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COURT

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JUDICIAL CENTRE

**EDMONTON**

PLAINTIFF

**BANK OF MONTREAL**

DEFENDANT

**LADACOR AMS LTD., NOMADS PIPELINE CONSULTING LTD., 2367147 ONTARIO INC., and DONALD KLISOWSKY**

DOCUMENT

**SUPPLEMENTAL BRIEF BY ALVAREZ & MARSAL CANADA INC. LIT, IN ITS CAPACITY AS RECEIVER AND MANAGER OF LADACOR AMS LTD., NOMADS PIPELINE CONSULTING LTD. AND 2367147 ONTARIO INC.**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF PARTY  
FILING THIS DOCUMENT

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File Ref.: 99766/12

## I. INTRODUCTION

1. This Supplemental Brief of Law is filed by Alvarez & Marsal Canada Inc. LIT ("**A&M**"), the Court-appointed receiver and manager (the "**Receiver**") of Ladacor AMS Ltd. ("**Ladacor AMS**"), Nomads Pipeline Consulting Ltd. ("**Nomads**"), and 2367147 Ontario Inc. ("**236**", and together with Ladacor AMS and Nomads, collectively, the "**Debtors**").
2. This Supplemental Brief of Law is filed in response to the application by Donald Klisowsky (the "**Klisowsky Application**") seeking, among other things, (i) a direction for the Receiver to provide the Court with a list of accounts receivable of Nomads and to provide proof of Nomads' insolvency; (ii) adjourning the application of the Receiver returnable September 13, 2019 (the "**Receiver's Application**"); and (iii) staying the Receiver from assigning Nomads into bankruptcy.
3. In addition, this Supplemental Brief of Law is filed in response to recent correspondence from counsel to Hythe & District Pioneer Homes (Advisory Committee) ("**Hythe**"), advising the Receiver that Hythe opposes certain relief sought in the proposed form of discharge order attached to the Receiver's Application (the "**Discharge Order**"), namely, (i) any relief declaring that the Receiver has duly and properly discharged its duties, responsibilities and obligations as a Receiver; and (ii) any order relieving the Receiver from liability for acts done as Receiver (the "**Hythe Requests**").
4. The Receiver previously filed a Brief of Law in support of the Receiver's Application (the "**Application Brief**") on September 5, 2019. Capitalized terms used and not otherwise defined herein will have the meaning given to them in the Application Brief or the Fourth Report of the Receiver dated September 4, 2019 (the "**Fourth Report**").

## II. BACKGROUND

5. A summary of the facts relevant to the relief sought in the Receiver's Application are set out in the Application Brief. A brief overview of the relevant facts pertaining to the Klisowsky Application and the Hythe Requests are set out below.
  1. Appointment of the Receiver
6. Pursuant to the Receivership Order, the Receiver was appointed receiver and manager, without security, of all of the Property of the Debtors pursuant to section 243(1) of the BIA,

section 13(2) of the *Judicature Act*, RSA 2000, c J-2 and 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7.

- Fourth Report at para 1

7. The Receivership Order sets out the powers and duties of the Receiver, which does not include a requirement to provide a list of accounts receivable of Nomads or proof of its insolvency.

- Application Brief at Tab 1

8. The Receiver has regularly reported to the Court on the receipts and disbursements of the Debtors, including providing a final statement of receipts and disbursements of Nomads in the Fourth Report.

- Fourth Report at paras 46 - 52

2. Nomads' Insolvency

9. For accounting and financial reporting purposes, Nomads and Ladacor AMS combined their financial records and did not separate their assets and liabilities but were in the process of doing so prior to the Receivership Date.

- Fourth Report at para 8

10. Nomads frequently entered into contracts in the name of Nomads "operating as Ladacor" (which is distinct from the Debtor, Ladacor AMS).

- Supplemental Report of the Receiver dated September 12, 2019 (the "**Supplemental Report**") at Appendix E

11. In order for the Receiver to determine what assets and liabilities belonged to which entity (Nomads or Ladacor AMS), the Receiver sent a notice of statement of Receiver to all known creditors of the companies. In addition, the Receiver engaged the former controller of Ladacor AMS and Nomads (the "**Controller**") to assist it in the preparation of the creditor listings attached to the Fourth Report.

- Supplemental Report at paras 17 – 20 and Appendices A, B

12. The Receiver was advised by Klisowsky that the Controller would have the best understanding and knowledge of the assets and liabilities of the companies.

- Supplemental Report at para 18

13. Based on Nomads books and records, the claims received by the Receiver throughout the Receivership Proceedings, and the information provided by the Controller, the Receiver determined there are approximately \$4.7 million in unsecured creditor claims made against Nomads.

- Fourth Report at para 32 and Appendix B
- Supplemental Report at para 20

14. The Klisowsky Application denies the validity of certain claims that have been made against Nomads, including the claims from the Alberta Treasury Board and Finance ("**Alberta Finance**"), the Canada Revenue Agency (the "**CRA**"), Employment and Social Development Canada (Wage Earner Protection Program) ("**WEPP**") and Liberty Mutual Insurance Company ("**Liberty**").

- Fourth Report at Appendix B

15. The Alberta Finance claim is an amount owing by Nomads for pre-receivership taxes that was determined prior to the Receivership Date and has accrued interest during the Receivership Proceedings.

- Supplemental Report at para 24 and Appendix A

16. The CRA claim is an amount owing by Nomads for pre-receivership GST that was determined during a trust exam audit conducted by the CRA during the Receivership Proceedings.

