

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

AND

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c. B-3, AS AMENDED AND SECTION  
39 OF THE *LAW AND EQUITY ACT*, RSBC 1996 c. 253, AS AMENDED

AND

IN THE MATTER OF THE RECEIVERSHIP OF DIONYMED BRANDS INC.

BETWEEN:

GLAS Americas LLC

PETITIONER

AND:

DionyMed Brands Inc.

RESPONDENT

**NOTICE OF APPLICATION**

**Name of Applicant:** FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the court-appointed receiver of DionyMed Brands Inc. (the "**Receiver**")

**To:** The Service List attached hereto as **Schedule A**

TAKE NOTICE that an application will be made by the Receiver to the presiding judge at the Law Courts, 800 Smithe Street Vancouver, B.C. V6Z 2E1 on November 26, 2019 at 9:45 a.m., or so soon thereafter as counsel may be heard, for the order set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. FTI, in its capacity as the court-appointed receiver and manager of all the assets, undertakings and property, including proceeds thereof (the "**Property**") of DionyMed Brands Inc. (the "**Company**"), seeks an order (the "**Order**"), substantially in the form attached hereto as **Schedule B**, among other things:

- (a) abridging the time for service of this notice of application and that further service of the notice of application, other than to those listed in the Service List attached hereto as Schedule A be dispensed with;

- (b) approving the actions, conduct and activities of the Receiver to November 19, 2019, as outlined in the first report of the Receiver dated November 19, 2019 (the "**First Report**");
- (c) approving the bidding procedures (the "**Bidding Procedures**") for the sale of the Company's Property attached as Appendix A to the Order;
- (d) authorizing the Receiver to provide financing to Herban Industries Inc. ("**Herban Delaware**") to acquire the Gotham Green Debt and Security (as defined below); and
- (e) such further and other relief as counsel may request and this Honourable Court may deem appropriate.

**Part 2: FACTUAL BASIS**

1. By an order (the "**Receivership Order**") pronounced by this Honourable Court on October 29, 2019, FTI was appointed the Receiver of the Company.

***Background***

2. The Company was founded in 2017, and is a company continued into British Columbia pursuant to the *Business Corporations Act* (British Columbia). Through its direct and indirect subsidiaries, it operates a multi-state distribution and direct-to-consumer cannabis delivery platform in the United States.

3. Since 2018, the Company has been listed on the Canadian Securities Exchange under the symbol "DYME".

4. The Company is a holding company and through its wholly owned subsidiaries it generates revenue, primarily in the United States, by (a) manufacturing and processing cannabis products, (b) selling wholly-owned branded products, such as cannabis vaporiser cartridges, and (c) providing wholesale distribution and logistics management on behalf of cultivators, manufacturers and third-party brands.

5. The Company's primary assets are the capital stock of its subsidiaries. The Company wholly owns, directly and/or indirectly, the issued and outstanding shares or membership interests, as applicable, of the following entities:

- (a) DionyMed Inc. ("**DMI**");
- (b) Herban Delaware;
- (c) Gourmet Green Room, Inc ("**GGR**");
- (d) Herban Industries CA LLC dba Rise Logistics ("**Herban CA**");
- (e) Herban Industries OR LLC dba Winberry Farms ("**Herban OR**");

- (f) Herban CA 2 LLC ("**Herban 2**");
- (g) Herban Industries CO LLC ("**Herban CO**");
- (h) Herban Industries MI LLC ("**Herban MI**");
- (i) Herban Industries NJ LLC ("**Herban NJ**"); and
- (j) Herban Industries NV LLC ("**Herban NV**").

6. The Company also has an interest in HomeTown Heart ("**HomeTown**"), a California corporation, in the form of an option agreement whereby the Company can acquire all of the outstanding shares of HomeTown for a nominal sum following the occurrence of certain events.

7. DMI is the Company's sole Canadian subsidiary. DMI (and not the Company) is the employer to the employees in Canada, and the Receiver intends to fund DMI to continue to pay those employees.

### ***Creditors***

8. Pursuant to a definitive agreement dated January 16, 2019, as amended and supplemented or otherwise modified (the "**Credit Agreement**"), the Company obtained a credit facility from a syndicate of lenders (the "**Lenders**"), in the initial amount of US \$13 million.

9. The syndicate of Lenders is now comprised of only one lender, SP1 Credit Fund ("**SP1**"), although there have been, at other times, more Lenders.

