrom. The Recipient shall indemnify and hold harmless the Receiver, and the Sales Agent and each of their directors, officers, employees, consultants, representatives, advisors and agents from all damages and losses of any nature whatsoever (including consequential damages) arising out of a breach by the Recipient or any of the Recipient's Representatives of any of the terms and conditions of this Agreement.
6. The Recipient agrees that the Receiver or the Sales Agent shall not disclose to the Recipient or any of the Recipient’s Representatives information about identifiable individuals forming part of the Confidential Information ("**Personal Information**") unless required by the Recipient, acting reasonably, for the purpose of evaluating the Transaction. If Personal Information is provided to the Recipient, then:
	1. the Recipient shall comply with the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, and any similar provincial legislation governing the protection of personal information in the private sector applicable to the Recipient in the course of collecting, using and disclosing Personal Information in connection with the Transaction;
	2. prior to the closing of the Transaction (the "**Closing**"), the Recipient shall: (i) collect and use Personal Information only for the purpose of evaluating the Transaction; (ii) only disclose Personal Information to those of the Recipient’s Representatives who need to know such Personal Information for the purpose of evaluating the Transaction; and (iii) use appropriate security measures to safeguard all Personal Information against unauthorized collection, access, use or disclosure; and
	3. if the Transaction proceeds, following the Closing, the Recipient shall, and shall cause its Representatives to, use or disclose Personal Information obtained as a result of the Transaction only for purposes of carrying on the business conducted by the Company or the carrying out of the objects for which the Transaction took place or otherwise for purposes for which such Personal Information was collected by the Company, unless the consent for other use or disclosure has been obtained from the individuals to whom such Personal Information relates has been obtained as permitted or required by law.
7. In the event the Recipient or any of the Recipient's Representatives become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigation, demand, order or other legal process) to disclose any of the contents of the Confidential Information, or either the fact that discussions or negotiations are taking place concerning a possible Transaction between the Receiver and the Recipient, or any of the terms, conditions or other facts with respect to any such possible Transaction, including the status thereof, the Receiver, agrees that the Recipient and the Recipient's Representatives may do so without liability, provided the Recipient (i) cooperate with the Receiver in any attempts they may make to obtain a protective order or other appropriate assurance that confidential treatment will be afforded the Confidential Information, and (ii) if no protective order is obtained and disclosure is required, (a) furnish only that portion of the Confidential Information that, in the Recipient counsel's opinion, the Recipient is legally compelled to disclose, and (b) take all reasonable measures to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.
8. The Receiver or the Sales Agent may elect at any time to terminate further access by the Recipient to the Confidential Information. If at any time the Recipient determines not to proceed with the possible Transaction, the Recipient will promptly notify the Receiver and the Sales Agent in writing. Following any request by the Receiver, the Sales Agent or any of their Representatives, the Recipient agrees (i) to promptly re-deliver to the Receiver or the Sales Agent all written Confidential Information and any other written material containing or reflecting any of the Confidential Information in the possession of the Recipient or the Recipient's Representatives, (ii) the Recipient and the Recipient's Representatives will not retain any copies, extracts or other reproductions in whole or in part, mechanical or electronic, of such written material, and (iii) all Notes prepared by the Recipient or the Recipient's Representatives will be destroyed, with all such destruction being confirmed by the Recipient, to the Sales Agent the Receiver in writing.
9. Except to the extent necessary to carry out the Permitted Purpose, neither Recipient nor its Representatives are allowed to make copies of Confidential Information without the prior written approval of the Receiver or the Sales Agent (excepting that copies made by virtue of electronic communications or storage or printed copies for review by a permitted individual shall not be a breach of this prohibition).
10. Notwithstanding Section 9 or anything to the contrary in this Agreement, the Recipient and its Representatives are not required to destroy any computer files containing the Confidential Information that are created during automatic computer system backup, provided that such files are stored securely by the Recipient and its Representatives, cannot be destroyed without undue efforts, and access to such files are limited. With respect to such backup computer files, the non-use and confidentiality obligations set forth in this Agreement shall apply in perpetuity and survive expiration or termination of this Agreement.
11. If the Recipient or any of the Recipient's Representatives are provided with physical access to any properties of the Company, the Recipient agrees that neither the Recipient nor any of the Recipient’s Representatives shall have, and shall not make, any claims whatsoever against the Receiver or the Sales Agent, or any of their Representatives as a result of such access including, without limitation, any and all claims and causes of action for personal injury, death or property damage occurring as a result of the Recipient or any of the Recipient's Representatives' access to such properties or facilities and the Recipient agrees to indemnify, defend and hold harmless the Receiver and the Sales Agent, or any of their from and against any and all liabilities, claims and causes of action for personal injury, death or property damage occurring on or to such property or facility as a result of entry onto the premises by the Recipient or any of the Recipient’s Representatives. The Recipient shall, and shall cause its Representatives to, comply fully with all rules, regulations and instructions issued by the Receiver and the Sales Agent regarding the Recipient's or the Recipient's Representatives' access to such properties or facilities.