- Supplemental Report at para 25 and Appendix B

17. The WEPP claim is based on the termination of certain employees as at the Receivership Date, who the Receiver, in consultation with the Controller, determined to be working for Nomads. The Receiver understands there were 66 employees of Nomads and 43 WEPP claims filed against the estate of Nomads.

- Supplemental Report at paras 26 – 27 and Appendix C

18. The Liberty claim is based on a specific performance bond in respect of a Ladacor AMS project and various indemnities provided pursuant to an indemnity agreement in respect of that project by, among others, Nomads and Klisowsky.

- Supplemental Report at para 28 and Appendix D

19. Nomads has very little cash remaining in its estate and the Remaining Nomads' Assets are either illiquid or subject to significant litigation making it difficult to realize upon. Further, Nomads (and the other guarantors of the BMO Loan) are subject to a subrogation and contribution claim from 236.

- Fourth Report at paras 42, 44, 67 - 72

3. The Hythe Project

20. As set out in the Prior Reports, since the Receivership Date, the Receiver has been in constant contact with Hythe in respect of the Hythe Project.

- First Report at paras 45 - 49
- Third Report at paras 19 – 21
- Fourth Report at paras 22- 27

21. Shortly after the appointment of the Receiver, Hythe's then counsel e-mailed the Receiver a letter from Hythe advising that Hythe preferred to end its contract with Nomads and have the Hythe Project completed by Clark Builders, but potentially have certain limited work performed by Nomads.

- Supplemental Report at paras 38, 41 and Appendix E

22. On multiple occasions, starting in early June 2018, the Receiver e-mailed Hythe advising that Hythe needed to address roofing as soon as possible due to the potential for damage as a result of rain and other environmental concerns. The Receiver further advised Hythe that it would not be taking steps in this regard until an agreement was reached between the parties and Hythe had determined how it would proceed with the Hythe Project.

- Supplemental Report at paras 38, 41 – 43 and Appendix E

23. On June 20, 2018, the Receiver was advised by Hythe that it did not wish for the Receiver to take any further steps in respect of the Hythe Project. Hythe further advised that it was seeking

a transfer of the completed modules from Nomads for another contractor to complete the Hythe Project.

- Supplemental Report at para 43 and Appendix E

24. From the outset of the Receivership Proceedings, the Receiver attempted to work diligently with Hythe to allow for the hand-off of the Hythe Project by the Receiver as requested by Hythe.

- Supplemental Report at Appendix E

25. At all times the Receiver took measures to ensure that the Hythe Project site was properly monitored, supervised and the site modular units were protected as best as possible, under the circumstances. In doing so the Receiver incurred substantial costs associated with holding and securing the Hythe Project site even when Hythe made it clear that it no longer required the services of Nomads.

- First Report at para 48
- Fourth Report at para 22
- Supplemental Report at paras 46, 48 and Appendix E

26. Due to the Receiver not being able to reach any agreement with Hythe with respect to the Receiver's go-forward involvement in the Hythe Project (notwithstanding multiple attempts by the Receiver), the Receiver vacated the Hythe Project site premise and turned over custody and control of this site to Hythe.

- First Report at para 49
- Third Report at para
- Fourth Report at para 22
- Supplemental Report at para 47

### **III. ISSUES**

27. The issue to be determined by this Honourable Court is whether it is appropriate to grant the Relief sought in the Discharge Order.

#### IV. ARGUMENT

##### A. Nomads is insolvent and its bankruptcy is warranted in the circumstances

28. The Receiver was appointed over Nomads pursuant to, among other things, section 243 of the BIA.

- Fourth Report at para 1
- Application Brief at Tab 1

29. Section 243 of the BIA allows a court to appoint a receiver over all or substantially all of the property of an "insolvent person".

- BIA section 243 [TAB 1]

30. Nomads is currently in receivership for failing to meet its obligations generally as they became due, in that Nomads failed to meet its obligations to BMO and others, such obligations which exceed \$1,000.

- First Report at para 78(c)

31. The Receiver, in consultation with the Controller, has undertaken a detailed review of the books and records of the company and the claims against Nomads and has determined that the unsecured creditor claims against Nomads exceed \$4.7 million.

- Fourth Report at para 29
- Supplemental Report at paras 18 - 20

32. Nomads has very little cash and the Remaining Nomads' Assets are illiquid. Further, any cash held by Nomads and any potential recoveries from the Remaining Nomads' Assets will be subject to a subrogation and contribution claim of 236.

33. Based on the foregoing, Nomads is insolvent within the meaning of the BIA.

34. Assigning Nomads into bankruptcy will allow for an efficient and orderly wind-down of Nomads' estate and will allow the proposed LIT to seek instructions from Nomads' unsecured creditors and/or its inspectors. Further, any dispute that Klisowsky may have with respect to claims being made against Nomads can be addressed in the bankruptcy proceeding.

- Fourth Report at para 41
- First Report at para 78(e)

**B. The Receiver is authorized to bankrupt Nomads**

35. Pursuant to the Receivership Order, the Receiver is authorized to assign the Debtors into bankruptcy.

- Application Brief at Tab 1

36. In the First Report, the Receiver advised that it intended to assign Ladacor and Nomads into bankruptcy pursuant to the Receivership Order.

- First Report at para 78(a)

37. At no point has Klisowsky disputed the appointment of the Receiver pursuant to section 243 of the BIA, nor has he sought to appeal or modify the Receivership Order.

38. There are no valid grounds for staying the Receiver from assigning Nomads into bankruptcy.

**C. The Receiver is not required to provide an accounting or proof of insolvency**

39. The Klisowsky Application requests that the Court order that the Receiver provide a complete and accurate list of accounts receivable of Nomads and proof of Nomads insolvency.