10. The funds drawn by the Company under the Credit Agreement are secured by a first-ranking security interest over all or substantially all of the assets of the Company and certain of its subsidiaries and/or entities over which it has control.

11. Each of HomeTown, DMI, Herban Delaware, Herban CA, Herban OR, Herban NJ, Herban 2 and GGR have guaranteed the Company's obligations pursuant to the Credit Agreement and granted security in favour of GLAS Americas LLC (the "**Collateral Agent**") over all or substantially all of their assets.

12. Pursuant to the Credit Agreement, the petitioner, GLAS Americas LLC, was appointed the Collateral Agent on behalf of the Lenders. GLAS USA LLC was appointed the Administrative Agent under the Credit Agreement on behalf of the Lenders.

13. As at October 15, 2019, the Company was indebted pursuant to the Credit Agreement in the following amounts (US dollars) (with interest and fees continuing to accrue):

- (i) \$24,078,106.80, representing the principal amount of outstanding indebtedness of the Company pursuant to the Credit Agreement, including the applicable prepayment premium;
- (ii) \$610,971.36, representing accrued and unpaid interest on the principal amount as of but excluding October 15, 2019; and

- (iii) \$121,604.64, the accrued and unpaid anniversary fee as of but excluding October 15, 2019, and all other fees and expenses and other amounts owing as obligations as of October 15, 2019.

14. The Receiver has obtained an opinion from its counsel that, subject to standard qualifications and assumptions contained therein, the security granted by the Company to the Collateral Agent is valid and the necessary registrations and other steps have been made or taken to perfect such security.

15. In addition, the Company is indebted to Flow Capital Corp ("**Flow Capital**"). Flow Capital is the only other creditor with a security registration against the Company.

16. The Company is indebted to Flow Capital pursuant to two Royalty Purchase Agreements dated April 4, 2018 and May 25, 2018 respectively. In or around September 2019, Flow Capital registered a security interest against each of the Company, HomeTown, Herban CA, GGR, Herban Delaware, Herban OR, Herban NJ, Herban NV and Herban CO (collectively, the "**Flow Capital Registrations**").

17. The Receiver has identified certain irregularities or deficiencies with Flow Capital's alleged security.

18. The Receiver, through its counsel, has requested that Flow Capital withdraw its security registrations, or in the alternative, immediately provide the Receiver with documentation justifying the Flow Capital Registrations. The Receiver received a response letter from counsel for Flow Capital and is in the process of reviewing Flow Capital's position.

19. To the extent matters pertaining to the Flow Capital Registrations are not resolved to the satisfaction of the Receiver in the near term, the Receiver anticipates it will apply to Court for an order discharging these security registrations.

20. Furthermore, according to the books and records of the Company, as of November 4, 2019, the Company owed its unsecured creditors, including trade creditors, approximately USD \$53.3 million.

#### *Activities of the Receiver since its Appointment*

21. In addition to the other activities of the Receiver described in this Notice of Application, the Receiver's activities since its appointment include, among others, the following:

- (a) pursuant to the Receivership Order, the Receiver has established a website where all materials filed with the Court and all orders granted by the Court in connection with this proceeding will be made available in electronic form;
- (b) pursuant to s. 245(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3. (the "**BIA**"), the Receiver sent notice of its appointment, in the prescribed form, and statement pursuant to s. 246(1) of the BIA to all known creditors of the Company, the Office of the Superintendent of Bankruptcy and to the Company;

- (c) out of an abundance of caution, the Receiver also provided notice of its appointment to the known creditors of DMI, advising the Company is insolvent and that the Receiver will not be able to fund the operations of DMI; and
- (d) with the support and input of SP1, the Receiver has developed procedures for the solicitation of offers to purchase the Company's Property (i.e. the Bidding Procedures), and has commenced marketing the Property for sale and implementing the Bidding Procedures, as further detailed below.

### *Sale of the Company's Assets*

22. In consultation with SP1, the Receiver has developed procedures for the solicitation of offers to purchase the Company's Property, including the following:

- (a) all shares in the capital of Herban Delaware;
- (b) all of the books, records, books of account, supplier and customer lists, business information, research and development information, business analyses and plans, and records, and all other documents, files, records, correspondence, electronic information (including emails and web page content), and other data and information, financial or otherwise related to the business of Herban Delaware, Herban CA, Herban 2, GGR, Herban OR, Herban NJ, Hometown Heart, Herban NV, Herban CO and Herban MI, in each case, which is owned by, and within the control or possession of the Company; and
- (c) the Company's interest in an agricultural lease dated January 1, 2019 relating to property in Oregon, U.S. and a lease dated July 23, 2019 for property located in Los Angeles, California, both of which are related to the business of the Company.