12. The Recipient understands and acknowledges that neither the Receiver, the Sales Agent, nor any of their Representatives makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. The Recipient agrees that neither the Receiver or the Sales Agent nor any of their Representatives shall have any liability to the Recipient or any of the Recipient's Representatives relating to or resulting from use of the Confidential Information by the Recipient or the Recipient’s Representatives. The Recipient further understands and agrees that (i) the Receiver and the Sales Agent (a) shall be free to conduct the process for a Transaction as they in their sole discretion shall determine (including changing or terminating such process, providing any information to any other Person, negotiating with any other Person or entering into a Definitive Agreement with any other Person with respect to any transaction, in each case, at any time and without notice to you or any other Person) and (b) shall be free at their sole discretion to at any time accept or reject any proposal relating to the Property for any reason without notice to the Recipient or any other Person, and (ii) the Recipient shall have no claim against the Receiver or the Sales Agent or any of their Representatives in connection with any of the foregoing.
13. The Recipient hereby represents and warrants that it is not bound by the terms of any agreement with a third party that would conflict with any of the Recipient’s obligations under this Agreement.
14. In accepting and reviewing the Confidential Information, the Recipient represents and warrants that it is acting solely for itself. Further, the Recipient represents and warrants that neither the Recipient nor any of the Recipient's Representatives have discussed or shared, and the Recipient hereby covenants that unless it has first received the written consent of the Receiver, or the Sales Agent, neither the Recipient nor any of the Recipient's Representatives will discuss or share, with any third party any aspect of the Confidential Information, except in accordance with Section 4 or 8 of this Agreement. The Recipient acknowledges that the effect of this covenant is that without the full disclosure to and the written consent of the Receiver or the Sales Agent, neither the Recipient nor any of the Recipient's Representatives can act as agent, partner, co-participant or co-venturer for any third party or third parties with respect to a proposed Transaction. In order to obtain the consent of the Receiver or the Sales Agent, which the Receiver or the Sales Agent is entitled to withhold in its sole discretion, the Recipient shall notify the Receiver or the Sales Agent of the identity of each Person for whom or with whom the Recipient or any of the Recipient's Representatives had considered pursuing a possible Transaction and the nature and interest the Recipient or any of the Recipient's Representatives and each such Person would have in respect of such possible Transaction.
15. The Recipient agrees that, unless and until a Definitive Agreement is entered into between the Receiver and the Recipient with respect to the Transaction, neither, the Receiver nor the Recipient will be under any legal obligation of any kind whatsoever with respect to the Transaction by virtue of this or any other written or oral expression, except with respect to the matters specifically agreed to herein. Except for the matters set forth in this Agreement or in any Definitive Agreement, no party shall be entitled to rely on any statement, promise, agreement or understanding, whether oral or written, any custom, usage of trade, course of dealing or conduct.
16. The Recipient agrees that all (i) communications regarding the Transaction, (ii) requests for additional information, (iii) requests for facility tours or management meetings, and (iv) discussions or questions regarding procedures, will be submitted or directed only to the Receiver and the Sales Agent. Without the Receiver or the Sales Agent’s prior written consent, the Recipient shall not, and shall direct the Recipient's Representatives not to, make any contact of any nature regarding a proposed Transaction (including inquiries or requests concerning Confidential Information) with any employee, supplier, customer, creditor, bank or other lender of or to the Company or any of its Affiliates.
17. This Agreement may be executed by facsimile or electronic transmission and in any number of counterparts, each of which when so executed shall be deemed an original, but such counterparts shall together constitute one and the same agreement.
18. The Recipient agrees that the restrictions contained in this Agreement are reasonable in order to protect the legitimate interests of the Receiver, the Sales Agent and the Company and all defences to the strict enforcement of the restrictions by the Receiver and the Sales Agent are hereby waived by the Recipient.
19. If any term or provision of this Agreement is declared to be void or unenforceable in whole or in part by a court of competent jurisdiction, it shall be deemed to be severable from the rest of this Agreement and it shall not affect or impair the enforceability or validity of any other covenant or provision of this Agreement.
20. This Agreement shall be governed by and interpreted in accordance with the laws in force in the Province of Alberta. The Recipient hereby irrevocably attorns to the exclusive jurisdiction of the Courts of the Province of Alberta for the determination of all matters arising hereunder in the event the Receiver or the Sales Agent should bring an action on this Agreement in the Courts of the Province of Alberta. The Recipient hereby agrees that, notwithstanding the foregoing, the Receiver or the Sales Agent may bring an action on this Agreement in any jurisdiction where the Recipient has assets or in any jurisdiction where this Agreement has been breached or where a breach is threatened, and in such an event, the Recipient hereby irrevocably attorns to the jurisdiction of the Courts of such jurisdictions for the determination of all matters arising hereunder.
21. This Agreement will continue for a period of two years from the date hereof, unless otherwise agreed in writing by the Receiver.
22. Notices authorized or required by this agreement shall be delivered by email, hand or reputable third-party courier service. Notices to the Receiver shall be delivered to:

Attention: Orest Konowalchuk / Chad Artem

Phone: (403) 538-4736 / (403) 538-7518

Email: okonowalchuk@alvarezandmarsal.com / cartem@alvarezandmarsal.com ;

Fax: (403) 538-7551

Bow Valley Square 4

Suite 1110, 250 6th Ave SW

Calgary, Alberta

T2P 3H7

With a copy to:

Ryan Zahara, Blake, Cassels & Graydon LLP

#3500, 855-2nd Street S.W.

Calgary, AB

T2P4J8

ryan.zahara@blakes.com

Each party may change its address for notices hereunder by written notice to the other party.

1. No waiver of any particular requirement hereunder shall be construed as a general waiver of this Agreement, and any failure by or delay by the Receiver or the Company in enforcing its rights against any particular breach of this Agreement shall not limit or affect their rights to enforce their rights against any other breach hereof.
2. This Agreement may not be assigned by the Recipient without the prior written consent of the Receiver and the Company.
3. This Agreement shall enure to the benefit of the Receiver, the Sales Agent and the Company and its successors and assigns and shall be binding upon the Recipient and its successors and permitted assigns.
4. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior contracts, agreements and understandings pertaining to the subject matter of this Agreement. No modification or alteration of this Agreement shall be binding unless executed in writing by the parties hereto. There are no representations, warranties, collateral agreements or conditions affecting this transaction other than as are expressed or referred to herein in writing.
5. Nothing contained in this Agreement shall in any way limit the rights or remedies available to the Receiver, the Sales Agent and the Company at law, in equity or under statute arising in any way in connection with the disclosure of the Confidentiality Information in the event of a breach or a threatened breach of this Agreement.

[*Remainder of page left intentionally blank with signature page to follow*]

**IN WITNESS WHEREOF** the parties have executed this Agreement on the day and year first above written.

|  |  |  |
| --- | --- | --- |
| [**INSERT RECIPIENT**] |  | **ALVAREZ & MARSAL CANADA INC. LIT**, in its capacity as receiver and manager of 2367147 ONTARIO INC. and not in its personal or corporate capacity |
| Per:Title: |  | PerTitle |
|  | **JONES LANG LASALLE REAL ESTATE SERVICES INC.** |
|  |  |
|  | Per:Title: |