40. Throughout the Receivership Proceedings the Receiver has reported on the steps it has taken to realize upon the assets of Nomads.

41. The Final Statement of Receipts and Disbursements sets out the receipts of the Receiver with respect to the various projects Nomads was involved with and the Receiver has reported on the Remaining Nomads' Assets.

- Fourth Report at paras 42 – 44, 46 - 52

42. The Receivership Order does not require that the Receiver to provide a list of accounts receivable or prove the insolvency of Nomads.

**D. The actions and conduct of the Receiver with respect to the Kor-Alta Project were appropriate**

43. The Klisowsky Application also requests that the Court adjourn the Receiver's Application so that the Receiver's alleged decision not to cancel the performance bond (the "**Performance Bond**") issued by Liberty Mutual Insurance Company ("**Liberty**") with respect to the construction of the Chateh Provincial Courthouse (the "**Kor-Alta Project**") may be



investigated. In particular, Mr. Klisowsky alleges that the Receiver should have acted to cancel the Performance Bond upon canceling the contract for the Kor-Alta Project.

- Supplemental Affidavit of Donald Klisowsky sworn September 11, 2019 ("**Supplemental Affidavit of Donald Klisowsky**") at paras 9-11.

44. There are no valid grounds for this request. It was not an option for the Receiver to unilaterally elect to cancel the Performance Bond.

45. A surety bond is a tripartite agreement between the obligee, the principal, and the surety. No one party to the bond can unilaterally elect to cancel the bond.

- Howard M. Wise, *The Manual of Construction Law* (Toronto, ON: Thomson Reuters Canada Limited, 2019) (loose-leaf updated 2019, release 2019-8) vol 2 at 6-1 [TAB 2].

46. The suggestion of Mr. Klisowsky that a principal may unilaterally elect to cancel a performance bond upon its non-performance of the underlying construction contract also runs counter to the very purpose of performance bonds, which is to guarantee the performance of the underlying contract by the principal.

- Thomas G. Heintzman, Bryan G. West, and Immanuel Goldsmith, *Heintzman and Goldsmith on Canadian Building Contracts* (Toronto, ON: Thomson Reuters Canada Limited, 2019) (loose-leaf updated 2019, release 2019-3) vol 1 at 15-3 [TAB 3].

47. Further, we note that Mr. Klisowsky incorrectly summarizes the effect of Clause 45 of the Indemnity and Security Agreement with Liberty (the "**Indemnity Agreement**") at paragraph 4 of his Supplemental Affidavit. Any termination of the Indemnity Agreement would not have limited the liability of parties to the Indemnity Agreement to "valid costs incurred up to the termination". Rather, Clause 45 clearly states that any such termination would "not modify, nor exclude, nor discharge the Indemnitors' obligations relating to Bonds issued prior to the effective date of termination".

- Supplemental Affidavit of Donald Klisowsky at para 4 and Exhibit B.

**E. The actions and conduct of the Receiver with respect to the Hythe Project has been previously approved by this Court**

48. The actions and conduct of the Receiver with respect to its dealings with Hythe and the Hythe Project have been transparent and regularly reported throughout these Receivership Proceedings.

- First Report at paras 45 - 49
- Third Report at paras 19 – 21
- Fourth Report at paras 22- 27

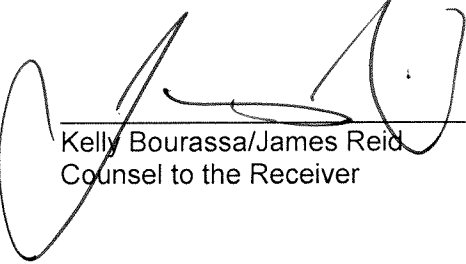
49. The actions, conduct and activities of the Receiver, as outlined in the First Report and Third Report with respect to its dealings with Hythe and the Hythe Project, have previously been ratified and approved by orders of this Court (the "**Prior Court Orders**").
- Auction Approval and Vesting Order and Other Relief pronounced October 10, 2018 at para 18 [TAB 4]
  - Approval and Vesting Order, Interim Distribution Order, Sealing Order and Other Relief pronounced December 18, 2018 at paras 16 - 17 [TAB 5]
50. At all times during these Receivership Proceedings, Hythe has had counsel who have been served with all materials filed in the Receivership Proceedings.
51. At no time has Hythe opposed the Court's approval of the actions, conduct and activities of the Receiver as outlined in its Prior Reports, nor has Hythe sought to appeal the Prior Court Orders.
52. The Hythe Request is made by Hythe's new (third) counsel to get up to speed on the litigation between Nomads and Hythe.
53. Hythe has had ample time in these Receivership Proceedings to address any concerns it may have had with respect to the conduct of the Receiver. There is no merit to this last minute Hythe Request and such relief will only increase costs in these Receivership Proceedings at the expense of the creditors of Nomads.