23. The Receiver has prepared, among other things, (i) a list of potential bidders for the Property ("**Potential Bidders**"), including both strategic and financial parties who, in the Receiver's reasonable professional judgment, may be interested in acquiring some or all of the Property, (ii) an initial offering summary (the "**Teaser Letter**") to notify Potential Bidders of the opportunity to make an offer to acquire all or any part of the Property; (iii) a form of confidentiality agreement (the "**Confidentiality Agreement**"); and (iv) a form of acknowledgement (the "**Acknowledgement**") whereby Potential Bidders agree to be bound by the provisions of the Bidding Procedures.

24. Since October 31, 2019 (the commencement date of the Teaser Letter campaign), the Receiver has sent in excess of 180 Teaser Letters to the Potential Bidders. As of the date of this notice of application, approximately 27 Potential Bidders have executed the Confidentiality Agreement and are performing diligence on the Company and the Property.

25. The Receiver has also worked closely with its U.S. counsel to understand, and to be able to answer questions from Potential Bidders and other potential purchasers regarding, the various cannabis regulatory considerations in connection with various transaction structures for the proposed sale.

26. The proposed Bidding Procedures are attached as Appendix D to the Receiver's First Report. Key elements of the Bidding Procedures include (capitalized terms as defined in the Bidding Procedures):

***Due Diligence***

- (a) the Receiver has created an electronic due diligence data site for the Company and the Property and will continue to populate and manage the data site, and has prepared a detailed confidential memorandum describing the opportunity to acquire all or part of the Property (the "**CIM**");
- (b) interested parties are required to execute and deliver to the Receiver the Confidentiality Agreement and Acknowledgement before being provided access to the data room and CIM;

***Bidding***

- (c) all bids for the purchase of the Property must be in writing and must be received by the Receiver by no later than 1:00 p.m. (Vancouver time) on December 9, 2019 (the "**Bid Deadline**"), in the form of the template asset purchase agreement provided by the Receiver, along with a blackline;
- (d) to be eligible to be a Qualified Bidder, a Bidder must deliver a Bid satisfying the bid requirements prescribed in the Bidding Procedures, which include, among others, the following requirements:
  - (i) the Bid must be accompanied by a cash Good Faith Deposit equal to the greater of (i) US \$3 million and (ii) 20% of the total cash purchase price contemplated by the Bid, which Good Faith Deposit must be paid to the Receiver in trust<sup>1</sup>; and
  - (ii) the Bid must be irrevocable, and may not be conditional on financing or any internal approval or on the outcome or review of due diligence;
- (e) after clarifying discussions or negotiations, the Receiver will review all Bids and other documentation and information submitted by the Bidders, and shall determine, in its reasonable judgment, the Qualified Bidders and, for the Qualified Bidders, their respective Qualified Bid, if any, that are qualified to participate in the Auction;
- (f) all Bids will be considered by the Receiver, but the Receiver reserves the right to reject any and all Bids;

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<sup>1</sup> In connection with an offer for individual assets of the Company and/or any of its direct or indirect subsidiaries (i.e. an offer that does not include all of the shares of Herban Delaware), the deposit must be equal to at least twenty-five-percent (25%) of the total cash purchase price contemplated by the offer. For greater certainty, there is no US \$3 million minimum in that circumstance.

### *Auction*

- (g) if there are at least two (2) Qualified Bids, or any combination thereof, or a combination of non-overlapping Qualified Bids (an "**Aggregated Bid**"), the Receiver may, but is not required to, conduct an auction to determine the highest and/or best Qualified Bid of Aggregated Bid;
- (h) the Auction will commence on **December 11, 2019**, at a time and place to be determined by the Receiver, and to be conducted in accordance with the terms of the Bidding Procedures.

27. The Property is being offered for sale on an "as is, where is" basis.

28. The Bidding Procedures provide that the Receiver will apply to this Honourable Court for the approval of the Successor Bidder(s), if any, and for an order vesting title in and to the applicable Property in the ultimate purchaser or purchasers of the Property.

29. The Receiver reserves the right to consider offers for individual assets of the Company and/or any of its direct or indirect subsidiaries. However, the Receiver will favour a bid that includes all of the shares of Herban Delaware.

