

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS  
AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON  
GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1" HERETO<sup>1</sup>**

**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY  
AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. c.-  
43, AS AMENDED**

**MOTION RECORD OF THE RECEIVER  
(Returnable February 12, 2020)**

February 5, 2020

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Counsel to KSV Kofman Inc., solely in its capacity as  
Court-appointed receiver and not in its personal  
capacity

TO: THE SERVICE LIST

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<sup>1</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC

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TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS  
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**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO  
CELADON GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1"  
HERETO<sup>1</sup>**

**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE  
ACT*, R.S.O. 1990, C. c.-43, AS AMENDED**

**NOTICE OF MOTION  
(Returnable February 12, 2020)**

KSV Kofman Inc. ("**KSV**"), in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**") of the Property (as defined in the Supplemental Order dated January 23, 2020, the "**Supplemental Order**") of Celadon Group, Inc. and the affiliated debtors listed in footnote "1" hereto (collectively, the "**Chapter 11 Debtors**"), will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on Wednesday, February 12, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An order (the "**Ayr Approval and Vesting Order**") substantially in the form of the draft order attached as Tab "3" of this Motion Record, among other things (i) approving the Ayr Transaction (as defined

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<sup>1</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC



below) contemplated by an agreement of purchase and sale between Celadon Group, Inc. on behalf of Hyndman Transport Ltd. (the "**Vendor**"), as vendor, and Wyndham Street Investments Inc. (the "**Ayr Purchaser**"), as purchaser, dated January 7, 2020, as amended (the "**Ayr Sale Agreement**"), and vesting in the Ayr Purchaser, or as it may direct in accordance with the Ayr Sale Agreement, all of the Vendor's right, title and interest in and to the property described in the Ayr Sale Agreement (the "**Ayr Purchased Assets**"), including the real property located at 2616 Cedar Creek Road, Ayr, Ontario, Canada (the "**Ayr Property**"), (ii) abridging the time for service of the Notice of Motion and the Motion Record herein, if necessary, and validating service thereof, (iii) sealing the confidential appendix of the First Report of the Receiver dated February 5, 2020 (the "**First Report**") pending further order of the Court and (iv) authorizing the Receiver, following completion of the Ayr Transaction, to create, hold and distribute the Holdback (as defined below) (or cause the Holdback to be created, held and distributed) as follows:

- (a) first, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Potential Trust Claim Holdback (as defined below);
- (b) second, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Receiver's Charge Holdback (as defined below);
- (c) third, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Accrued Fees Holdback (as defined below) and make one or more distributions (or cause one or more distributions to be made) to pay the fees and expenses owing to the Receiver and counsel for the Receiver in the amount of the Accrued Fees Holdback;
- (d) fourth, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Siemens Lien Holdback (as defined below) and, with the agreement of the Receiver, the Chapter 11 Debtors, Siemens Canada Limited ("**Siemens**") and the Prepetition Term Loan Agent (as defined in the Supplemental Order) or upon further Order of the Court, to distribute (or cause to be distributed) to Siemens any amount of the Siemens Lien Holdback

as is agreed, or ordered by this Court, in satisfaction of the Siemens Lien (as defined below); and

- (e) fifth, cause the balance of the net proceeds from the Ayr Transaction to be distributed to the DIP Agent (as defined in the Supplemental Order) and the Prepetition Term Loan Agent subject to the terms of the US Ayr Sale Approval Order (as defined below).

2. An order (the "**Winnipeg Approval and Vesting Order**") substantially in the form of the draft order attached as Tab "5" of this Motion Record, among other things (i) approving the Winnipeg Transaction (as defined below) contemplated by an agreement of purchase and sale, and the amendment thereto, between the Vendor, as vendor, and 2925924 Manitoba Ltd. (the "**Winnipeg Purchaser**") as purchaser, dated January 16, 2020, as amended on January 30, 2020 (the "**Winnipeg Sale Agreement**"), and vesting in the Winnipeg Purchaser, or as it may direct in accordance with the Winnipeg Sale Agreement, all of the Vendor's right, title and interest in and to the property described in the Winnipeg Sale Agreement (the "**Winnipeg Purchased Assets**" and together with the Ayr Purchased Assets, the "**Purchased Assets**"), including the real property located at 50 Omands Creek Boulevard, Winnipeg, Manitoba, Canada (the "**Winnipeg Property**") and (ii) authorizing the Receiver, following the completion of the Winnipeg Transaction, to transfer the balance of the net proceeds from the Winnipeg Transaction to the DIP Agent and the Prepetition Term Loan Agent subject to the terms of the US Winnipeg Sale Approval Order (as defined below).

3. Such further and other relief as counsel may request and the Honourable Court deems just.

**THE GROUNDS FOR THIS MOTION ARE:**

4. On December 8, 2019, the Chapter 11 Debtors commenced proceedings by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**US Court**") (the "**Chapter 11 Proceedings**"). Of the

Chapter 11 Debtors, two corporations, namely Celadon Canadian Holdings, Limited ("**CCHL**") and Hyndman Transport Limited ("**Hyndman**") are Canadian corporations.

5. On December 9, 2019, the Chapter 11 Debtors ceased operations, with the exception of the business operated by Taylor Express, Inc, a Chapter 11 Debtor.

6. On January 23, 2020, the Court issued and entered an Initial Recognition Order and a Supplemental Order among other things, recognizing the Chapter 11 Proceedings in Canada and appointing KSV Kofman Inc. as Receiver of the Property.

### ***Background***

7. The Chapter 11 Debtors were a significant US-based trucking company providing international truckload services between the US, Canada and Mexico. The Chapter 11 Debtors' head office is in Indianapolis, Indiana.

8. CCHL is an inactive holding company and the sole shareholder of Hyndman. Hyndman operated a fleet of approximately 310 trucks and trailers from the Ayr Property, the Winnipeg Property and one other owned property in Wroxeter, Ontario. On December 9, 2020, at the same time that the Chapter 11 Debtors ceased their business operations, Hyndman terminated its workforce with the exception of a few employees retained to manage its facilities. Hyndman's workforce was not unionized nor did it maintain any registered pension plans.

9. The Chapter 11 Debtors' principal secured creditors are (i) MidCap Funding IV Trust as administrative agent and lender under the Chapter 11 Debtors' US\$60 million revolving credit facility, (ii) Blue Torch Finance LLC as agent representing a group of term loan lenders under a US\$105 million term loan facility (the "**Term Loan Facility**"), (iii) Luminus Energy Partners Master Fund, Ltd. pursuant to a US\$30 million "last-out" participant in the Term Loan Facility and (iv) a number of vehicle financiers/lessors who have registered security interests in Hyndman's tractors and trailers.

10. The Chapter 11 Debtors entered into the Ayr Sale Agreement and the Winnipeg Sale Agreement prior to the Receiver's appointment. Following its appointment, the Receiver forthwith consulted with the Chapter 11 Debtors and their representatives to understand the sale process undertaken for the Ayr Property and the Winnipeg Property (the "**Sale Process**").

### ***The Sale Process***

11. In June of 2019, the Chapter 11 Debtors engaged Colliers International Inc. ("**Colliers**") and Jones Lang LaSalle Estate Services, Inc. ("**JLL**") to co-market several pieces of real property including the Winnipeg Property. Colliers and JLL listed the Winnipeg Property on the Multiple Listing Service.

12. On December 13, 2019, DLA Piper LLP (US), the Chapter 11 Debtors legal counsel, sent a process letter accompanied by a non-disclosure agreement (the "**NDA**") to a number of prospective purchasers of the assets subject to liquidation, including both the Ayr Property and the Winnipeg Property, which were marketed on an "as is, where is" basis. Following the execution of the NDA, interested parties were given access to a virtual data room.

13. The Sale Process was subsequently approved by the US Court on January 6, 2020.

### ***(i) the Ayr Property***

14. On or prior to December 30, 2019, four prospective purchasers, including the Ayr Purchaser, submitted letters of intent (each an "**LOI**" and collectively, the "**LOIs**") for the Ayr Property. The LOI submitted by the Ayr Purchaser was the highest of the LOIs and its value substantially exceeded the appraised value of the Ayr Property.

15. The Ayr Purchaser informed the Chapter 11 Debtors that it did not wish to be a "stalking horse" nor was it open to including the Ayr Property in an auction to be conducted by the Chapter 11 Debtors for certain other assets on January 22, 2020 (the "**Auction**"). The Chapter 11 Debtors and the Ayr Purchaser

negotiated and executed the Ayr Sale Agreement for the Ayr Purchased Assets (the "**Ayr Transaction**"). The Chapter 11 Debtors, in an effort to preserve their ability to enter into a superior transaction between the date on which the Ayr Sale Agreement was executed and closing, negotiated a break fee payable if the Ayr Sale Agreement was terminated to complete an Alternative Transaction (as defined in the Ayr Sale Agreement). The Ayr Transaction was subsequently approved by the US Court on January 31, 2020 (the "**US Ayr Sale Approval Order**").

***(ii) the Winnipeg Property***

16. On or prior to December 30, 2019, three prospective purchasers, including the Winnipeg Purchaser, submitted conditional LOIs. The LOI submitted by the Winnipeg Purchaser was the highest of the LOIs.

17. Similar to the Ayr Purchaser, the Winnipeg Purchaser did not wish to be a "stalking horse" nor was it open to including the Winnipeg Property in the Auction. The Chapter 11 Debtors and the Winnipeg Purchaser negotiated the Winnipeg Sale Agreement for the purchase of the Winnipeg Purchased Assets (the "**Winnipeg Transaction**" and together with the Ayr Transaction, the "**Transactions**"). The Winnipeg Sale Agreement includes a similar break fee provision in the event the Chapter 11 Debtors wish to pursue an Alternative Transaction (as defined in the Winnipeg Sale Agreement) between the date on which the Winnipeg Sale Agreement was executed and closing. The Winnipeg Transaction was subsequently approved by the US Court on January 31, 2020 (the "**US Winnipeg Sale Approval Order**").

***Proposed Distributions***

***(i) the Ayr Property***

18. Subject to Court approval, once the Ayr Transaction closes, the Receiver intends to create, hold and distribute the Holdback (as defined below) (or cause the Holdback to be created, held and distributed) as follows:

- (a) first, create and hold a reserve (or cause a reserve to be created and held) in the amount of the \$107,000 for a potential trust claim in favour of certain Hyndman owner/operators (the "**Potential Trust Claim Holdback**");
- (b) second, create and hold a reserve (or cause a reserve to be created and held) in the amount of \$350,000 to cash collateralize the Receiver's Charge (as defined in the Supplemental Order) (the "**Receiver's Charge Holdback**");
- (c) third, create and hold a reserve (or cause a reserve to be created and held) in the amount of \$200,000 and make one or more distributions (or cause one or more distributions to be made) to pay the fees of the Receiver and its counsel, Bennett Jones LLP ("**Bennett Jones**") and Thompson Dorfman Sweatman LLP ("**TDS**"), through January 31, 2020 and from February 1, 2020 to the return of this motion (the "**Accrued Fees Holdback**");
- (d) fourth, create and hold a reserve (or cause a reserve to be created and held) in the amount of the \$23,000 in respect of a construction lien registered against the Ayr Property (the "**Siemens Lien**") (the "**Siemens Lien Holdback**" and together with the Potential Trust Claim Holdback, the Receiver's Charge Holdback and the Accrued Fees Holdback, the "**Holdback**"); and
- (e) fifth, cause the balance of the net proceeds from the Ayr Transaction to be distributed to the DIP Agent and the Prepetition Term Loan Agent subject to the terms of the US Ayr Sale Approval Order.

19. The Receiver's counsel, Bennett Jones, has provided an opinion that the security granted to the DIP Agent and Prepetition Term Loan Agent constitutes a valid and enforceable charge against the Ayr Property.

***(ii) the Winnipeg Property***

20. Subject to Court approval, once the Winnipeg Transaction closes, the Receiver intends to cause the balance of the net proceeds from the Winnipeg Transaction to be distributed to the DIP Agent and the Prepetition Term Loan Agent subject to the terms of the US Winnipeg Sale Approval Order.

21. The Receiver's Manitoba counsel, TDS, has provided an opinion that the security granted to the DIP Agent and Prepetition Term Loan Agent constitutes a valid and enforceable charge against the Winnipeg Property.

***Sealing***

22. The Monitor requests and recommends that the details on all of the LOIs submitted in the Sale Process and the appraised value of the Ayr Property, found at Confidential Appendix "1" of the First Report, be filed with the Court on a confidential basis and be sealed in accordance with the Ayr Approval and Vesting Order as the documents contain confidential information.

23. If this information is not sealed, it may negatively impact realizations on the Purchased Assets if the Transactions do not close.

24. The Receiver believes that the proposed sealing is appropriate in the circumstances and is not aware of any party that will be prejudiced if the information is sealed.

***General***

25. The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B3, as amended, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and the inherent and equitable jurisdiction of this Court.

26. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, as amended.

27. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

28. the First Report; and

29. such further and other material as counsel may advise and this Court may permit.

February 5, 2020

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capacity as Court-appointed receiver and not in  
its personal capacity



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AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED IN FOOTNOTE "1" HERETO

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.-43, AS AMENDED

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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Counsel to KSV Kofman Inc., solely in its  
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its personal capacity

TAB 2



**First Report of  
KSV Kofman Inc. as  
Receiver of the Canadian  
Business and Assets of  
Celadon Group, Inc. and the  
Entities Listed in Footnote 1 Hereto**

**February 5, 2020**

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COURT FILE NO.:CV-20-00634911-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
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**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
BANKRUPTCY AND INSOLVENCY ACT AND SECTION 101 OF THE COURTS OF JUSTICE  
ACT (ONTARIO), R.S.O. 1990, c. C-43, AS AMENDED**

**FIRST REPORT OF KSV KOFMAN INC.  
AS PROPOSED RECEIVER**

**February 5, 2020**

## **1.0 Introduction**

1. On December 8, 2019, Celadon Group, Inc. (“Celadon” or the “Foreign Representative”) and its affiliated entities<sup>1</sup> listed in footnote 1 (collectively, the “Chapter 11 Debtors” and each a “Chapter 11 Debtor”) commenced proceedings by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “US Court”) (the “Chapter 11 Proceedings”). Two of the Chapter 11 Debtors are Canadian corporations: Celadon Canadian Holdings, Limited (“CCHL”) and Hyndman Transport Limited (“Hyndman”) (jointly, the “Canadian Debtors”).
2. Pursuant to an Initial Recognition Order (the “Initial Recognition Order”) and a Supplemental Order (“Supplemental Order”), both made on January 23, 2020 by the Ontario Superior Court of Justice (Commercial List) (the “Court”), the Chapter 11 Proceedings were recognized in Canada and KSV Kofman Inc. (“KSV”) was appointed receiver (“Receiver”) of the Chapter 11 Debtors’ property in Canada. Copies of the Initial Recognition Order and the Supplemental Order are attached as Appendices “A” and “B”, respectively.

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<sup>1</sup> A R Management Services, Inc., Bee Line, Inc., Celadon E-Commerce, Inc., Celadon Canadian Holdings, Limited, Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited, Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc. and Vorbas, LLC.

3. On or around December 9, 2019, the Chapter 11 Debtors ceased operations, with the exception of the business operated by Taylor Express, Inc. ("Taylor"), a US debtor. The stated purpose of the Chapter 11 Proceedings is to preserve and sell the Taylor business on a going-concern basis and to conduct an orderly wind down and realization process for the other Chapter 11 Debtors, including the Canadian Debtors.
4. KSV is filing this report ("Report") in its capacity as Receiver.

## **1.1 Purposes of this Report**

1. The purposes of this Report are to:
  - a) provide background information about these proceedings;
  - b) provide a summary of the sale process carried out by the Chapter 11 Debtors ("Sale Process"), which resulted in transactions (the "Transactions") approved by the US Court on January 30, 2020 for Hyndman's real property located at:
    - i. 2616 Cedar Creek Rd, Ayr, Ontario (the "Ayr Property"), pursuant to an Agreement of Purchase and Sale dated January 7, 2020 (the "Ayr APS") between Celadon Group, Inc., on behalf of Hyndman, and Wyndham Street Investments Inc. (the "Ayr Purchaser") (the "Ayr Transaction"); and
    - ii. 50 Omands Creek Boulevard, Winnipeg, Manitoba (the "Winnipeg Property"), pursuant to an Agreement of Purchase and Sale dated January 16, 2020 (the "Original Winnipeg APS") and an amendment thereto dated January 30, 2020 (the "Winnipeg APS Amendment" and together with the Original Winnipeg APS, the "Winnipeg APS") between Hyndman and 2925924 Manitoba Ltd. (the "Winnipeg Purchaser") (the "Winnipeg Transaction");
  - c) set out the basis upon which the Receiver is recommending Court approval of the Transactions;
  - d) explain why the Receiver is of the view that the Confidential Appendix to this Report should be sealed pending further order of the Court;
  - e) provide the Receiver's recommended distribution of the sale proceeds from the Transactions (the "Distributions") and the basis for a holdback of \$680,000 to be retained by the Receiver (the "Holdback"); and
  - f) recommend that the Court issue orders:
    - i. approving the Ayr APS, the Winnipeg APS and the Transactions;
    - ii. authorizing Hyndman to complete the Transactions and to convey the Ayr Property to the Ayr Purchaser and the Winnipeg Property to the Winnipeg Purchaser, as applicable, and vesting the Ayr Property in the Ayr Purchaser and the Winnipeg Property in the Winnipeg Purchaser, as applicable, on closing of the Transactions, free and clear of claims and encumbrances other than the permitted encumbrances;

- iii. sealing the Confidential Appendix to this Report pending further order of the Court; and
- iv. approving the Distributions and the Holdback.

## **1.2 Currency**

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

## **1.3 Restrictions**

1. In preparing this Report, the Receiver has relied upon the Chapter 11 Debtors' unaudited and publicly available financial information, materials filed in the Chapter 11 Proceedings and discussions with the Chapter 11 Debtors' legal counsel and financial advisor (the "Information").
2. The Receiver has not performed an audit or other verification of the Information. An examination of the Chapter 11 Debtors' financial forecasts as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Chapter 11 Debtors' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of the Information or any financial information presented in this Report or relied upon by the Receiver in its preparation of this Report.

## **2.0 Background**

1. The Chapter 11 Debtors were a significant US-based trucking company, with a fleet of approximately 3,300 tractors, 10,000 trailers and approximately 3,800 employees, including approximately 357 employed by the Canadian Debtors. The Chapter 11 Debtors provided international truckload services between the US, Canada and Mexico. The Chapter 11 Debtors' head office is in Indianapolis, Indiana.
2. In respect of the Canadian Debtors:
  - a) Hyndman operated a fleet of approximately 310 trucks and trailers from the Ayr Property, the Winnipeg Property and an owned property in Wroxeter, Ontario. Hyndman had been in business since 1937 and was acquired by Celadon in 2005; and
  - b) CCHL is an inactive holding company and the sole shareholder of Hyndman.
3. Upon discontinuation of its business on or around December 9, 2019, Hyndman terminated its workforce, including substantially all of its employees and owner-operator drivers. Hyndman retained a few employees to manage its facilities. Hyndman's workforce was not unionized and it did not maintain any registered pension plans.
4. In advance of these proceedings, KSV filed a report to Court dated January 22, 2020 (the "Prefiling Report"). Information about the Canadian Debtors and the Chapter 11 Proceedings is provided in the Prefiling Report and, accordingly, that information is not repeated in this Report. A copy of the Prefiling Report is attached as Appendix "C", without appendices.

5. Copies of all Court materials filed in these proceedings are available on the Receiver's website at <https://www.ksvadvisory.com/insolvency-cases/case/celadon-group-inc>.

### 3.0 Secured Creditors

1. The Chapter 11 Debtors' principal secured creditors are:
  - a) MidCap Funding IV Trust ("MidCap"), as administrative agent and lender under the Chapter 11 Debtors' US\$60 million revolving credit facility dated July 31, 2019 (the "Revolving Credit Agreement"), which was to be used to fund the Chapter 11 Debtors' working capital requirements. The Canadian Debtors are co-borrowers under the Revolving Credit Agreement and granted to MidCap a security interest in substantially all of their assets in order to secure all of the obligations under the Revolving Credit Agreement, which totalled approximately US\$31.8 million at the commencement of the Chapter 11 Proceedings, plus interest and costs, which continue to accrue. MidCap is also a subordinate secured creditor on the Chapter 11 Debtors' non-current assets, including their real property and vehicle fleet;
  - b) a group of term loan lenders represented by Blue Torch Finance LLC ("Blue Torch"), as agent (collectively, the "Term Loan Lenders"), who were owed approximately US\$103.6 million under a US\$105 million term loan facility (the "Term Loan Facility") at the commencement of the Chapter 11 Proceedings, plus interest and costs, which continue to accrue. The Canadian Debtors are secured guarantors under the Term Loan Facility. The Term Loan Lenders are also the DIP lenders in these proceedings pursuant to a US\$11.25 million DIP facility approved by the US Court and this Court pursuant to the Supplemental Order;
  - c) Luminus Energy Partners Master Fund, Ltd., a 49.9% shareholder of Celadon is also a secured creditor as a result of its US\$30 million "last-out" participation in the Term Loan Facility discussed in 1(b) above; and
  - d) numerous vehicle financiers/lessors who have registered security interests in Hyndman's tractors and trailers, the largest of which is Canadian Western Bank (approximately 271 vehicles).
2. Various US Court orders issued in the Chapter 11 Proceedings require the Chapter 11 Debtors to consult with the DIP lenders (being the Term Loan Lenders), MidCap and the Official Committee of Unsecured Creditors ("UCC")<sup>2</sup> (collectively, the "Consultation Parties") in respect of the disposition of their assets. The Chapter 11 Debtors' sale approval motions filed with the US Court reference that the Consultation Parties were consulted with and did not oppose approval of the Transactions by the US Court.

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<sup>2</sup> The UCC in the Chapter 11 Proceedings is comprised of Comdata, Inc., Transport Enterprise Leasing, LLC and Master Fleet National LLC.



## 4.0 Sale Process

### 4.1 Overview

1. The Chapter 11 Debtors entered into the Ayr APS and Winnipeg APS prior to the Receiver's appointment.
2. The Supplemental Order and certain endorsements of the Court require Court approval for Canadian asset sales. Following its appointment, the Receiver forthwith consulted with the Chapter 11 Debtors and their representatives to understand the Sale Process undertaken for the Ayr Property and the Winnipeg Property.
3. A summary of the Sale Process is as follows:
  - a) in June, 2019, the Chapter 11 Debtors engaged Colliers International Inc. ("Colliers") and Jones Lang LaSalle Real Estate Services, Inc. ("JLL") to co-market several parcels of real property owned by the Chapter 11 Debtors, including the Winnipeg Property. Both Colliers and JLL are well known to the Receiver;
  - b) in June, 2019, Colliers and JLL listed the Winnipeg Property on the Multiple Listing Service ("MLS"). The Ayr Property was not listed for sale at that time as it was not included in the properties subject to JLL's and Colliers' engagement;
  - c) on December 13, 2019, DLA Piper LLP (US) ("DLA"), the Chapter 11 Debtors' legal counsel, sent a process letter to approximately 120 prospective purchasers of the assets subject to liquidation, including the Ayr Property and the Winnipeg Property (the "Process Letter"). A copy of the Process Letter is attached as Appendix "D";
  - d) the Process Letter was accompanied by a non-disclosure agreement ("NDA"). Following execution of the NDA, interested parties were granted access to a virtual data room, which included property information, including Colliers' appraisals of the Ayr and Winnipeg properties performed in June, 2019, site plans, environmental studies and other information prospective purchasers commonly require when performing diligence on real property;
  - e) the Winnipeg Property and the Ayr Property were marketed on an "as is, where is" basis and prospective purchasers were advised that any transaction would be subject to the approval of the US Court; and
  - f) the Process Letter set 5:00 pm on December 30, 2019 as the deadline for non-binding indications of interest to be submitted.
4. The Sale Process summarized above, including the Process Letter dated December 13, 2019, was subsequently approved by the US Court on January 6, 2020. The Receiver has been advised that the Sale Process generated approximately 60 executed NDAs, including approximately 20 parties that indicated specific interest in the Chapter 11 Debtors' Canadian real property. Additional details on the offers received for the Ayr Property and the Winnipeg Property are provided in the following sections of this Report.

## 4.2 Ayr Property

1. On or prior to December 30, 2019, four prospective purchasers, including the Ayr Purchaser, submitted letters of intent (“LOI”) for the Ayr Property. Each LOI was conditional. A summary of the offers (the “Offer Summary”) received for the Ayr Property, and the appraised value of the Ayr Property, is attached as Confidential Appendix “1”. The rationale for the sealing order is provided in Section 5.1 of this Report.
2. As reflected in the Offer Summary, the LOI submitted by the Ayr Purchaser was the highest of the four (4) LOIs. Its value also substantially exceeds the appraised value of the Ayr Property.
3. The Chapter 11 Debtors’ sale motions filed with the US Court reflect that the Ayr Purchaser was not willing to be a “stalking horse” nor was it open to including the Ayr Property in an auction conducted by the Chapter 11 Debtors for certain other assets on January 22, 2020 (the “Auction”). The Ayr Purchaser advised that it was only interested in a private sale.
4. In order to preserve the ability for the Chapter 11 Debtors to enter into a superior transaction between the date on which the Ayr APS was executed and closing (i.e. a fiduciary out provision), the Ayr APS contemplates that a break fee of \$360,000 would be payable if the Ayr APS was terminated to complete an “Alternative Transaction” (as defined in the Ayr APS).
5. Based on the foregoing, the Chapter 11 Debtors negotiated a binding Agreement of Purchase and Sale with the Ayr Purchaser, resulting in the execution of the Ayr APS on January 7, 2020. The Ayr APS is summarized in Section 5 below.
6. On January 31, 2020, the Ayr Transaction was approved by the US Court. A copy of the US Court Order is attached as Appendix “E” (the “US Ayr Sale Approval Order”).

## 4.3 Winnipeg Property

1. As a result of the pre-filing marketing of the Winnipeg Property by Colliers and JLL, and the Sale Process carried out by the Chapter 11 Debtors, three conditional LOIs for the Winnipeg Property were submitted on or prior to the December 30, 2019 bid deadline. The LOIs submitted for the Winnipeg Property are summarized in the Offer Summary. There were no offers submitted for the Winnipeg Property prior to the December 30, 2019 bid deadline.
2. As reflected in the Offer Summary provided in Confidential Appendix “1”, the LOI submitted by the Winnipeg Purchaser was the highest received.
3. Similar to the Ayr Purchaser, the sale motions filed with the US Court reflect that the Winnipeg Purchaser was not willing to be a “stalking horse” nor was it open to including the Winnipeg Property in the Auction. The Winnipeg Purchaser advised that it too was only interested in a private sale.

4. The Winnipeg APS also had a fiduciary out provision allowing the Chapter 11 Debtors to enter into a superior transaction if the opportunity arose between the date on which the Winnipeg APS was executed and closing. In this regard, the Winnipeg APS contemplates a break fee of \$120,000 and an expense reimbursement of up to \$60,000 payable if the Winnipeg APS was terminated to complete an "Alternative Transaction" (as defined in the Winnipeg APS).
5. Based on the foregoing, the Chapter 11 Debtors negotiated a binding Agreement of Purchase and Sale with the Winnipeg Purchaser, resulting in the execution of the Original Winnipeg APS on January 16, 2020. On January 30, 2020, Hyndman and the Winnipeg Purchaser executed the Winnipeg APS Amendment which resulted in, among other things, a reduction of the purchase price from \$4.25 million to \$4.05 million and a requirement to pay an additional deposit of \$200,000. The Winnipeg APS is summarized in Section 5 below.
6. On January 31, 2020, the Winnipeg Transaction was approved by the US Court. A copy of the US Court Order (the "US Winnipeg Sale Approval Order") is attached as Appendix "F".

## 5.0 The Transactions

1. A summary of the Transactions is provided in the table below.

Description	Ayr Transaction	Winnipeg Transaction
Purchaser <sup>3</sup>	Wyndham Street Investments Inc.	2925924 Manitoba Ltd.
Purchased Assets	Ayr Property and the chattels/fixtures set out in the Ayr APS	Winnipeg Property and the chattels/fixtures set out in the Winnipeg APS
Purchase Price	\$12 million	\$4.05 million
Deposit	\$500,000	\$400,000
Representations and Warranties	Consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.	
Closing Date	February 18, 2020, subject to Court approval	Within 15 days of the later of US Court approval and waiver of all conditions
Material Conditions	Other than Court approval, all material conditions have been satisfied or waived.	
Break Fee	\$360,000 (i.e. 3% of the purchase price)	\$120,000 (i.e. 3% of the purchase price) plus an expense reimbursement of up to \$60,000.

2. Copies of the Ayr APS<sup>4</sup> and Winnipeg APS are attached as Appendices "G" and "H", respectively.

<sup>3</sup> The Receiver understands that the Ayr Purchaser and the Winnipeg Purchaser are arm's length to the Chapter 11 Debtors.

<sup>4</sup> The Ayr APS includes an Amendment which, *inter alia*, extends the closing date from February 10, 2020 to February 18, 2020. At the time of finalizing this Report, the Ayr Purchaser had not yet executed the Amendment. An executed version will be provided to the Court at the return of this motion.

## 5.1 Sealing

1. Confidential Appendix “1” includes details on all of the LOIs submitted under the Sale Process and the appraised value of the Ayr Property<sup>5</sup>. The Receiver is of the view that this information should be filed with the Court on a confidential basis and remain sealed pending further order of the Court as the availability of this information may negatively impact any future sale process for the Canadian real property if the Transactions do not close.
2. The Receiver does not believe any stakeholder will be prejudiced if the information is sealed. Keeping the appraisal information sealed pending further Court order will assist to facilitate the Sale Process - the appraisals were only available to prospective purchasers that executed an NDA and, accordingly, keeping this information sealed at this time is consistent with the Sale Process approved by the US Court.

## 5.2 Recommendation

1. The Receiver recommends that the Court issue orders approving the Transactions for the following reasons:
  - a) the Sale Process was carried out by the Chapter 11 Debtors in accordance with Orders issued by the US Court;
  - b) in the Receiver’s view, the market was well canvassed for each of the real properties and further time spent listing the properties is unlikely to improve recoveries;
  - c) the Transactions provide for the greatest recovery available in the circumstances. In the case of the Ayr Transaction, the purchase price substantially exceeds the appraised value for the Ayr Property and the other LOIs submitted. For the Winnipeg Property, the purchase price represents the highest offer since it was listed for sale in June 2019 by Colliers/JLL;
  - d) the Consultation Parties, being the stakeholders with the principal economic interest in the Transactions, did not oppose approval at the sale approval motions before the US Court on January 30, 2020, following which the US Court approved the Transactions;
  - e) the Transactions will eliminate maintenance costs and property taxes that are continuing to accrue for the Ayr Property and the Winnipeg Property; and
  - f) the Ayr APS and Winnipeg APS both preserve the ability for the Chapter 11 Debtors to complete a superior transaction should one be identified prior to closing. In the Receiver’s view, the break fee of 3% of the purchase price is reasonable and consistent with other break fees approved by this Court. It was also approved by the US Court. No charge is being sought from this Court in respect of the break fees.