**V. CONCLUSION**

54. For the reasons set out above, the Receiver submits that the Klisowsky Application should be dismissed, the Hythe Request should be denied and the Receiver's Application should be granted, with costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12<sup>th</sup> DAY OF SEPTEMBER, 2019**

**BLAKE, CASSELS & GRAYDON LLP**



Kelly Bourassa/James Reid  
Counsel to the Receiver

**LIST OF AUTHORITIES**

**TAB      AUTHORITY**

- 1      Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3
- 2      Howard M. Wise, *The Manual of Construction Law* (Toronto, ON: Thomson Reuters Canada Limited, 2019) (loose-leaf updated 2019, release 2019-8) vol 2
- 3      Thomas G. Heintzman, Bryan G. West, and Immanual Goldsmith, *Heintzman and Goldsmith on Canadian Building Contracts* (Toronto, ON: Thomson Reuters Canada Limited, 2019) (loose-leaf updated 2019, release 2019-3) vol 1
- 4      Auction Approval and Vesting Order and Other Relief pronounced October 10, 2018
- 5      Approval and Vesting Order, Interim Distribution Order, Sealing Order and Other Relief pronounced December 18, 2018

**Tab 1**

## PART XI **Secured Creditors and Receivers**

### **Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

### **Restriction on appointment of receiver**

**(1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

### **Definition of *receiver***

**(2)** Subject to subsections (3) and (4), in this Part, ***receiver*** means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
  - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

### **Definition of *receiver* — subsection 248(2)**

**(3)** For the purposes of subsection 248(2), the definition ***receiver*** in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

### **Trustee to be appointed**

**(4)** Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

### **Place of filing**

**(5)** The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

### **Orders respecting fees and disbursements**

**(6)** If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

### **Meaning of *disbursements***

**(7)** In subsection (6), ***disbursements*** does not include payments made in the operation of a business of the insolvent person or bankrupt.

**Tab 2**



## 6 Bonds

Bonding requirements in construction contracts may vary. The size and nature of the project may vary the types of bonds which the parties involved in construction may be required to procure for the project.

### 6.1 General

Bonds differ from insurance policies in several respects.<sup>1</sup> The first major distinction is that, unlike an insurance policy which is an agreement between two parties, the bond is a tripartite agreement. The parties to the bond are the "principal", the "obligee" and the "surety". The principal, obligee and surety may differ depending on the party requesting the bond.

When Owner Requires Bond	When Contractor Requires Bond from Subcontractor
Owner ("Obligee")	General Contractor ("Obligee")
General Contractor ("Principal")	Subcontractor ("Principal")
Bonding Company ("Surety")	Bonding Company ("Surety")

Secondly, under a bonding arrangement, the surety undertakes certain obligations in the event of a default by the principal in the event that the principal defaults in carrying out its contract with the obligee. As such, and prior to providing a bonding facility to the principal, the bonding company usually requires that the principal execute a form of indemnity agreement in favour of the bonding company, and often requires that the owners of the principal provide personal indemnities to the bonding company, in addition to those given by the principal. These indemnity agreements are usually wide ranging and provide the bonding company certain rights in the event of a default of the principal. These rights often include bonding company's right to settle or compromise claims in respect of any bonds posted in respect of a given project. The indemnity agreement obligates the principal to co-operate fully with the bonding company in the event of a default in respect of any bonded project. Where a default occurs such that the bonding company is liable to a third party, and where an indemnity agreement is in place, the bonding company will ultimately look to its principal in the event of a default where the bonding company is required to make payment in respect of any bond which it issues.<sup>2</sup>

1 For an in-depth view of the law of surety see *Scott and Reynolds on Surety Bonds*, Carswell looseleaf.

2 For a discussion of claims under indemnity agreements see *Continental*

**Tab 3**

## 15§2. THE NATURE OF A BOND

A bond is a contract normally made under seal by which one party (called the obligor, surety or bonding company, and in this text usually referred to as the surety or bonding company) agrees to guarantee the performance of an underlying contract by another party (called the principal) in favour of a third party (called the obligee or creditor). Upon that performance occurring, the surety is discharged from further obligation, but otherwise the surety remains obliged to guaranty the underlying contract. Each of these ingredients in the definition of a bond will be examined in this section.

As can be seen, the three-legged structure of a bond makes it suitable to guarantee the performance of a contractor on a building project. The contractor is the principal whose obligations are guaranteed. The owner is the obligee who is provided with financial protection by the bond. And the bonding company is the surety who guarantees the performance of the contractor.

The structure of the bond can also be used to guarantee the performance by a subcontractor if the contractor or owner wants financial protection against a default by the subcontractor. In this chapter, the discussion will usually refer to the owner-contractor setting, but the same rights and obligations under a bond may arise in a contractor-subcontractor setting,<sup>15.7</sup> or any other setting in which one party wishes to obtain a guarantee of the performance by another party on a building project.

The wording of the bonds used in the building industry is of ancient origin. So to the modern eye and ear, the wording and structure of the bond may seem awkward. The bond usually has four parts. It starts with words such as “Know all men by these presents”, these words being the ancient introduction to a very formal engagement such as a deed. The bond will state the condition of the bond, being the due performance of the underlying obligation. The bond will then state the amount of the bond, being the limit of the surety’s obligation. And the bond will finish by providing that, if the condition is satisfied — that is, the performance of the underlying contract occurs — then the bond is discharged and the obligation under the bond is null and void, but otherwise the surety is bound to the obligee in the amount of the bond.

On its face, the structure of the bond makes it appear to be a conditional obligation of the bonding company to pay an amount to the obligee, which

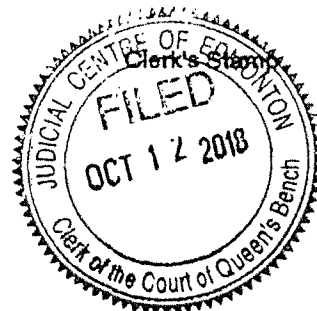
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*Construction Lien Act*; section 12 of O. Reg. 304/18, Appendix, Ontario Legislation; see Chapter 16§9(j) and 16§10(h). Section 85.1 does not apply if the contractor is an architect or engineer: s. 85.1(3).