30. If the Receiver determines that no Qualified Bid was received, or at least one Qualified Bid was received but it is not likely that the transactions contemplated by any such Qualified Bid will be consummated, the Receiver shall notify the SP1 Representative and within ten (10) Business Days of such determination, file an application with the Court seeking directions and/or such other relief as the Receiver deems appropriate in the circumstances. In that circumstance, the Secured Lenders will have the option within five (5) Business Days from such determination to submit a credit bid (that would constitute a binding agreement if accepted) even if they did not submit a credit bid at any other point during the bidding process.

### *Gotham Green Litigation*

31. On or about July 30, 2019, the Company and Herban 2 entered into and issued a Secured Convertible Demand Note in favor of Gotham Green Fund (Q) II, L.P. ("**Gotham Q**") in the principal amount of USD \$1,706,760.00 (the "**Gotham Q Note**"). Pursuant to the Gotham Q Note, Herban 2 granted Gotham Q a security interest in all of Herban 2's assets. In order to perfect its security interest in Herban 2's assets, Gotham Q (through its collateral agent), filed a UCC-1 Financing Statement with the California Secretary of State on July 30, 2019.

32. On or about July 30, 2019, the Company and Herban 2 also entered into and issued a Secured Convertible Demand Note in favor of Gotham Green Fund II, L.P. ("**Gotham Green**") in the principal amount of USD \$293,240.00 (the "**Gotham Note**") (the Gotham Q Note and the Gotham Note are referred to collectively as the "**Gotham Green Notes**"). Pursuant to the Gotham Note, Herban 2 granted Gotham Green a security interest in all of Herban 2's assets. In order to perfect its security interest in Herban 2's assets, Gotham Green (through its collateral agent) filed a UCC-1 Financing Statement with the California Secretary of State on July 30, 2019.

33. Pursuant to the Secured Notes, Gotham Green and Gotham Q collectively loaned US \$2 million to the Company and Herban 2. The Secured Notes are demand notes that could be called at any time in accordance with their terms.
34. The Secured Notes were guaranteed by Herban CA, Herban Delaware and GGR. All the debt and security in connection with the Gotham Green Notes are collectively referred to as the "**Gotham Green Debt and Security**".
35. On September 16, 2019, Gotham Green called the Secured Notes and sent a letter to the Company and Herban 2 demanding repayment of the notes in full. No amounts have been repaid to Gotham Green.
36. On October 30, 2019, Gotham Green and Gotham Q commenced litigation against the Company, GGR, Herban 2, Herban Delaware, and Herban CA in the Superior Court of the State of California, County of Los Angeles, Central Division (the "**Gotham Green Litigation**").
37. GGR is the holder of various cannabis licenses issued by the State of California and the City of Los Angeles. The Receiver is of the view that it would be detrimental to the Company and the proposed sale of the Property (described above) if the Gotham Green Litigation were to continue, and in particular if the licenses held by GGR were affected by such litigation.
38. The Receiver is advised by SP1 that, in SP1's opinion, the GGR licenses have material value, and the value of the Company will be materially adversely affected if, for example, because of enforcement steps by Gotham Green, GGR ceased to be a subsidiary of the Company.
39. Accordingly, since October 30, 2019, the Receiver and its counsel have been in ongoing discussions with SP1 and its counsel with respect to the Gotham Green Litigation, including the possibility of having the Receiver fund Herban Delaware using its Receiver's borrowings to acquire the Gotham Green Debt and Security.

### **Part 3: LEGAL BASIS**

1. Pursuant to the Receivership Order, the Receiver is authorized to, among other things, market any or all of the Property of the Company, 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 considers appropriate. Further, the Receiver may apply to this Court for advice and directions in the discharge of its powers and duties pursuant to the Receivership Order.
2. Section 247(b) of the BIA provides, among other things, that the Receiver shall deal with the property of an insolvent person in a commercially reasonable manner.
3. Through the implementation of the Bidding Procedures, the Property is being, and will continue to be, offered for sale in a transparent, orderly and timely process. Moreover, the Bidding Procedures are designed to maximize value for the benefit of all of the Company's stakeholders, including by providing certain flexibility to the Receiver by granting it the ability (but not the obligation) to conduct the Auction.
4. Requiring all bids to be delivered to the Receiver by the Bid Deadline is reasonable as, among other things, (i) the Receiver commenced the Bidding Procedures by sending the Teaser



Letter to Potential Bidders commencing on October 31, 2019, (ii) the Receiver has limited funding and must complete a sale of the Property prior to December 31, 2019 in order to preserve the value of the Company, (iii) in the Receiver's opinion, there is likely a limited set of potential buyers, and (iv) the Company has been marketing the Property to interested parties since June, 2018.