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<sup>5</sup> The appraisal for the Winnipeg Property is not referenced or relied upon by the Receiver given that the Winnipeg Property was listed for sale and market-tested. Since the Ayr Property was not listed, the Receiver has referenced the appraised value in Confidential Appendix “1”.

## 6.0 Proposed Distribution of Sale Proceeds

1. The Term Loan Lenders have registered mortgages on the Ayr Property and the Winnipeg Property. Accordingly, the Receiver instructed its legal counsel, Bennett Jones LLP (“Bennett Jones”), to review the security held by the Term Loan Lenders in Ontario and Thompson Dorfman Sweatman LLP (“TDS”), a Manitoba based law firm, to review their security over the Winnipeg Property.
2. On January 29, 2020, Bennett Jones and TDS each provided opinions to the Receiver which, subject to standard assumptions and qualifications contained therein, conclude that the security granted by the Chapter 11 Debtors to Blue Torch, as agent to the Term Loan Lenders, as registered on title to the applicable property by way of a mortgage, creates valid and perfected security interests in the Ayr Property and the Winnipeg Property, as applicable.
3. Accordingly, subject to the proposed Holdback detailed below and any other holdbacks contemplated by any US Order, the Receiver believes it is appropriate for the proceeds of the Transactions to be distributed to Blue Torch, in its capacity as agent to the Term Loan Lenders and DIP lenders in these proceedings.
4. On December 20, 2019, Siemens Canada Limited registered a construction lien against the Ayr Property in the amount of \$22,278.52 (the “Siemens Lien”).

### 6.1 Holdback

1. The Holdback is summarized in the table below.

Description	Amount (\$000s)
(a) Potential trust claim (“Potential Trust Claim Holdback”)	107
(b) Receiver’s Charge (“Receiver’s Charge Holdback”)	350
(c) Fees to-date (“Accrued Fees Holdback”)	200
(d) Siemens Lien (“Siemens Lien Holdback”)	23
Total	680

2. A description of the Holdback is as follows:
  - a) pursuant to paragraph 33 of the Supplemental Order, \$907,000 of Hyndman’s cash is to be segregated and held by the Receiver, of which \$800,000 represents potential priority employee claims for unpaid wages and vacation pay and \$107,000 for a potential trust claim in favour of certain owner/operators. As at the date of this Report, approximately \$300,000 has been transferred from Hyndman’s accounts to the Receiver. Since priority employee claims are limited to Hyndman’s current assets, the balance is to be funded by Hyndman from accounts receivable collections. The Holdback includes \$107,000 as the Receiver and Bennett Jones have not yet determined the validity of the trust claim asserted by the owner/operators;
  - b) the Supplemental Order created a Receiver’s Charge of up to \$350,000 to cover the outstanding fees and disbursements of the Receiver and its legal counsel. The amount to be held is intended to cash collateralize the charge;

- c) the fees through January 31, 2020 of the Receiver and its counsel (both Bennett Jones and TDS) total approximately \$185,000 (including disbursements and taxes). The Receiver is of the view that these fees should be paid from the proceeds with an additional \$15,000 as an accrual for fees incurred from February 1, 2020 to the return of this motion; and
  - d) \$23,000 will be included in the Holdback for the Siemens Lien, the validity of which has yet to be determined.
3. As at the date of this Report, the Receiver has commenced its administration of the employee claims process under the *Wage Earner Protection Program Act*. The Receiver is working with the Chapter 11 Debtors and Koskie Minsky LLP ("Koskie"), legal counsel to a group of former employees, to calculate and submit the claims.

## 7.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(f) of this Report.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.**

**SOLELY IN ITS CAPACITY AS RECEIVER OF THE CANADIAN  
BUSINESS AND ASSETS OF  
CELADON GROUP, INC. AND THE  
ENTITIES LISTED IN FOOTNOTE 1 HERETO  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

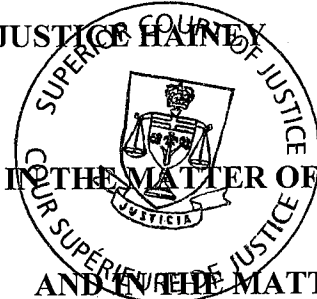
ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR.

) THURSDAY, THE 23<sup>rd</sup> DAY OF

JUSTICE HAINES

) JANUARY, 2020



IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED IN FOOTNOTE "1" HERETO

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED

INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Celadon Group, Inc. ("Celadon") in its capacity as the foreign representative (the "Foreign Representative") on behalf of itself as well as its direct and indirect subsidiaries (collectively, the "Chapter 11 Debtors"<sup>1</sup>), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") for Orders substantially in the forms included at Tabs 3 and 4 of the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

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<sup>1</sup> In addition to Celadon, the Chapter 11 Debtors are A R Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc. and Vorbas, LLC.



**ON READING** the Notice of Application of the Foreign Representative, the affidavit of Kathryn Wouters sworn January 22, 2020 and the exhibits thereto, including the declaration of Kathryn Wouters sworn December 8, 2019 (the “**Wouters Declaration**”), and upon being provided with copies of the documents required by section 269(2) of the BIA,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the proposed Receiver, counsel for Blue Torch Finance LLC (the “**Agent**”) as agent for the DIP Lenders and as agent for the Term Loan Lenders, counsel to MidCap (each as defined in the Wouters Declaration), counsel to the proposed Employee Representative, and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Danny M. Nunes sworn January 23, 2020:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meaning given to them in the Wouters Declaration.

#### **FOREIGN REPRESENTATIVE**

3. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the “foreign representative” as defined in section 269 of the BIA of the Chapter 11 Debtors in respect of the cases commenced in the United States Bankruptcy Court for the District of Delaware by the Chapter 11 Debtors pursuant to Chapter 11 of the United States Bankruptcy Code (collectively, the “**Foreign Proceeding**”).

#### **CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

4. **THIS COURT DECLARES** that the centre of main interest for each of the Chapter 11 Debtors is the United States of America and that the Foreign Proceeding is hereby recognized as a “foreign main proceeding” as defined in section 268 of the BIA.

## STAY OF PROCEEDINGS

5. **THIS COURT ORDERS** that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
- (b) further proceedings in any action, suit or proceeding against the Chapter 11 Debtors are restrained; and
- (c) the commencement of any action, suit or proceeding against the Chapter 11 Debtors is prohibited.

## NO SALE OF PROPERTY

6. **THIS COURT ORDERS** that, except with leave of this Court, each of the Chapter 11 Debtors is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

## GENERAL

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada and the United States of America, to give effect to this Order and to assist the Chapter 11 Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.


9. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Service List in

this proceeding and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

A handwritten signature in cursive script, appearing to read "Hamey J.", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JAN 23 2020

PER / PAR: 

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED IN FOOTNOTE "1" HERETO

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at Toronto

INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)

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Toronto, ON M5X 1E2

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Danny M. Nunes (LSO No. 53802D)  
Tel: 416.365.3421  
Email: danny.nunes@dlapiper.com

Lawyers for the Chapter 11 Debtors and the Foreign  
Representative

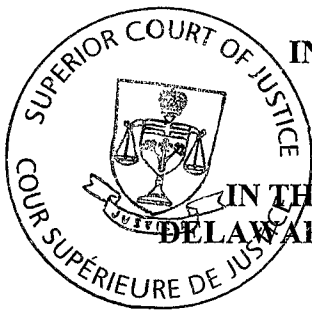
## **Appendix “B”**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE  
JUSTICE HAINEY

)  
)  
)

THURSDAY, THE 23<sup>rd</sup> DAY OF  
JANUARY, 2020



IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN  
IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF  
~~DELAWARE~~ WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED  
ENTITIES LISTED IN FOOTNOTE "1" HERETO

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF  
JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED

SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Celadon Group, Inc. ("Celadon") in its capacity as the foreign representative (the "Foreign Representative") on behalf of itself as well as its direct and indirect subsidiaries (collectively, the "Chapter 11 Debtors"<sup>1</sup>), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") for Orders substantially in the forms included at

<sup>1</sup> In addition to Celadon, the Chapter 11 Debtors are A R Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc. and Vorbas, LLC.

Tabs 3 and 4 of the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application of the Foreign Representative, the affidavit of Kathryn Wouters sworn January 22, 2020 and the exhibits thereto, including the declaration of Kathryn Wouters sworn December 8, 2019 (the “**Wouters Declaration**”), and upon being provided with copies of the documents required by section 269(2) of the BIA,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the proposed Receiver, counsel for Blue Torch Finance LLC (the “**Agent**”) as agent for the DIP Lenders and as agent for the Term Loan Lenders, counsel to MidCap (each as defined in the Wouters Declaration), counsel to the proposed Employee Representative, and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Danny M. Nunes sworn January 23, 2020:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meaning given to them in the Wouters Declaration.

#### **INITIAL RECOGNITION ORDER**

3. **THIS COURT ORDERS** that the provisions of this Order shall be interpreted in a manner complementary and supplementary to the provisions of the Initial Recognition Order (Foreign Main Proceeding) dated as of January 23, 2020 (the “**Recognition Order**”), provided that in the event of a conflict between the provisions of this Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

## RECOGNITION OF FOREIGN REPRESENTATIVE ORDER

4. **THIS COURT ORDERS** that the Order of the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”) made in the Foreign Proceeding (as defined in the Recognition Order), and attached hereto as Schedule “A”, authorising Celadon Group, Inc. to act as Foreign Representative of the Chapter 11 Debtors (the “**Foreign Representative Order**”) is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 272 of the BIA, provided, however, that in the event of any conflict between the terms of the Foreign Representative Order and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Property (as defined below) in Canada.

## RECOGNITION OF FINAL DIP ORDER

5. **THIS COURT ORDERS** that the Order of the U.S. Bankruptcy Court made in the Foreign Proceeding and attached hereto as Schedule “B”, authorizing, *inter alia*, the Chapter 11 Debtors to obtain senior secured superiority financing from the DIP Lenders and granting to the DIP Lenders a charge (the “**DIP Charge**”) over the Chapter 11 Debtors’ assets, including all of the assets, undertakings and properties of the Chapter 11 Debtors located in Canada, acquired or, or used in relation to the business carried on by the Chapter 11 Debtors in Canada, including all proceedings there (collectively, the “**Property**”) (the “**Final DIP Order**” and together with the Foreign Representative Order, the “**Recognized Foreign Orders**”), is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 272 of the BIA, provided, however, that in the event of any conflict between the terms of the Final DIP Order and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Property in Canada.

## APPOINTMENT OF RECEIVER

6. **THIS COURT ORDERS** that pursuant to section 272(1)(d) of the BIA and pursuant to Section 101 of the CJA, KSV is hereby appointed receiver (the “**Receiver**”), without security, of all of the Property.



## RECEIVER'S POWERS

7. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver, in consultation with the Chapter 11 Debtors, considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to access all information relating to the Chapter 11 Debtors' accounts at any financial institution in Canada, and the Receiver shall have immediate, continuous and unrestricted access to carry out the foregoing;
- (d) to access any and all computer systems and servers, wherever located, related to the business and affairs of the Chapter 11 Debtors and or the Property;
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (f) to assist the Chapter 11 Debtors to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion and in consultation with the Chapter 11 Debtors may deem appropriate;

- (g) to sell, convey, transfer, lease or assign the Property or any part or parts thereof as requested by the Chapter 11 Debtors out of the ordinary course of business,
  - (i) without the approval of the Court in respect of any transaction not exceeding CDN\$200,000, provided that the aggregate consideration for all such transactions does not exceed CDN\$1,000,000;
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (h) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (i) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Chapter 11 Debtors and/or the Property, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (j) to apply for any permits, licenses, approvals or permissions as may be required by any governmental authority and any renewals thereof on behalf of and, if thought desirable by the Receiver, in the name of any Chapter 11 Debtor; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, subject at all times to the provisions of this Order and the provisions of the Recognized Foreign Orders.

## **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

8. **THIS COURT ORDERS** that: (i) the Chapter 11 Debtors; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver and shall deliver all such Property to the Receiver upon the Receiver’s request.

9. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Chapter 11 Debtors, and any computer programs, computer tapes, computer disks, servers, electronic backups, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

10. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this

paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

11. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against or in respect of the Receiver, except with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE CHAPTER 11 DEBTORS OR THE PROPERTY**

12. **THIS COURT ORDERS** that until such date as this Court may order (the “**Stay Period**”), no Proceeding shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business (the “**Business**”) or Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

13. **THIS COURT ORDERS** that, without limiting the stay of proceedings provided for in the Recognition Order, during the Stay Period, all rights and remedies of any Person against or in respect of the Chapter 11 Debtors, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (a) prevent the assertion of or the exercise of rights and remedies outside of Canada, (b) empower any of the Chapter 11 Debtors to carry on any business in Canada which that Chapter 11 Debtor is not lawfully entitled to carry on, (c) exempt the Receiver or any Chapter 11 Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (d) prevent the filing of any registration to preserve or perfect a security interest, or (e) prevent the registration of a claim for lien, or (e) preclude any party having a Vehicle Finance Lien (as

defined in paragraph 27 below) from enforcing such Vehicle Finance Liens solely in accordance with the protocols and stipulations established in the Foreign Proceeding.

#### **NO INTERFERENCE WITH RIGHTS**

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Chapter 11 Debtors and affecting the Business in Canada, without the prior written consent of the Receiver or leave of this Court.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

15. **THIS COURT ORDERS** that all employees of the Chapter 11 Debtors in Canada shall remain the employees of the Chapter 11 Debtors until such time as the Chapter 11 Debtors, or the Receiver on the Chapter 11 Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **ADDITIONAL PROTECTIONS**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Chapter 11 Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors or the Receiver, and that the Chapter 11 Debtors and the Receiver shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that

the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver or the applicable Chapter 11 Debtor in accordance with normal payment practices of the applicable Chapter 11 Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver or the applicable Chapter 11 Debtor, or as may be ordered by this Court.

17. **THIS COURT ORDERS** that notwithstanding the provisions of the Recognized Foreign Orders, but subject to paragraph 33 below, all funds, monies, cheques, instruments and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

18. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided, however, that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

## **OTHER PROVISIONS RELATING TO THE RECEIVER**

19. **THIS COURT ORDERS** that the Receiver:

- (a) is hereby authorized to provide such information and assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) is hereby authorized to otherwise coordinate the administration and supervision of the Chapter 11 Debtors' assets and affairs with the Foreign Representative;
- (c) shall report to this Court at least once every two months with respect to the status of these proceedings and the status of the Foreign Proceeding, which reports may include information relating to the Property, or such other matters as may be relevant to the proceedings herein; and
- (d) in addition to the periodic reports referred to in paragraph 19(c) above, the Receiver may report to this Court at such other times and intervals as the Receiver may deem appropriate with respect to any of the matters referred to in paragraph 19(c) above.

20. **THIS COURT ORDERS** that the Chapter 11 Debtors and the Foreign Representative shall (a) advise the Receiver of all material steps taken to date and to be taken by the Chapter 11 Debtors or the Foreign Representative in these proceedings or in the Foreign Proceeding as it relates to the Property, (b) co-operate fully with the Receiver in the exercise of its powers and discharge of its obligations, and (c) provide the Receiver with the assistance that is necessary to enable the Receiver to adequately carry out its functions.

21. **THIS COURT ORDERS** that the Receiver (a) shall post on its website all Orders of this Court made in these proceedings, all motions and other materials filed by any Person herein (including without limitation any reports of the Receiver filed herein), and such other materials as this Court may order from time to time, and (b) may post on its website any other materials that the Receiver deems appropriate.

22. **THIS COURT ORDERS** that the Receiver may provide any creditor of a Chapter 11 Debtor with information provided by the Chapter 11 Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Receiver. The Receiver shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Receiver has been advised by the Chapter 11 Debtors is privileged or confidential, the Receiver shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Receiver, the Foreign Representative and the relevant Chapter 11 Debtors may agree.

23. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property in Canada in the maximum amount of CDN \$350,000, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall have the priority set out in paragraphs 26 and 28 hereof, and shall be subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

24. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice and the accounts of the Receiver and its legal counsel shall not be subject to approval in the Foreign Proceeding.

25. **THIS COURT ORDERS** that prior to passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver and its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.



## **DIP CHARGE**

26. **THIS COURT ORDERS** that the Agent in its capacity as agent for DIP Lender shall be entitled to the benefit of and is hereby granted a DIP Charge on the Property in Canada, which DIP Charge shall be consistent with the liens and charges created by the Final DIP Order with respect to the Property in Canada, shall have the priority set out in paragraphs 27 and 29 hereof, and further provided that the DIP Charge shall not be enforced except with leave of this Court on notice to the Receiver and those parties on the service list established for these proceedings (the “**Service List**”).

## **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

27. **THIS COURT ORDERS** that the priorities of the Receiver’s Charge and the DIP Charge shall be as follows:

- (a) First – vehicle-specific liens and charges in favour of financiers and lessors of vehicles to Hyndman Transport Limited, solely with respect to and as against such vehicles (the “**Vehicle Finance Liens**”); and the Prepetition ABL Liens over the ABL Priority Collateral (both as defined in the Final DIP Order);
- (b) Second - the Receiver’s Charge; and
- (c) Third – the DIP Charge.

28. **THIS COURT ORDERS** that the filing, registration or perfection of the Receiver’s Charge or the DIP Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

29. **THIS COURT ORDERS** that the Charges (as constituted and defined herein) shall constitute a charge on the Property in Canada and, in the case of the Receiver’s Charge, such Charge shall rank in priority to all other security interests, trust, liens, charges and encumbrances, claims of secured creditor, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, and in the case of the DIP Charge shall rank in

priority to all Encumbrances other than the Receiver's Charge and the Vehicle Finance Liens and the Prepetition ABL Liens over the ABL Priority Collateral:

30. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Chapter 11 Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Charges, unless the Chapter 11 Debtors also obtain the prior written consent of the Receiver and the DIP Lender.

31. **THIS COURT ORDERS** that the Receiver's Charge and the DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any Chapter 11 Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (i) the creation of the Charges shall not create or be deemed to constitute a breach by a Chapter 11 Debtor of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (iii) the payments made by the Chapter 11 Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

32. **THIS COURT ORDERS** that Charges created by this Order over leases of real property in Canada shall only be a charge in the applicable Chapter 11 Debtors' interest in such real property leases.

#### **REINSTATEMENT OF BANK ACCOUNT OPERATION**

33. **THIS COURT ORDERS** that the Chapter 11 Debtors are authorized to reinstate the operation of the bank accounts held in the name of Hyndman Transport Limited in accordance with the terms of MidCap Prepetition ABL Loan Documents (as defined in the Final DIP Order). Despite the foregoing, and any other term in this Order, \$907,000 of the current assets of Hyndman will be segregated and held separate and apart in a trust account by the Receiver pending the determination of the amount of BIA s. 81.3 and 81.4 claims and any trust claims of the Hyndman employees and/or "owner/operator" drivers, on consent of the Receiver, Midcap and Koskie Minsky LLP as counsel to the employees, or as otherwise ordered by this Court.

#### **SERVICE AND NOTICE**

34. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/insolvency-cases/case/celadon-group-inc>

35. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Chapter 11 Debtors, the Foreign Representative and the Receiver are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Chapter 11 Debtors'

creditors or other interested parties at their respective addresses as last shown on the records of the applicable Chapter 11 Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

36. **THIS COURT ORDERS** that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Receiver shall cause to be published a notice once a week for two consecutive weeks, in the Globe and Mail (National Edition) regarding the issuance of the Recognition Order and this Order.

37. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

38. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a monitor, a proposal trustee, or a trustee in bankruptcy of any Chapter 11 Debtor, the Business or the Property.

39. **THIS COURT ORDERS** that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Receiver shall cause to be published a notice once a week for two consecutive weeks, in the Globe and Mail (National Edition) regarding the issuance of this Order and the Recognition Order.

40. **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 of America, to give effect to this Order and to assist the Chapter 11 Debtors, the Foreign Representative, the Receiver, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative and the Receiver, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the

Foreign Representative, the Receiver, and their respective counsel and agents in carrying out the terms of this Order.

41. **THIS COURT ORDERS** that each of the Chapter 11 Debtors, the Foreign Representative and the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

42. **THIS COURT ORDERS** that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and adopted by this Court and the U.S. Bankruptcy Court and attached as Schedule "C" hereto (the "**JIN Guidelines**"), are hereby adopted by this Court for the purposes of these recognition proceedings.

43. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Foreign Representative, the Receiver and the rest of the Service List, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

44. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

A handwritten signature in cursive script, appearing to read "Hainey", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JAN 23 2020

PER / PAR:

A small, handwritten signature or mark, possibly initials, written in cursive.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED IN FOOTNOTE "1" HERETO

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto, Ontario

SUPPLEMENTAL ORDER

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Lawyers for the Chapter 11 Debtors and the Foreign  
Representative

## **Appendix “C”**



**Report of  
KSV Kofman Inc. as  
Proposed Receiver of the Canadian  
Business and Assets of  
Celadon Group, Inc. and the  
Entities Listed in Footnote 1 Hereto**

January 22, 2020



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COURT FILE NO.: \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN  
IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE  
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**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
BANKRUPTCY AND INSOLVENCY ACT AND SECTION 101 OF THE COURTS OF JUSTICE  
ACT (ONTARIO), R.S.O. 1990, c. C-43, AS AMENDED**

**REPORT OF KSV KOFMAN INC.  
AS PROPOSED RECEIVER**

**JANUARY 22, 2020**

## **1.0 Introduction**

1. On December 8, 2019, Celadon Group, Inc. (the “Foreign Representative”) and its affiliated entities<sup>1</sup> listed in footnote 1 to this report (“Report”) (collectively, the “Chapter 11 Debtors”) commenced proceedings by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “US Court”) (the “Chapter 11 Proceedings”). Two of the Chapter 11 Debtors are Canadian corporations: Celadon Canadian Holdings, Limited (“CCHL”) and Hyndman Transport Limited (“Hyndman”) (jointly, the “Canadian Debtors”).
2. On December 9, 2019, the US Court heard the Chapter 11 Debtors’ first day motions and granted numerous orders. On December 16, 2019, the US Court entered an order authorizing Celadon Group, Inc. to act as Foreign Representative for the Chapter 11 Debtors (the “Foreign Representative Order”).

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<sup>1</sup> A R Management Services, Inc., Bee Line, Inc., Celadon E-Commerce, Inc., Celadon Canadian Holdings, Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited, Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc. and Vorbas, LLC.

3. The Foreign Representative is making an application to the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") for the following:
  - a) an initial recognition order which, *inter alia*, recognizes the Chapter 11 Proceedings as a "foreign main proceeding", recognizes the Foreign Representative as the "foreign representative", stays all proceedings against the Chapter 11 Debtors, and restricts the Chapter 11 Debtors' ability to sell or otherwise dispose of property in Canada (the "Initial Recognition Order"); and
  - b) a supplemental order (the "Supplemental Order", and together with the Initial Recognition Order, the "Recognition Orders") which, *inter alia*, appoints KSV Kofman Inc. ("KSV") as receiver (the "Receiver") of the assets, undertakings and properties of the Chapter 11 Debtors located in Canada, acquired for, or used in relation to the business carried on by the Chapter 11 Debtors in Canada, including all proceeds thereof, under section 101 of the *Courts of Justice Act (Ontario)* ("CJA") and subsection 272(1)(d) of the *Bankruptcy and Insolvency Act* ("BIA"), recognizes certain US Court Orders made in the Chapter 11 Proceedings, grants a stay of proceedings against the Chapter 11 Debtors and establishes certain charges against the Chapter 11 Debtors' property in Canada, including the property of the Canadian Debtors.
4. This Report is filed by KSV in the context of its proposed appointment as Receiver.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide KSV's qualifications to act as Receiver;
  - b) provide background information about the Chapter 11 Debtors and the Chapter 11 Proceedings, including a summary of the US Court Orders for which recognition is being sought from the Ontario Court;
  - c) set out the status of two pending Canadian real property transactions and other property and assets of the Canadian Debtors, including tractors, trailers, cash and accounts receivable;
  - d) discuss an \$11.25 million debtor-in-possession credit facility dated as of December 16, 2019 (the "DIP Facility") between the Chapter 11 Debtors and Blue Torch Finance LLC, as agent for the lenders to the DIP Facility (the "DIP Lenders");
  - e) discuss the proposed Receiver's Charge and DIP Charge (both as defined in the Supplemental Order); and
  - f) recommend that the Ontario Court grant the relief sought by the Foreign Representative.

## 1.2 Currency

1. All currency references in this Report are to US dollars, unless otherwise noted.

## 1.3 Restrictions

1. In preparing this Report, KSV has relied upon the Chapter 11 Debtors' unaudited and publicly available financial information, materials filed in the Chapter 11 Proceedings and discussions with the Chapter 11 Debtors' legal counsel (the "Information").
2. KSV has not performed an audit or other verification of the Information. An examination of the Chapter 11 Debtors' financial forecasts as outlined in the *Chartered Professional Accountants of Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based on the Chapter 11 Debtors' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. KSV expresses no opinion or other form of assurance with respect to the accuracy of the Information or any financial information presented in this Report or relied upon by KSV in its preparation of this Report.

## 1.4 KSV's Qualifications to Act as Receiver

1. KSV is qualified to act as Receiver. KSV's qualifications include:
  - a) KSV is a trustee within the meaning of subsection 2(1) of the BIA; and
  - b) KSV has extensive experience acting as a court officer in cross-border insolvency proceedings in a wide variety of industries, including in the recognition proceedings of Allied Group<sup>2</sup>, which operated in the trucking and transportation industry (as do the Chapter 11 Debtors).
2. KSV has consented to act as Receiver in these proceedings should the Ontario Court grant the Recognition Orders. A copy of KSV's consent to act as Receiver is attached as Appendix "A".

## 2.0 Background

1. The Chapter 11 Debtors were a significant US-based trucking company, with a fleet of approximately 3,300 tractors and 10,000 trailers and approximately 3,800 employees, including approximately 357 employed by the Canadian Debtors. The Chapter 11 Debtors specialized in international truckload services between the US, Canada and Mexico. The Chapter 11 Debtors' head office is in Indianapolis, Indiana.

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<sup>2</sup> KSV performed this mandate under its predecessor business, Duff & Phelps Canada Restructuring Inc.

2. The Chapter 11 Debtors and affiliated companies are comprised of 32 entities. A copy of the corporate organizational chart is attached as Appendix “B”. In respect of the Canadian Debtors:
  - a) Hyndman operated a fleet of approximately 310 trucks and trailers from owned properties in Wroxeter and Ayr, Ontario and Winnipeg, Manitoba. Hyndman had been in business since 1937; and
  - b) CCHL is an inactive holding company and the sole shareholder of Hyndman.
3. On or around December 9, 2019, all of the Chapter 11 Debtors ceased operations, with the exception of the business operated by Taylor Express, Inc. (“Taylor”), a US debtor. The stated purpose of the Chapter 11 Proceedings is to preserve and sell the Taylor business on a going-concern basis and to conduct an orderly wind down and realization process for the other Chapter 11 Debtors, including the Canadian Debtors.
4. Upon the discontinuation of its business on or around December 9, 2019, Hyndman terminated its workforce, including all but three of its 357 employees and owner-operator drivers. The three employees were retained to manage its facilities. Hyndman’s workforce was not unionized and it did not maintain any registered pension plans.
5. The Chapter 11 Debtors’ principal secured creditors are:
  - a) MidCap Funding IV Trust (“MidCap”), as administrative agent and lender under the Chapter 11 Debtors’ \$60 million revolving credit facility dated July 31, 2019 (the “Revolving Credit Agreement”), which funded the Chapter 11 Debtors’ working capital requirements. The Canadian Debtors are co-borrowers under the Revolving Credit Agreement and granted to MidCap a security interest in substantially all of their assets in order to secure all of the obligations under the Revolving Credit Agreement, which totalled approximately \$31.8 million at the commencement of the Chapter 11 Proceedings, plus interest and costs which continue to accrue. MidCap is also a subordinate secured creditor on the Chapter 11 Debtors’ non-current assets, including their real property and vehicle fleet;
  - b) a group of term loan lenders represented by Blue Torch Finance LLC, as agent (collectively, the “Term Loan Lenders”), who were owed approximately \$103.6 million under a \$105 million term loan facility (the “Term Loan Facility”) at the commencement of the Chapter 11 Proceedings, plus interest and costs which continue to accrue. The Canadian Debtors are secured guarantors under the Term Loan Facility. The Term Loan Lenders are the DIP Lenders in the Chapter 11 Proceedings;
  - c) Luminus Energy Partners Master Fund, Ltd. (“Luminus”), which is a 49.9% shareholder of Celadon Group, Inc. and a secured creditor as a result of its \$30 million “last-out” participation in the Term Loan Facility referenced in 5(b) above; and

- d) numerous vehicle financiers/lessors who have registered security interests in Hyndman's vehicle fleet, the largest of which is Canadian Western Bank ("CWB") (approximately 271 vehicles). CWB is represented by Goldman Sloan Nash & Haber LLP ("GSNH"). GSNH also represents Concentra Bank, Compaction Credit Ltd. and Canadian Equipment Financing and Leasing Inc., which have financed or leased to Hyndman five, eight and eight vehicles, respectively.
6. Further information concerning the Chapter 11 Debtors' background, financial position, corporate structure and the reasons the Chapter 11 Debtors filed for Chapter 11 protection are provided in the December 8, 2019 Declaration of Kathryn Wouters, the Senior Vice President of Finance and Treasurer of Celadon Group, Inc. (the "Wouters Declaration"), which is appended to Ms. Wouters' Affidavit sworn January 22, 2020 and was filed in support of the Foreign Representative's application to the Ontario Court (the "Wouters Affidavit").

### 3.0 Canadian Employees

1. According to the Affidavit of Jeff Sippel, a former Hyndman employee, sworn January 16, 2020: (a) all but a few of Hyndman's employees were terminated without notice on December 9, 2019; and (b) Hyndman's former employees are owed approximately \$2.3 million in respect of unpaid wages, vacation pay, severance and termination. KSV does not have details as to the allocation of the unpaid amounts owing to the employees in respect of each category of employee obligation.
2. KSV has been advised that Koskie Minsky LLP ("Koskie") represents over 200 former Hyndman employees. At a 9:30 a.m. appointment on January 15, 2020 before Mr. Justice Hailey of the Ontario Court, His Honour issued an endorsement (the "January 15<sup>th</sup> Endorsement") stating:

*"While it is preferable that the U.S. debtors bring a Recognition proceeding and receivership in Canada under Part 13 of the BIA, I am prepared to issue a receivership on the application of the terminated Canadian employees on short notice, and in either case, appoint KSV Kofman as receiver".*

A copy of the January 15<sup>th</sup> Endorsement is attached as Appendix "C".

3. The appointment of a Receiver will allow former Canadian employees to claim and receive statutory payments under the *Wage Earner Protection Program Act* ("WEPPA"), including amounts in respect of unpaid wages and termination pay.
4. If appointed, one of the Receiver's principal activities will be to administer the WEPPA claims process for the former Hyndman employees.