<sup>15.7</sup> *V.K. Mason Construction Ltd. v. Canadian General Insurance Group Ltd. / Groupe d'assurance canadienne generale Ltée*, 1998 CarswellOnt 3386, 40 C.L.R. (2d) 237 (Ont. Gen. Div.), affirmed 1998 CarswellOnt 4909, 42 C.L.R. (2d) 241 (Ont. C.A.); *Trafalgar House Construction (Regions) Ltd. v. General Surety & Guarantee Co.* (1995), [1996] A.C. 199 (U.K. H.L.).

**Tab 4**

COURT FILE NUMBER 1803-09581  
 COURT Court of Queen's Bench of Alberta  
 JUDICIAL CENTRE Edmonton  
 PLAINTIFF BANK OF MONTREAL  
 DEFENDANTS LADACOR AMS LTD., NOMADS PIPELINE CONSULTING LTD.,  
 2367147 ONTARIO INC. and DONALD KLISOWSKY



DOCUMENT AUCTION APPROVAL AND VESTING ORDER AND OTHER  
 RELIEF

ADDRESS FOR  
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 CONTACT  
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Blake, Cassels & Graydon LLP  
 Barristers and Solicitors  
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 855 - 2 Street SW  
 Calgary, Alberta T2P 4J8

I hereby certify this to be a  
 true copy of the original.

for Clerk of the Court

Attention: Ryan Zahara / James Reid  
 Tel: (403) 260-9628 / (403) 260-9731  
 Facsimile: (403) 260-9700  
 File No.: 99766/12

DATE ON WHICH ORDER WAS PRONOUNCED: October 10, 2018  
 NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice K.G.  
 Nielsen  
 LOCATION OF HEARING: Edmonton, Alberta

UPON the application of Alvarez & Marsal Canada Inc. in its capacity as the receiver and manager (the "Receiver") of the undertaking, property and assets of Ladacor AMS Ltd., Nomads Pipeline Consulting Ltd. and 2367147 Ontario Inc. (collectively, the "Debtors" and each a "Debtor") for an order: (i) approving the auction agreement dated September 28, 2018 (the "Auction Agreement") between the Receiver, in its capacity as Court appointed receiver and manager of the Debtors, and Century Services Corp. (the "Auctioneer"), which is appended as Appendix B to the First Report of the Receiver dated October 2, 2018 (the "First Report"), and the transactions contemplated thereby; (ii) providing for the vesting of the Debtors' right, title and interest in and to the Assets, as defined in the Auction Agreement and listed in the attached Schedule "A" hereto, in any person or persons who purchase any of the

Assets pursuant to the Auction Agreement (a "**Purchaser**"); and (iii) authorizing the Receiver to disburse and distribute the sale proceeds in respect of the Assets;

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

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

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

#### **SERVICE AND DEFINITIONS**

1. The time for service of the notice of application for this Order is hereby abridged and service of the Application and supporting materials is deemed good and sufficient.

#### **APPROVAL OF AUCTION AGREEMENT**

2. The Auction Agreement (including all schedules attached thereto) is hereby approved.
3. Subject to the provisions of this Order and the Receivership Order granted by the Honourable Justice J.E. Topolniski on May 18, 2018 (the "**Receivership Order**"), the Receiver is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Auction Agreement. Without limiting the foregoing, the Receiver is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or useful to give full and complete effect to the Auction Agreement.

#### **MARKETING AND SALE OF ASSETS**

4. The Auctioneer is authorized to market and sell the Assets in accordance with the terms of the Auction Agreement (the "**Asset Sales**"). The Asset Sales shall be free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively the "**Claims**") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order; and
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system,

collectively, the "**Encumbrances**".

#### **ASSET SALE AND VESTING**

5. Upon the Auctioneer completing the sale of any of the Assets to a Purchaser, and upon receipt of the purchase price by the Auctioneer and delivery by the Auctioneer of a bill of sale or similar evidence of purchase to such Purchaser (the "**Purchaser Bill of Sale**"):
  - (a) all of a Debtors' right, title and interest in and to the Assets, as applicable, shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all Claims, and all of the Encumbrances affecting or relating to such Assets shall be expunged and discharged as against such Assets;
  - (b) any Debtor and all persons who claim by, through or under such Debtor in respect of the Assets, as applicable, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Assets and, to the extent that any such persons remain in possession or control of any of the Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee); and
  - (c) the Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Assets for its own use and benefit without any interference of or by any Debtor, or any person claiming by or through or against the Debtors.
6. Nothing herein shall discharge the obligations of the Auctioneer pursuant to the Auction Agreement or otherwise, or the rights or claims of the Receiver in respect thereof including, without limitation, the obligations of the Auctioneer to account for and remit the proceeds of the Asset Sales (the "**Sale Proceeds**") to the Receiver in accordance with the terms of the Auction Agreement.
7. For the purposes of determining the nature and priority of Claims, the monies payable to the Receiver under the Auction Agreement from the Asset Sales shall stand in the place

and stead of the Assets, and from and after the delivery of the Purchaser Bill of Sale, all Claims shall attach to the net Sale Proceeds from the Asset Sales with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. From and after the closing of sale of any of the Assets to a Purchaser, the Receiver is authorized to take all such steps as may be necessary to effect the discharge of any security registration or registrations relating to the Claims registered against the Assets, including Encumbrances, as may be necessary, provided that the Receiver shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Assets, and the Receiver shall be authorized to take any further steps by way of further application to this Court.
9. Notwithstanding (i) the pendency of these receivership proceedings; (ii) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to such applications; (iii) any assignment in bankruptcy made in respect of the Debtors; or (iv) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtors, and notwithstanding any provision to the contrary in any such agreement (a "**Third Party Agreement**"):
  - (a) the vesting of the Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of a Debtor and shall not be void or voidable by creditors of any Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation; and
  - (b) the vesting of the Assets in the Purchaser (or its nominee) pursuant to this Order shall not create nor be deemed to constitute a breach by any Debtor of any Third



Party Agreement, and the Purchaser shall not have liability to any person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation, execution, delivery or performance of the transactions contemplated herein.