5. In addition, as set out above, the Receiver is of the view that it would be detrimental to the Company and the proposed sale of the Property if the Gotham Green Litigation were to continue, particularly if the licenses held by GGR were to be affected by such litigation. In order to preserve and protect the Property and maximize value to the Company's stakeholders, and to the extent the Receiver determines it advisable, the Receiver seeks an order authorizing it to fund Herban Delaware's acquisition of the Gotham Green Debt and Security.

6. The steps taken, or proposed to be taken, by the Receiver since its appointment in relation to the Property as outlined in the First Report and above are commercially reasonable.

7. In support of this application, the Receiver will rely on:

- (a) The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (b) Rule 8-1 and 8-5 of the *Supreme Court Civil Rules of Court*;
- (c) the inherent jurisdiction of this Honourable Court.

**Part 4: MATERIAL TO BE RELIED ON**

1. The Receiver will rely on:

- (a) the pleadings and materials taken and filed herein;
- (b) the First Report of the Receiver, dated November 19, 2019;
- (c) the Affidavit of Yana Kislenko, made October 22, 2019; and
- (d) such further and other material as counsel may advise and the Court may permit.

The time estimated by the Receiver for the hearing of the within application is 20 minutes.

This application is NOT within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed application response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

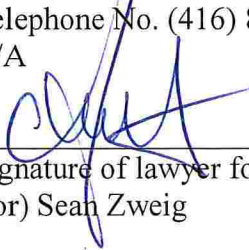
Applicant's address for service:

**BENNETT JONES LLP**  
 Barristers and Solicitors  
 2500 Park Place, 666 Burrard Street  
 Vancouver, BC V6C 2X8  
 Telephone No. (416) 863.1200

Fax number address for service :

N/A

Date: November 19, 2019

  
 \_\_\_\_\_  
 Signature of lawyer for the Receiver  
 (for) Sean Zweig

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this notice of application

with the following variations and additional terms:

.....  
 .....  
 .....

Date: .....

[dd/mmm/yyyy]

.....  
 Signature of [ ] Judge [ ] Master

**Appendix****THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

*GLAS Americas LLC v DionyMed Brands Inc.*

**SERVICE LIST**

As of November 18, 2019

<p><b>Stikeman Elliott LLP</b> Suite 1700, 666 Burrard Street Vancouver, British Columbia V6C 2X8</p> <p>Attention: Maria Konyukhova Angela Crimeni</p> <p>Email: mkonyukhova@stikeman.com acrimeni@stikeman.com</p> <p><i>Counsel for SP1 Credit Fund</i></p>	<p><b>Cassels Brock &amp; Blackwell LLP</b> Suite 2100, Scotia Plaza, 40 King Street West Toronto, Ontario M5H 3C2</p> <p>Attention: Joseph Bellissimo</p> <p>Email: jbellissimo@casselsbrock.com</p> <p><i>Counsel for DionyMed Brands Inc.</i></p>
<p><b>FTI Consulting Canada Inc.</b> TD South Tower, 79 Wellington Street West Toronto Dominion Centre Suite 2010, PO Box 104 Toronto, Ontario, M5K 1G8</p> <p>Attention: Jeffrey Rosenberg Craig Munro</p> <p>Email: jeffrey.rosenberg@fticonsulting.com craig.munro@fticonsulting.com</p> <p><i>Receiver</i></p>	<p><b>Bennett Jones LLP</b> 666 Burrard Street, Suite 2500 Vancouver, British Columbia V6C 2X8</p> <p>Attention: David Gruber Sean Zweig Victor Fong</p> <p>Email: gruberd@bennettjones.com zweigs@bennettjones.com fongv@bennettjones.com</p> <p><i>Counsel for the Receiver</i></p>
<p><b>Torkin Manes LLP</b> 151 Yonge Street, Suite 1500 Toronto, Ontario M5C 2W7</p> <p>Attention: Jeffrey Simpson</p> <p>Email: jsimpson@torkinmanes.com</p> <p><i>Counsel for Flow Capital Corp.</i></p>	<p><b>Blake, Cassels &amp; Graydon LLP</b> 595 Burrard Street P.O. Box 49314 Suite 2600, Three Bentall Centre Vancouver British Columbia V7X 1L3</p> <p>Attention: Claire Hildebrand</p> <p>Email: claire.hildebrand@blakes.com</p> <p><i>Counsel for the Ad Hoc Bondholders</i></p>