## 4.0 Property of the Canadian Debtors

### 4.1 Real Property Sale Transactions

1. As a result of a process carried out by the Chapter 11 Debtors to realize on certain assets, two of the three Canadian real properties are subject to Agreements of Purchase and Sale. Both sale approval motions are scheduled to be heard by the US Court on January 30, 2020. KSV has not yet had an opportunity to discuss the marketing process for these properties with representatives of the Chapter 11 Debtors.
2. KSV understands that the purchase price for the Ayr, Ontario and Winnipeg, Manitoba properties is CAD\$12 million and CAD\$4.25 million, respectively. KSV is not otherwise familiar with the terms of these transactions. KSV intends to discuss these transactions and the related marketing efforts immediately following its appointment.
3. The January 15<sup>th</sup> Endorsement included the following in respect of the sale of the property owned by the Canadian Debtors: *“The Canadian assets shall not be sold without the approval of this court, despite the sale proceedings underway in the U.S. proceedings of the U.S. debtors”*. The Receiver, once appointed, will consider whether it is necessary to register a copy of the Recognition Orders on title to the three Canadian properties. While KSV is cognizant of protecting the interests of Canadian stakeholders, it does not want to take steps that may impair the completion of transactions.
4. Following its appointment, KSV will file a report with the Ontario Court concerning the proposed sale of any property in Canada owned by the Chapter 11 Debtors.

### 4.2 Cash and Accounts Receivable

1. Following a second 9:30 a.m. appointment, this one on January 20, 2020, Mr. Justice Hainey issued a further endorsement which provided that, *inter alia*, any funds (if any) in the Canadian Debtors' bank accounts, or subsequently deposited into the Canadian Debtors' bank accounts, are to remain in those bank accounts pending the hearing of the Foreign Representative's receivership application. A copy of the January 20<sup>th</sup> endorsement is attached as Appendix “D”.
2. KSV has been advised that, as at the close of business on January 17, 2020, there was approximately CAD\$187,000 and \$24,000 in the Canadian Debtors' Canadian and US dollar bank accounts, respectively.

3. KSV has retained Bennett Jones LLP (“Bennett Jones”) to act as its legal counsel in the event that the Recognition Orders are granted and KSV is appointed as Receiver. On January 22, 2020, Bennett Jones provided an opinion<sup>3</sup> which, subject to the standard assumptions and qualifications contained therein, concludes that the security granted by the Canadian Debtors in favour of MidCap, as registered under the PPSA, creates a valid and perfected security interest in the Canadian Debtors’ assets situated in Ontario, Alberta and British Columbia. Bennett Jones also notes that MidCap effected PPSA registrations against the Canadian Debtors in Manitoba and Saskatchewan, but the opinion does not provide an opinion under those jurisdictions as Bennett Jones does not practice in Manitoba or Saskatchewan.
4. Based on Bennett Jones’ review of the PPSA searches, it appears that the only registrations ranking ahead of MidCap are by Blue Torch Finance LLC in respect of the Term Loan Facility (which KSV understands to have been subordinated to MidCap in respect of certain collateral, including cash receipts) and by vehicle or equipment financiers and lessors.
5. Based on the foregoing, KSV believes it is appropriate that the Canadian Debtors’ accounts receivable collections are swept and applied against MidCap’s Revolving Credit Agreement on a daily basis. KSV has been advised that these proceeds contribute to fund the Chapter 11 Proceedings.

### **4.3 Trucks and Trailers**

1. KSV understands that a large percentage of Hyndman’s fleet has been repossessed, including a large number that were financed by CWB. KSV understands that CWB is conducting its own realization process for these vehicles. KSV is unaware whether any other fleet financiers have also repossessed their trucks and trailers.
2. On January 21, 2020, KSV sent a representative to Hyndman’s facility in Ayr, Ontario to determine if any vehicles remained on site. KSV’s representative advised that several trucks and trailers do remain on site. Once appointed, KSV intends to discuss the sale of these vehicles with the Chapter 11 Debtors and the secured creditors having a charge on them. KSV understands that any rolling stock in Canada is likely to be included in a sale of all rolling stock owned by the Chapter 11 Debtors. Ontario Court approval is intended to be sought to the extent rolling stock owned by the Canadian Debtors is included in the sale.
3. The Chapter 11 Debtors have allowed vehicle lessors and financiers to have access to their various premises, including those in Canada, in order to take possession of their collateral. That process is expected to continue.

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<sup>3</sup> A copy of the security opinion will be made available to the Ontario Court should it wish to review it.



## 5.0 US Court Orders

1. The Foreign Representative is seeking recognition of the following US Court Orders by the Ontario Court:
  - a) Foreign Representative Order, which authorizes the Foreign Representative to act as the “foreign representative” under Section 269 of the BIA in order to seek the relief sought in its application; and
  - b) Final DIP Order, which authorizes the advances under the DIP Facility to be used to finance the Chapter 11 Proceedings and contemplates that advances under the DIP Facility would be secured by a super-priority charge in both the US and Canada. The terms of the DIP Facility are summarized below in Section 6 of this Report.

## 6.0 The DIP Facility<sup>4</sup>

1. As set out in the Wouters Declaration and the Wouters Affidavit, the Chapter 11 Debtors, including the Canadian Debtors, require financing during the Chapter 11 Proceedings to provide the necessary liquidity to wind down their businesses on an orderly basis. It is unclear to KSV at this point what portion of this facility is required for the Canadian Debtors’ realization process.
2. A copy of the DIP Facility is appended to the Foreign Representative’s application materials and summarized in the Wouters Affidavit. A summary of the key terms of the DIP Facility is provided in the table below.

<b>Borrower</b>	Celadon Group, Inc.
<b>Guarantors</b>	The Chapter 11 Debtors, including the Canadian Debtors
<b>Nature of Liability</b>	Canadian Debtors and other Chapter 11 Debtors are to be jointly and severally liable for all obligations under the DIP Facility
<b>Post-petition Lenders</b>	The DIP Lenders, being the same parties as the Prepetition Term Lenders
<b>DIP Agent</b>	Blue Torch Finance LLC
<b>Commitment</b>	Up to \$11.25 million
<b>Interest Rate</b>	Base Rate plus 12.5% (effective interest rate of 17.5%)
<b>Expenses and Fees</b>	\$725,000 (including facility, administration, exit and other fees) plus 2.5% of net sale proceeds in excess of the amounts required to repay the DIP Facility, the Prepetition ABL Obligations and the Prepetition Term Loan Obligations
<b>Budget</b>	The Chapter 11 Debtors must operate in accordance with the DIP Budget
<b>Priority Charge</b>	It is contemplated that advances under the DIP Facility will be secured by the DIP Charge over the Chapter 11 Debtors’ property in Canada, which is proposed to rank subordinate only to the Receiver’s Charge, Vehicle Finance Liens (as defined in the Supplemental Order) and MidCap’s ABL Priority Collateral

<sup>4</sup> Capitalized terms not otherwise defined in this section of the Report are as defined in the DIP Facility.

3. In assessing the reasonableness of the DIP Facility and the proposed recognition of the Final DIP Order, KSV considered the following:
- a) once the Recognition Orders are issued, there should be no prejudice to Canadian creditors in recognizing the DIP Facility as there would be a mechanism in place to protect Canadian creditors to the extent required:
    - (i) Canadian real property or other transactions are subject to the approval of the Ontario Court and any distribution of proceeds therefrom to the DIP Lenders will be subject to further order of the Ontario Court; and
    - (ii) many of Hyndman's vehicle financiers will be conducting their own realization processes for the Hyndman vehicles they financed. To the extent owned vehicles remain on site, their sale will be subject to an order of the Ontario Court. KSV will also be vetting the security<sup>5</sup> and writing to all equipment lessors/financiers who have repossessed their vehicles to obtain an accounting of the sale proceeds so that it can determine if there is any equity that should be made available to subsequent ranking creditors;
  - b) the Canadian Debtors are secured guarantors under the Term Loan Facility and, accordingly, the DIP Facility does not grant security over any previously unencumbered assets of the Canadian Debtors;
  - c) the Chapter 11 Debtors have filed sale approval motions for a number of pending transactions, including the Taylor business for \$14.5 million<sup>6</sup> and the Canadian Debtors' real property in Ayr, Ontario and Winnipeg, Manitoba for CAD\$12 million and CAD\$4.25 million, respectively. The proceeds of these transactions are sufficient to repay in full the DIP Facility after considering the Carve-Out and Permitted Liens;
  - d) while the pricing of the DIP Facility is significant (an effective interest rate of 17.5% plus fees of at least \$725,000), the Wouters Declaration states that the DIP Facility is the result of arm's-length negotiations between the Chapter 11 Debtors and the DIP Lenders. The DIP Facility has been approved by the US Court with the consent of the secured creditors and the funds available under the DIP Facility have been advanced to the Chapter 11 Debtors; and
  - e) as a result of the controls put in place over assets in Canada set out in paragraph 3(a) above, KSV believes that there should be sufficient recoveries in Canada to repay in full all priming obligations in Canada. Any remaining balance (net of administrative costs in Canada) would be paid to the Chapter 11 Debtors for distribution to creditors in the Chapter 11 Proceedings. KSV expects that unsecured creditors of the Canadian Debtors would be treated consistently with unsecured creditors of the Chapter 11 proceedings, which is appropriate in the context of the Recognition Orders.

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<sup>5</sup> Bennett Jones is in the process of compiling the security documents it requires to prepare an opinion on the validity of the security granted in favour of Blue Torch Finance LLC.

<sup>6</sup> This transaction is not subject to these proceedings.

4. Based on the foregoing, KSV does not believe that any creditor with an economic interest in the Canadian Debtors' assets will be materially prejudiced by the recognition of the Final DIP Order and/or the granting of the DIP Charge.

## 7.0 Court Ordered Charges

1. In addition to the DIP Charge, the proposed Supplemental Order contemplates a charge in favour of the Receiver for its fees and disbursements, including legal fees (the "Receiver's Charge").
2. The Foreign Representative is seeking a Receiver's Charge in an amount not to exceed \$350,000 to secure the fees and expenses of the Receiver and its counsel.
3. A Receiver's Charge is a customary provision in a receivership order - it is required by the professionals involved to protect their fees and costs in the event the debtors are unable to pay those amounts during the insolvency process.
4. KSV believes that the amount of the Receiver's Charge is reasonable in the circumstances given the scope of its anticipated mandate.

## 8.0 Conclusion and Recommendation

1. Based on the foregoing, KSV recommends that this Honourable Court grant the Recognition Orders sought by the Foreign Representative.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.**

**SOLELY IN ITS CAPACITY AS PROPOSED RECEIVER OF  
THE CANADIAN BUSINESS AND ASSETS OF CELADON GROUP, INC. AND  
THE AFFILIATED ENTITIES LISTED IN FOOTNOTE 1 HERETO  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “D”**



**DLA Piper LLP (US)**  
444 West Lake Street  
Suite 900  
Chicago, Illinois 60606-0089  
[www.dlapiper.com](http://www.dlapiper.com)

December 13, 2019

*CONFIDENTIAL*

**Re: Celadon Group, Inc.**

Ladies and Gentleman:

Thank you for expressing interest in exploring a transaction with Celadon Group, Inc. ("Celadon" or the "Company"). Celadon and its subsidiaries (collectively, the "Debtors") filed petitions for relief under chapter 11 of the Bankruptcy Code on December 8, 2019 in the United States Bankruptcy Court for the District of Delaware (the "Court"). Celadon has retained DLA Piper LLP (US) ("DLA Piper") to act as its legal counsel in connection with the possible sale of Celadon, or certain of its businesses and/or assets. As part of Celadon's sale process, the Company will entertain offers for (i) the entire business, (ii) any of the Company's individual business units, or (iii) any of the Company's assets.

The Company will make available diligence information regarding the Company and its assets to those interested parties that have executed a Confidentiality Agreement with the Company. A form of Confidentiality Agreement may be obtained by contacting counsel in accordance with the information set forth below.

In order to pursue a transaction with the Company, we are requesting that you submit to counsel an initial non-binding indication of interest (an "Offer") by 5:00 p.m. EDT on December 30, 2019. Celadon will evaluate all Offers based upon a number of factors, including (but not limited to) the aggregate consideration, the businesses being acquired, the transaction structure, conditionality, and the buyer's ability to finance and timely consummate the transaction.

Your Offer should specify the following:

- 1) A detailed description of your proposed transaction and the businesses you wish to acquire, as well as any liabilities you will assume;
- 2) The aggregate cash purchase price, on a debt free and cash free basis, expressed in U.S. dollars;
- 3) Any bid protections or expense reimbursement being sought as part of your Offer;
- 4) Details of the key assumptions pertaining to the transaction that you have made in order to derive the proposed cash purchase price indicated in sub-paragraph (2) above, including the basis for the valuation;
- 5) A detailed description of your financing plans, including sources of funds, financing structure, and whether your Offer is conditioned upon external financing;



*CONFIDENTIAL*

December 13, 2019  
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- 6) A list of the material, unanswered business questions or issues that are important for determining final value, and the scope, nature, timing, and extent of any remaining due diligence which you or your financing sources would need to complete in order to execute a definitive agreement that does not contain any diligence or financing conditions;
- 7) A description of the corporate and other approvals, if any, which you have obtained prior to making your Offer (you should bear in mind that certainty of outcome is a key consideration for Celadon in any decision to proceed with a prospective purchaser);
- 8) A listing of all corporate, shareholder, and regulatory approvals required, and all other conditions required to be fulfilled, prior to (a) submitting a final bid, and (b) consummating a transaction, including the amount of time required to obtain each;
- 9) The appropriate contact person, including telephone number, email address, and contact information for any outside advisors (including investment bankers, outside legal counsel, and accountants) who are expected to work with you; and
- 10) Any other information you feel would be important to our decision whether to proceed with you in the next stages of the process.

All requests for Confidentiality Agreements and all Offers shall be submitted to:

Richard Chesley  
DLA Piper LLP (US)  
444 West Lake Street  
Chicago, Illinois 60606  
Phone: 312.368.3430  
E-mail: richard.chesley@dlapiper.com

Once Offers are received, the Company intends to proceed with a sale process on the following timeline:

- The Company will determine, after consultation with its key creditor constituencies, those Offers that it believes provide adequate consideration and other acceptable terms (including the timing of consummation) for the purchase and sale of one or more assets (the "Qualified Bids") by 12:00 p.m. on January 2, 2020. The Company may engage in discussions with any third party whose Offer the Company deems deficient for the purpose of making that Offer a Qualified Bid.



CONFIDENTIAL

December 13, 2019  
Page Three

- The Company will seek approval of procedures (the “Bid Procedures”) for the sale of its assets at a hearing on January 3, 2020. The Company will request that the Bid Procedures provide for, among other things (a) the submission of all definitive documentation with respect to any Qualified Bid (including a binding Asset Purchase Agreement in the form provided by the Company and with a redline showing changes from the Company form of Asset Purchase Agreement) by no later than January 13, 2020, (b) an auction if more than one fully documented Qualified Bid for the same asset(s) is received on January 15, 2020, and (c) a sale hearing to occur by January 22, 2020. It is contemplated that all sales shall be consummated by January 24, 2020. The Company will also request authority to provide bid protections to one or more stalking horse bidders.

The pleadings filed in the Debtors’ bankruptcy cases can be accessed at <https://www.kccllc.net/celadon/>.

This letter does not constitute an offer or invitation for the sale or purchase of securities or any of the businesses or assets of Celadon. In addition, Celadon expressly reserves the right, in its sole discretion, without prior notice and without giving any reasons therefore, to (i) terminate discussions with any or all prospective purchasers and to pursue or reject any or all offers at any time, (ii) amend, modify or terminate any or all of the rules and procedures set forth herein, and (iii) amend the CIM or any other written material or oral information furnished to a potential purchaser.

We appreciate your interest and look forward to working with you to achieve a successful transaction. Any questions or comments regarding Celadon or the bidding process should be directed to the individuals at DLA Piper listed below.

Richard Chesley  
DLA Piper LLP (US)  
E-mail: [richard.chesley@dlapiper.com](mailto:richard.chesley@dlapiper.com)

Scott Layfield  
DLA Piper LLP (US)  
E-mail: [scott.layfield@dlapiper.com](mailto:scott.layfield@dlapiper.com)

## **Appendix “E”**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
CELADON GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 19-12606 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Related D.I.: 273, 274, 277, 299, 309, 384

**ORDER (I) APPROVING THE PRIVATE SALE OF CERTAIN NONRESIDENTIAL  
REAL PROPERTY LOCATED IN AYR, ONTARIO, CANADA FREE AND CLEAR OF  
ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS  
AND (II) GRANTING OTHER RELATED RELIEF**

This matter coming before the court upon the *Motion of the Debtors for Entry of an Order (I) Approving the Private Sale of Certain Nonresidential Real Property Located in Ayr, Ontario, Canada Free and Clear of All Liens, Claims, Encumbrances and Other Interests and (II) Granting Other Related Relief* (the “Motion”),<sup>2</sup> filed by Celadon Group, Inc. and its affiliated debtors (collectively, the “Debtors”) for entry of an order (this “Order”) approving the private sale of the Premises to the Purchaser; all as further described in the Motion; and upon consideration of the First Day Declaration, the *Omnibus Notice of Private Sale Motions and Sale Hearing [York, Cedar*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celadon Group, Inc. (1050); A R Management Services, Inc. (3604); Bee Line, Inc. (5403); Celadon Canadian Holdings, Limited (2539); Celadon E-Commerce, Inc. (2711); Celadon International Corporation (5246); Celadon Logistics Services, Inc. (0834); Celadon Mexicana, S.A. de C.V. (6NL7); Celadon Realty, LLC (2559); Celadon Trucking Services, Inc. (6138); Distribution, Inc. (0488); Eagle Logistics Services Inc. (7667); Hyndman Transport Limited (3249); Jaguar Logistics, S.A. de C.V. (66D1); Leasing Servicios, S.A. de C.V. (9MUA); Osborn Transportation, Inc. (7467); Quality Companies LLC (4073); Quality Equipment Leasing, LLC (2403); Quality Insurance LLC (7248); Servicios Corporativos Jaguar, S.C. (78CA); Servicios de Transportación Jaguar, S.A. de C.V. (5R68); Stinger Logistics, Inc. (3860); Strategic Leasing, Inc. (7534); Taylor Express, Inc. (9779); Transportation Insurance Services Risk Retention Group, Inc. (7197); Vorbas, LLC (8936). The corporate headquarters and the mailing address for the Debtors listed above is 9503 East 33rd Street, One Celadon Drive, Indianapolis, IN 46235.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or in the Final DIP Order [D.I. 214].



*Creek, Winnipeg*] [D.I. 309], and the *Declaration of Kathryn Wouters in Support of Debtors' Motions Authorizing the Private Sales of Certain Nonresidential Real Properties* [D.I. 384], and the record of these chapter 11 cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C § 157(b)(2)(A), (iv) venue of this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court, if any; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, as set forth in this Order.
2. Any and all objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are hereby overruled on the merits with prejudice.
3. Based upon the record before the Court, the Purchaser's offer for the Premises, as embodied in the Purchase Agreement, is the highest or otherwise best offer for the Premises.

4. The transaction, and the terms and conditions and transactions contemplated by the Purchase Agreement, are hereby authorized and approved pursuant to section 363(b) of the Bankruptcy Code.

5. The Debtors are authorized to consummate the sale of the Premises pursuant to and in accordance with the terms and conditions of the Purchase Agreement, which is attached hereto as **Exhibit 1**. Notwithstanding the foregoing, the Debtors are hereby authorized to accept modifications and edits to the Purchase Agreement that are not materially burdensome or harmful to the estates as may be submitted by and agreed upon between the parties in writing, without further order of the Court.

6. Notwithstanding anything to the contrary contained in this Order, upon the Closing, the Purchase Price shall be paid as set forth in the Purchase Agreement, and from the net sale proceeds, the Debtors shall fund a reserve for KEIP and KERP benefits, Anthem Insurance Companies, Inc. dba Anthem Blue Cross and Blue Shield (“Anthem”) on account of health care claims for services covered by the Debtors’ self-insured health plan and related services (“Medical Benefits”), and Professional Fee Reserve, each in an amount agreed to by and between the Debtors and the DIP Agent, and the Debtors shall cause the Purchaser to remit the balance of the net sale proceeds available after funding the reserves to the DIP Agent and Prepetition Term Loan Agent, to reduce the DIP Obligations or Prepetition Term Loan Obligations, as the case may be, subject to the Committee’s Challenge rights set forth in the Final DIP Order.<sup>3</sup>

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<sup>3</sup> The amount reserved for Anthem for payment of Medical Benefits, together with all other amounts reserved for payment of Medical Benefits from the proceeds of other asset sales pending as of the date hereof, shall total \$1 million (collectively, the “Medical Benefits Escrow”). The requirement to release funds from the Medical Benefits Escrow to Anthem is subject to entry of an order approving the assumption of the Anthem ASA, as modified by agreement of the parties, or as otherwise ordered by the Court.

7. The Debtors are authorized to execute and deliver, and empowered to perform under, and consummate the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary to consummate the sale of the Premises.

8. If the Debtors exercise their fiduciary obligation and enter into an alternative transaction than the private sale contemplated by the Motion, the Debtors are authorized to pay to the Purchaser the Break-Up Fee.

9. Upon the closing of the private sale, the Seller is authorized to pay to the Real Estate Agent the Real Estate Fee, which shall be paid from the funds received by the Seller from the private sale.

10. This Order shall be binding in all respects upon (a) the Debtors, (b) the Debtors' estates, (c) the Debtors' creditors, (d) all holders of liens whether known or unknown against the Premises, and (e) the Purchaser and all of its successors and assigns.

11. This Order and the Purchase Agreement shall inure to the benefit of the Debtors, their estates, their creditors, the Purchaser, and the Purchaser's respective successors and assigns of each of the foregoing.

12. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtors may sell the Premises free and clear of any liens, claims, encumbrances, and other interests.

13. Pursuant to section 363(f) of the Bankruptcy Code, upon the consummation of the transactions contemplated by the Purchase Agreement, the Premises (and good and marketable title to the Premises) and all of the Debtors' rights, title, and interest therein shall be transferred to the Purchaser free and clear of all liens with all such liens to attach to the net cash proceeds of the sale of the Premises in the order of their priority, with the same validity, force and effect which

they now have as against the Premises, subject to any claims and defenses, setoffs, or rights of recoupment the Debtors may possess with respect thereto.

14. The transfer of the Premises to the Purchaser pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer of the Premises, and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the Premises.

15. For avoidance of doubt, nothing contained herein shall modify, affect, or abrogate the rights of the Committee, under Sections 5.10 and 5.23(b) of the Final DIP Order.

16. Nothing in this Order or the Purchase Agreement releases, nullifies, precludes or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the post-sale owner or operator of property after the date of entry of this Order. Nothing in this Order or the Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

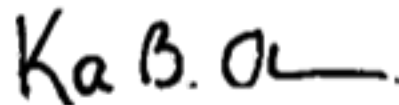
17. For avoidance of doubt, nothing in this Order shall enjoin, release, impair or otherwise preclude the United States from pursuing any criminal action or any police or regulatory action against the Debtors or from pursuing any liability to the United States that is not a “claim” within the meaning of section 101(5) of the Bankruptcy Code.

18. The fourteen (14) day stay contemplated by Bankruptcy Rule 6004(h) is hereby waived, and the Debtors and the Purchaser are authorized to implement immediately the relief granted by this Order.

19. The Debtors and the Purchaser are authorized and empowered to take all actions necessary to implement the relief granted by this Order.

20. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Order.

Dated: January 31st, 2020  
Wilmington, Delaware

A handwritten signature in black ink, appearing to read "Ka B. Owens", with a stylized flourish at the end.

KAREN B. OWENS  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**(Purchase Agreement)**



# **Agreement of Purchase and Sale** **Commercial**

## **Form 500**

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 7 day of January, 2020

**BUYER:** WYNDHAM STREET INVESTMENTS INC., agrees to purchase from  
(Full legal names of all Buyers)

**SELLER:** CELADON GROUP, INC. ON BEHALF OF WYNDHAM TRANSPORT LTD., the following  
(Full legal names of all Sellers)

### **REAL PROPERTY:**

Address 2616 CEDAR CREEK ROAD, AYR, ONTARIO, CANADA

fronting on the North side of CEDAR CREEK ROAD

in the TOWN OF AYR

and having a frontage of AS PER SURVEY more or less by a depth of AS PER SURVEY more or less

and legally described as PT LT 30 CON 11 NORTH DUMFRIES; PT RDAL BTN CON 10 & 11 NORTH DUMFRIES CLOSED BY 58G710

AS IN WS707023, EXCEPT PT 1, 58EX470 TOWNSHIP OF NORTH DUMFRIES (the "property")  
(Legal description of land including easements not described elsewhere)

**PURCHASE PRICE:** Dollars (CDN\$) 12,000,000.00

Twelve Million Dollars

**DEPOSIT:** Buyer submits upon acceptance  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Five Hundred Thousand Dollars (CDN\$) 500,000.00

by negotiable cheque payable to.. CBRE LIMITED IN TRUST "Deposit Holder"  
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A** B attached hereto form(s) part of this Agreement.

**1. IRREVOCABILITY:** This offer shall be irrevocable by Buyer until 5:00 on  
(Seller/Buyer) (a.m./p.m.)  
the 14 day of January, 2020, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

**2. COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the SEE SCHEDULE A day of 20. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

MZ

INITIALS OF SELLER(S):

CW

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3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: .....  
(For delivery of Documents to Seller)

FAX No.: .....  
(For delivery of Documents to Buyer)

Email Address: .....  
(For delivery of Documents to Seller)

Email Address: .....  
(For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**  
All Chattels to be accepted in an "AS IS" condition on closing:  
All pit related items, racking and shelving in parts room, shop  
compressor, network, security and cabling and IT Related Items, Office  
Furniture, Gate and Door Controllers ( including keyless Fob system )

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**  
Overhead Crane in Shop Area ( Kone Crane ), Building and Pylon Signage

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:  
N/A

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price.** The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, If applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

*ML*

INITIALS OF SELLER(S):

*CW*

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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the ..... day of ..... SEE SCHEDULE A ..... 20....., (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property, that its present use (..... ZONE 11-Z11, TRUCKING .....) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;  
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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**28. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein. SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Buyer/Authorized Signing Officer)

(Seal) (Date) JAN 7, 2020

(Witness)

(Buyer/Authorized Signing Officer)

(Seal) (Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Seller/Authorized Signing Officer)

(Seal) (Date) 1/10/2020

(Witness)

(Seller/Authorized Signing Officer)

(Seal) (Date)

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal) (Date)

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at this day of 20.

(a.m./p.m.)

☐ ☐

(Signature of Seller or Buyer)

**INFORMATION ON BROKERAGE(S)**

Listing Brokerage

(Tel. No.)

(Salesperson/Broker/Broker of Record Name)

Co-op/Buyer Brokerage

(Tel. No.)

(Salesperson/Broker/Broker of Record Name)

**ACKNOWLEDGEMENT**

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

(Seller)

CANTON GROUP, INC. ON BEHALF OF WYNDHAM STREET INVESTMENTS INC.

(Date) 1/10/2020

(Buyer) WYNDHAM STREET INVESTMENTS INC.

(Date)

(Seller)

(Date)

(Buyer)

(Date)

Address for Service

Address for Service

(Tel. No.)

(Tel. No.)

Seller's Lawyer

Buyer's Lawyer

Address

Address

Email

Email

(Tel. No.)

(Fax. No.)

(Tel. No.)

(Fax. No.)

**FOR OFFICE USE ONLY****COMMISSION TRUST AGREEMENT**

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:

In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.

Acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)

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## Schedule A

### Agreement of Purchase and Sale - Commercial

#### Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** WYNDHAM STREET INVESTMENTS INC., and

**SELLER:** CELADON GROUP, INC. ON BEHALF OF HYNDMAN TRANSPORT LTD.

for the purchase and sale of 2616 CEDAR CREEK ROAD, AYR, ONTARIO, CANADA

dated the 7 day of January, 2020

Buyer agrees to pay the balance as follows:

**THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK. REFER TO SCHEDULE A, B AND C**

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

*M2*

INITIALS OF SELLER(S):

*CW*

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Schedule "A"

To Agreement of Purchase and Sale re: 2616 Cedar Creek Road, Ayr, Ontario, Canada

Between:

BUYER: WYNDHAM STREET INVESTMENTS INC.

SELLER: CELADON GROUP, INC. ON BEHALF OF HYNDMAN TRANSPORT LTD.

1. Legal Description:

The Legal Description of the subject Properties are:

PT LT 30 CON 11 NORTH DUMFRIES; PT RDAL BTN CON 10 & 11 NORTH DUMFRIES CLOSED BY 58G710; AS IN WS707023, EXCEPT PT 1, 58EX470 TOWNSHIP OF NORTH DUMFRIES

2. Payment of Purchase Price:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by wire transfer, to the Seller on the completion of this transaction.

3. Completion Date:

This Agreement shall be completed by no later than thirty (30) days from the date of execution of the Purchase Agreement.

4. Title Search:

The Requisition Date of this Agreement shall be no later than ten (10) days prior to the completion date.

5. Assignment:

The Buyer shall be entitled to direct the transfer of title of the Property to whomsoever it elects provided the Buyer is otherwise in compliance with; and shall at all times remain obligated to the terms and conditions of this Agreement.

6. Seller to Discharge Mortgage:

The Seller agrees to discharge at its own expense all mortgages and liens registered against the property.

7. Seller Deliveries and Authorities:

The Seller agrees to:

- (a) Supply to the Buyer within Five (5) days of Acceptance, all of the following documents for the Buyer's review, in each case to the extent in the possession or control of the Seller (collectively, the "Due Diligence Documents"):
  1. a survey of the Property;
  2. all building plans, architectural plans and drawings, site plan and site plan concepts;
  3. copies of property tax bills and assessment notices in respect of the Property for the last two (2) years;
  4. copies of all utility and services bills in respect of the Property for the last two (2) years;
  5. financial statements showing all income and expenses in respect of the Property for the last two (2) years;
  6. all environmental, geotechnical, and similar studies and reports commissioned by the Vendor in respect of the Property;
  7. a list of all continuing litigation and potential litigation and outstanding receivables concerning the Property;
  8. a list of chattels to be included in the purchase price
- (b) Authorize all governmental and other authorities having jurisdiction over the real property, to release to the Buyer all information such authorities have on file respecting the Property.

Initials of Buyer:

M2

Initials of Seller:

CW

8. Due Diligence Period:

This Offer is conditional for five (5) business days from the date of execution of this Purchase Agreement (the "Due Diligence Period"), upon the Buyer, at its own expense, being satisfied in its sole and absolute and unfettered discretion, as to all aspects of the Property including, without limitation:

- a) Upon the Buyer conducting an inspection of the subject property

This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller during the Due Diligence Period, failing which this Offer shall be null and void and the Buyer's deposit, together with any interest earned or accrued thereon, will be returned without deduction or set-off.

9. Access:

The Seller agrees to allow the Buyer, its agents and employees, access to the property for the purposes of physical inspections and to carry out prudent tests during the Due Diligence Period given reasonable notice by the Buyer. Should the Buyer hire agents, the cost and responsibility of such work shall be for the account of the Buyer. The Buyer covenants and agrees to restore the property forthwith after inspection to its pre-existing physical condition prior to the time of the first such inspection. The Buyer agrees to treat the results of such inspections in a strictly confidential manner and not to disclose the results to a third party except where required by law.