#### **LIMITATION OF LIABILITY**

10. Subject to the Receivership Order, nothing in this Order shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Assets. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Assets within the meaning of environmental legislation or pursuant to the terms of the *Bankruptcy and Insolvency Act (Canada)*.
11. Except for gross negligence or willful misconduct, no action lies against the Receiver by reason of this Order or to the performance of any act authorized by this Order.

#### **AMENDMENT TO THE RECEIVERSHIP ORDER**

12. Paragraph 5 of the Receivership Order is hereby amended to change the references to paragraphs 6 and 7 to paragraphs 5 and 6.
13. Paragraph 15(b) and 15(c) of the Receivership Order is hereby amended to include the reference to "sub-paragraph a".
14. Paragraph 15(c)(i) of the Receivership Order is hereby amended to include the reference to "clause ii below".
15. Paragraph 16 of the Receivership Order is hereby amended by adding the words: "in the Receiver's possession or control at the time a claim is made" at the end of the first sentence.

#### **APPROVAL OF ACCOUNTS, ACTIVITIES AND RECEIPTS AND DISBURSEMENTS**

16. The Receiver's accounts for fees and disbursements, as set out in the First Report, are hereby approved without the necessity of a formal passing of its accounts.
17. The accounts of the Receiver's legal counsel, Blake, Cassels & Graydon LLP, for its fees and disbursements, as set out in the First Report, are hereby approved without the necessity of a formal assessment of its accounts.

18. The Receiver's activities as set out in the First Report, except in relation to the Banff Project (as defined in the First Report) and described more specifically in paragraphs 30 to 33 of the First Report, and the schedule of receipts and disbursements attached thereto are hereby ratified and approved.

#### **INTERIM DISTRIBUTION**

19. The Receiver is hereby authorized and directed, at such time as it determines appropriate, to make an interim distribution or interim distributions to Bank of Montreal ("BMO") from amounts received in accordance with the terms of the Auction Agreement and any amounts received from the Westgate Building Contract (as defined in the First Report) to pay down the Receiver's Certificates issued in these proceedings and to make partial repayment of the amount of Ladacor AMS Ltd.'s and Nomads Pipeline Consulting Ltd.'s respective indebtedness to BMO, as set out in the First Report, subject to the retention of amounts for any priority claims.


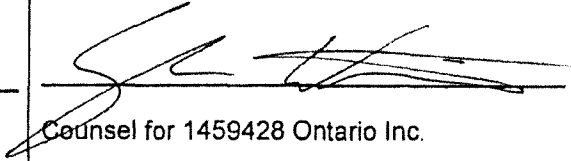
#### **MISCELLANEOUS MATTERS**

20. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
21. This Order must be served only upon those interested parties attending or represented at the within Application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
22. The Receiver, the Auctioneer (or its nominee) and any other interested party shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Asset Sales.

23. Upon the closing of the transactions contemplated in the Auction Agreement, the Receiver shall file with the Clerk of the Court a Receiver's Certificate substantially in the form attached hereto as Schedule "B".

"K.G. Nielsen"

J.C.Q.B.A

APPROVED AS TO FORM AND CONTENT THIS <u>11<sup>th</sup></u> DAY OF OCTOBER 2018	APPROVED AS TO FORM AND CONTENT THIS <u>11<sup>th</sup></u> DAY OF OCTOBER 2018
DENTONS CANADA LLP	MCCUAIG DESROCHERS LLP
 Counsel for Bank of Montreal	 Counsel for 1459428 Ontario Inc.

**SCHEDULE "A"**  
**(List of Assets)**

**SCHEDULE "B"**  
**(Form of Receiver's Certificate)**

Clerk's Stamp

COURT FILE NUMBER	1803-09581
COURT	Court of Queen's Bench of Alberta
JUDICIAL CENTRE	Edmonton
PLAINTIFF	<b>BANK OF MONTREAL</b>
DEFENDANTS	<b>LADACOR AMS LTD., NOMADS PIPELINE CONSULTING Ltd., 2367147 ONTARIO INC. and DONALD KLISOWSKY</b>
DOCUMENT	<b>RECEIVER'S CERTIFICATE</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>Blake, Cassels &amp; Graydon LLP</b> Barristers and Solicitors 3500 Bankers Hall East Tower 855 – 2 Street SW Calgary, Alberta T2P 4J8  <b>Attention: Ryan Zahara / James Reid</b> Tel: (403) 260-9628 / (403) 260-9731 Facsimile: (403) 260-9700 File No.: 99766/12

**RECITALS**

A. Pursuant to an Order of the Honourable Madam Justice J.E. Topolniski of the Court of Queen's Bench of Alberta, Judicial District of Edmonton (the "**Court**") dated May 18, 2018, Alvarez & Marsal Canada Inc. was appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of, among others, Ladacor AMS Ltd. and Nomads Pipeline Consulting Ltd. (collectively, the "**Debtors**").

B. Pursuant to an Order of the Court dated October 10, 2018, the Court approved the auction agreement dated September 28, 2018 (the "**Auction Agreement**") between the Receiver, in its capacity as receiver and manager of the Debtors, and Century Services Corp.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Auction Agreement.