<p><b>AllOver Media LLC</b> 16355 36<sup>th</sup> Ave N Suite 700 Plymouth, MN 55426</p> <p>Attention: Chad Dudycha and Dale Kopel</p> <p>Email: Chad.dudycha@allovermedia.com Dale.kopel@allovermedia.com</p>	<p><b>Fox Rothschild LLP</b> Campbell Mithun Tower 222 S. Ninth St. Suite 2000 Minneapolis MN 55402-3338</p> <p>Attention: Mark P. Schneebeck</p> <p>Email: mschneebeck@foxrothschild.com</p> <p><i>Counsel for AllOver Media LLC</i></p>
<p><b>Allen Attorney Group</b> 2121N. California Blvd, Suite 290 Walnut Creek, CA 94596</p> <p>Attention: Kevin R. Allen</p> <p>Email: kevin@allenattorneygroup.com</p> <p><i>Counsel for DeWinter Group, Inc.</i></p>	<p><b>Borden Ladner Gervais</b> 1200 Waterfront Centre 200 Burrard St. P.O Box 48600 Vancouver, BC, V7X 1T2</p> <p>Attention: Lisa Hiebert</p> <p>Telephone: 604-632-3425</p> <p>Email: LHiebert@blg.com</p> <p><i>Counsel for Innovative Industrial Properties Inc., and IIP-CA 3LP</i></p>
<p><b>Silverman Law Firm, LLC</b> 1512 Larimer St Suite 600 Denver, CO 80202</p> <p>Attention: David Silverman</p> <p>Email: david@dsilvermanlaw.com</p> <p><i>Counsel for Suzuki Enterprises, Inc. a Colorado Corporation doing business as CFOshare</i></p>	

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

AND

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c. B-3, AS AMENDED AND SECTION  
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AND

IN THE MATTER OF THE RECEIVERSHIP OF DIONYMED BRANDS INC.

BETWEEN:

GLAS Americas LLC

PETITIONER

AND:

DionyMed Brands Inc.

RESPONDENT

**ORDER MADE AFTER APPLICATION**  
**(Approving bidding procedures)**

BEFORE	)	THE HONOURABLE	)	November ____, 2019
	)	_____	)	
	)		)	
	)		)	

ON THE APPLICATION of FTI Consulting Canada Inc., in its capacity as the court-appointed receiver (the "**Receiver**") of all of the assets, undertakings and property of DionyMed Brands Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor pursuant to the receivership order issued on October 29, 2019 (the "**Receivership Order**") in the within proceedings; AND ON READING the Receiver's First Report to the Court dated November 19, 2019 (the "**First Report**"); AND ON HEARING from counsel for the Receiver and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served;

**THIS COURT ORDERS AND DECLARES THAT:****Service**

1. The time for service of the Notice of Application herein and supporting materials be and are hereby abridged and deemed good and sufficient such that the Notice of Application is properly returnable today, and service upon any interested party other than those parties on the service list maintained by the Receiver in this proceeding is hereby dispensed with.

**Approval of Receiver's Actions**

2. The actions, conduct, and activities of the Receiver, as outlined in the First Report, are hereby approved.

**Approval of bidding procedures**

3. The bidding procedures (the "**Bidding Procedures**") for the sale of the Debtor's Property (as defined in the Bidding Procedures), substantially in the form attached as Appendix A to this Order, are hereby approved.
4. The Receiver is authorized and directed to implement the Bidding Procedures and to do all such things as it considers necessary or desirable to conduct and give full effect to the Bidding Procedures.
5. The Receiver, and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of performing its obligations under the Bidding Procedures, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Receiver in performing its obligations under the Bidding Procedures (as determined by this Court).
6. In connection with the Bidding Procedures and pursuant to clause 7(3)(c) of the *Personal Information and Electronic Documents Act* (Canada), the Receiver and the Debtor are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a "**Transaction**"). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Receiver or the Debtor, as applicable; (ii) destroy all such information, or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The transacting party with respect to any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver or the Debtor, as applicable, or ensure that all other personal information is destroyed.

**Authorization to provide funding**

7. The Receiver is empowered and authorized, but not obligated, to provide funding to Herban Industries Inc. ("**Herban Delaware**"), as the Receiver considers necessary or desirable, for the purpose of Herban Delaware acquiring the Gotham Green Debt and Security, as that term is defined in the First Report.