10. Seller's Deliveries on Closing:

On closing the Seller shall deliver the following to the Buyer:

- (a) Any original contracts or agreements if any which the Buyer shall have elected to assume in accordance with the terms of this Agreement;
- (b) An assignment of any outstanding guarantees, warranties, indemnities, permits, certificates and licenses related to the property and the building thereon, to the extent that such documents are assignable;
- (c) All existing duplicate master keys to all locks and locking devices on the property or in the building;
- (d) An undertaking to pay all utilities to the date of closing to pay all taxes to the date of closing and to ready any item on the statement of adjustments if necessary, after closing;
- (e) Provide transfer of the property in registrable form in favour of the buyer or as the buyer directs;
- (f) An undertaking by seller to adjust any errors or omissions in the statement of adjustments.

11. Realty Tax Refunds:

All right, title and benefit to any realty tax appeals and reassessments and any rebates, refunds or reassessment of realty taxes for the Lands in respect of periods preceding the Closing Date (collectively, the "Realty Tax Refunds") shall remain the property of the Seller. The Buyer agrees to pay to the Seller, promptly after the completion of any successful assessment appeal, the net proceeds of any rebate, refund or reassessment of realty taxes for the Lands received by the Buyer in respect of any period prior to the Closing Date. For greater certainty, the obligations under this Section shall survive Closing.

12. Property Management prior to Completion:

The Seller further covenants and agrees as follows:

- a) To maintain, manage and operate the real property from the date of acceptance of this Offer to closing in the matter equivalent to the Seller's prior management;
- b) That after acceptance hereof, the Seller will not enter into any new lease agreement(s) with any tenant(s) without first obtaining the written consent of the Buyer.

13. Statement of Adjustments:

Seller to deliver statement of adjustments 7 days prior to closing.

Initials of Buyer:

*MB*

Initials of Seller:

*CW*



14. Agency

It is hereby acknowledged that CBRE Limited Inc. is acting on behalf of the Purchaser and all applicable real estate fees shall be payable by the Vendor at a commission of one percent (1%) of the purchase price. The real estate fees shall be payable upon successful closing.

15. Confidentiality

The parties agree that this Letter and the transaction of the purchase and sale referred to herein, and any information provided by either party to the other with respect to this transaction or the Property, shall be kept strictly confidential and no public announcements will be made in respect thereof, provided that the parties may give such information on a confidential basis to their advisors, creditors, consultants or assignee(s) and as may be required by applicable laws. Notwithstanding the foregoing, this Paragraph 15 (Confidentiality) shall not apply to disclosures required in the bankruptcy cases of Vendor and its affiliates.

Initials of Buyer:

*MD*

Initials of Seller:

*CW*



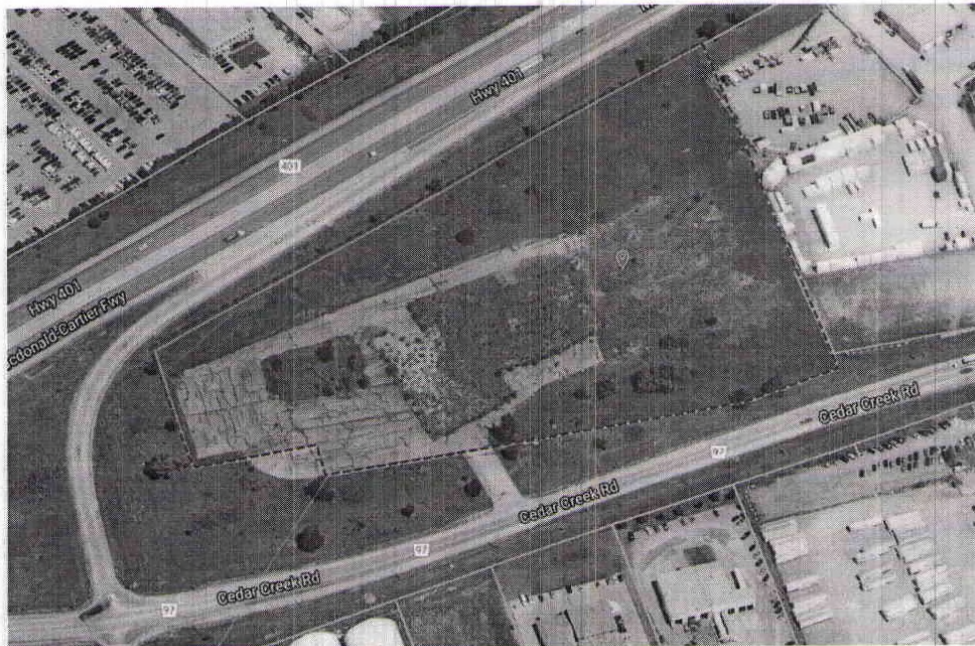
Schedule "B"

To Agreement of Purchase and Sale re: 2616 Cedar Creek Road, Ayr, Ontario, Canada

Between:

BUYER: WYNDHAM STREET INVESTMENTS INC.

SELLER: CELADON GROUP, INC. ON BEHALF OF HYNDMAN TRANSPORT LTD.



Initials of Buyer:

ML

Initials of Seller:

CW

Schedule "C"

To Agreement of Purchase and Sale re: 2616 Cedar Creek Road, Ayr, Ontario, Canada

Between:

BUYER: WYNDHAM STREET INVESTMENTS INC.

SELLER: CELADON GROUP, INC. ON BEHALF OF HYNDMAN TRANSPORT LTD.

Acknowledgement re "As Is" Condition

The Buyer acknowledges and agrees, subject to and except as otherwise expressly provided for in this Agreement, that:

- (a) The property is being purchased and assumed by the Buyer on an "as is, where is" basis as of the Completion Date, in the condition or state as it exists as of the Completion Date, and without any express or implied agreement, representation or warranty of any kind whatsoever as to, without limitation, (i) the structural integrity or any other aspect of the physical condition of the property or the buildings and/or improvements located thereon, (ii) the conformity of the buildings and/or improvements to any plans or specifications for the property (including, but not limited to, any plans and specifications that may have been or which may be provided to the Buyer), (iii) the conformity of the property to past, current or future applicable zoning or building code requirements or other applicable laws, (iv) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the lands, or the buildings/improvements situated on or as part of the property, (v) the sufficiency of any drainage, (vi) whether the property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, (vii) the existence or non-existence of underground storage tanks, (viii) the availability of public utilities and services for the property, (ix) the fitness or suitability of the property for occupancy or any intended use (including matters relating to health and safety), (x) the potential for further development of the property, (xi) the existence of land use, zoning or building entitlements affecting the property, (xii) the financial condition of any present or prospective tenant of the property or any contractor or whether any encumbrances are assignable, (xiii) the environmental condition of the property and/or any buildings and/or improvements located thereon, including the condition of the soil or groundwater, both surface and subsurface, the existence of any sub-surface installations or the existence of any hazardous substance in, on, under or in the vicinity of the property, or (xiv) the accuracy, currency or completeness of any information or documentation supplied or to be supplied in connection with the property and other assets being sold pursuant to this Agreement.
- (b) In entering into this Agreement, the Buyer has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the property, including without limitation, the physical and environmental condition of the property and the review of the documentation made available to the Buyer, the Buyer is not relying on any information or material furnished by the Seller or any other person or entities on behalf of or at the direction of the Seller in connection therewith, and the Buyer hereby unconditionally and irrevocably waives any and all actual or potential rights the Buyer might have against the Seller pursuant to any warranty, express or implied, of any kind or type, of this Agreement relating to the property. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in or created by any statute, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including, but not limited to, claims regarding defects, whether or not discoverable, product liability claims, or similar claims, and to all other extent or later created or conceived of strict liability or strict liability type claims and rights;
- (c) The Seller shall not be responsible or liable for any misrepresentation, lack of disclosure or incorrect or incomplete disclosure of any nature whatsoever on the part of the Seller or any real estate broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of the Seller or any third party.
- (d) The Seller shall have no obligations or responsibility to the Buyer after the Completion Date with respect to the property or any buildings and/or improvements located thereon or the condition, suitability, or marketability thereof or with respect any other matter relating to same.

Initials of Buyer:



Initials of Seller:





- (e) The Buyer agrees to release and discharge the Seller and its successors and assigns, or any of them, from every claim of any kind that the Buyer may make, suffer, sustain or incur in regard to any hazardous substance relating to the property and/or the buildings and/or improvements located therein. The Buyer further agrees that the Buyer will not, directly or indirectly, attempt to compel the Seller to clean up or remove or pay for the clean up or removal of any hazardous substance, remediate any condition or matter in, on, under or in the vicinity of the property, or seek an abatement in the Purchase Price or damages in connection with any hazardous substance.
- (f) This Section shall not merge on, but shall survive, the Completion Date.

#### Inspection

The Buyer shall be entitled to conduct reasonable investigations, tests and inspections in respect of the property during normal business hours, upon reasonable notice to the Seller, and subject to the rights of or restrictions in favour of any existing tenants in accordance with their respective leases (if applicable). Without limiting the foregoing, the Buyer may enter upon the property at its own risk and expense, upon obtaining the prior approval of the Seller, and in the presence of a representative of the Seller; for such purpose the Seller shall make an employee of the Seller available to the Buyer at all reasonable times on reasonable prior notice. All inspections, investigations and testing carried out by the Buyer or its representative shall be carried out as expeditiously as possible at the Buyer's sole cost, expense and risk and in accordance with the inspection rights and notice provisions contained in the respective leases for any of the tenants of the property and so as to cause the minimum amount of interference and disruption to such tenants, their employees, suppliers and customers. Any damage caused to the property as a result of the Buyer's entry upon the property, or any part thereof, or any activities carried out by the Buyer Purchaser or its representatives in respect of the property, or any part thereof, shall be promptly repaired by the Buyer to the Seller's reasonable satisfaction. The Buyer agrees to indemnify and save harmless the Seller from all actions, costs, liabilities and damages resulting from the Buyer's entry and the activities carried out by the Buyer or its representatives relating to its inspection of the property and in that regard the Seller may resort to all or part of the deposit to off-set the cost of any such damages or losses for which the Buyer is responsible.

#### Escrow Closing and Registrations

The Buyer and Seller covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "DRA") to govern the electronic submission of the Transfer/Deed for the Property and to the applicable Land Registry Office. The DRA shall out-line or establish the procedures and timing for completing all registrations electronically and pro-vide for all closing documents and closing funds to be held in escrow pending the submission of the Transfer/Deed to the Land Registry Office and their acceptance by virtue of each registration document being assigned a registration number. The DRA shall also provide that if there is a problem with the Teraview electronic registration system which does not allow the parties to electronically register all registration documents on the Completion Date, the Completion Date shall be deemed to be extended until the next day when the said system is accessible and operating for the Land Registry Office applicable to the Property.

#### Taxes and Fees

The Buyer shall be responsible for all registration fees and land transfer taxes and sales taxes payable in connection with this transaction. Each party shall pay its own legal fees with respect to this transaction.

Initials of Buyer:

*WZ*

Initials of Seller:

*CW*

**Tender**

Any tender of documents under this Agreement shall be made upon the parties or their respective counsel and shall be delivered by electronic mail, facsimile and/or courier. Any tender of money shall be made by wire transfer, certified cheque or bank draft of immediately available funds from a financial institution listed in Schedule I of the Bank Act (Canada) to the tendering party's counsel subject to the terms and provisions of the DRA.

It is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this Section called the "Tendering Party") upon the other party (in this Section called the "Receiving Party") when the solicitor for the Tendering Party has:

- delivered all applicable documents and funds to the Receiving Party's solicitor in accordance with the provisions of the DRA;
- advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
- completed all steps required by the electronic registration system to complete this Transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the transfer/deed for completeness and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing them for registration by the Receiving Party's solicitor),

without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

**Fiduciary Obligations; Alternative Transaction**

Buyer acknowledges that on December 8, 2019, Seller, together with certain of its affiliates and subsidiaries, commenced voluntary proceedings under chapter 11 of title 11 of the United States Code by filing petitions for relief in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court").

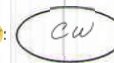
Nothing in this Agreement, or any document related to the transactions contemplated hereby, will require any Seller or any of their respective directors, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations ("Fiduciary Obligations"). For the avoidance of doubt, the Seller retains the right to pursue any transaction or restructuring strategy that, in the Seller's business judgment, will maximize the value of their estates. Buyer acknowledges and agrees that notice of this Agreement shall be provided to all interested parties, and such parties shall be afforded the opportunity to propose an alternative transaction to acquire the property ("Alternative Transaction"). Seller may accept such Alternative Transaction in the exercise of its Fiduciary Obligations.

Notwithstanding anything contained herein to the contrary, Seller may terminate this Agreement, with no penalty or liability (except has provided in the following sentence), (a) if Seller determines that proceeding with this Agreement will violate its Fiduciary Obligations, (b) if Seller, in the exercise of its Fiduciary Obligations, decides to proceed with an Alternative Transaction, or (c) the Bankruptcy Court does not approve the sale of the property. Upon the consummation of any Alternative Transaction following any such termination, Buyer shall be deemed to have earned a Break-Up Fee (defined below), which shall be paid in cash, by wire transfer of immediately available funds to an account designated by Buyer, out of the proceeds of such Alternative Transaction, without further order of the Bankruptcy Court, contemporaneously with the consummation of such Alternative Transaction. "Break-Up Fee" shall be an amount equal to \$360,000 (CAD\$).

Initials of Buyer:



Initials of Seller:



## **Appendix “F”**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
CELADON GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 19-12606 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: D.I. 301, 302, 308, 309, 314, 384

**ORDER (I) AUTHORIZING THE PRIVATE SALE OF CERTAIN NONRESIDENTIAL  
REAL PROPERTY LOCATED IN WINNIPEG, MANITOBA, CANADA FREE AND  
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (II)  
AUTHORIZING THE SELLER TO ASSUME AND ASSIGN CERTAIN EXECUTORY  
CONTRACTS, AND (III) GRANTING OTHER RELATED RELIEF**

This matter coming before the court upon the *Motion of the Debtors for Entry of an Order (I) Authorizing the Private Sale of Certain Nonresidential Real Property Located in Winnipeg, Manitoba, Canada Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Authorizing the Seller to Assume and Assign Certain Executory Contracts, and (III) Granting Other Related Relief* (the “Motion”),<sup>2</sup> filed by Celadon Group, Inc. and its affiliated debtors (collectively, the “Debtors”) for entry of an order (this “Order”) (i) approving the private sale of the Winnipeg Property to the Purchaser for cash consideration equal to the Purchase Price; (ii)

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celadon Group, Inc. (1050); A R Management Services, Inc. (3604); Bee Line, Inc. (5403); Celadon Canadian Holdings, Limited (2539); Celadon E-Commerce, Inc. (2711); Celadon International Corporation (5246); Celadon Logistics Services, Inc. (0834); Celadon Mexicana, S.A. de C.V. (6NL7); Celadon Realty, LLC (2559); Celadon Trucking Services, Inc. (6138); Distribution, Inc. (0488); Eagle Logistics Services Inc. (7667); Hyndman Transport Limited (3249); Jaguar Logistics, S.A. de C.V. (66D1); Leasing Servicios, S.A. de C.V. (9MUA); Osborn Transportation, Inc. (7467); Quality Companies LLC (4073); Quality Equipment Leasing, LLC (2403); Quality Insurance LLC (7248); Servicios Corporativos Jaguar, S.C. (78CA); Servicios de Transportación Jaguar, S.A. de C.V. (5R68); Stinger Logistics, Inc. (3860); Strategic Leasing, Inc. (7534); Taylor Express, Inc. (9779); Transportation Insurance Services Risk Retention Group, Inc. (7197); Vorbas, LLC (8936). The corporate headquarters and the mailing address for the Debtors listed above is 9503 East 33rd Street, One Celadon Drive, Indianapolis, IN 46235.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or in the Final DIP Order [D.I. 214].



authorizing the Seller to assume the Assumed Contracts, and to assign the Assumed Contracts to the Purchaser pursuant to the Purchase Agreement, as amended, and (iii) granting other related relief; all as further described in the Motion; and upon consideration of the First Day Declaration, the *Notice of Substitution of Exhibit with Respect to the Winnipeg Property Purchase Agreement* [D.I. 314], the *Omnibus Notice of Private Sale Motions and Sale Hearing [York, Cedar Creek, Winnipeg]* [D.I. 309], the *Declaration Of Kathryn Wouters in Support of Debtors' Motions Authorizing the Private Sales of Certain Nonresidential Real Properties* [D.I. 384], and the record of these chapter 11 cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C § 157(b)(2)(A), (iv) venue of this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court, if any; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, as set forth in this Order.

2. Any and all objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are hereby overruled on the merits with prejudice.

3. Based upon the record before the Court, the Purchaser's offer for the Winnipeg Property, as embodied in the Amendment to the Purchase Agreement, dated as of January 30, 2020 (together with the Purchase Agreement, the "Amended Purchase Agreement"), is the highest or otherwise best offer for the Winnipeg Property.

4. The Debtors are authorized to consummate the sale of the Winnipeg Property pursuant to and in accordance with the terms and conditions of the Amended Purchase Agreement, which is attached hereto as Exhibit 1. Notwithstanding the foregoing, the Debtors are hereby authorized to accept modifications and edits to the Amended Purchase Agreement that are not materially burdensome or harmful to the estates as may be submitted by and agreed upon between the parties in writing, without further order of the Court.

5. Notwithstanding anything to the contrary contained in this Order, upon the Closing, the Purchase Price shall be paid as set forth in the Amended Purchase Agreement, and from the net sale proceeds, the Debtors shall fund a reserve for KEIP and KERP benefits, Anthem Insurance Companies, Inc. dba Anthem Blue Cross and Blue Shield ("Anthem") on account of health care claims for services covered by the Debtors' self-insured health plan and related services ("Medical Benefits"), and Professional Fee Reserve, each in an amount agreed to by and between the Debtors and the DIP Agent, and the Debtors shall cause the Purchaser to remit the balance of the net sale proceeds available after funding the reserves to the DIP Agent and Prepetition Term Loan Agent,



to reduce the DIP Obligations or Prepetition Term Loan Obligations, as the case may be, subject to the Committee's Challenge rights set forth in the Final DIP Order.<sup>3</sup>

6. The Debtors are authorized to execute and deliver, and empowered to perform under, and consummate the Amended Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary to consummate the sale of the Winnipeg Property.

7. The private sale transaction and the assumption of the Assumed Contracts by the Seller and the subsequent assignment of the Assumed Contracts to the Purchaser, to the extent such Assumed Contracts are capable of being assumed and assigned, under the terms and conditions and transactions contemplated by the Amended Purchase Agreement, are hereby authorized and approved pursuant to sections 363(b) and 365 of the Bankruptcy Code.

8. To the extent applicable, the Seller shall be responsible to pay any cure costs (as defined under section 365 of the Bankruptcy Code) related to the Assumed Contracts, as provided under the Amended Purchase Agreement, which shall be paid out of the funds it receives from the sale.

9. If the Debtors exercise their fiduciary obligation and enter into an alternative transaction than the private sale contemplated by the Motion, the Debtors are authorized to pay to the Purchaser the Break-Up Fee.

10. The Seller is authorized to pay Capital's portion of the Real Estate Fee, in accordance with the Amended Purchase Agreement. The Seller shall be eligible to pay the Real

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<sup>3</sup> The amount reserved for Anthem for payment of Medical Benefits, together with all other amounts reserved for payment of Medical Benefits from the proceeds of other asset sales pending as of the date hereof, shall total \$1 million (collectively, the "Medical Benefits Escrow"). The requirement to release funds from the Medical Benefits Escrow to Anthem is subject to entry of an order approving the assumption of the Anthem ASA, as modified by agreement of the parties, or as otherwise ordered by the Court.

Estate Fee to Colliers only upon further application to this Court, and upon this Court's approval of such application.

11. This Order shall be binding in all respects upon (a) the Debtors, (b) the Debtors' estates, (c) the Debtors' creditors, (d) all holders of liens whether known or unknown against the Property, and (e) the Purchaser and all of its successors and assigns.

12. This Order and the Amended Purchase Agreement shall inure to the benefit of the Debtors, their estates, their creditors, the Purchaser, and the Purchaser's respective successors and assigns of each of the foregoing.

13. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtors may sell the Winnipeg Property free and clear of any liens, claims, encumbrances and other interests (except as set forth in the Amended Purchase Agreement).

14. Pursuant to section 363(f) of the Bankruptcy Code, upon the consummation of the transactions contemplated by the Amended Purchase Agreement, the Winnipeg Property (and good and marketable title to the Winnipeg Property) and all of the Debtors' rights, title, and interest therein shall be transferred to the Purchaser free and clear of all liens with all such liens to attach to the net cash proceeds of the sale of the Winnipeg Property in the order of their priority, with the same validity, force and effect which they now have as against the Winnipeg Property, subject to any claims and defenses, setoffs, or rights of recoupment the Debtors may possess with respect thereto.

15. The transfer of the Winnipeg Property to the Purchaser pursuant to the Amended Purchase Agreement constitutes a legal, valid, and effective transfer of the Winnipeg Property, and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the Winnipeg Property.

16. For avoidance of doubt, nothing contained herein shall modify, affect, or abrogate the rights of the Committee, under Sections 5.10 and 5.23(b) of the Final DIP Order.

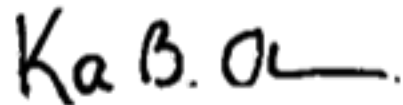
17. Nothing in this Order or the Amended Purchase Agreement releases, nullifies, precludes or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the post-sale owner or operator of property after the date of entry of this Order. Nothing in this Order or the Amended Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

18. For avoidance of doubt, nothing in this Order shall enjoin, release, impair or otherwise preclude the United States from pursuing any criminal action or any police or regulatory action against the Debtors or from pursuing any liability to the United States that is not a “claim” within the meaning of section 101(5) of the Bankruptcy Code.

19. The fourteen (14) day stay contemplated by Bankruptcy Rule 6004(h) is hereby waived, and the Debtors and the Purchaser are authorized to implement immediately the relief granted by this Order.

20. The Debtors and the Purchaser are authorized and empowered to take all actions necessary to implement the relief granted by this Order.

21. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Order.

A handwritten signature in black ink, appearing to read 'Ka B. Owens', with a stylized flourish at the end.

**Dated: January 31st, 2020**  
**Wilmington, Delaware**

**KAREN B. OWENS**  
**UNITED STATES BANKRUPTCY JUDGE**

**EXHIBIT 1**

**(Amended Purchase Agreement)**



### **Offer to Purchase**

2925924 Manitoba Ltd. (hereinafter referred to as the "**Purchaser**"), does hereby offer and agree through Capital Commercial Real Estate Services Inc. (hereinafter referred to as "**Capital**") as agents for the Purchaser, to purchase from the Vendor, Hyndman Transport Limited (hereinafter referred to as the "**Vendor**") the land and premises located at 50 Omands Creek Boulevard, in the City of Winnipeg, in the Province of Manitoba, as shown outlined in red on the sketch plan attached hereto as Schedule "A", and forming part of this Offer to Purchase including, without limitation, all assets as described in paragraph 2 hereof (collectively the "**Purchased Assets**").

The lands forming part of the Purchased Assets are legally described as follows:

Certificate of Title No. 2954598/1

Parcel "A" Plan 48046 WLTO in NW ¼ of 14-11-2 EPM

and such lands consist of a total land area of 13.51 acres (+/-) and the building comprises 17,079 square feet (+/-) (hereinafter called the "**Land**"), at and for the price of Four Million Two Hundred and Fifty Thousand (\$4,250,000.00) Dollars (hereinafter called the "**Purchase Price**"), upon and subject to the terms and conditions as follows:

1. The Purchase Price shall be paid at Winnipeg, in lawful money of Canada as follows:
  - (a) An initial deposit in the sum of Two Hundred Thousand (\$200,000.00) Dollars payable by cheque to the agents for the Vendor within three (3) business days of acceptance hereof, as a deposit to be held by such agents pending completion or other termination of any agreement resulting from acceptance of this Offer; and
  - (b) A further deposit in the sum of One Hundred Thousand (\$100,000.00) Dollars within five (5) business days following satisfaction or withdrawal of all of the Purchaser's conditions and the Vendor's conditions contained herein, such further deposit to be held by the agents for the Vendor pending completion or other termination of any agreement resulting from acceptance of this Offer; and
  - (c) The balance, plus or minus adjustments, to be paid by the Purchaser to the Vendor or its solicitors on or before the Date of Closing by solicitor's trust cheque.

The Vendor shall be aware that part of the proceeds of the Purchase Price shall come by way of the Purchaser arranging a new first mortgage for the Land and that those mortgage proceeds shall be paid in accordance with the provisions of the DRA. referred to in Schedule B.

2. The Purchase Price shall include, without limitation, all buildings, structures, erections, improvements, appurtenances, rights, interests and benefits enjoyed in connection therewith and fixtures situated in or upon all of the Land and all systems, machinery and equipment used in connection with the operation of the building and maintenance

- 2 -

thereof, including but not limited to all overhead rails, hoist and cranes, all electrical fixtures and equipment, air conditioning freezing units and equipment, plumbing and bathroom fixtures as installed, screens, storm windows and doors, window blinds, partitions, power wiring and installations, pumps and compressors; all to be free and clear of all liens, charges, encumbrances and interests save and except for the Permitted Encumbrances. The following additional assets are included, namely:

- (a) The Vendor's entire interest in the service and maintenance contracts, equipment leases and other contracts ("**Contracts**") regarding the Land and chattels enumerated in this paragraph 3, provided they are capable of being assigned;
  - (b) The Vendor's entire interest in all permits and licenses (the "**Permits**") pertaining to the Land or any portion thereof, provided they are capable of being assigned; and
  - (c) The Vendor's entire interest in all warranties and guarantees (the "**Warranties**") given to, assigned to or benefitting the Vendor or the Land or the chattels enumerated above provided they are capable of being assigned.
3. (a) By its acceptance of this Offer the Vendor covenants, warrants and represents to the Purchaser and it is a condition of the agreement resulting from the acceptance of this Offer that:
- (i) there is not now and will not be at the Date of Closing any agreement or option for the purchase of any Purchased Assets other than the agreement resulting from an acceptance of this Offer;
  - (ii) the Vendor shall at the Date of Closing have good and marketable title to the Purchased Assets, and shall convey good and marketable title to the Purchased Assets to the Purchaser, free and clear of all liens, charges, mortgages, encumbrances and registrations other than registrations (if any) for which the Vendor makes provision for discharge from title at closing, or from the proceeds of sale hereunder, to the satisfaction of the Purchaser, save and except those charges or encumbrances placed upon the Land by or through the Purchaser, and Permitted Encumbrances, as herein after defined;
  - (iii) The Vendor is a corporation duly organized and validly existing under the laws of its jurisdiction of incorporation and is duly qualified in the Province of Manitoba to own the Purchased Assets, and has the corporate power, capacity and authority to enter into and execute and deliver this Agreement, and to incur the Vendor's obligations hereunder; and
  - (iv) The Vendor is a resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (b) The Vendor acknowledges that any agreement resulting from acceptance of this Offer is conditional upon the representations, warranties and covenants contained in

- 3 -

subparagraph (a), being true and correct on the Date of Closing and that the truth or correctness of each of them are conditions inserted herein exclusively for the benefit of the Purchaser, as a condition precedent to the Purchaser's obligation to complete the purchase, and any one or more of them may therefore be waived by the Purchaser at any time and any agreement resulting from acceptance of this Offer amended to delete them ipso facto accordingly. If any of these conditions shall not be fulfilled on or before the Date of Closing and any of them not so fulfilled shall not have been waived by the Purchaser, or if the Purchaser determines that any representation is untrue, then, unless the parties hereto agree in writing at or before the Date of Closing, the agreement resulting from acceptance of this Offer shall be at an end and the Vendor and the Purchaser shall each be released from all obligation to the other under or pursuant to this Offer and resulting agreement, and the deposits and all monies paid by the Purchaser hereunder and all interest earned thereon as herein provided shall be paid to the Purchaser forthwith without deduction.

4. The Vendor covenants that it shall, within five (5) business days of acceptance of this Offer, deliver to the Purchaser the following, if in the possession or control of the Vendor:
  - (a) a plan of survey or surveyor's certificate made or updated by a licensed land surveyor within the last two (2) years of the date of acceptance of this Offer in form satisfactory to the Purchaser's solicitor;
  - (b) any plans and specifications relating to the original construction and improvement of all the buildings on the Land;
  - (c) copies of any existing roof reports, structural reports, appraisal reports, mechanical reports, engineering reports, and environmental reports pertaining to the Property;
  - (d) a list of the chattels and equipment owned by the Vendor which are included in the Purchase Price;
  - (e) a list of the chattels and equipment leased by the Vendor which are not included in the Purchase Price;
  - (f) a list of the operating and/or service agreements under which the Vendor is receiving services with respect to the Purchased Assets (including but not limited to the security services agreement and janitorial services agreement);
  - (g) fully executed copies of all Contracts, Permits and Warranties;
  - (h) all necessary authorizations and consents for the Purchaser to conduct municipal, provincial and any other searches the Purchaser may wish to conduct in relation to the Property; and
  - (i) copies of the 2017 and any 2018 Property Tax notice and Assessment Notice

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together with any history on successful or unsuccessful tax appeals.

All of the foregoing shall be held by the Purchaser or its solicitors in escrow, and may be photocopied by them, but shall be returned together with all photocopies to the Vendor if this transaction of purchase and sale is not completed for any reason whatsoever.

5. The Purchaser shall have a period of forty-five (45) days from from execution of this Offer to Purchase by the Purchaser and the Vendor to examine the documentation provided in paragraph 4 above at its own expense. During this period, the Purchaser shall have the right to approve the information provided by the Vendor. If the documentation or the results of such inspection are inconsistent with the representations, warranties and covenants contained in any agreement resulting from acceptance of this Offer is unsatisfactory to the Purchaser or any of the above are otherwise unsatisfactory to the Purchaser in its absolute discretion, the Purchaser may terminate any agreement resulting from acceptance of this Offer by notice in writing delivered to the Vendor or its solicitors within the given time frame.
6. The Purchaser shall have a period of forty-five (45) days from execution of this Offer to Purchase by the Purchaser and the Vendor to conduct such searches, surveys, physical inspections and/or soil tests of the Land and/or buildings and/or other Purchased Assets by such agents, consultants or other persons as it deems necessary, including all environmental searches and inquiries. The Vendor, by its acceptance of this Offer, consents to such surveys, tests or inspections and will promptly, upon the Purchaser's request, furnish any consent, application or other writing to cause inspection to be made or undertaken by them, provided that the cost of every such survey, test, inspection or application shall be paid by the Purchaser who agrees to indemnify the Vendor against all expenses incurred therefor. If the results of such inspections are unsatisfactory to the Purchaser in its absolute discretion, the Purchaser may terminate any agreement resulting from acceptance of this Offer by notice in writing delivered to the Vendor or its solicitors within the given time frame. The Purchaser shall indemnify the Vendor for any injury to person or property resulting in any way from the Purchaser, it's agents, consultants or other persons appointed by it, in conducting such tests, surveys and inspections and the Purchaser shall return the Property to the same condition as prior to the tests, surveys and inspections.
7. The Purchaser shall have a period of forty-five (45) days from the acceptance of this Offer to obtain a first mortgage of the property. If the financing arrangements are unsatisfactory to the Purchaser in its sole and absolute discretion, the Purchaser may terminate any agreement resulting from acceptance of this Offer by notice in writing delivered to the Vendor or its solicitors within the given time frame.
8. On any termination pursuant to paragraphs 5, 6, 7 or 9 hereof, the initial deposit shall be returned to the Purchaser together with any interest earned thereon, without deduction, and any agreement resulting from the acceptance of this Offer shall be of no further force and effect.