THE RECEIVER CERTIFIES the following:

1. The Auction occurred and the Auctioneer has paid and the Receiver has received the NMG and all other amounts payable to the Receiver pursuant to the Auction Agreement; and
2. This Certificate was delivered by the Receiver at \_\_\_\_\_ on October \_\_\_\_, 2018.

Alvarez & Marsal Canada Inc., in its capacity as Receiver of the undertaking, property and assets of Ladacor AMD Ltd. and Nomads Pipeline Consulting Ltd., and not in its personal capacity.

Per: \_\_\_\_\_

Name:

Title:

**Tab 5**

COURT FILE NUMBER 1803-09581

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Edmonton

PLAINTIFF **BANK OF MONTREAL**

DEFENDANTS **LADACOR AMS LTD., NOMADS PIPELINE CONSULTING LTD.,  
2367147 ONTARIO INC. and DONALD KLISOWSKY**

DOCUMENT **APPROVAL AND VESTING ORDER, INTERIM DISTRIBUTION  
ORDER, SEALING ORDER AND OTHER RELIEF**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY FILING  
THIS DOCUMENT **Blake, Cassels & Graydon LLP**  
Barristers and Solicitors  
3500 Bankers Hall East Tower  
855 – 2 Street SW  
Calgary, Alberta T2P 4J8

**Attention: Ryan Zahara / James Reid**  
Tel: (403) 260-9628 / (403) 260-9731  
Facsimile: (403) 260-9700  
File No.: 99766/12



**DATE ON WHICH ORDER WAS PRONOUNCED:** December 18, 2018

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Justice K.G. Nielsen

**LOCATION OF HEARING:** Edmonton, Alberta

**UPON** the application of Alvarez & Marsal Canada Inc. in its capacity as the receiver and manager (the "**Receiver**") of the undertaking, property and assets of, among others, 2367147 Ontario Inc. (the "**Debtor**") for an order: (i) approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement dated October 16, 2018 (the "**Purchase Agreement**"), between the Receiver, in its capacity as receiver and manager of the Debtor, and Sioux Lookout First Nations Health Authority (the "**Purchaser**"), or its nominee, and appended to the third report to the Court submitted by the Receiver dated December 10, 2018 (the "**Third Report**"), and vesting in the Purchaser, the Debtor's right, title and interest in and to the assets described in the Purchase Agreement (the "**Purchased Assets**") in accordance with the terms of the Purchase Agreement; (ii) an interim distribution order; and (iii) a sealing order, among other relief;

**AND UPON HAVING READ** the Third Report, confidential appendix 1 thereto (the "**Confidential Appendix**") and such other material in the pleadings and proceedings as deemed necessary;



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

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

**DEFINITION**

1. Capitalized terms not defined in this Order shall have the meanings attributed to them in the Third Report.

**SERVICE**

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

**APPROVAL OF TRANSACTION**

3. The Transaction is hereby approved, and the execution of the Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute any such additional documents in respect of the Debtor, including but not limited to, any declarations of ceasing to carry on business under a trade name and any articles of amendment, as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser (or its nominee).

**VESTING OF PROPERTY**

4. Upon the delivery of a Receiver's certificate to the Purchaser, substantially in the form set out in Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Purchase Agreement and listed on Schedule "B" hereto shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and
- (c) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, easements and restrictive covenants listed on Schedule "D"); and,

for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. Upon the registration in the Land Titles Division of the Land Registry Office at Kenora (No. 23) (the "**Land Registry Office**") of one or more Transfer(s) in the form prescribed by the *Land Titles Act* (Ontario) (each, a "**Transfer** ") of all or any portion of the real property Purchased Assets identified in Schedule "B" hereto, duly executed by the Receiver (or deemed to be executed through electronic signature), the Director of Titles (the "**Director**") is hereby directed to enter the transferee named in any such Transfer as the owner of the applicable subject real property set out in such Transfer in fee simple, and is hereby directed to delete and expunge from title to the real property set out in each such Transfer all of the Claims listed in Schedule "C" hereto, including such further Claims as may have arisen and/or been registered against title to the real property Purchased Assets.
6. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

#### **CLOSING OF THE SALE TRANSACTION**

7. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.

8. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such persons remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
9. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
10. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtor.
11. The Receiver is to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser (or its nominee).
12. Pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, section 20(e) of the Alberta *Personal Information Protection Act*, and any other equivalent provision in any other provincial statute, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees listed in the Sale Agreement. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
13. Notwithstanding:
  - (a) the pendency of these proceedings;
  - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor

and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

#### **INTERIM DISTRIBUTION**

15. The Receiver is hereby authorized and directed, at such time as it determines appropriate, to make an interim distribution or interim distributions to Bank of Montreal ("**BMO**") from amounts received from the Transaction up to the full amount of the Debtor's respective indebtedness to BMO, as set out in the Third Report, subject to the retention of amounts for any priority claims.

#### **APPROVAL OF ACTIVITIES AND RECEIPTS AND DISBURSEMENTS**

16. The actions, conduct, and activities of the Receiver and its legal counsel, as outlined in the Third Report, are hereby approved.
17. The actions, conduct, and activities of the Receiver and its legal counsel, as it relates to the Banff Project as discussed in paragraphs 30 to 33 of the First Report and 12 to 14 of the Third Report are hereby approved.
18. The Receiver's statement of receipts and disbursements for the period from May 18, 2018 to November 30, 2018, as set out in the Third Report is hereby approved.