**General**

8. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same in accordance with the Receivership Order on:
    - (i) the persons listed on the service list created in these proceedings;
    - (ii) any other person served with notice of the application for this Order;
    - (iii) any other parties attending or represented at the application for this Order;  
and
  - (b) posting a copy of this Order on the Receiver's website at <http://cfcanada.fticonsulting.com/DionyMed/>
- and service on any other person is hereby dispensed with.
9. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER.

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Signature of Sean Zweig  
Lawyer for the Receiver

BY THE COURT

REGISTRAR



**Schedule "A" – List of Counsel**

<b><u>Counsel Name</u></b>	<b><u>Party Represented</u></b>

## Bidding Procedures

### Background

GLAS USA LLC and GLAS Americas Inc. (collectively the “**Agents**”) are the administrative and collateral agent, respectively, of the lenders (the “**Secured Lenders**”) from time to time party to the credit agreement dated January 16, 2019 with DionyMed Brands Inc. (the “**Debtor**”) and certain of its subsidiaries, as amended, modified and supplemented from time to time.

On October 29, 2019, on the application of the Agents, the Supreme Court of British Columbia (the “**Court**”) granted an order (the “**Receivership Order**”) appointing FTI Consulting Canada Inc. as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of the Debtor, including all proceeds thereof (collectively, the “**Property**”). Pursuant to the Receivership Order, the Receiver is authorized 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 considers appropriate, and, subject to a further order of the Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business.

### Property for Sale

The Property is available for sale pursuant to these bidding procedures (these “**Bidding Procedures**”). The Property includes the following:

1. All shares in the capital of Herban Industries Inc. (“**Herban**”), a Delaware corporation;
2. All of the books, records, books of account, supplier and customer lists, business information, research and development information, business analyses and plans, and records, and all other documents, files, records, correspondence, electronic information (including emails and web page content), and other data and information, financial or otherwise related to the business of Herban, Herban Industries CA LLC, Herban CA 2 LLC, Gourmet Green Room, Inc., Herban Industries OR LLC, Herban Industries NJ LLC, Hometown Heart, Herban Industries NV LLC, Herban Industries CO LLC and Herban Industries MI LLC, in each case, which is owned by, and within the control or possession of DYME, at the Closing Date; and
3. The agricultural lease dated January 1, 2019 between Cynthia A. Jessup and DionyMed Holdings Inc. (a predecessor corporation of the Debtor) in respect of 42466 Winberry Creek Road, Fall Creek, Oregon 97438 and the lease agreement dated July 23, 2019 between IIP-CA 3 LP and DYME in respect of 1454, 1458 and 1500 Esperanza Street, Los Angeles, California.

Notwithstanding anything else contained herein, the Receiver may consider offers for individual assets of the Debtor and/or any of its direct or indirect subsidiaries.<sup>1</sup> However, the Receiver will favour a bid that includes all of the shares of Herban.

### **Free of Any And All Claims and Interests**

All of the right, title and interests of the Receiver and the Debtor in and to the Property, or any portion thereof, to be acquired will be sold free and clear of all security interests, hypothecs, mortgages, trusts or deemed trusts, liens, executions, levies, charges, or other financial or monetary claims (collectively, the “**Charges**”) pursuant to an Approval and Vesting Order in form reasonably satisfactory to the Successful Bidder(s) (as defined below) and the Receiver and approved by the Court, such Charges to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding priority, validity or enforceability thereof).

### **Bidding Procedures**

The Receiver filed an application with the Court seeking, among other things, approval of: (a) the solicitation of offers for the acquisition of the Property or any parts thereof (each a “**Bid**”, and each party who submits a Bid, a “**Bidder**”) in accordance with the terms of these Bidding Procedures; and (b) the rules for the conduct of an auction (the “**Auction**”) if and when (i) the conditions for the holding of the Auction are satisfied as provided in these Bidding Procedures, and (ii) the Receiver determines in its sole discretion that an Auction would be advisable.

On November [●], 2019, the Court issued an order approving the Bidding Procedures (the “**Bidding Procedures Order**”). Accordingly, these Bidding Procedures shall govern the solicitation by the Receiver of Bids for all or part of the Property and the selection by the Receiver of one or more Successful Bids (as defined below).

#### **1. Solicitation**

The Receiver has prepared: (a) a list of potential bidders for the Property (the “**Potential Bidders**”), including both strategic and financial parties who, in the Receiver’s reasonable professional judgment, may be interested in acquiring the Property; (b) an initial offering summary (the “**Teaser Letter**”) to notify Potential Bidders of the existence of this solicitation process and invite the Potential Bidders to make an offer to acquire all or any part of the Property; (c) a form of confidentiality agreement (the “**Confidentiality Agreement**”); and (d) a form of acknowledgment (the “**Acknowledgement**”) whereby the Potential Bidder agrees to be bound by the provisions of these Bidding Procedures.