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9. At the Date of Closing the Vendor shall deliver or cause to be delivered to the Purchaser's solicitors the following:
- (a) evidence of payments of municipal realty taxes, business taxes, local improvements and assessment rates, hydro-electric charges, water rates, charges under maintenance or other contracts with respect to the operation of the building, and all such other items as the parties hereto may mutually agree upon. All such matters shall be adjusted proportionately and allowed to the Date of Closing, the day itself to be to the Purchaser's account both as to income and expense. The realty tax adjustment shall be for the calendar year during which the Date of Closing occurs. The Vendor shall pay all tax arrears with penalties thereon up to the Date of Closing. Fire and other insurance shall not be transferred or adjusted without the written consent of the Purchaser. Existing local improvement levies and assessments (if any), whether accrued or unaccrued, shall be for the sole account of the Vendor;
  - (b) transfer of title to the Land in registrable form in favour of the Purchaser or its nominee, and all title documents in its possession or under its control;
  - (c) declaration confirming that the Vendor is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada), as applicable;
  - (d) if applicable, a proper bill of sale in respect of any chattel property purchased hereunder;
  - (e) Assignment of Contracts, if applicable;
  - (f) all tax, hydro-electric, water and other account apportioned;
  - (g) all contracts, agreements and warranties which the Vendor may have in relation to the Purchased Assets and proper assignments thereof;
  - (h) an undertaking that all charges in relation to the operation of the building on the Land have been paid, will be paid or have been properly allowed for;
  - (i) proper releases and discharges of any outstanding interests (if any) in the Purchased Assets not being assumed by the Purchaser;
  - (j) A certificate of the Vendor or an officer of the Vendor confirming that the representations and warranties contained in paragraph 4 are true and correct as at the Closing Date with the same force and effect as if each of such representations and warranties was made at and as of the Closing Date;
  - (k) all duplicate keys and master keys (if available) to all buildings and facilities on the Land;

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- (l) such certificates, affidavits, statutory declaration of officers of the Vendor and other documents as may be reasonably necessary to establish that the written terms and conditions have been complied with and fulfilled.
10. The Vendor shall, at the Date of Closing, deliver to the Purchaser possession of the Land, free and clear of all liens, charges and encumbrances save and except for:
- (a) caveats for those charges or encumbrances placed against the Land by or through the Purchaser;
  - (b) Caveat No. 262334/1, 265696/1, Caveat No. 81-10253/1, Caveat No. 3066090/1, Caveat No. 3157625/1, Caveat No. 3705888/1 and Caveat No. 3705891/1;
  - (c) utility service (if any) in usual form and content; and
  - (d) such other encumbrances as are usual and normal-course for a property of similar location and use, and which will not negate the validity and marketability of title to the property.

The foregoing items (a) to (d) collectively herein called the **"Permitted Encumbrances"**.

11. The Date of Closing shall occur within fifteen (15) days following the later of (a) the date the Bankruptcy Court (as defined in attached Schedule B) approves the sale contemplated herein, or (b) the waiver of each of the Vendor's conditions; unless otherwise agreed by the parties in writing.
12. All buildings and equipment upon the Land or used in connection therewith shall remain at the risk of the Vendor until the Date of Closing. Until completion of the purchase and sale at closing the Vendor shall, subject to the interest of any registered mortgage, hold all policies of insurance and any proceeds thereof in trust for the parties hereto as their interest may from time to time appear, and if the buildings or equipment therein shall be substantially damaged before completion, the Purchaser may elect to receive the proceeds of the insurance and complete the transaction, or to release its interest in the insurance and cancel any agreement resulting from acceptance of this Offer. If it elects to cancel any agreement resulting from acceptance of this Offer, all monies paid hereunder including the deposits shall be forthwith returned by the Vendor to the Purchaser with all interest thereon as herein provided and neither party shall be liable to the other for any costs or damages.
13. From the date of acceptance of this Offer until closing, the Vendor shall cause the buildings and the equipment used in connection therewith to continue to be operated, managed and maintained in a good, proper, efficient and competent manner as would a prudent owner of property of a comparable type, age, class and location, and shall pay, or cause to be paid, all operating and carrying charges within a reasonable time after they fall due so that on closing there will be no unpaid accounts relating to the premises and their operation more than ninety (90) days old. Following acceptance of this Offer,

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the Vendor shall not make or renew any agreement to lease, lease, lease amendment or other agreement or commitment with respect to the operation, maintenance and management of the Purchased Assets without prior written consent of the Purchaser, which consent may not be unreasonably withheld.

14. The Vendor by acceptance of this Offer represents that the Vendor is not now, and does not at the Date of Closing of the sale intend to be, a non-resident of Canada as defined by the provisions of the *Income Tax Act* (Canada), and it is a condition of this Offer that on or before the Date of Closing of the sale the Vendor shall furnish the Purchaser with such evidence of the Vendor's residence as the Purchaser may reasonably require, failing which the Purchaser will comply with Section 116 of the *Income Tax Act* (Canada).
15. This Offer, when duly accepted by the Vendor, shall constitute a binding contract of purchase and sale and time shall be in all respects of the essence thereof.
16. The Purchaser shall have the right to nominate, assign, transfer and convey its rights, privileges, benefits, duties and obligations under and by virtue of the within Agreement, in writing, to any person, firm or corporation, and any such nominee or assignee shall thereupon be bound to observe, keep and perform all of the covenants, agreements, duties and obligations of the Purchaser hereunder, and to enter into any and all documents contemplated herein as if such nominee/ assignee had originally executed this Agreement; and such nomination/ assignment shall not relieve the Purchaser of and from its covenants, agreements, duties and obligations under or by virtue of the assignment/nomination.
17. Any tender of documents or money hereunder may be made upon the solicitors acting for the party on whom tender is desired to be made and it shall be sufficient that a certified cheque be tendered instead of cash.
18. In the event this Offer to Purchaser is accepted by the Vendor then, following such acceptance, the initial deposit, together with the additional deposit, if any, paid by the Purchaser in accordance with the terms of this Offer to Purchase, shall be held by Colliers in trust, in an interest bearing account, to be paid over to the Vendor as part of the purchase price, with all interest accruing to the benefit of the Purchaser, when it has carried out its entire obligation under this contract, but to be returned to the Purchaser should the Vendor fail to do so.

If the Purchaser fails to carry out its obligation under this Offer following its acceptance, the Vendor shall be entitled to retain the deposits as the Vendor's own property by virtue of the Purchaser's default and such retainer of deposits shall not itself constitute a termination of this Offer and shall not restrict the Vendor from exercising any other remedies which the Vendor may have by virtue of the Purchaser's default, including the right to claim damages from the Purchaser which the Vendor sustains in excess of the deposits.

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In every other case, unless the Vendor and Purchaser shall specifically otherwise agree in writing, Colliers shall retain the said deposit and any additional deposit in trust at interest until the Vendor and Purchaser shall agree as to its disposition or until a court of competent jurisdiction shall order Colliers to make payment to one or other of the parties, in which instance the deposit and any additional deposit together with the interest accumulated thereon, shall be paid in accordance with the agreement between the parties or the order of the Court to the Purchaser or Vendor, as the case may be.

If the Purchaser and Vendor cannot agree as to the disposition of the deposit and any additional deposit, Colliers may, notwithstanding anything hereinbefore contained, pay the monies into the Court of Queen's Bench by way of interpleader and the entitlement to the said deposit monies and interest shall then be determined by the Court of Queen's Bench.

19. During the period from acceptance of this Offer to the Date of Closing, the Purchaser and its agents shall have access to the Land, and each and every building thereon, at all reasonable hours to inspect such property.
20. GOODS AND SERVICES TAX (GST)
  - (a) The Purchaser is registered and shall be registered on the Date of Closing pursuant to the provisions of the *Excise Tax Act* (Canada) and the regulations passed pursuant thereto (the "**Excise Tax**") for the purposes of collecting any goods and services taxes (the "**GST**"). Accordingly, if the Property or any part thereof is subject to GST as defined in the Excise Act, then the Purchaser shall not be required to pay any GST to the Vendor for the purchase of the Land. Provided however that the Purchaser's ability to self-assess as hereinbefore provided shall be subject to the Purchaser providing the Vendor on or before the Date of Closing with a certificate setting forth the Purchaser's GST registration number. The furnishing of such a certificate by the Purchaser to the Vendor shall be a warranty by the Purchaser that the Purchaser's registration under the Excise Act for the purposes of collecting any GST is valid and subsisting and that the Purchaser shall remit directly to the appropriate taxing authority, as required by law, any GST relating to the Agreement and the transaction contemplated hereby. Upon receipt from the Purchaser of the said certificate the Vendor shall thereupon be relieved of all GST liability with respect to purchase and sale of the Land.
  - (b) If the Land or any part thereof is subject to GST as defined in the Excise Act and if, on the Closing Date, the Purchaser is not registered pursuant to the provisions of the Excise Act for the purposes of collecting any GST or if the Purchaser does not provide the certificate referred to in subparagraph a. above then, in that event, the Vendor shall apply GST at the applicable rate to the Purchase Price of the Land and the Purchaser, in addition to the Purchase Price, shall pay to the Vendor, on the Date of Closing, by certified cheque, the amount of GST exigible.

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21. The Purchaser shall be solely responsible for the costs of registration of the transfer of land respecting the property including, without limitation, the payment of Manitoba land transfer tax.
22. It is understood and agreed that no representation, warranty, collateral agreement, promise, undertaking, guarantee or condition affecting this Agreement or the Property has been made by the Vendor or its agent other than as expressed herein in writing. The Purchaser and Vendor agree the Offer to Purchase is subject to the provisions within Schedule B. In the event of any conflict between the provisions within Schedule B and the Offer to Purchase, the provisions within this Schedule B shall prevail.
23. Both parties acknowledge that Capital is the Purchaser's agent and represents the Purchaser in this transaction, but is able to provide certain information and assistance to the Vendor. Purchaser represents and warrants that there are no other agents or brokers acting for the Purchaser.
24. It is a term and condition of this Offer that the Vendor shall be responsible for the payment in whole of any commission earned by any person, firm or corporation as real estate agent as a result of the sale hereby contemplated, and the Vendor represents to the Purchaser that it has engaged as Colliers International ("**Colliers**"). The Vendor acknowledges that the Purchaser was introduced to the Purchased Assets by its agent Capital and the Vendor agrees to indemnify Colliers/Capital against any other claims for commission and agrees to pay to Colliers/Capital, on a 55/45 basis, a real estate commission fee amounting to four (4%) percent of the Purchase Price, together with any and all goods and services taxes (if applicable) or any other taxes imposed on, or collectible by Colliers upon transfer of title to the Purchaser and to indemnify the Purchaser in respect thereof, subject to bankruptcy court approval. The Vendor directs and authorizes Colliers to retain and apply the deposit or so much thereof as is required to pay the said commission as and when such commission becomes properly due and payable, and to remit to the Vendor's solicitor the balance of the deposit funds, together with the applicable interest earned thereon. The Vendor hereby irrevocably directs and authorizes its solicitors to promptly pay any unpaid commission out of the sale proceeds to Colliers. Any commissions or parts of commissions not paid on the date title to the property is transferred to the Purchaser shall be payable with interest calculated at the rate of 2% per month and compounded semi-annually.
25. This Offer and its acceptance is to be read with all changes of gender or number required by the context, and this Agreement shall enure to and be binding upon the parties hereto and each of their respective heirs, executors, administrators and assigns, as the case may be, and time shall be in all respects of the essence hereof.
26. This Counter Offer shall be open for acceptance by the Purchaser until 4:00 p.m. Winnipeg time on January 16, 2020, after which time if the Offer is not accepted, it shall be null and void, and all deposit funds shall be returned forthwith to the Purchaser without deduction.

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27. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery, or by sending the same by prepaid registered mail or electronic facsimile transmission as follows:

to the Purchaser at the following address:

Box 2, Group 200, RR#2  
Winnipeg, Manitoba  
R3C 2E6

with a copy to the Purchaser's solicitor:  
Bruce King  
Pitblado LLP  
2500-360 Main St | Winnipeg, MB R3C 4H6

and to the Vendor at the following address:

Celadon Group, Inc.  
Attn: Kathryn Wouters  
9503 East 33rd Street, One Celadon Drive  
Indianapolis, IN 46235 USA  
e-mail: kwouters@celadontrucking.com

with a copy to the Vendor's solicitor:

DLA Piper LLP (US)  
Attn: Richard Chesley, Esq.  
444 West Lake Street  
Chicago, IL 60606 USA  
e-mail: richard.chesley@us.dlapiper.com

Any notice or other document so mailed shall be deemed to have been given three (3) days following the date of mailing and any notice or other document personally delivered or sent by electronic facsimile transaction shall be deemed to have been given upon receipt. In the event of interruption of mail services through strike or other similar reasons, all notices or deliveries must be made by personal delivery or electronic facsimile transmission.

28. This Offer to Purchase may be executed in counterpart, each of which when executed and delivered shall be deemed to be an original and all of which when taken together will constitute one and the same document. This Offer to Purchase may be executed the parties by electronic means, including by successful facsimile transmission or by electronic delivery and the parties agree that any signatures received by electronic means shall be deemed an original for all purposes.

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DATED this 16th day of January, 2020

**2925924 MANITOBA LTD.**

\_\_\_\_\_  
WITNESS

Per: 

Name: Ursula Baziuk

Title: Secretary/Treasurer

I have authority to bind the Corporation

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**ACCEPTANCE**

The undersigned Vendor, the owner of the above-described property, hereby accepts the above Offer together with all terms therein contained. The undersigned Vendor further agrees to and with the Purchaser to duly complete the sale on the terms and conditions of the above Offer and, should it fail to do so, the Purchaser may, at its option, cancel any agreement resulting from acceptance of this Offer and withdraw its deposit or take whatever remedies it may have at law.

DATED this 16th day of January, 2020.

**HYNDMAN TRANSPORT LIMITED**

\_\_\_\_\_  
WITNESS

Per: 

Name: Chase Welsh

Title: Secretary

I have authority to bind the Corporation

\_\_\_\_\_  
WITNESS

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

Name:

Title:

I have authority to bind the Corporation

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SUPPLEMENT TO OFFER TO PURCHASE

This Supplement accompanies the Offer to Purchase dated January \_\_\_\_\_, 2020 for the property located at \_\_\_\_\_

In representing the parties in the negotiations for the Purchase/Sale of the Property:

The Listing Broker represents:

X The Vendor and does not represent the Purchaser  
\_\_\_\_ The Purchaser and does not represent the Vendor  
\_\_\_\_ both parties with the consent of each other

\_\_\_\_ VENDOR'S INITIALS \_\_\_\_ PURCHASER'S INITIALS  
\_\_\_\_ LISTING SALESPERSONS INITIALS

The Selling Broker represents:

X The Purchaser and does not represent the Vendor  
\_\_\_\_ The Vendor and does not represent the Purchaser  
\_\_\_\_ both parties with the consent of each other

\_\_\_\_ PURCHASER'S INITIALS \_\_\_\_ VENDOR'S INITIALS  
\_\_\_\_ SELLING SALESPERSONS INITIALS

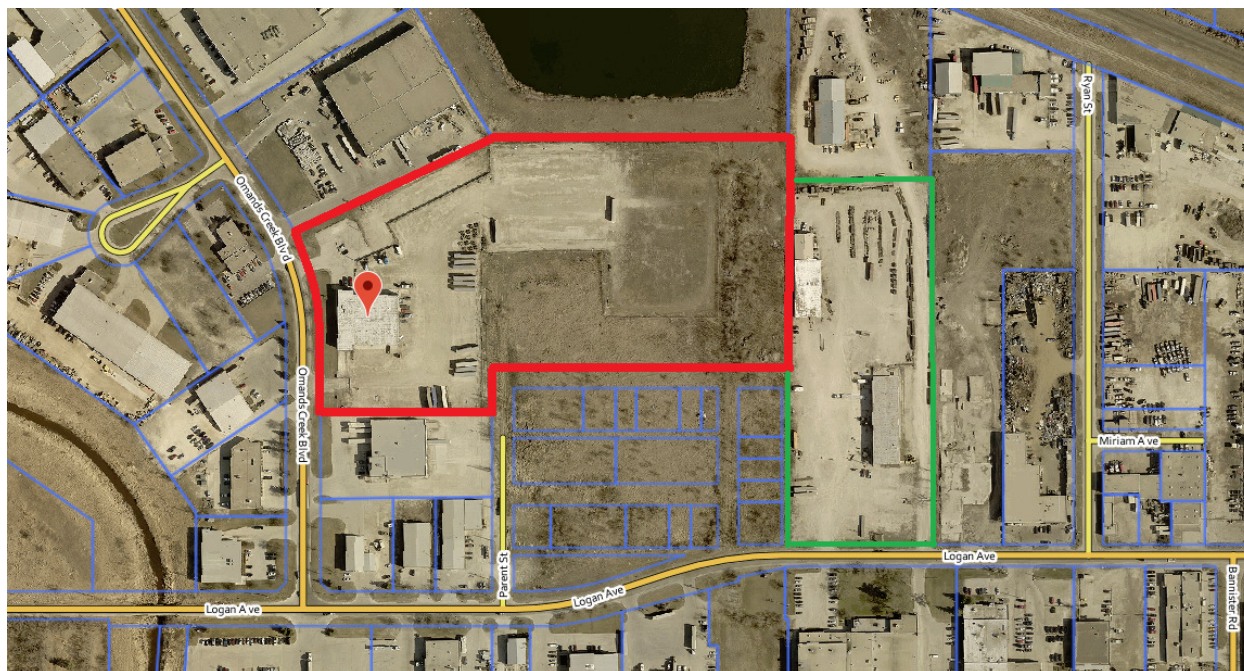
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**SCHEDULE "A"**

**SITE PLAN**

copy of site plan outlined in red



2nd Floor, 570 Portage Avenue, Winnipeg, MB R3C 0G4 | T 204.943.5700 F 204.956.2783

[capitalgrp.ca](http://capitalgrp.ca)

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**Schedule "B"**

The Offer to Purchase is subject to the following provisions. In the event of any conflict between the provisions within this Schedule B and the Offer to Purchase, the provisions within this Schedule B shall prevail.

**Acknowledgement re "As Is" Condition**

The Purchaser acknowledges and agrees, subject to and except as otherwise expressly provided for in this Agreement, that:

- (a) The property is being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Date of Closing, in the condition or state as it exists as of the Date of Closing, and without any express or implied agreement, representation or warranty of any kind whatsoever as to, without limitation, (i) the structural integrity or any other aspect of the physical condition of the property or the buildings and/or improvements located thereon, (ii) the conformity of the buildings/and or improvements to any plans or specifications for the property (including, but not limited to, any plans and specifications that may have been or which may be provided to the Purchaser), (iii) the conformity of the property to past, current or future applicable zoning or building code requirements or other applicable laws, (iv) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the lands, or the buildings/improvements situated on or as part of the property, (v) the sufficiency of any drainage, (vi) whether the property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, (vii) the existence or non-existence of underground storage tanks, (viii) the availability of public utilities and services for the property, (ix) the fitness or suitability of the property for occupancy or any intended use (including matters relating to health and safety), (x) the potential for further development of the property, (xi) the existence of land use, zoning or building entitlements affecting the property, (xii) the financial condition of any present or prospective tenant of the property or any contractor or whether any encumbrances are assignable, (xiii) the environmental condition of the property and/or any buildings and/or improvements located thereon, including the condition of the soil or groundwater, both surface and subsurface, the existence of any sub-surface installations or the existence of any hazardous substance in, on, under or in the vicinity of the property, or (xiv) the accuracy, currency or completeness of any information or documentation supplied or to be supplied in connection with the property and other assets being sold pursuant to this Agreement.
- (b) In entering into this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the property, including without limitation, the physical and environmental condition of the property and the review of the documentation made available to the Purchaser, the Purchaser is not relying on any information or material furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor in connection therewith, and the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights the Purchaser might have against the Vendor pursuant to any warranty, express or implied, of any kind or type, of this Agreement relating to the property. Such waiver is absolute, unlimited and

includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in or created by any statute, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including, but not limited to, claims regarding defects, whether or not discoverable, product liability claims, or similar claims, and to all other extent or later created or conceived of strict liability or strict liability type claims and rights;

- (c) The Vendor shall not be responsible or liable for any misrepresentation, lack of disclosure or incorrect or incomplete disclosure of any nature whatsoever on the part of the Vendor or any real estate broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of the Vendor of any third party.
- (d) The Vendor shall have no obligations or responsibility to the Purchaser after the Date of Closing with respect to the property or any buildings and/or improvements located thereon or the condition, suitability, or marketability thereof or with respect any other matter relating to same.
- (e) The Purchaser agrees to release and discharge the Vendor and its successors and assigns, or any of them, from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any hazardous substance relating to the property and/or the buildings and/or improvements located therein. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the clean up or removal of any hazardous substance, remediate any condition or matter in, on, under or in the vicinity of the property, or seek an abatement in the Purchase Price or damages in connection with any hazardous substance.
- (f) This Section shall not merge on, but shall survive, the Date of Closing.

### **Inspection**

The Purchaser shall be entitled to conduct reasonable investigations, tests and inspections in respect of the property during normal business hours, upon reasonable notice to the Vendor, and subject to the rights of or restrictions in favour of any existing tenants in accordance with their respective leases (if applicable). Without limiting the foregoing, the Purchaser may enter upon the property at its own risk and expense, upon obtaining the prior approval of the Vendor, and in the presence of a representative of the Vendor; for such purpose the Vendor shall make an employee of the Vendor available to the Purchaser at all reasonable times on reasonable prior notice. All inspections, investigations and testing carried out by the Purchaser or its representative shall be carried out as expeditiously as possible at the Purchaser's sole cost, expense and risk and in accordance with the inspection rights and notice provisions contained in the respective leases for any of the tenants of the property and so as to cause the minimum amount of interference and disruption to such tenants, their employees, suppliers and customers. Any damage caused to the property as a result of the Purchaser's entry upon the property, or any part thereof, or any activities carried out by the Purchaser or its representatives in respect of the property, or any part thereof, shall be promptly repaired by the Purchaser to the Vendor's reasonable satisfaction. The Purchaser agrees to indemnify and save harmless the Vendor from all actions, costs, liabilities and damages resulting from the Purchaser's entry and the activities carried out by the Purchaser or its representatives relating to its inspection of the property and in that regard the Vendor

may resort to all or part of the deposit to off-set the cost of any such damages or losses for which the Purchaser is responsible.

### **Escrow Closing and Registrations**

The Purchaser and Vendor covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "**DRA**") to govern the electronic submission of the Transfer/Deed for the Property and to the applicable Land Registry Office. The DRA shall out-line or establish the procedures and timing for completing all registrations electronically and pro-vide for all closing documents and closing funds to be held in escrow pending the submission of the Transfer/Deed to the Land Registry Office and their acceptance by virtue of each registration document being assigned a registration number. The DRA shall also provide that if there is a problem with the Teraview electronic registration system which does not allow the parties to electronically register all registration documents on the Date of Closing, the Date of Closing shall be deemed to be extended until the next day when the said system is accessible and operating for the Land Registry Office applicable to the Property.

### **Taxes and Fees**

The Purchaser shall be responsible for all registration fees and land transfer taxes and sales taxes payable in connection with this transaction. Each party shall pay its own legal fees with respect to this transaction.

### **Tender**

Any tender of documents under this Agreement shall be made upon the parties or their respective counsel and shall be delivered by electronic mail, facsimile and/or courier. Any tender of money shall be made by wire transfer, certified cheque or bank draft of immediately available funds from a financial institution listed in Schedule I of the Bank Act (Canada) to the tendering party's counsel subject to the terms and provisions of the DRA.

It is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this Section called the "**Tendering Party**") upon the other party (in this Section called the "**Receiving Party**") when the solicitor for the Tendering Party has:

- delivered all applicable documents and funds to the Receiving Party's solicitor in accordance with the provisions of the DRA;
- advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
- completed all steps required by the electronic registration system to complete this Transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party has "signed" the transfer/deed and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing them for registration by the Receiving Party's solicitor),

without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

### **Bankruptcy Matters**

Purchaser acknowledges that on December 8, 2019, Vendor, together with certain of its affiliates and subsidiaries, commenced voluntary proceedings under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") by filing petitions for relief in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

The obligations of Vendor under this Offer to Purchase are contingent upon (i) the entry of the bid procedures order that provides the Purchaser with the Bid Protections described below and (ii) the entry of a sale order by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code, which shall find the Purchaser to be a "good faith purchaser" under section 363(m) of the Bankruptcy Code, provide for the sale of the Property free and clear of any and all liens, claims, encumbrances and interests, and shall be reasonably acceptable to the Purchaser (the "Sale Order"), which Sale Order shall become a final, non-appealable order (a "Final Order"). In the event a Final Order is not entered on or before February 24, 2020, Purchaser shall have the right to terminate this Agreement and receive a return of any deposits, provided, however, the requirement that the Sale Order be a Final Order may be waived by the Purchaser in its sole discretion.

The Bid Procedures Order shall provide that if this Agreement is terminated by Vendor upon entering into a sale of the Property to a third-party (the "Alternative Transaction") prior to the Date of Closing, then Buyer shall be deemed to have earned a break-up fee in the amount of \$120,000 (CAD), and the reimbursement of out-of-pocket expenses, subject to a cap of \$60,000 (CAD) (collectively, the "Bid Protections"). The Bid Protections shall be a super-priority administrative expense priority obligation under Section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

In the event that Vendor terminates this Agreement by entering into an Alternative Transaction, in addition to a return of any deposits, Purchaser's remedies will be limited to the payment of the Bid Protections.

Amending Agreement between:

2925924 Manitoba Ltd. ("**Purchaser**")

-and-

Hyndman Transport Limited, (hereinafter called the "**Vendor**")

**WHEREAS** the Purchaser and Vendor are parties to an Offer to Purchase made by the Purchaser on January 16th, 2020 and accepted by the Vendor on January 16th, 2020 (the "**Offer**");

**AND WHEREAS** the Offer is subject to a number of conditions in favour of the Purchaser, including the Purchaser's evaluation of the environmental status of the Purchased Assets;

**AND WHEREAS** the Purchaser's investigations into the environmental status of the Purchased Assets have identified the existence of hazardous substances on the Land, which the Purchaser acknowledges will be the Purchaser's entire responsibility;

**AND WHEREAS** the existence of hazardous substances on the Land will entail the Purchaser incurring remediation costs;

**AND WHEREAS** the Purchaser is prepared to waive the conditions in its favour in exchange for a reduction of the Purchase Price;

Now therefore the parties agree:

1. Capitalized terms used in this Amending Agreement and not otherwise defined herein shall have the meaning given to them in the Offer.
2. To amend the Offer as follows:
  - a) The Purchase Price shall be revised to be Four Million and Fifty Thousand (\$4,050,000.00) Dollars;
  - b) Sub-paragraph 1 (b) is revised to read: "A further deposit in the amount of \$200,000.00 is to be provided concurrent with acceptance of this Amending Agreement, such further deposit to be held by the agents for the Vendor pending completion or other termination of any agreement resulting from acceptance of this Amending Agreement;
  - c) Paragraphs 5, 6 and 7 are deleted in their entirety;
  - d) Paragraph 8 is amended to delete reference to Paragraphs 5, 6 and 7;
  - e) Section 11 is revised to read: "The Date of Closing shall occur fifteen (15) days following the date the Bankruptcy Court (as defined in attached Schedule B) approves the sale contemplated herein, or such other date agreed to by the parties in writing"; and


- f) Schedule B to the Offer is amended under the heading "Bankruptcy Matters" to add the words "and the appropriate Canadian Court" immediately following the phrase "the United States Bankruptcy Court for the District of Delaware" and to add the words "and a confirming order by the appropriate Canadian Court" immediately prior to the defined term "(a "Final Order")".
- 3. All the remaining terms and conditions of the Offer are incorporated herein and shall remain unchanged.

***Signature Page to Follow***



Dated the 30<sup>th</sup> day of January, 2020.

**2925924 Manitoba Ltd.**

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

**Hyndman Transport Limited**

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

Dated the \_\_\_\_\_ day of January, 2020.

**2925924 Manitoba Ltd.**

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

**Hyndman Transport Limited**

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

## **Appendix “G”**

**Agreement of Purchase and Sale  
Commercial**

**Form 500**

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 7 day of January, 2020

**BUYER:** WYNDEHAM STREET INVESTMENTS INC., agrees to purchase from  
(Full legal names of all Buyers)

**SELLER:** CELADON GROUP, INC. ON BEHALF OF WYNDEHAM TRANSPORT LTD., the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address 2616 CEDAR CREEK ROAD, AYR, ONTARIO, CANADA

fronting on the North side of CEDAR CREEK ROAD

in the TOWN OF AYR

and having a frontage of AS PER SURVEY more or less by a depth of more or less

and legally described as PT LT 30 CON 11 NORTH DUMFRIES; PT RDAL EYN CON 10 & 11 NORTH DUMFRIES CLOSED BY 58G710

AS IN WS707023, EXCEPT PT 1 58EX470 TOWNSHIP OF NORTH DUMFRIES (the "property")  
(Legal description of land including exceptions not described elsewhere)

**PURCHASE PRICE:** Dollars (CDN\$) 12,000,000.00

Twelve Million Dollars

**DEPOSIT:** Buyer submits upon acceptance  
(Herein/Upon Acceptance/as otherwise described in this Agreement)

Five Hundred Thousand Dollars (CDN\$) 500,000.00

by negotiable cheque payable to CBRE LIMITED IN TRUST "Deposit Holder"  
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S)** A B attached hereto form(s) part of this Agreement.

**1. IRREVOCABILITY:** This offer shall be irrevocable by Buyer until 5:00 on  
(Seller/Buyer) (a.m./p.m.)  
the 14 day of January, 2020, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

**2. COMPLETION DATE:** This Agreement shall be completed by no later than 6.00 p.m. on the SEE SCHEDULE A day of 20. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

MZ

[Redacted]

CW

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3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: .....  
(For delivery of Documents to Seller)

FAX No.: .....  
(For delivery of Documents to Buyer)

Email Address: .....  
(For delivery of Documents to Seller)

Email Address: .....  
(For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**

**All Chattels to be accepted in an "AS IS" condition on closing:  
All pit related items, racking and shelving in parts room, shop  
compressor, network, security and cabling and IT Related Items, Office  
Furniture, Gate and Door Controllers ( including keyless Fob system )**

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

**Overhead Crane in Shop Area ( Kone Krane ), Building and Pylon Signage**

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

**N/A**

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price.** The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, If applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

*M2*

*CW*



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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the ..... day of ..... **SEE SCHEDULE A** ..... 20.....  
(Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property, that its present use (..... **ZONE 11-Z11, TRUCKING** .....) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.


14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):



);



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- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;  
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

*MB*

INITIALS OF SELLER(S):

*CW*



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**28. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.  
SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

JAN 7, 2020  
(Date)

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

(Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

1/10/2020  
(Date)

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

(Date)

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

(Date)

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at \_\_\_\_\_ this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_.

(a.m./p.m.)

(Signature of Seller or Buyer)

#### INFORMATION ON BROKERAGE(S)

Listing Brokerage

(Tel. No.)

(Salesperson/Broker/Broker of Record Name)

Co-op/Buyer Brokerage

(Tel. No.)