#### **SEALING ORDER**

19. Division 4 of Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010 does not apply.
20. The Confidential Appendix contains confidential and commercially sensitive information, which if made publicly available could be used to the detriment of the parties and these receivership proceedings, and shall be sealed on the Court file, not form part of the public record, and not be available for public inspection unless and until the Receiver files a certificate with this Court

confirming the completion of these receivership proceedings (the "**Receiver's Completion Certificate**") or further order by this Court, upon seven days' notice to all interested parties.

21. The Clerk of the Court shall file the Confidential Appendix in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED BY ALVAREZ & MARSAL CANADA INC.

THE CONFIDENTIAL MATERIALS ARE SEALED UNTIL ALVAREZ & MARSAL CANADA INC. FILES THE RECEIVER'S COMPLETION CERTIFICATE OR FURTHER ORDER PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE JUSTICE K.G. NIELSEN ON DECEMBER 18, 2018.

22. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying or varying the terms of this Order, with such application to be brought on notice to the Receiver and any other affected party in accordance with the *Alberta Rules of Court*, Alta Reg 124/2010 and this Order.

#### **MISCELLANEOUS MATTERS**

23. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the Ontario Land Registry Office staff and/or the Director, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
24. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

25. Service of this Order on any party not attending this application is hereby dispensed with.

"K. G. Nielsen"

J.C.Q.B.A.

## Schedule "A"

### Form of Receiver's Certificate

COURT FILE NUMBER	1803-09581	<div>Clerk's Stamp</div>
COURT	Court of Queen's Bench of Alberta	
JUDICIAL CENTRE	Edmonton	
PLAINTIFF	<b>BANK OF MONTREAL</b>	
DEFENDANTS	<b>LADACOR AMS LTD., NOMADS PIPELINE CONSULTING LTD., 2367147 ONTARIO INC. and DONALD KLISOWSKY</b>	
DOCUMENT	<b>RECEIVER'S CERTIFICATE</b>	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>Blake, Cassels &amp; Graydon LLP</b> Barristers and Solicitors 3500 Bankers Hall East Tower 855 – 2 Street SW Calgary, Alberta T2P 4J8  <b>Attention: Ryan Zahara / James Reid</b> Tel: (403) 260-9628 / (403) 260-9731 Facsimile: (403) 260-9700 File No.: 99766/12	

### RECITALS

- A. Pursuant to an Order of the Honourable Madam Justice J. Topolniski of the Court of Queen's Bench of Alberta, Judicial District of Edmonton (the "**Court**") dated May 18, 2018, Alvarez & Marsal Canada Inc. LIT was appointed as the receiver and manager (the "**Receiver**") of the assets, undertakings and properties of, among others, 2367147 Ontario Inc. (the "**Debtor**").
- B. Pursuant to an Order of the Court dated December 18, 2018 (the "**Approval and Vesting Order**"), the Court approved the Asset Purchase Agreement dated October 16, 2018 (the "**Purchase Agreement**"), between the Receiver, in its capacity as Court appointed receiver and manager of the Debtor, and Sioux Lookout First Nations Health Authority, or its nominee (the "**Purchaser**"), and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets (the "**Transaction**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the condition to Closing as set out in section 26 of the

Purchase Agreement has been satisfied or waived by the Receiver and the Purchaser; and  
(iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval and Vesting Order.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Purchase Agreement;
2. The conditions to Closing as set out in section 26 of the Purchase Agreement has been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at Calgary, Alberta on **[Date]**.

**ALVAREZ & MARSAL CANADA INC. LIT, IN ITS  
CAPACITY AS COURT-APPOINTED RECEIVER  
AND MANAGER OF ALL OF THE ASSETS,  
UNDERTAKINGS AND PROPERTIES OF 2367147  
ONTARIO INC. AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY**

Per: \_\_\_\_\_

Name:

Title:



**Schedule "B"**

**Purchased Assets**

**Real Property**

**LEGAL DESCRIPTION:**

**Firstly:**

**PIN 42043-1778 (LT):** PCL 43386 SEC DKF; LT 72-82 PL M126; SIOUX LOOKOUT

**Secondly:**

**PIN 42043-1943 (LT):** LTS 83, 84, 85, 86, 87, 88, 89 & 90 PL M126; MUNICIPALITY OF SIOUX LOOKOUT

**Personal Property**

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

**Hotel Asset List**

See attached

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

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

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

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

**Schedule "C"**

**Encumbrances to be Expunged and Discharged**

**REGISTRATIONS TO BE DELETED FROM PINs 42043-1778 (LT) AND 42043-1943 (LT):**

**Land Titles Division of the Land Registry Office at Kenora (No. 23)**

<u>Reg. Num.</u>	KN80287
Registration Date:	August 11, 2017
Registration Type:	Charge
Amount:	\$5,000,000
Chargor:	2367147 Ontario Inc.
Chargee:	Bank of Montreal

<u>Reg. Num.</u>	KN85438
Registration Date:	July 20, 2018
Registration Type:	Application to Register Court Order
Parties From:	Court of Queen's Bench of Alberta
Parties To:	Alvarez & Marsal Canada Inc.

**Schedule "D"**

**Permitted Encumbrances**

**REGISTRATIONS TO REMAIN ON PINs 42043-1778 (LT) AND 42043-1943 (LT):**

<u>Reg. Num.</u>	LT199368
Registration Date:	June 22, 1989
Registration Type:	Bylaw

<u>Reg. Num.</u>	KN60320
Registration Date:	June 30, 2014
Registration Type:	Notice of Site Plan Agreement
Parties From:	2367147 Ontario Inc.
Parties To:	The Corporation of the Municipality of Sioux Lookout