(Salesperson/Broker/Broker of Record Name)

#### ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

(Seller) CELADON GROUP, INC. ON BEHALF OF HYDROTRANSPORT LTD.

1/10/2020  
(Date)

(Buyer) WYNDHAM STREET INVESTMENTS INC. (Date)

(Seller)

(Date)

(Buyer)

(Date)

Address for Service

Address for Service

(Tel. No.)

(Tel. No.)

Seller's Lawyer

Buyer's Lawyer

Address

Address

Email

Email

(Tel. No.)

(Fax. No.)

(Tel. No.)

(Fax. No.)

#### FOR OFFICE USE ONLY

#### COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:

In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale. Acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)

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**Schedule A**  
**Agreement of Purchase and Sale - Commercial**

**Form 500**  
for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** WYNDHAM STREET INVESTMENTS INC. \_\_\_\_\_, and

**SELLER:** CELADON GROUP, INC. ON BEHALF OF HYNDMAN TRANSPORT LTD. \_\_\_\_\_

for the purchase and sale of 2616 CEDAR CREEK ROAD, AYR, ONTARIO, CANADA \_\_\_\_\_

dated the 7 day of January, 2020

Buyer agrees to pay the balance as follows:

**THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK. REFER TO SCHEDULE A, B AND C**

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

*M2*

*CW*



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Schedule "A"

To Agreement of Purchase and Sale re: 2616 Cedar Creek Road, Ayr, Ontario, Canada

Between:

BUYER: WYNDHAM STREET INVESTMENTS INC.

SELLER: CELADON GROUP, INC. ON BEHALF OF HYNDMAN TRANSPORT LTD.

1. Legal Description:

The Legal Description of the subject Properties are:

PT LT 30 CON 11 NORTH DUMFRIES; PT RDAL BTN CON 10 & 11 NORTH DUMFRIES CLOSED BY 58G710; AS IN WS707023, EXCEPT PT 1, 58EX470 TOWNSHIP OF NORTH DUMFRIES

2. Payment of Purchase Price:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by wire transfer, to the Seller on the completion of this transaction.

3. Completion Date:

This Agreement shall be completed by no later than thirty (30) days from the date of execution of the Purchase Agreement.

4. Title Search:

The Requisition Date of this Agreement shall be no later than ten (10) days prior to the completion date.

5. Assignment:

The Buyer shall be entitled to direct the transfer of title of the Property to whomsoever it elects provided the Buyer is otherwise in compliance with; and shall at all times remain obligated to the terms and conditions of this Agreement.

6. Seller to Discharge Mortgage:

The Seller agrees to discharge at its own expense all mortgages and liens registered against the property.

7. Seller Deliveries and Authorities:

The Seller agrees to:

- (a) Supply to the Buyer within Five (5) days of Acceptance, all of the following documents for the Buyer's review, in each case to the extent in the possession or control of the Seller (collectively, the "Due Diligence Documents"):
  1. a survey of the Property;
  2. all building plans, architectural plans and drawings, site plan and site plan concepts;
  3. copies of property tax bills and assessment notices in respect of the Property for the last two (2) years;
  4. copies of all utility and services bills in respect of the Property for the last two (2) years;
  5. financial statements showing all income and expenses in respect of the Property for the last two (2) years;
  6. all environmental, geotechnical, and similar studies and reports commissioned by the Vendor in respect of the Property;
  7. a list of all continuing litigation and potential litigation and outstanding receivables concerning the Property;
  8. a list of chattels to be included in the purchase price
- (b) Authorize all governmental and other authorities having jurisdiction over the real property, to release to the Buyer all information such authorities have on file respecting the Property.

Initials of Buyer:

M2

Initials of Seller:

CW



8. Due Diligence Period:

This Offer is conditional for five (5) business days from the date of execution of this Purchase Agreement (the "Due Diligence Period"), upon the Buyer, at its own expense, being satisfied in its sole and absolute and unfettered discretion, as to all aspects of the Property including, without limitation:

- a) Upon the Buyer conducting an inspection of the subject property

This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller during the Due Diligence Period, failing which this Offer shall be null and void and the Buyer's deposit, together with any interest earned or accrued thereon, will be returned without deduction or set-off.

9. Access:

The Seller agrees to allow the Buyer, its agents and employees, access to the property for the purposes of physical inspections and to carry out prudent tests during the Due Diligence Period given reasonable notice by the Buyer. Should the Buyer hire agents, the cost and responsibility of such work shall be for the account of the Buyer. The Buyer covenants and agrees to restore the property forthwith after inspection to its pre-existing physical condition prior to the time of the first such inspection. The Buyer agrees to treat the results of such inspections in a strictly confidential manner and not to disclose the results to a third party except where required by law.

10. Seller's Deliveries on Closing:

On closing the Seller shall deliver the following to the Buyer:

- (a) Any original contracts or agreements if any which the Buyer shall have elected to assume in accordance with the terms of this Agreement;
- (b) An assignment of any outstanding guarantees, warranties, indemnities, permits, certificates and licenses related to the property and the building thereon, to the extent that such documents are assignable;
- (c) All existing duplicate master keys to all locks and locking devices on the property or in the building;
- (d) An undertaking to pay all utilities to the date of closing to pay all taxes to the date of closing and to ready any item on the statement of adjustments if necessary, after closing;
- (e) Provide transfer of the property in registrable form in favour of the buyer or as the buyer directs;
- (f) An undertaking by seller to adjust any errors or omissions in the statement of adjustments.

11. Realty Tax Refunds:

All right, title and benefit to any realty tax appeals and reassessments and any rebates, refunds or reassessment of realty taxes for the Lands in respect of periods preceding the Closing Date (collectively, the "Realty Tax Refunds") shall remain the property of the Seller. The Buyer agrees to pay to the Seller, promptly after the completion of any successful assessment appeal, the net proceeds of any rebate, refund or reassessment of realty taxes for the Lands received by the Buyer in respect of any period prior to the Closing Date. For greater certainty, the obligations under this Section shall survive Closing.

12. Property Management prior to Completion:

The Seller further covenants and agrees as follows:

- a) To maintain, manage and operate the real property from the date of acceptance of this Offer to closing in the matter equivalent to the Seller's prior management;
- b) That after acceptance hereof, the Seller will not enter into any new lease agreement(s) with any tenant(s) without first obtaining the written consent of the Buyer.

13. Statement of Adjustments:

Seller to deliver statement of adjustments 7 days prior to closing.

Initials of Buyer:

*MB*

*[Redacted]*

*CW*



14. Agency

It is hereby acknowledged that CBRE Limited Inc. is acting on behalf of the Purchaser and all applicable real estate fees shall be payable by the Vendor at a commission of one percent (1%) of the purchase price. The real estate fees shall be payable upon successful closing.

15. Confidentiality

The parties agree that this Letter and the transaction of the purchase and sale referred to herein, and any information provided by either party to the other with respect to this transaction or the Property, shall be kept strictly confidential and no public announcements will be made in respect thereof, provided that the parties may give such information on a confidential basis to their advisors, creditors, consultants or assignee(s) and as may be required by applicable laws. Notwithstanding the foregoing, this Paragraph 15 (Confidentiality) shall not apply to disclosures required in the bankruptcy cases of Vendor and its affiliates.

Initials of Buyer:

*MZ*

Initials of Seller:

*CW*



Schedule "B"  
To Agreement of Purchase and Sale re: 2616 Cedar Creek Road, Ayr, Ontario, Canada  
Between:  
BUYER: WYNDHAM STREET INVESTMENTS INC.  
SELLER: CELADON GROUP, INC. ON BEHALF OF HYNDMAN TRANSPORT LTD.



Initials of Buyer:

MS

Initials of Seller:

ew



Schedule "C"  
To Agreement of Purchase and Sale re: 2616 Cedar Creek Road, Ayr, Ontario, Canada  
Between:  
BUYER: WYNDHAM STREET INVESTMENTS INC.  
SELLER: CELADON GROUP, INC. ON BEHALF OF HYNDMAN TRANSPORT LTD.

Acknowledgement re "As Is" Condition

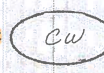
The Buyer acknowledges and agrees, subject to and except as otherwise expressly provided for in this Agreement, that:

- (a) The property is being purchased and assumed by the Buyer on an "as is, where is" basis as of the Completion Date, in the condition or state as it exists as of the Completion Date, and without any express or implied agreement, representation or warranty of any kind whatsoever as to, without limitation, (i) the structural integrity or any other aspect of the physical condition of the property or the buildings and/or improvements located thereon, (ii) the conformity of the buildings and/or improvements to any plans or specifications for the property (including, but not limited to, any plans and specifications that may have been or which may be provided to the Buyer), (iii) the conformity of the property to past, current or future applicable zoning or building code requirements or other applicable laws, (iv) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the lands, or the buildings/improvements situated on or as part of the property, (v) the sufficiency of any drainage, (vi) whether the property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, (vii) the existence or non-existence of underground storage tanks, (viii) the availability of public utilities and services for the property, (ix) the fitness or suitability of the property for occupancy or any intended use (including matters relating to health and safety), (x) the potential for further development of the property, (xi) the existence of land use, zoning or building entitlements affecting the property, (xii) the financial condition of any present or prospective tenant of the property or any contractor or whether any encumbrances are assignable, (xiii) the environmental condition of the property and/or any buildings and/or improvements located thereon, including the condition of the soil or groundwater, both surface and subsurface, the existence of any sub-surface installations or the existence of any hazardous substance in, on, under or in the vicinity of the property, or (xiv) the accuracy, currency or completeness of any information or documentation supplied or to be supplied in connection with the property and other assets being sold pursuant to this Agreement.
- (b) In entering into this Agreement, the Buyer has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the property, including without limitation, the physical and environmental condition of the property and the review of the documentation made available to the Buyer, the Buyer is not relying on any information or material furnished by the Seller or any other person or entities on behalf of or at the direction of the Seller in connection therewith, and the Buyer hereby unconditionally and irrevocably waives any and all actual or potential rights the Buyer might have against the Seller pursuant to any warranty, express or implied, of any kind or type, of this Agreement relating to the property. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in or created by any statute, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including, but not limited to, claims regarding defects, whether or not discoverable, product liability claims, or similar claims, and to all other extent or later created or conceived of strict liability or strict liability type claims and rights;
- (c) The Seller shall not be responsible or liable for any misrepresentation, lack of disclosure or incorrect or incomplete disclosure of any nature whatsoever on the part of the Seller or any real estate broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of the Seller or any third party.
- (d) The Seller shall have no obligations or responsibility to the Buyer after the Completion Date with respect to the property or any buildings and/or improvements located thereon or the condition, suitability, or marketability thereof or with respect any other matter relating to same.

Initials of Buyer:



Initials of Seller:





- (e) The Buyer agrees to release and discharge the Seller and its successors and assigns, or any of them, from every claim of any kind that the Buyer may make, suffer, sustain or incur in regard to any hazardous substance relating to the property and/or the buildings and/or improvements located therein. The Buyer further agrees that the Buyer will not, directly or indirectly, attempt to compel the Seller to clean up or remove or pay for the clean up or removal of any hazardous substance, remediate any condition or matter in, on, under or in the vicinity of the property, or seek an abatement in the Purchase Price or damages in connection with any hazardous substance.
- (f) This Section shall not merge on, but shall survive, the Completion Date.

#### Inspection

The Buyer shall be entitled to conduct reasonable investigations, tests and inspections in respect of the property during normal business hours, upon reasonable notice to the Seller, and subject to the rights of or restrictions in favour of any existing tenants in accordance with their respective leases (if applicable). Without limiting the foregoing, the Buyer may enter upon the property at its own risk and expense, upon obtaining the prior approval of the Seller, and in the presence of a representative of the Seller; for such purpose the Seller shall make an employee of the Seller available to the Buyer at all reasonable times on reasonable prior notice. All inspections, investigations and testing carried out by the Buyer or its representative shall be carried out as expeditiously as possible at the Buyer's sole cost, expense and risk and in accordance with the inspection rights and notice provisions contained in the respective leases for any of the tenants of the property and so as to cause the minimum amount of interference and disruption to such tenants, their employees, suppliers and customers. Any damage caused to the property as a result of the Buyer's entry upon the property, or any part thereof, or any activities carried out by the Buyer Purchaser or its representatives in respect of the property, or any part thereof, shall be promptly repaired by the Buyer to the Seller's reasonable satisfaction. The Buyer agrees to indemnify and save harmless the Seller from all actions, costs, liabilities and damages resulting from the Buyer's entry and the activities carried out by the Buyer or its representatives relating to its inspection of the property and in that regard the Seller may resort to all or part of the deposit to off-set the cost of any such damages or losses for which the Buyer is responsible.

#### Escrow Closing and Registrations

The Buyer and Seller covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "DRA") to govern the electronic submission of the Transfer/Deed for the Property and to the applicable Land Registry Office. The DRA shall out-line or establish the procedures and timing for completing all registrations electronically and pro-vide for all closing documents and closing funds to be held in escrow pending the submission of the Transfer/Deed to the Land Registry Office and their acceptance by virtue of each registration document being assigned a registration number. The DRA shall also provide that if there is a problem with the Teraview electronic registration system which does not allow the parties to electronically register all registration documents on the Completion Date, the Completion Date shall be deemed to be extended until the next day when the said system is accessible and operating for the Land Registry Office applicable to the Property.

#### Taxes and Fees

The Buyer shall be responsible for all registration fees and land transfer taxes and sales taxes payable in connection with this transaction. Each party shall pay its own legal fees with respect to this transaction.

Initials of Buyer:

MZ

Initials of Seller:

CW



### Tender

Any tender of documents under this Agreement shall be made upon the parties or their respective counsel and shall be delivered by electronic mail, facsimile and/or courier. Any tender of money shall be made by wire transfer, certified cheque or bank draft of immediately available funds from a financial institution listed in Schedule I of the Bank Act (Canada) to the tendering party's counsel subject to the terms and provisions of the DRA.

It is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this Section called the "Tendering Party") upon the other party (in this Section called the "Receiving Party") when the solicitor for the Tendering Party has:

- delivered all applicable documents and funds to the Receiving Party's solicitor in accordance with the provisions of the DRA;
- advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
- completed all steps required by the electronic registration system to complete this Transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the transfer/deed for completeness and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing them for registration by the Receiving Party's solicitor),

without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

### Fiduciary Obligations; Alternative Transaction

Buyer acknowledges that on December 8, 2019, Seller, together with certain of its affiliates and subsidiaries, commenced voluntary proceedings under chapter 11 of title 11 of the United States Code by filing petitions for relief in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court").

Nothing in this Agreement, or any document related to the transactions contemplated hereby, will require any Seller or any of their respective directors, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations ("Fiduciary Obligations"). For the avoidance of doubt, the Seller retains the right to pursue any transaction or restructuring strategy that, in the Seller's business judgment, will maximize the value of their estates. Buyer acknowledges and agrees that notice of this Agreement shall be provided to all interested parties, and such parties shall be afforded the opportunity to propose an alternative transaction to acquire the property ("Alternative Transaction"). Seller may accept such Alternative Transaction in the exercise of its Fiduciary Obligations.

Notwithstanding anything contained herein to the contrary, Seller may terminate this Agreement, with no penalty or liability (except as provided in the following sentence), (a) if Seller determines that proceeding with this Agreement will violate its Fiduciary Obligations, (b) if Seller, in the exercise of its Fiduciary Obligations, decides to proceed with an Alternative Transaction, or (c) the Bankruptcy Court does not approve the sale of the property. Upon the consummation of any Alternative Transaction following any such termination, Buyer shall be deemed to have earned a Break-Up Fee (defined below), which shall be paid in cash, by wire transfer of immediately available funds to an account designated by Buyer, out of the proceeds of such Alternative Transaction, without further order of the Bankruptcy Court, contemporaneously with the consummation of such Alternative Transaction. "Break-Up Fee" shall be an amount equal to \$360,000 (CAD\$).

Initials of Buyer:

MZ

Initials of Seller:

CW



**Waiver**

**Agreement of Purchase and Sale - Commercial**

**BUYER:** WYNDHAM STREET INVESTMENTS INC.

**SELLER:** CELADON GROUP, INC. ON BEHALF OF HYNDMAN TRANSPORT LTD.

**REAL PROPERTY:** 2616 CEDAR CREEK ROAD, AYR, ONTARIO, CANADA

In accordance with the terms and conditions of the Agreement of Purchase and Sale - Commercial dated the 7<sup>th</sup> day of January

2020, regarding the above property, I/We hereby waive the condition(s) which read(s) as follows:

**8. Due Diligence Period**

This Offer is conditional for five (5) business days from the date of execution of this Purchase Agreement (the "Due Diligence Period"), upon the Buyer, at its own expense, being satisfied in its sole and absolute and unfettered discretion, as to all aspects of the Property including, without limitation:

a) Upon the Buyer conducting an inspection of the subject property

This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller during the Due Diligence Period, failing which this Offer shall be null and void and the Buyer's deposit, together with any interest earned or accrued thereon, will be returned without deduction or set-off.

All other terms and conditions in the aforementioned Agreement of Purchase and Sale - Commercial to remain unchanged.

For the purposes of this Waiver, "Buyer" includes purchaser, and "Seller" includes vendor.

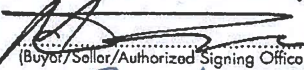
DATED at AYR, Ontario, at 1:30 p.m. this 17 day of JANUARY 2020

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

  
(Witness)


PER: WYNDHAM STREET INVESTMENTS INC.

  
(Buyer/Seller/Authorized Signing Officer)

 JAN. 17, 2020  
(Seal) (Date)

(Witness)

  
(Buyer/Seller/Authorized Signing Officer)

 1/17/2020  
(Seal) (Date)

Receipt acknowledged at 1:58 pm this 17th day of January 2020 by:

Print Name: Chase Welsh

Signature: 

## AMENDING AND CONFIRMATION AGREEMENT

**WHEREAS** by an Agreement of Purchase and Sale dated January 7, 2020 (the “**Purchase Agreement**”) between WYNDHAM STREET INVESTMENTS INC. (the “**Buyer**”) and CELADON GROUP, INC. on behalf of HYNDMAN TRANSPORT LTD. (the “**Seller**”), the Seller agreed to sell to the Buyer and the Buyer agreed to buy from the Seller, the property known municipally as 2616 CEDAR CREEK ROAD, AYR, ONTARIO (the “**Property**”) on and subject to the terms and provisions thereof;

**AND WHEREAS** the Buyer and the Seller have agreed to amend the Purchase Agreement on and subject to the terms and provisions set out in this Amending and Confirmation Agreement (the “**Amending Agreement**”);

**AND WHEREAS** the Buyer and the Seller wish to confirm the Completion Date / Closing Date for the transaction contemplated by the Purchase Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the Purchase Agreement, the Property, the sum of Two Dollars (\$2.00) and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto hereby acknowledge and agree as follows:

### **AMENDMENT:**

1. The Purchase Agreement is hereby amended by deleting reference in Section 5 to “Overhead Crane in Shop Area (Kone Crane)”, it being acknowledged and agreed that such fixture is to be included in the Purchase Price on an “as is, where is” condition as set out in the Purchase Agreement.
2. The Purchase Agreement is hereby amended by including in Section 4 “all shop equipment currently in the facility that is owned by the Seller”, it being acknowledged and agreed that such equipment is to be included in the Purchase Price on an “as is, where is” condition as set out in the Purchase Agreement.

### **CONFIRMATION:**

3. The Buyer and the Seller acknowledge, confirm and agree that the Completion Date / Closing Date for the transaction contemplated by the Purchase Agreement is February 18, 2020.

### **GENERAL:**

4. This Amending Agreement is subject to the terms and provisions in the Purchase Agreement.
5. Except to the extent required in order to give effect to this Amending Agreement, all other terms of the Purchase Agreement remain unchanged and in full force and effect, and time remains of the essence.
6. This Amending Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Counterparts may be transmitted by fax or in electronically scanned form. Parties transmitting by fax or electronically will also deliver the original counterpart to the other parties, but failure to do so does not invalidate this Amending Agreement.

*[The remainder of this page is intentionally left blank.]*

*Executed by the Buyer as of February \_\_\_\_\_, 2020.*

**WYNDHAM STREET INVESTMENTS INC.**

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

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

I/We have authority to bind the Corporation

*Executed by the Seller as of February 5, 2020.*

**CELADON GROUP, INC. on behalf of  
HYNDMAN TRANSPORT LTD.**



\_\_\_\_\_  
Name: Chase Welsh  
Title: Secretary

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

I/We have authority to bind the Corporation

## **Appendix “H”**

### Offer to Purchase

2925924 Manitoba Ltd. (hereinafter referred to as the "**Purchaser**"), does hereby offer and agree through Capital Commercial Real Estate Services Inc. (hereinafter referred to as "**Capital**") as agents for the Purchaser, to purchase from the Vendor, Hyndman Transport Limited (hereinafter referred to as the "**Vendor**") the land and premises located at 50 Omands Creek Boulevard, in the City of Winnipeg, in the Province of Manitoba, as shown outlined in red on the sketch plan attached hereto as Schedule "A", and forming part of this Offer to Purchase including, without limitation, all assets as described in paragraph 2 hereof (collectively the "**Purchased Assets**").

The lands forming part of the Purchased Assets are legally described as follows:

Certificate of Title No. 2954598/1

Parcel "A" Plan 48046 WLTO in NW ¼ of 14-11-2 EPM

and such lands consist of a total land area of 13.51 acres (+/-) and the building comprises 17,079 square feet (+/-) (hereinafter called the "**Land**"), at and for the price of Four Million Two Hundred and Fifty Thousand (\$4,250,000.00) Dollars (hereinafter called the "**Purchase Price**"), upon and subject to the terms and conditions as follows:

1. The Purchase Price shall be paid at Winnipeg, in lawful money of Canada as follows:
  - (a) An initial deposit in the sum of Two Hundred Thousand (\$200,000.00) Dollars payable by cheque to the agents for the Vendor within three (3) business days of acceptance hereof, as a deposit to be held by such agents pending completion or other termination of any agreement resulting from acceptance of this Offer; and
  - (b) A further deposit in the sum of One Hundred Thousand (\$200,000.00) Dollars within five (5) business days following satisfaction or withdrawal of all of the Purchaser's conditions and the Vendor's conditions contained herein, such further deposit to be held by the agents for the Vendor pending completion or other termination of any agreement resulting from acceptance of this Offer; and
  - (c) The balance, plus or minus adjustments, to be paid by the Purchaser to the Vendor or its solicitors on or before the Date of Closing by solicitor's trust cheque.

The Vendor shall be aware that part of the proceeds of the Purchase Price shall come by way of the Purchaser arranging a new first mortgage for the Land and that those mortgage proceeds shall be paid in accordance with the provisions of the DRA. referred to in Schedule B.

2. The Purchase Price shall include, without limitation, all buildings, structures, erections, improvements, appurtenances, rights, interests and benefits enjoyed in connection therewith and fixtures situated in or upon all of the Land and all systems, machinery and equipment used in connection with the operation of the building and maintenance

thereof, including but not limited to all overhead rails, hoist and cranes, all electrical fixtures and equipment, air conditioning freezing units and equipment, plumbing and bathroom fixtures as installed, screens, storm windows and doors, window blinds, partitions, power wiring and installations, pumps and compressors; all to be free and clear of all liens, charges, encumbrances and interests save and except for the Permitted Encumbrances. The following additional assets are included, namely:

- (a) The Vendor's entire interest in the service and maintenance contracts, equipment leases and other contracts ("**Contracts**") regarding the Land and chattels enumerated in this paragraph 3, provided they are capable of being assigned;
  - (b) The Vendor's entire interest in all permits and licenses (the "**Permits**") pertaining to the Land or any portion thereof, provided they are capable of being assigned; and
  - (c) The Vendor's entire interest in all warranties and guarantees (the "**Warranties**") given to, assigned to or benefitting the Vendor or the Land or the chattels enumerated above provided they are capable of being assigned.
3. (a) By its acceptance of this Offer the Vendor covenants, warrants and represents to the Purchaser and it is a condition of the agreement resulting from the acceptance of this Offer that:
- (i) there is not now and will not be at the Date of Closing any agreement or option for the purchase of any Purchased Assets other than the agreement resulting from an acceptance of this Offer;
  - (ii) the Vendor shall at the Date of Closing have good and marketable title to the Purchased Assets, and shall convey good and marketable title to the Purchased Assets to the Purchaser, free and clear of all liens, charges, mortgages, encumbrances and registrations other than registrations (if any) for which the Vendor makes provision for discharge from title at closing, or from the proceeds of sale hereunder, to the satisfaction of the Purchaser, save and except those charges or encumbrances placed upon the Land by or through the Purchaser, and Permitted Encumbrances, as herein after defined;
  - (iii) The Vendor is a corporation duly organized and validly existing under the laws of its jurisdiction of incorporation and is duly qualified in the Province of Manitoba to own the Purchased Assets, and has the corporate power, capacity and authority to enter into and execute and deliver this Agreement, and to incur the Vendor's obligations hereunder; and
  - (iv) The Vendor is a resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (b) The Vendor acknowledges that any agreement resulting from acceptance of this Offer is conditional upon the representations, warranties and covenants contained in

INITIALS	

subparagraph (a), being true and correct on the Date of Closing and that the truth or correctness of each of them are conditions inserted herein exclusively for the benefit of the Purchaser, as a condition precedent to the Purchaser's obligation to complete the purchase, and any one or more of them may therefore be waived by the Purchaser at any time and any agreement resulting from acceptance of this Offer amended to delete them ipso facto accordingly. If any of these conditions shall not be fulfilled on or before the Date of Closing and any of them not so fulfilled shall not have been waived by the Purchaser, or if the Purchaser determines that any representation is untrue, then, unless the parties hereto agree in writing at or before the Date of Closing, the agreement resulting from acceptance of this Offer shall be at an end and the Vendor and the Purchaser shall each be released from all obligation to the other under or pursuant to this Offer and resulting agreement, and the deposits and all monies paid by the Purchaser hereunder and all interest earned thereon as herein provided shall be paid to the Purchaser forthwith without deduction.

4. The Vendor covenants that it shall, within five (5) business days of acceptance of this Offer, deliver to the Purchaser the following, if in the possession or control of the Vendor:
- (a) a plan of survey or surveyor's certificate made or updated by a licensed land surveyor within the last two (2) years of the date of acceptance of this Offer in form satisfactory to the Purchaser's solicitor;
  - (b) any plans and specifications relating to the original construction and improvement of all the buildings on the Land;
  - (c) copies of any existing roof reports, structural reports, appraisal reports, mechanical reports, engineering reports, and environmental reports pertaining to the Property;
  - (d) a list of the chattels and equipment owned by the Vendor which are included in the Purchase Price;
  - (e) a list of the chattels and equipment leased by the Vendor which are not included in the Purchase Price;
  - (f) a list of the operating and/or service agreements under which the Vendor is receiving services with respect to the Purchased Assets (including but not limited to the security services agreement and janitorial services agreement);
  - (g) fully executed copies of all Contracts, Permits and Warranties;
  - (h) all necessary authorizations and consents for the Purchaser to conduct municipal, provincial and any other searches the Purchaser may wish to conduct in relation to the Property; and
  - (i) copies of the 2017 and any 2018 Property Tax notice and Assessment Notice

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together with any history on successful or unsuccessful tax appeals.

All of the foregoing shall be held by the Purchaser or its solicitors in escrow, and may be photocopied by them, but shall be returned together with all photocopies to the Vendor if this transaction of purchase and sale is not completed for any reason whatsoever.

5. The Purchaser shall have a period of forty-five (45) days from from execution of this Offer to Purchase by the Purchaser and the Vendor to examine the documentation provided in paragraph 4 above at its own expense. During this period, the Purchaser shall have the right to approve the information provided by the Vendor. If the documentation or the results of such inspection are inconsistent with the representations, warranties and covenants contained in any agreement resulting from acceptance of this Offer is unsatisfactory to the Purchaser or any of the above are otherwise unsatisfactory to the Purchaser in its absolute discretion, the Purchaser may terminate any agreement resulting from acceptance of this Offer by notice in writing delivered to the Vendor or its solicitors within the given time frame.
6. The Purchaser shall have a period of forty-five (45) days from execution of this Offer to Purchase by the Purchaser and the Vendor to conduct such searches, surveys, physical inspections and/or soil tests of the Land and/or buildings and/or other Purchased Assets by such agents, consultants or other persons as it deems necessary, including all environmental searches and inquiries. The Vendor, by its acceptance of this Offer, consents to such surveys, tests or inspections and will promptly, upon the Purchaser's request, furnish any consent, application or other writing to cause inspection to be made or undertaken by them, provided that the cost of every such survey, test, inspection or application shall be paid by the Purchaser who agrees to indemnify the Vendor against all expenses incurred therefor. If the results of such inspections are unsatisfactory to the Purchaser in its absolute discretion, the Purchaser may terminate any agreement resulting from acceptance of this Offer by notice in writing delivered to the Vendor or its solicitors within the given time frame. The Purchaser shall indemnify the Vendor for any injury to person or property resulting in any way from the Purchaser, its agents, consultants or other persons appointed by it, in conducting such tests, surveys and inspections and the Purchaser shall return the Property to the same condition as prior to the tests, surveys and inspections.
7. The Purchaser shall have a period of forty-five (45) days from the acceptance of this Offer to obtain a first mortgage of the property. If the financing arrangements are unsatisfactory to the Purchaser in its sole and absolute discretion, the Purchaser may terminate any agreement resulting from acceptance of this Offer by notice in writing delivered to the Vendor or its solicitors within the given time frame.
8. On any termination pursuant to paragraphs 5, 6, 7 or 9 hereof, the initial deposit shall be returned to the Purchaser together with any interest earned thereon, without deduction, and any agreement resulting from the acceptance of this Offer shall be of no further force and effect.

INITIALS	



9. At the Date of Closing the Vendor shall deliver or cause to be delivered to the Purchaser's solicitors the following:
- (a) evidence of payments of municipal realty taxes, business taxes, local improvements and assessment rates, hydro-electric charges, water rates, charges under maintenance or other contracts with respect to the operation of the building, and all such other items as the parties hereto may mutually agree upon. All such matters shall be adjusted proportionately and allowed to the Date of Closing, the day itself to be to the Purchaser's account both as to income and expense. The realty tax adjustment shall be for the calendar year during which the Date of Closing occurs. The Vendor shall pay all tax arrears with penalties thereon up to the Date of Closing. Fire and other insurance shall not be transferred or adjusted without the written consent of the Purchaser. Existing local improvement levies and assessments (if any), whether accrued or unaccrued, shall be for the sole account of the Vendor;
  - (b) transfer of title to the Land in registrable form in favour of the Purchaser or its nominee, and all title documents in its possession or under its control;
  - (c) declaration confirming that the Vendor is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada), as applicable;
  - (d) if applicable, a proper bill of sale in respect of any chattel property purchased hereunder;
  - (e) Assignment of Contracts, if applicable;
  - (f) all tax, hydro-electric, water and other account apportioned;
  - (g) all contracts, agreements and warranties which the Vendor may have in relation to the Purchased Assets and proper assignments thereof;
  - (h) an undertaking that all charges in relation to the operation of the building on the Land have been paid, will be paid or have been properly allowed for;
  - (i) proper releases and discharges of any outstanding interests (if any) in the Purchased Assets not being assumed by the Purchaser;
  - (j) A certificate of the Vendor or an officer of the Vendor confirming that the representations and warranties contained in paragraph 4 are true and correct as at the Closing Date with the same force and effect as if each of such representations and warranties was made at and as of the Closing Date;
  - (k) all duplicate keys and master keys (if available) to all buildings and facilities on the Land;

INITIALS	

- (l) such certificates, affidavits, statutory declaration of officers of the Vendor and other documents as may be reasonably necessary to establish that the written terms and conditions have been complied with and fulfilled.
10. The Vendor shall, at the Date of Closing, deliver to the Purchaser possession of the Land, free and clear of all liens, charges and encumbrances save and except for:
- (a) caveats for those charges or encumbrances placed against the Land by or through the Purchaser;
  - (b) Caveat No. 262334/1, 265696/1, Caveat No. 81-10253/1, Caveat No. 3066090/1, Caveat No. 3157625/1, Caveat No. 3705888/1 and Caveat No. 3705891/1;
  - (c) utility service (if any) in usual form and content; and
  - (d) such other encumbrances as are usual and normal-course for a property of similar location and use, and which will not negate the validity and marketability of title to the property.
- The foregoing items (a) to (d) collectively herein called the "**Permitted Encumbrances**".
11. The Date of Closing shall occur within fifteen (15) days following the later of (a) the date the Bankruptcy Court (as defined in attached Schedule B) approves the sale contemplated herein, or (b) the waiver of each of the Vendor's conditions; unless otherwise agreed by the parties in writing.
12. All buildings and equipment upon the Land or used in connection therewith shall remain at the risk of the Vendor until the Date of Closing. Until completion of the purchase and sale at closing the Vendor shall, subject to the interest of any registered mortgage, hold all policies of insurance and any proceeds thereof in trust for the parties hereto as their interest may from time to time appear, and if the buildings or equipment therein shall be substantially damaged before completion, the Purchaser may elect to receive the proceeds of the insurance and complete the transaction, or to release its interest in the insurance and cancel any agreement resulting from acceptance of this Offer. If it elects to cancel any agreement resulting from acceptance of this Offer, all monies paid hereunder including the deposits shall be forthwith returned by the Vendor to the Purchaser with all interest thereon as herein provided and neither party shall be liable to the other for any costs or damages.
13. From the date of acceptance of this Offer until closing, the Vendor shall cause the buildings and the equipment used in connection therewith to continue to be operated, managed and maintained in a good, proper, efficient and competent manner as would a prudent owner of property of a comparable type, age, class and location, and shall pay, or cause to be paid, all operating and carrying charges within a reasonable time after they fall due so that on closing there will be no unpaid accounts relating to the premises and their operation more than ninety (90) days old. Following acceptance of this Offer,

INITIALS	

the Vendor shall not make or renew any agreement to lease, lease, lease amendment or other agreement or commitment with respect to the operation, maintenance and management of the Purchased Assets without prior written consent of the Purchaser, which consent may not be unreasonably withheld.

14. The Vendor by acceptance of this Offer represents that the Vendor is not now, and does not at the Date of Closing of the sale intend to be, a non-resident of Canada as defined by the provisions of the *Income Tax Act* (Canada), and it is a condition of this Offer that on or before the Date of Closing of the sale the Vendor shall furnish the Purchaser with such evidence of the Vendor's residence as the Purchaser may reasonably require, failing which the Purchaser will comply with Section 116 of the *Income Tax Act* (Canada).
15. This Offer, when duly accepted by the Vendor, shall constitute a binding contract of purchase and sale and time shall be in all respects of the essence thereof.
16. The Purchaser shall have the right to nominate, assign, transfer and convey its rights, privileges, benefits, duties and obligations under and by virtue of the within Agreement, in writing, to any person, firm or corporation, and any such nominee or assignee shall thereupon be bound to observe, keep and perform all of the covenants, agreements, duties and obligations of the Purchaser hereunder, and to enter into any and all documents contemplated herein as if such nominee/ assignee had originally executed this Agreement; and such nomination/ assignment shall not relieve the Purchaser of and from its covenants, agreements, duties and obligations under or by virtue of the assignment/nomination.
17. Any tender of documents or money hereunder may be made upon the solicitors acting for the party on whom tender is desired to be made and it shall be sufficient that a certified cheque be tendered instead of cash.
18. In the event this Offer to Purchaser is accepted by the Vendor then, following such acceptance, the initial deposit, together with the additional deposit, if any, paid by the Purchaser in accordance with the terms of this Offer to Purchaser, shall be held by Colliers in trust, in an interest bearing account, to be paid over to the Vendor as part of the purchase price, with all interest accruing to the benefit of the Purchaser, when it has carried out its entire obligation under this contract, but to be returned to the Purchaser should the Vendor fail to do so.

If the Purchaser fails to carry out its obligation under this Offer following its acceptance, the Vendor shall be entitled to retain the deposits as the Vendor's own property by virtue of the Purchaser's default and such retainer of deposits shall not itself constitute a termination of this Offer and shall not restrict the Vendor from exercising any other remedies which the Vendor may have by virtue of the Purchaser's default, including the right to claim damages from the Purchaser which the Vendor sustains in excess of the deposits.

INITIALS	

In every other case, unless the Vendor and Purchaser shall specifically otherwise agree in writing, Colliers shall retain the said deposit and any additional deposit in trust at interest until the Vendor and Purchaser shall agree as to its disposition or until a court of competent jurisdiction shall order Colliers to make payment to one or other of the parties, in which instance the deposit and any additional deposit together with the interest accumulated thereon, shall be paid in accordance with the agreement between the parties or the order of the Court to the Purchaser or Vendor, as the case may be.

If the Purchaser and Vendor cannot agree as to the disposition of the deposit and any additional deposit, Colliers may, notwithstanding anything hereinbefore contained, pay the monies into the Court of Queen's Bench by way of interpleader and the entitlement to the said deposit monies and interest shall then be determined by the Court of Queen's Bench.

19. During the period from acceptance of this Offer to the Date of Closing, the Purchaser and its agents shall have access to the Land, and each and every building thereon, at all reasonable hours to inspect such property.

20. GOODS AND SERVICES TAX (GST)

- (a) The Purchaser is registered and shall be registered on the Date of Closing pursuant to the provisions of the *Excise Tax Act* (Canada) and the regulations passed pursuant thereto (the "**Excise Tax**") for the purposes of collecting any goods and services taxes (the "**GST**"). Accordingly, if the Property or any part thereof is subject to GST as defined in the Excise Act, then the Purchaser shall not be required to pay any GST to the Vendor for the purchase of the Land. Provided however that the Purchaser's ability to self-assess as hereinbefore provided shall be subject to the Purchaser providing the Vendor on or before the Date of Closing with a certificate setting forth the Purchaser's GST registration number. The furnishing of such a certificate by the Purchaser to the Vendor shall be a warranty by the Purchaser that the Purchaser's registration under the Excise Act for the purposes of collecting any GST is valid and subsisting and that the Purchaser shall remit directly to the appropriate taxing authority, as required by law, any GST relating to the Agreement and the transaction contemplated hereby. Upon receipt from the Purchaser of the said certificate the Vendor shall thereupon be relieved of all GST liability with respect to purchase and sale of the Land.
- (b) If the Land or any part thereof is subject to GST as defined in the Excise Act and if, on the Closing Date, the Purchaser is not registered pursuant to the provisions of the Excise Act for the purposes of collecting any GST or if the Purchaser does not provide the certificate referred to in subparagraph a. above then, in that event, the Vendor shall apply GST at the applicable rate to the Purchase Price of the Land and the Purchaser, in addition to the Purchase Price, shall pay to the Vendor, on the Date of Closing, by certified cheque, the amount of GST exigible.

INITIALS	

21. The Purchaser shall be solely responsible for the costs of registration of the transfer of land respecting the property including, without limitation, the payment of Manitoba land transfer tax.
22. It is understood and agreed that no representation, warranty, collateral agreement, promise, undertaking, guarantee or condition affecting this Agreement or the Property has been made by the Vendor or its agent other than as expressed herein in writing. The Purchaser and Vendor agree the Offer to Purchase is subject to the provisions within Schedule B. In the event of any conflict between the provisions within Schedule B and the Offer to Purchase, the provisions within this Schedule B shall prevail.
23. Both parties acknowledge that Capital is the Purchaser's agent and represents the Purchaser in this transaction, but is able to provide certain information and assistance to the Vendor. Purchaser represents and warrants that there are no other agents or brokers acting for the Purchaser.
24. It is a term and condition of this Offer that the Vendor shall be responsible for the payment in whole of any commission earned by any person, firm or corporation as real estate agent as a result of the sale hereby contemplated, and the Vendor represents to the Purchaser that it has engaged as Colliers International ("**Colliers**"). The Vendor acknowledges that the Purchaser was introduced to the Purchased Assets by its agent Capital and the Vendor agrees to indemnify Colliers/Capital against any other claims for commission and agrees to pay to Colliers/Capital, on a 55/45 basis, a real estate commission fee amounting to four (4%) percent of the Purchase Price, together with any and all goods and services taxes (if applicable) or any other taxes imposed on, or collectible by Colliers upon transfer of title to the Purchaser and to indemnify the Purchaser in respect thereof, subject to bankruptcy court approval. The Vendor directs and authorizes Colliers to retain and apply the deposit or so much thereof as is required to pay the said commission as and when such commission becomes properly due and payable, and to remit to the Vendor's solicitor the balance of the deposit funds, together with the applicable interest earned thereon. The Vendor hereby irrevocably directs and authorizes its solicitors to promptly pay any unpaid commission out of the sale proceeds to Colliers. Any commissions or parts of commissions not paid on the date title to the property is transferred to the Purchaser shall be payable with interest calculated at the rate of 2% per month and compounded semi-annually.
25. This Offer and its acceptance is to be read with all changes of gender or number required by the context, and this Agreement shall enure to and be binding upon the parties hereto and each of their respective heirs, executors, administrators and assigns, as the case may be, and time shall be in all respects of the essence hereof.
26. This Counter Offer shall be open for acceptance by the Purchaser until 4:00 p.m. Winnipeg time on January 16, 2020, after which time if the Offer is not accepted, it shall be null and void, and all deposit funds shall be returned forthwith to the Purchaser without deduction.

INITIALS	



27. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery, or by sending the same by prepaid registered mail or electronic facsimile transmission as follows:

to the Purchaser at the following address:

Box 2, Group 200, RR#2  
Winnipeg, Manitoba  
R3C 2E6

with a copy to the Purchaser's solicitor:

Bruce King  
Pitblado LLP  
2500-360 Main St | Winnipeg, MB R3C 4H6

and to the Vendor at the following address:

Celadon Group, Inc.  
Attn: Kathryn Wouters  
9503 East 33rd Street, One Celadon Drive  
Indianapolis, IN 46235 USA  
e-mail: kwouters@celadontrucking.com

with a copy to the Vendor's solicitor:

DLA Piper LLP (US)  
Attn: Richard Chesley, Esq.  
444 West Lake Street  
Chicago, IL 60606 USA  
e-mail: richard.chesley@us.dlapiper.com

Any notice or other document so mailed shall be deemed to have been given three (3) days following the date of mailing and any notice or other document personally delivered or sent by electronic facsimile transaction shall be deemed to have been given upon receipt. In the event of interruption of mail services through strike or other similar reasons, all notices or deliveries must be made by personal delivery or electronic facsimile transmission.

28. This Offer to Purchase may be executed in counterpart, each of which when executed and delivered shall be deemed to be an original and all of which when taken together will constitute one and the same document. This Offer to Purchase may be executed the parties by electronic means, including by successful facsimile transmission or by electronic delivery and the parties agree that any signatures received by electronic means shall be deemed an original for all purposes.

INITIALS	



DATED this 16th day of January, 2020

**2925924 MANITOBA LTD.**

WITNESS

Per:

Name: Ursula Baziuk

Title: Secretary/Treasurer

I have authority to bind the Corporation

INITIALS	


**ACCEPTANCE**

The undersigned Vendor, the owner of the above-described property, hereby accepts the above Offer together with all terms therein contained. The undersigned Vendor further agrees to and with the Purchaser to duly complete the sale on the terms and conditions of the above Offer and, should it fail to do so, the Purchaser may, at its option, cancel any agreement resulting from acceptance of this Offer and withdraw its deposit or take whatever remedies it may have at law.

DATED this 16th day of January, 2020.

**HYNDMAN TRANSPORT LIMITED**

\_\_\_\_\_  
WITNESS

Per:   
Name: Chase Welsh  
Title: Secretary  
I have authority to bind the Corporation

\_\_\_\_\_  
WITNESS

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
I have authority to bind the Corporation

INITIALS	

SUPPLEMENT TO OFFER TO PURCHASE

This Supplement accompanies the Offer to Purchase dated January \_\_\_\_, 2020 for the property located at \_\_\_\_\_

In representing the parties in the negotiations for the Purchase/Sale of the Property:

The Listing Broker represents:

- ☒ The Vendor and does not represent the Purchaser  
☐ The Purchaser and does not represent the Vendor  
☐ both parties with the consent of each other

\_\_\_\_ VENDOR'S INITIALS \_\_\_\_ PURCHASER'S INITIALS  
\_\_\_\_ LISTING SALESPERSONS INITIALS

The Selling Broker represents:

- ☒ The Purchaser and does not represent the Vendor  
☐ The Vendor and does not represent the Purchaser  
☐ both parties with the consent of each other

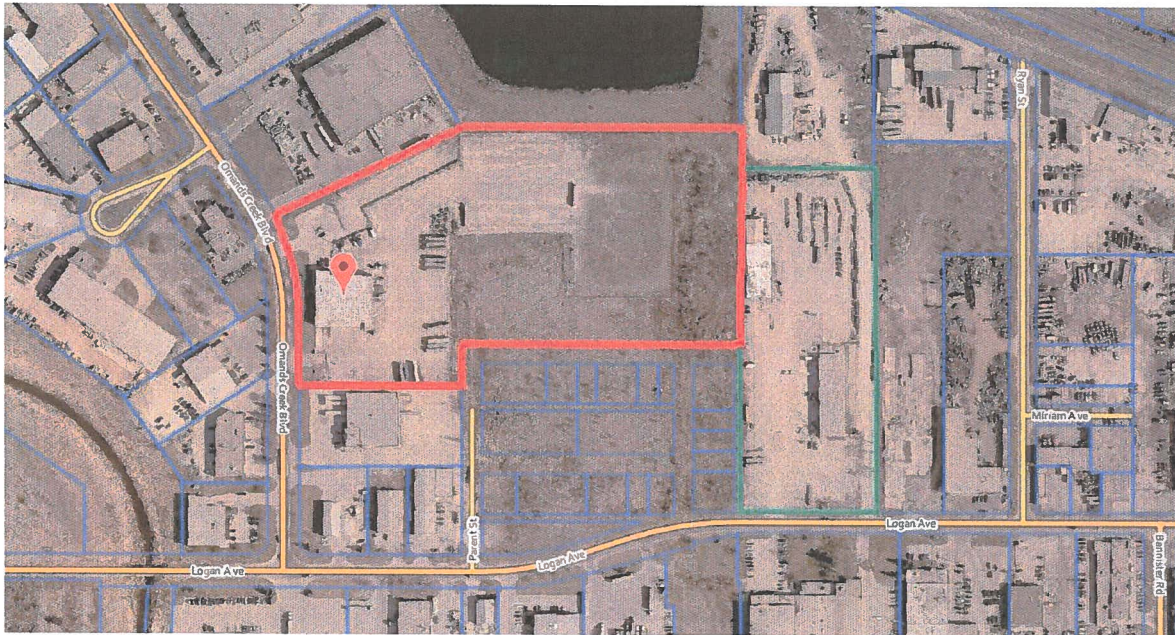
\_\_\_\_ PURCHASER'S INITIALS \_\_\_\_ VENDOR'S INITIALS  
\_\_\_\_ SELLING SALESPERSONS INITIALS

INITIALS	

**SCHEDULE "A"**

**SITE PLAN**

copy of site plan outlined in red



INITIALS	

### **Schedule "B"**

The Offer to Purchase is subject to the following provisions. In the event of any conflict between the provisions within this Schedule B and the Offer to Purchase, the provisions within this Schedule B shall prevail.

#### **Acknowledgement re "As Is" Condition**

The Purchaser acknowledges and agrees, subject to and except as otherwise expressly provided for in this Agreement, that:

- (a) The property is being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Date of Closing, in the condition or state as it exists as of the Date of Closing, and without any express or implied agreement, representation or warranty of any kind whatsoever as to, without limitation, (i) the structural integrity or any other aspect of the physical condition of the property or the buildings and/or improvements located thereon, (ii) the conformity of the buildings/and or improvements to any plans or specifications for the property (including, but not limited to, any plans and specifications that may have been or which may be provided to the Purchaser), (iii) the conformity of the property to past, current or future applicable zoning or building code requirements or other applicable laws, (iv) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the lands, or the buildings/improvements situated on or as part of the property, (v) the sufficiency of any drainage, (vi) whether the property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, (vii) the existence or non-existence of underground storage tanks, (viii) the availability of public utilities and services for the property, (ix) the fitness or suitability of the property for occupancy or any intended use (including matters relating to health and safety), (x) the potential for further development of the property, (xi) the existence of land use, zoning or building entitlements affecting the property, (xii) the financial condition of any present or prospective tenant of the property or any contractor or whether any encumbrances are assignable, (xiii) the environmental condition of the property and/or any buildings and/or improvements located thereon, including the condition of the soil or groundwater, both surface and subsurface, the existence of any sub-surface installations or the existence of any hazardous substance in, on, under or in the vicinity of the property, or (xiv) the accuracy, currency or completeness of any information or documentation supplied or to be supplied in connection with the property and other assets being sold pursuant to this Agreement.
- (b) In entering into this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the property, including without limitation, the physical and environmental condition of the property and the review of the documentation made available to the Purchaser, the Purchaser is not relying on any information or material furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor in connection therewith, and the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights the Purchaser might have against the Vendor pursuant to any warranty, express or implied, of any kind or type, of this Agreement relating to the property. Such waiver is absolute, unlimited and

includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in or created by any statute, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including, but not limited to, claims regarding defects, whether or not discoverable, product liability claims, or similar claims, and to all other extent or later created or conceived of strict liability or strict liability type claims and rights;

- (c) The Vendor shall not be responsible or liable for any misrepresentation, lack of disclosure or incorrect or incomplete disclosure of any nature whatsoever on the part of the Vendor or any real estate broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of the Vendor of any third party.
- (d) The Vendor shall have no obligations or responsibility to the Purchaser after the Date of Closing with respect to the property or any buildings and/or improvements located thereon or the condition, suitability, or marketability thereof or with respect any other matter relating to same.
- (e) The Purchaser agrees to release and discharge the Vendor and its successors and assigns, or any of them, from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any hazardous substance relating to the property and/or the buildings and/or improvements located therein. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the clean up or removal of any hazardous substance, remediate any condition or matter in, on, under or in the vicinity of the property, or seek an abatement in the Purchase Price or damages in connection with any hazardous substance.
- (f) This Section shall not merge on, but shall survive, the Date of Closing.

### **Inspection**

The Purchaser shall be entitled to conduct reasonable investigations, tests and inspections in respect of the property during normal business hours, upon reasonable notice to the Vendor, and subject to the rights of or restrictions in favour of any existing tenants in accordance with their respective leases (if applicable). Without limiting the foregoing, the Purchaser may enter upon the property at its own risk and expense, upon obtaining the prior approval of the Vendor, and in the presence of a representative of the Vendor; for such purpose the Vendor shall make an employee of the Vendor available to the Purchaser at all reasonable times on reasonable prior notice. All inspections, investigations and testing carried out by the Purchaser or its representative shall be carried out as expeditiously as possible at the Purchaser's sole cost, expense and risk and in accordance with the inspection rights and notice provisions contained in the respective leases for any of the tenants of the property and so as to cause the minimum amount of interference and disruption to such tenants, their employees, suppliers and customers. Any damage caused to the property as a result of the Purchaser's entry upon the property, or any part thereof, or any activities carried out by the Purchaser or its representatives in respect of the property, or any part thereof, shall be promptly repaired by the Purchaser to the Vendor's reasonable satisfaction. The Purchaser agrees to indemnify and save harmless the Vendor from all actions, costs, liabilities and damages resulting from the Purchaser's entry and the activities carried out by the Purchaser or its representatives relating to its inspection of the property and in that regard the Vendor



may resort to all or part of the deposit to off-set the cost of any such damages or losses for which the Purchaser is responsible.

### **Escrow Closing and Registrations**

The Purchaser and Vendor covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "**DRA**") to govern the electronic submission of the Transfer/Deed for the Property and to the applicable Land Registry Office. The DRA shall out-line or establish the procedures and timing for completing all registrations electronically and pro-vide for all closing documents and closing funds to be held in escrow pending the submission of the Transfer/Deed to the Land Registry Office and their acceptance by virtue of each registration document being assigned a registration number. The DRA shall also provide that if there is a problem with the Teraview electronic registration system which does not allow the parties to electronically register all registration documents on the Date of Closing, the Date of Closing shall be deemed to be extended until the next day when the said system is accessible and operating for the Land Registry Office applicable to the Property.

### **Taxes and Fees**

The Purchaser shall be responsible for all registration fees and land transfer taxes and sales taxes payable in connection with this transaction. Each party shall pay its own legal fees with respect to this transaction.

### **Tender**

Any tender of documents under this Agreement shall be made upon the parties or their respective counsel and shall be delivered by electronic mail, facsimile and/or courier. Any tender of money shall be made by wire transfer, certified cheque or bank draft of immediately available funds from a financial institution listed in Schedule I of the Bank Act (Canada) to the tendering party's counsel subject to the terms and provisions of the DRA.

It is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this Section called the "**Tendering Party**") upon the other party (in this Section called the "**Receiving Party**") when the solicitor for the Tendering Party has:

- delivered all applicable documents and funds to the Receiving Party's solicitor in accordance with the provisions of the DRA;
- advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
- completed all steps required by the electronic registration system to complete this Transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party has "signed" the transfer/deed and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing them for registration by the Receiving Party's solicitor),

without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

### **Bankruptcy Matters**

Purchaser acknowledges that on December 8, 2019, Vendor, together with certain of its affiliates and subsidiaries, commenced voluntary proceedings under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") by filing petitions for relief in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

The obligations of Vendor under this Offer to Purchase are contingent upon (i) the entry of the bid procedures order that provides the Purchaser with the Bid Protections described below and (ii) the entry of a sale order by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code, which shall find the Purchaser to be a "good faith purchaser" under section 363(m) of the Bankruptcy Code, provide for the sale of the Property free and clear of any and all liens, claims, encumbrances and interests, and shall be reasonably acceptable to the Purchaser (the "Sale Order"), which Sale Order shall become a final, non-appealable order (a "Final Order"). In the event a Final Order is not entered on or before February 24, 2020, Purchaser shall have the right to terminate this Agreement and receive a return of any deposits, provided, however, the requirement that the Sale Order be a Final Order may be waived by the Purchaser in its sole discretion.

The Bid Procedures Order shall provide that if this Agreement is terminated by Vendor upon entering into a sale of the Property to a third-party (the "Alternative Transaction") prior to the Date of Closing, then Buyer shall be deemed to have earned a break-up fee in the amount of \$120,000 (CAD), and the reimbursement of out-of-pocket expenses, subject to a cap of \$60,000 (CAD) (collectively, the "Bid Protections"). The Bid Protections shall be a super-priority administrative expense priority obligation under Section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

In the event that Vendor terminates this Agreement by entering into an Alternative Transaction, in addition to a return of any deposits, Purchaser's remedies will be limited to the payment of the Bid Protections.

Amending Agreement between:

2925924 Manitoba Ltd. ("**Purchaser**")

-and-

Hyndman Transport Limited, (hereinafter called the "**Vendor**")

**WHEREAS** the Purchaser and Vendor are parties to an Offer to Purchase made by the Purchaser on January 16th, 2020 and accepted by the Vendor on January 16th, 2020 (the "**Offer**");

**AND WHEREAS** the Offer is subject to a number of conditions in favour of the Purchaser, including the Purchaser's evaluation of the environmental status of the Purchased Assets;

**AND WHEREAS** the Purchaser's investigations into the environmental status of the Purchased Assets have identified the existence of hazardous substances on the Land, which the Purchaser acknowledges will be the Purchaser's entire responsibility;

**AND WHEREAS** the existence of hazardous substances on the Land will entail the Purchaser incurring remediation costs;

**AND WHEREAS** the Purchaser is prepared to waive the conditions in its favour in exchange for a reduction of the Purchase Price;

Now therefore the parties agree:

1. Capitalized terms used in this Amending Agreement and not otherwise defined herein shall have the meaning given to them in the Offer.
2. To amend the Offer as follows:
  - a) The Purchase Price shall be revised to be Four Million and Fifty Thousand (\$4,050,000.00) Dollars;
  - b) Sub-paragraph 1 (b) is revised to read: "A further deposit in the amount of \$200,000.00 is to be provided concurrent with acceptance of this Amending Agreement, such further deposit to be held by the agents for the Vendor pending completion or other termination of any agreement resulting from acceptance of this Amending Agreement;
  - c) Paragraphs 5, 6 and 7 are deleted in their entirety;
  - d) Paragraph 8 is amended to delete reference to Paragraphs 5, 6 and 7;
  - e) Section 11 is revised to read: "The Date of Closing shall occur fifteen (15) days following the date the Bankruptcy Court (as defined in attached Schedule B) approves the sale contemplated herein, or such other date agreed to by the parties in writing"; and

- f) Schedule B to the Offer is amended under the heading "Bankruptcy Matters" to add the words "and the appropriate Canadian Court" immediately following the phrase "the United States Bankruptcy Court for the District of Delaware" and to add the words "and a confirming order by the appropriate Canadian Court" immediately prior to the defined term "(a "Final Order")".
- 3. All the remaining terms and conditions of the Offer are incorporated herein and shall remain unchanged.

***Signature Page to Follow***

Dated the 30<sup>th</sup> day of January, 2020.

**2925924 Manitoba Ltd.**

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

**Hyndman Transport Limited**

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

Dated the 30th day of January, 2020.

**2925924 Manitoba Ltd.**

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

**Hyndman Transport Limited**

Per: 



TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 12 <sup>th</sup> DAY
	)	
JUSTICE HAINEY	)	OF FEBRUARY, 2020

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS  
AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO  
CELADON GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1"  
HERETO<sup>1</sup>**

**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE  
ACT*, R.S.O. 1990, C. c.-43, AS AMENDED**

**APPROVAL AND VESTING ORDER  
(Ayr Property)**

**THIS MOTION**, made by KSV Kofman Inc., in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**") of the Property (as defined in the Supplemental Order dated January 23, 2020, the "**Supplemental Order**") of Celadon Group Inc. and the affiliated debtors listed in footnote "1" hereto (the "**Chapter 11 Debtors**") for an order, *inter alia*, approving the sale transaction (the "**Transaction**") with respect to all of the lands and premises municipally described as 2616 Cedar Creek Road, Ayr, Ontario, Canada and all of the present and after-acquired assets, undertaking and properties of the Vendor (as defined below) related thereto contemplated by an agreement of purchase and sale between Celadon Group, Inc. on behalf of Hyndman Transport Ltd. (the "**Vendor**"), as vendor, and Wyndham Street Investments Inc. (the

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<sup>1</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC

"**Purchaser**"), as purchaser, dated January 7, 2020, as amended (the "**Sale Agreement**"), a copy of which is attached as Appendix "G" to the First Report of the Monitor dated February 5, 2020 (the "**First Report**"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all of the Vendor's right, title and interest in and to the "Property" as defined in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Aiden Nelms sworn February 5, 2020, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and that further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that the Confidential Appendices to the First Report shall be sealed and kept confidential pending further order of this Court.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Vendor is hereby authorized and approved, with such minor amendments as the Vendor, with the consent of the Receiver, may deem necessary. The Vendor, with the consent of the Receiver, is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Vendor's right, title and interest in and to the Purchased Assets, including without limitation the subject real property identified in **Schedule "B"** hereto (the "**Real Property**"), shall vest absolutely in the

Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, 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: (i) any encumbrances or charges created by the Supplemental Order; (ii) 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 (iii) 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, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser, or as it may direct, as the owner of the Real Property identified in **Schedule "B"** hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that 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.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that following the delivery of the Receiver's Certificate contemplated herein, the Receiver is authorized to create, hold and distribute the Holdback (as defined in the First Report) (or cause the Holdback to be created, held and distributed) as follows:

- a) first, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Potential Trust Claim Holdback (as defined in the First Report);
- b) second, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Receiver's Charge Holdback (as defined in the First Report);
- c) third, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Accrued Fees Holdback (as defined in the First Report) and make one or more distributions (or cause one or more distributions to be made) to pay the fees and expenses owing to the Receiver and counsel for the Receiver in the amount of the Accrued Fees Holdback;
- d) fourth, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Siemens Lien Holdback (as defined in the First Report) and, with the agreement of the Receiver, the Chapter 11 Debtors, Siemens Canada Limited ("**Siemens**") and the Prepetition Term Loan Agent (as defined in the Supplemental Order), or upon further Order of the Court, to distribute (or cause to be distributed) to Siemens any amount of the Siemens Lien Holdback as is agreed, or ordered by this Court, to be payable to Siemens in satisfaction of the Siemens Lien (as defined in the First Report); and

- e) fifth, cause the balance of the net proceeds from the Transaction to be distributed to the DIP Agent (as defined in the Supplemental Order) and the Prepetition Term Loan Agent, subject to the terms of the US Ayr Sale Approval Order (as defined in the First Report).

9. **THIS COURT ORDERS** that, 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 Vendor and any bankruptcy order issued pursuant to any such applications; and
- c) any assignment in bankruptcy made in respect of the Vendor,

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendor and shall not be void or voidable by creditors of the Vendor, nor shall it constitute nor be deemed to be a 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.

10. **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 and 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.

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**SCHEDULE "A"**  
**FORM OF RECEIVER CERTIFICATE**

Court File No.: CV-20-00634911-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS  
AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO  
CELADON GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1"  
HERETO<sup>2</sup>**

**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990, C. c.-43, AS AMENDED**

**RECEIVER'S CERTIFICATE**

**RECITALS**

I. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 23, 2020 (as amended, the "**Supplemental Order**"), KSV Kofman Inc. was appointed as Receiver (in such capacity, the "**Receiver**") of the Property (as defined in the Supplemental Order).

II. Pursuant to an Order of the Court dated February 12, 2020 (the "**Ayr Approval and Vesting Order**"), the Court approved the agreement of purchase and sale between Celadon Group, Inc. on behalf of Hyndman Transport Ltd., as vendor (the "**Vendor**"), and Wyndham Street Investments Inc. (the "**Purchaser**"), as purchaser, dated January 7, 2020 (the "**Sale Agreement**"), and provided for the vesting

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<sup>2</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC

in the Purchaser, or as it may direct in accordance with the Sale Agreement, of all of the Vendor's right, title and interest in and to the Purchased Assets (as defined in the Ayr Approval and Vesting Order), 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 conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser in accordance with their terms;
3. The transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KSV KOFMAN INC.**, solely in its capacity as court appointed receiver, and not in its personal capacity or in any other capacity

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

Name:

Title:

**SCHEDULE "B"**  
**LEGAL DESCRIPTION OF THE REAL PROPERTY**

PIN NO.: 03848-0178 (LT)

PT LT 30 CON 11 NORTH DUMFRIES; PT RDAL BTN CON 10 & 11 NORTH DUMFRIES CLOSED  
BY 58G710; AS IN WS707023, EXCEPT PT 1, 58EX470; TOWNSHIP OF NORTH DUMFRIES

**SCHEDULE "C"**  
**INSTRUMENTS TO BE DELETED FROM PIN NO. 03848-0178 (LT)**

<b>Reg. No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
WR1136835	September 6, 2018	Charge	\$500,000,000.00	Hyndman Transport Limited	Bank Of America, N.A.
WR1201387	July 31, 2019	Transfer Of Charge	N/A	Bank Of America, N.A.	Blue Torch Finance, LLC
WR1201439	August 1, 2019	Notice (Debenture Amending Agreement)	N/A	Blue Torch Finance, LLC	Hyndman Transport Limited
WR1233636	December 20, 2019	Construction Lien	\$22,278.00	Siemens Canada Limited	

**SCHEDULE "D"**  
**PERMITTED ENCUMBRANCES FROM PIN NO. 03848-0178 (LT)**

<b>Reg. No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
WR896635	July 29, 2015	Transfer	\$4,250,000.00	D 5 D Enterprises Limited	Hyndman Transport Limited
WR963165	July 4, 2016	Notice (Site Plan Agreement)	N/A	The Regional Municipality of Waterloo	
WR1150815	November 9, 2018	Notice (Site Plan Control Development Agreement)	N/A	The Corporation of the Township of North Dumfries	

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED IN FOOTNOTE "1" HERETO

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.-43, AS AMENDED

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**  
**(Ayr Property)**

**BENNETT JONES LLP**  
3400 First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

**Sean H. Zweig** (LSO #57307I)  
Tel: (416) 777-6253  
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**Aiden Nelms** (LSO#74170S)  
Tel:(416) 777-4642  
Fax: (416) 863-1716

Counsel to KSV Kofman Inc., solely in its capacity as Court-appointed receiver and not in its personal capacity



# TAB 4

Court File No. CV-20-00634911-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. \_\_\_\_\_ ) WEDNESDAY, THE 12<sup>th</sup> DAY  
\_\_\_\_\_ )  
JUSTICE HAINEY \_\_\_\_\_ ) OF FEBRUARY, 2020

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1" HERETO<sup>1</sup>

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. c.-43, AS AMENDED

~~THE HONOURABLE \_\_\_\_\_ ) WEEKDAY, THE #~~  
~~\_\_\_\_\_ )~~  
~~JUSTICE \_\_\_\_\_ ) DAY OF MONTH, 20YR~~

~~B E T W E E N :-~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

<sup>1</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC

**APPROVAL AND VESTING ORDER**  
(Ayr Property)

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ KSV Kofman Inc., in its capacity as ~~the~~ Court-appointed receiver (in such capacity, the "Receiver") of the ~~undertaking, property and assets of~~ ~~[DEBTOR]~~ Property (as defined in the Supplemental Order dated January 23, 2020, the "Supplemental Order") of Celadon Group Inc. and the affiliated debtors listed in footnote "1" hereto (the "~~Debtor~~ Chapter 11 Debtors") for an order, *inter alia*, approving the sale transaction (the "Transaction") with respect to all of the lands and premises municipally described as 2616 Cedar Creek Road, Ayr, Ontario, Canada and all of the present and after-acquired assets, undertaking and properties of the Vendor (as defined below) related thereto contemplated by an agreement of purchase and sale (~~the "Sale Agreement"~~) between ~~the Receiver and [NAME OF PURCHASER]~~ Celadon Group, Inc. on behalf of Hyndman Transport Ltd. (the "Vendor"), as vendor, and Wyndham Street Investments Inc. (the "Purchaser"), as purchaser, dated ~~[DATE]~~ and appended January 7, 2020, as amended (the "Sale Agreement"), a copy of which is attached as Appendix "G" to the First Report of the ~~Receiver~~ Monitor dated ~~[DATE]~~ February 5, 2020 (the "First Report"), and vesting in the Purchaser ~~the Debtor~~, or as it may direct in accordance with the Sale Agreement, all of the Vendor's right, title and interest in and to the ~~assets described~~ "Property" as defined in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and appendices thereto, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ Aiden Nelms sworn ~~[DATE]~~ February 5, 2020, filed,

1: ~~1.~~ THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and that further service thereof is hereby dispensed with.

2. THIS COURT ORDERS that the Confidential Appendices to the First Report shall be sealed and kept confidential pending further order of this Court.

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the ~~Receiver~~<sup>3</sup> Vendor is hereby authorized and approved, with such minor amendments as the Vendor, with the consent of the Receiver, may deem necessary. The Vendor, with the consent of the Receiver, is hereby authorized ~~and directed~~ to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

~~2.~~ 4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver<sup>2</sup>'s certificate to the Purchaser substantially in the form attached as **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 Sale Agreement [and listed on,~~ including without limitation the subject real property identified in Schedule "B" hereto<sup>4</sup> (the "Real Property"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise),

<sup>1</sup> ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

<sup>2</sup> ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

<sup>3</sup> ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

<sup>4</sup> ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

liens, executions, leases, notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, 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**"<sup>5</sup>), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Supplemental Order ~~of the Honourable Justice [NAME] dated [DATE]~~; (ii) 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 (iii) 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, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

~~3.5.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]]~~ Land Titles Division of ~~{LOCATION}~~ Waterloo (No. 58) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser, or as it may direct, as the owner of the ~~subject real property~~ Real Property identified in **Schedule "B"** hereto ~~(the "Real Property")~~ in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

<sup>5</sup> ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

<sup>6</sup> ~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

~~4.~~ 6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate,<sup>3</sup> 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<sup>8</sup>, 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.

~~5.~~ 7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

~~6. — THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser 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.~~

8. THIS COURT ORDERS that following the delivery of the Receiver's Certificate contemplated herein, the Receiver is authorized to create, hold and distribute the Holdback (as defined in the First Report) (or cause the Holdback to be created, held and distributed) as follows:

a) first, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Potential Trust Claim Holdback (as defined in the First Report);

<sup>7</sup> ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup> ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~



- b) second, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Receiver's Charge Holdback (as defined in the First Report);
- c) third, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Accrued Fees Holdback (as defined in the First Report) and make one or more distributions (or cause one or more distributions to be made) to pay the fees and expenses owing to the Receiver and counsel for the Receiver in the amount of the Accrued Fees Holdback;
- d) fourth, create and hold a reserve (or cause a reserve to be created and held) in the amount of the Siemens Lien Holdback (as defined in the First Report) and, with the agreement of the Receiver, the Chapter 11 Debtors, Siemens Canada Limited ("Siemens") and the Prepetition Term Loan Agent (as defined in the Supplemental Order), or upon further Order of the Court, to distribute (or cause to be distributed) to Siemens any amount of the Siemens Lien Holdback as is agreed, or ordered by this Court, to be payable to Siemens in satisfaction of the Siemens Lien (as defined in the First Report); and
- e) fifth, cause the balance of the net proceeds from the Transaction to be distributed to the DIP Agent (as defined in the Supplemental Order) and the Prepetition Term Loan Agent, subject to the terms of the US Ayr Sale Approval Order (as defined in the First Report).

**7.9. THIS COURT ORDERS** that, notwithstanding:

- a) ~~(a)~~ the pendency of these proceedings;

- b) ~~(b)~~ any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~D~~V~~e~~b~~t~~ndor and any bankruptcy order issued pursuant to any such applications; and
- c) ~~(c)~~ any assignment in bankruptcy made in respect of the ~~D~~V~~e~~b~~t~~ndor;

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~D~~V~~e~~b~~t~~ndor and shall not be void or voidable by creditors of the ~~D~~V~~e~~b~~t~~ndor, nor shall it constitute nor be deemed to be a 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.

~~8. — THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

~~9.~~ 10. **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 and 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.

~~Schedule A—Form of Receiver’s Certificate~~SCHEDULE "A"

FORM OF RECEIVER CERTIFICATE

Court File No. \_\_\_\_\_: CV-20-00634911-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS  
AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO  
CELADON GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1"  
HERETO<sup>2</sup>

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990, C. c.-43, AS AMENDED

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

~~—and—~~

~~DEFENDANT~~

Defendant

RECEIVER<sup>2</sup>'S CERTIFICATE

RECITALS

~~A~~I. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Mr. Justice Hainey of the  
Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~[DATE OF ORDER]~~,

<sup>2</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC

~~[NAME OF RECEIVER]~~ January 23, 2020 (as amended, the "Supplemental Order"), KSV Kofman Inc. was appointed as ~~the receiver~~ (Receiver in such capacity, the "Receiver") of the ~~undertaking, property and assets of [DEBTOR] (the "Debtor")~~ Property (as defined in the Supplemental Order).

BII. Pursuant to an Order of the Court dated ~~[DATE]~~ February 12, 2020 (the "Ayr Approval and Vesting Order"), the Court approved the agreement of purchase and sale ~~made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER]~~ between Celadon Group, Inc. on behalf of Hyndman Transport Ltd., as vendor (the "Vendor"), and Wyndham Street Investments Inc. (the "Purchaser"), as purchaser, dated January 7, 2020 (the "Sale Agreement"), and provided for the vesting in the Purchaser ~~of the Debtor's~~, or as it may direct in accordance with the Sale Agreement, of all of the Vendor's right, title and interest in and to the Purchased Assets (as defined in the Ayr Approval and Vesting Order), 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 ~~P~~purchase ~~P~~price for the Purchased Assets; (ii) that the conditions to ~~E~~closing as set out in ~~section 1.1 of~~ the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Vendor and the Purchaser; and (iii) the ~~T~~transaction has been completed to the satisfaction of the Receiver.

€III. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid ~~and the Receiver has received the Purchase Price~~ purchase price for the Purchased Assets payable on the ~~E~~closing ~~D~~date pursuant to the Sale Agreement;

2. The conditions to ~~C~~closing as set out in ~~section 1 of~~ the Sale Agreement have been satisfied or waived by the ~~Receiver~~Vendor and the Purchaser in accordance with their terms; ~~and~~
3. The ~~T~~transaction has been completed to the satisfaction of the Receiver; ~~and~~
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

~~{NAME OF RECEIVER}~~KSV KOFFMAN INC.,  
solely in its capacity as ~~Receiver of the~~  
~~undertaking, property and assets of~~  
~~{DEBTOR}~~court appointed receiver, and not in its  
personal capacity or in any other capacity

Per: \_\_\_\_\_  
Name:  
Title:

~~Schedule B—Purchased Assets~~

SCHEDULE "B"  
LEGAL DESCRIPTION OF THE REAL PROPERTY

PIN NO.: 03848-0178 (LT)

PT LT 30 CON 11 NORTH DUMFRIES; PT RDAL BTN CON 10 & 11 NORTH DUMFRIES  
CLOSED BY 58G710; AS IN WS707023, EXCEPT PT 1, 58EX470; TOWNSHIP OF NORTH  
DUMFRIES



Revised: January 21, 2014

SCHEDULE "C"

INSTRUMENTS TO BE DELETED FROM PIN NO. 03848-0178 (LT)

~~Schedule C—Claims to be deleted and expunged from title to Real Property~~

**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real**

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
<u>WR1136835</u>	<u>September 6, 2018</u>	<u>Charge</u>	<u>\$500,000,000.00</u>	<u>Hyndman Transport Limited</u>	<u>Bank Of America, N.A.</u>
<u>WR1201387</u>	<u>July 31, 2019</u>	<u>Transfer Of Charge</u>	<u>N/A</u>	<u>Bank Of America, N.A.</u>	<u>Blue Torch Finance, LLC</u>
<u>WR1201439</u>	<u>August 1, 2019</u>	<u>Notice (Debenture Amending Agreement)</u>	<u>N/A</u>	<u>Blue Torch Finance, LLC</u>	<u>Hyndman Transport Limited</u>
<u>WR1233636</u>	<u>December 20, 2019</u>	<u>Construction Lien</u>	<u>\$22,278.00</u>	<u>Siemens Canada Limited</u>	

SCHEDULE "D"  
PERMITTED ENCUMBRANCES FROM PIN NO. 03848-0178 (LT)

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
<u>WR896635</u>	<u>July 29, 2015</u>	<u>Transfer</u>	<u>\$4,250,000.00</u>	<u>D 5 D Enterprises Limited</u>	<u>Hyndman Transport Limited</u>
<u>WR963165</u>	<u>July 4, 2016</u>	<u>Notice (Site Plan Agreement)</u>	<u>N/A</u>	<u>The Regional Municipality of Waterloo</u>	
<u>WR1150815</u>	<u>November 9, 2018</u>	<u>Notice (Site Plan Control Development Agreement)</u>	<u>N/A</u>	<u>The Corporation of the Township of North Dumfries</u>	

**Court File No. CV-20-00634911-00CL**

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED IN FOOTNOTE "1" HERETO.

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

## Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**  
**(Ayr Property )**

~~(unaffected by the Vesting Order)~~

**BENNETT JONES LLP**  
**3400 First Canadian Place**  
**P.O. Box 130**  
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**Counsel to KSV Kofman Inc., solely in its capacity as  
Court-appointed receiver and not in its personal capacity**

# TAB 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 12 <sup>th</sup> DAY
	)	
JUSTICE HAINEY	)	OF FEBRUARY, 2020

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS  
AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO  
CELADON GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1"  
HERETO<sup>1</sup>**

**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE  
ACT*, R.S.O. 1990, C. c.-43, AS AMENDED**

**APPROVAL AND VESTING ORDER  
(Winnipeg Property)**

**THIS MOTION**, made by KSV Kofman Inc., in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**") of the Property (as defined in the Supplemental Order dated January 23, 2020, the "**Supplemental Order**") of Celadon Group Inc. and the affiliated debtors listed in footnote "1" hereto (the "**Chapter 11 Debtors**") for an order, *inter alia*, approving the sale transaction (the "**Transaction**") with respect to all of the lands and premises municipally described as 50 Omands Creek Boulevard, Winnipeg, Manitoba, Canada and all of the present and after-acquired assets, undertaking and properties of the Vendor (as defined below) related thereto contemplated by an agreement of purchase and sale, and an amendment thereto, between Hyndman Transport Limited (the "**Vendor**"), as vendor, and 2925924 Manitoba Ltd. (the

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<sup>1</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC



"**Purchaser**"), as purchaser, dated January 16, 2020 and January 30, 2020 respectively (together, the "**Sale Agreement**"), copies of which are attached as Appendix "H" to the First Report of the Monitor dated February 5, 2020 (the "**First Report**"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all of the Vendor's right, title and interest in and to the "Purchased Assets" as defined in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Aiden Nelms sworn February 5, 2020, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Vendor is hereby authorized and approved, with such minor amendments as the Vendor, with the consent of the Receiver, may deem necessary. The Vendor, with the consent of the Receiver, is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Vendor's right, title and interest in and to the Purchased Assets, including without limitation the subject real property identified in **Schedule "B"** hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, 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: (i) any encumbrances or charges created by the Supplemental Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Manitoba) or any other personal property registry system; and (iii) 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, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

3. **THIS COURT ORDERS** that upon the registration in the Winnipeg Land Titles Office (the "**WLTO**") of a certified copy of this Order together with the Receiver's Certificate and a Request/Transmission in the form prescribed by *The Real Property Act* (Manitoba), duly executed by the Purchaser or its solicitor, the District Registrar of the WLTO is hereby directed to: (i) cancel Title No. 2954598/1 and issue a new title in the name of the Purchaser as the owner of the Real Property identified in **Schedule "B"** hereto in fee simple, free and clear of all Encumbrances, save and except the permitted encumbrances, easements and restrictive covenants listed in **Schedule "D"** hereto; and (ii) delete and expunge all Encumbrances listed in **Schedule "C"** hereto, notwithstanding that the time for appeal of this Order has not yet expired.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that 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.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that following the delivery of the Receiver's Certificate contemplated herein, the Receiver is authorized to cause the balance of the net proceeds from the Transaction to be distributed to the DIP Agent and the Prepetition Term Loan Agent (as defined in the Supplemental Order) subject to the terms of the US Winnipeg Sale Approval Order (as defined in the First Report).

7. **THIS COURT ORDERS** that, 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 Vendor and any bankruptcy order issued pursuant to any such applications; and
- c) any assignment in bankruptcy made in respect of the Vendor,

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendor and shall not be void or voidable by creditors of the Vendor, nor shall it constitute nor be deemed to be a 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.

8. **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 and 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.

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**SCHEDULE "A"**  
**FORM OF RECEIVER CERTIFICATE**

Court File No.: CV-20-00634911-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS  
AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO  
CELADON GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1"  
HERETO<sup>2</sup>**

**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990, C. c.-43, AS AMENDED**

**RECEIVER'S CERTIFICATE**

**RECITALS**

I. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 23, 2020 (as amended, the "**Supplemental Order**"), KSV Kofman Inc. was appointed as Receiver (in such capacity, the "**Receiver**") of the Property (as defined in the Supplemental Order).

II. Pursuant to an Order of the Court dated February 12, 2020, the Court approved the agreement of purchase and sale, and the amendment thereto, between Hyndman Transport Limited, as vendor (the "**Vendor**"), and 2925924 Manitoba Ltd. (the "**Purchaser**"), as purchaser, dated January 16, 2020 and January 30, 2020 respectively (together, the "**Sale Agreement**"), and provided for the vesting in the

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<sup>2</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC

Purchaser, or as it may direct in accordance with the Sale Agreement, of all of the Vendor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser in accordance with their terms;
3. The transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KSV KOFMAN INC.**, solely in its capacity as court appointed receiver, and not in its personal capacity or in any other capacity

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

Name:

Title:

**SCHEDULE "B"**  
**LEGAL DESCRIPTION OF THE REAL PROPERTY**

Title No. 2954598/1

PARCEL "A" PLAN 48046 WLTO  
IN NW 1/4 OF 14-11-2 EPM



**SCHEDULE "C"**  
**INSTRUMENTS TO BE DELETED FROM TITLE NO. 2954598/1**

<b>Reg. No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From/By</b>	<b>Parties To</b>
4995406/1	2018-09-06	Mortgage	\$500,000,000.00	Hyndman Transport Limited	Bank of America, National Association
5093632/1	2019-08-06	Transfer of Mortgage	\$1.00	Bank of America	Blue Torch Finance, LLC
5096429/1	2019-08-14	Amending Agreement	N/A	Blue Torch Finance, LLC	Hyndman Transport Limited

**SCHEDULE "D"**  
**PERMITTED ENCUMBRANCES FROM TITLE NO. 2954598/1**

<b>Reg. No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From/By</b>	<b>Parties To</b>
262334/1	1979-07-03	Caveat	N/A	MAN. HYDRO ELECTRIC BOARD/MAN. TELEPHONE SYSTEM	
265696/1	1979-10-26	Caveat	N/A	THE CITY OF WINNIPEG	
81-10253/1	1981-02-17	Caveat	N/A	MAN. HYDRO ELECTRIC BOARD/ MANITOBA TELEPHONE SYSTEM	
3066090/1	2004-11-19	Caveat	N/A	THE CITY OF WINNIPEG	BY AGENT: LEONARD EDWARD STRIJACK
3157625/1	2005-07-11	Caveat	N/A	MANITOBA HYDRO, MTS ALLSTREAM AND SHAW CABLESYSTEMS	
3705888/1	2008-11-20	Caveat	N/A	THE CITY OF WINNIPEG	LEONARD EDWARD STRIJACK AS AGENT
3705891/1	2008-11-20	Caveat	N/A	THE CITY OF WINNIPEG	JAMES CARTER AS AGENT

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED IN FOOTNOTE "1" HERETO

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.-43, AS AMENDED

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**  
**(Winnipeg Property)**

**BENNETT JONES LLP**  
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P.O. Box 130  
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Counsel to KSV Kofman Inc., solely in its capacity as Court-  
appointed receiver and not in its personal capacity

# TAB 6

Court File No. CV-20-00634911-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. \_\_\_\_\_ ) WEDNESDAY, THE 12<sup>th</sup> DAY  
\_\_\_\_\_ )  
JUSTICE HAINEY \_\_\_\_\_ ) OF FEBRUARY, 2020

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1" HERETO<sup>1</sup>

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. c.-43, AS AMENDED

~~THE HONOURABLE \_\_\_\_\_ ) WEEKDAY, THE #~~  
~~\_\_\_\_\_ )~~  
~~JUSTICE \_\_\_\_\_ ) DAY OF MONTH, 20YR~~

~~B E T W E E N :-~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

<sup>1</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC

**APPROVAL AND VESTING ORDER**  
**(Winnipeg Property)**

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ KSV Kofman Inc., in its capacity as ~~the~~ Court-appointed receiver (in such capacity, the "Receiver") of the ~~undertaking, property and assets of~~ ~~[DEBTOR]~~ Property (as defined in the Supplemental Order dated January 23, 2020, the "Supplemental Order") of Celadon Group Inc. and the affiliated debtors listed in footnote "1" hereto (the "~~Debtor~~ Chapter 11 Debtors") for an order, inter alia, approving the sale transaction (the "Transaction") with respect to all of the lands and premises municipally described as 50 Omands Creek Boulevard, Winnipeg, Manitoba, Canada and all of the present and after-acquired assets, undertaking and properties of the Vendor (as defined below) related thereto contemplated by an agreement of purchase and sale, and an amendment thereto, between Hyndman Transport Limited (the "~~Sale Agreement~~") ~~between the Receiver and [NAME OF PURCHASER]~~ Vendor"), as vendor, and 2925924 Manitoba Ltd. (the "Purchaser"), as purchaser, dated ~~[DATE]~~ January 16, 2020 and ~~appended~~ January 30, 2020 respectively (together, the "Sale Agreement"), copies of which are attached as Appendix "H" to the First Report of the ~~Receiver~~ Monitor dated ~~[DATE]~~ February 5, 2020 (the "First Report"), and vesting in the Purchaser ~~the Debtor's~~ , or as it may direct in accordance with the Sale Agreement, all of the Vendor's right, title and interest in and to the ~~assets described~~ "Purchased Assets" as defined in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and appendices thereto, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ Aiden Nelms sworn ~~[DATE]~~ February 5, 2020, filed,

~~1.1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the ~~Receiver~~<sup>3</sup> Vendor is hereby authorized and approved, with such minor amendments as the Vendor, with the consent of the Receiver, may deem necessary. The Vendor, with the consent of the Receiver, is hereby authorized ~~and directed~~ to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

~~2.2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver<sup>2</sup>'s certificate to the Purchaser substantially in the form attached as **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 Sale Agreement [and listed on,~~ including without limitation the subject real property identified in Schedule "B" hereto]<sup>4</sup> (the "Real Property"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and

<sup>1</sup> ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

<sup>2</sup> ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

<sup>3</sup> ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

<sup>4</sup> ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~



whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Supplemental Order of the Honourable Justice [NAME] dated [DATE]; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (~~Ontario~~ Manitoba) or any other personal property registry system; and (iii) 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, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

~~3. THIS COURT ORDERS~~ 3. THIS COURT ORDERS that upon the registration in the Winnipeg Land Registry Titles Office ~~for (the [Registry Division of {LOCATION}] of a Transfer/Deed of Land~~ "WLTO") of a certified copy of this Order together with the Receiver's Certificate and a Request/Transmission in the form prescribed by ~~the Land Registration Reform Act~~ The Real Property Act (Manitoba), duly executed by the ~~Receiver~~ [Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act<sup>6</sup> Purchaser or its solicitor, the ~~Land~~ District Registrar of the WLTO is hereby directed to ~~enter:~~ (i) cancel Title No. 2954598/1 and issue a new title in the name of the Purchaser as the owner of the ~~subject real property~~ Real Property identified in **Schedule "B"** hereto ~~(the "Real Property")~~ in fee simple, free and ~~is hereby directed to~~ clear of all

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

Encumbrances, save and except the permitted encumbrances, easements and restrictive covenants listed in Schedule "D" hereto; and (ii) delete and expunge ~~from title to the Real Property all of the Claims~~ all Encumbrances listed in Schedule "C" hereto, notwithstanding that the time for appeal of this Order has not yet expired.

~~4. — THIS COURT ORDERS~~ 4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that 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<sup>8</sup>, 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.

~~5. 5. THIS COURT ORDERS AND DIRECTS~~ the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

~~6. — THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser 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.~~

<sup>7</sup> ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup> ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

6. THIS COURT ORDERS that following the delivery of the Receiver's Certificate contemplated herein, the Receiver is authorized to cause the balance of the net proceeds from the Transaction to be distributed to the DIP Agent and the Prepetition Term Loan Agent (as defined in the Supplemental Order) subject to the terms of the US Winnipeg Sale Approval Order (as defined in the First Report).

~~7.~~ 7. **THIS COURT ORDERS** that, notwithstanding:

- a) ~~(a)~~ the pendency of these proceedings;
- b) ~~(b)~~ any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~D~~V~~e~~b~~t~~ndor and any bankruptcy order issued pursuant to any such applications; and
- c) ~~(c)~~ any assignment in bankruptcy made in respect of the ~~D~~V~~e~~b~~t~~ndor;

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~D~~V~~e~~b~~t~~ndor and shall not be void or voidable by creditors of the ~~D~~V~~e~~b~~t~~ndor, nor shall it constitute nor be deemed to be a 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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

~~9.~~ 8. **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 and 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.

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~~Schedule A—Form of Receiver’s Certificate~~SCHEDULE "A"

FORM OF RECEIVER CERTIFICATE

Court File No. \_\_\_\_\_: CV-20-00634911-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS  
AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO  
CELADON GROUP, INC. AND THE AFFILIATED DEBTORS LISTED IN FOOTNOTE "1"  
HERETO<sup>2</sup>

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990, C. c.-43, AS AMENDED

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

RECEIVER<sup>2</sup>'S CERTIFICATE

RECITALS

~~A~~I. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Mr. Justice Hainey of the  
Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~[DATE OF ORDER]~~,

<sup>2</sup> In addition to Celadon, the Chapter 11 Debtors are AR Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("CCHL"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("Hyndman"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc., and Vorbas, LLC

~~[NAME OF RECEIVER]~~ January 23, 2020 (as amended, the "Supplemental Order"), KSV Kofman Inc. was appointed as ~~the receiver (the~~ "Receiver (in such capacity, the "Receiver") of the ~~undertaking, property and assets of [DEBTOR] (the "Debtor")~~ Property (as defined in the Supplemental Order).

~~BII.~~ Pursuant to an Order of the Court dated ~~[DATE]~~ February 12, 2020, the Court approved the agreement of purchase and sale ~~made as of [DATE OF AGREEMENT] (the "Sale Agreement")~~ between the Receiver [Debtor] and [NAME OF PURCHASER], and the amendment thereto, between Hyndman Transport Limited, as vendor (the "Vendor"), and 2925924 Manitoba Ltd. (the "Purchaser"), as purchaser, dated January 16, 2020 and January 30, 2020 respectively (together, the "Sale Agreement"), and provided for the vesting in the Purchaser ~~of the Debtor', or as it may~~ direct in accordance with the Sale Agreement, of all of the Vendor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 ~~P~~purchase ~~P~~price for the Purchased Assets; (ii) that the conditions to ~~C~~closing as set out in ~~section 1 of~~ the Sale Agreement have been satisfied or waived by the ~~Receiver~~Vendor and the Purchaser; and (iii) the ~~T~~transaction has been completed to the satisfaction of the Receiver.

~~€III.~~ Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid ~~and the Receiver has received the Purchase Price~~ purchase price for the Purchased Assets payable on the ~~C~~closing ~~D~~date pursuant to the Sale Agreement;

2. The conditions to ~~C~~closing as set out in ~~section 1.1 of~~ the Sale Agreement have been satisfied or waived by the ~~Receiver~~Vendor and the Purchaser in accordance with their terms; ~~and~~
3. The ~~T~~transaction has been completed to the satisfaction of the Receiver; ~~and~~ and
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

~~{NAME OF RECEIVER}~~KSV KOFMAN INC.,  
solely in its capacity as ~~Receiver of the~~  
~~undertaking, property and assets of~~  
~~{DEBTOR}~~court appointed receiver, and not in its  
personal capacity or in any other capacity

Per: \_\_\_\_\_  
Name:  
Title:



~~Schedule B—Purchased Assets~~

SCHEDULE "B"  
LEGAL DESCRIPTION OF THE REAL PROPERTY

Title No. 2954598/1

PARCEL "A" PLAN 48046 WLTO  
IN NW 1/4 OF 14-11-2 EPM

SCHEDULE "C"  
INSTRUMENTS TO BE DELETED FROM TITLE NO. 2954598/1

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From/By</u>	<u>Parties To</u>
<u>4995406/1</u>	<u>2018-09-06</u>	<u>Mortgage</u>	<u>\$500,000,000.00</u>	<u>Hyndman Transport Limited</u>	<u>Bank of America, National Association</u>
<u>5093632/1</u>	<u>2019-08-06</u>	<u>Transfer of Mortgage</u>	<u>\$1.00</u>	<u>Bank of America</u>	<u>Blue Torch Finance, LLC</u>
<u>5096429/1</u>	<u>2019-08-14</u>	<u>Amending Agreement</u>	<u>N/A</u>	<u>Blue Torch Finance, LLC</u>	<u>Hyndman Transport Limited</u>

Revised: January 21, 2014

SCHEDULE "D"

PERMITTED ENCUMBRANCES FROM TITLE NO. 2954598/1

~~Schedule C—Claims to be deleted and expunged from title to Real Property~~

**Schedule D — Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real**

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From/By</u>	<u>Parties To</u>
<u>262334/1</u>	<u>1979-07-03</u>	<u>Caveat</u>	<u>N/A</u>	<u>MAN. HYDRO ELECTRIC BOARD/MAN. TELEPHONE SYSTEM</u>	
<u>265696/1</u>	<u>1979-10-26</u>	<u>Caveat</u>	<u>N/A</u>	<u>THE CITY OF WINNIPEG</u>	
<u>81-10253/1</u>	<u>1981-02-17</u>	<u>Caveat</u>	<u>N/A</u>	<u>MAN. HYDRO ELECTRIC BOARD/ MANITOBA TELEPHONE SYSTEM</u>	
<u>3066090/1</u>	<u>2004-11-19</u>	<u>Caveat</u>	<u>N/A</u>	<u>THE CITY OF WINNIPEG</u>	<u>BY AGENT: LEONARD EDWARD STRIJACK</u>
<u>3157625/1</u>	<u>2005-07-11</u>	<u>Caveat</u>	<u>N/A</u>	<u>MANITOBA HYDRO, MTS ALLSTREAM AND SHAW CABLESYSTEMS</u>	
<u>3705888/1</u>	<u>2008-11-20</u>	<u>Caveat</u>	<u>N/A</u>	<u>THE CITY OF WINNIPEG</u>	<u>LEONARD EDWARD STRIJACK AS AGENT</u>
<u>3705891/1</u>	<u>2008-11-20</u>	<u>Caveat</u>	<u>N/A</u>	<u>THE CITY OF WINNIPEG</u>	<u>JAMES CARTER AS AGENT</u>

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED IN FOOTNOTE "1" HERETO

APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.-43, AS AMENDED

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER  
(Winnipeg Property )

(unaffected by the Vesting Order)

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Court-appointed receiver and not in its personal capacity

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**MOTION RECORD**

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