In accordance with the Receivership Order, the Receiver has already sent the Teaser Letter to the Potential Bidders. The Receiver will continue the solicitation process in accordance with the Bidding Procedures.

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<sup>1</sup> The structuring of any transaction involving individual assets of any direct or indirect subsidiary will require discussion between the Receiver and the bidder.

2. **As is, where is**

Any sale of any or all of the Property will be completed on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or the Debtor or their respective agents, professionals, advisors, or otherwise, except to the extent set forth in the relevant agreement(s) with the Successful Bidder(s).

3. **Access to Due Diligence Materials**

Interested parties that execute and deliver to the Receiver the Confidentiality Agreement and the Acknowledgement shall receive (a) a detailed confidential information memorandum prepared by the Receiver describing the opportunity to acquire all or part of the Property; and (b) access to an electronic due diligence data site (collectively, the “**Due Diligence Access**”). In addition, the Receiver will populate the due diligence data site with a template asset purchase agreement (the “**Template APA**”), which is to be used by interested parties who intend to submit binding offers as described below.

Each party’s Due Diligence Access shall terminate upon the earliest of the following events to occur:

- (a) Such party advises that it is no longer interested in pursuing an acquisition of any Property;
- (b) Such party does not submit a bid by the Bid Deadline (as defined below);
- (c) Such party submits a Bid by the Bid Deadline but the Receiver determines that such party does not constitute a Qualified Bidder (as defined herein);
- (d) If there is an Auction, such party does not participate in the Auction;
- (e) If there is an Auction, at the conclusion of the Auction; or
- (f) If there is no Auction, the approval by the Court of the Successful Bid.

The Receiver will designate a representative to coordinate all reasonable requests for Due Diligence Access for all parties eligible to receive such access in accordance with this Section. The Receiver and the Debtor are not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Property and do not make any representations or warranties as to the information or materials provided, except to the extent of any representations or warranties provided for in the relevant agreement(s) with the Successful Bidder(s).

Notwithstanding that a party’s Due Diligence Access may continue following the Bid Deadline, the Receiver shall not be obligated to furnish any additional due diligence information after the Bid Deadline.

4. **Bidding**

These Bidding Procedures provide for one phase of bidding in which to solicit binding offers to purchase all or part of the Property. In the event that the Receiver determines that the results of any Bids received satisfy the conditions for an Auction, as set out below, the Receiver may, in the Receiver's sole discretion, conduct an Auction in accordance with the procedures set out in Section 8 below.

All bids are to be denominated in dollars of the United States of America.

5. **Bidding Deadlines**

All bids must be submitted in writing via email or by personal delivery so that they are actually received by the Receiver no later than 1:00 p.m. (Vancouver time) on December 9, 2019 (the “**Bid Deadline**”) at:

FTI Consulting Canada Inc.  
TD Waterhouse Tower, Suite 2010  
79 Wellington Street  
Toronto, ON M5K 1G8

Attention: Jeffrey Rosenberg  
Email: Jeffrey.rosenberg@fticonsulting.com

Unless the Receiver determines otherwise, a bid received by the Receiver after the Bid Deadline shall not constitute a Qualified Bid (as defined below).

6. **Bid Requirements**

In order to be eligible to be a Qualified Bidder, a Bidder must deliver a bid to the Receiver which satisfies each of the following conditions (a “**Bid**”):

- (a) Confidentiality: The Bidder must deliver an executed Confidentiality Agreement and Acknowledgement (if not already delivered);
- (b) Identification: The Bid must identify the Bidder and representatives thereof who are authorized to appear and act on behalf of the Bidder for all purposes regarding the contemplated transaction;
- (c) Form and Content. The Bid must be in the form of the Template APA and be executed by the Bidder (each, a “**Proposed Purchase Agreement**”). Any changes and modifications to the Template APA are to be indicated on a blackline to the Template APA, which is to be submitted along with the executed version;
- (d) Allocation. The Bid must provide an allocation of the aggregate consideration of the Bid among the Property;

- (e) Good-Faith Deposit. The Bid must be accompanied by a cash deposit equal to the greater of (x) US\$3,000,000.00 and (y) twenty percent (20%) of the total cash purchase price contemplated by the Bid (the “**Good Faith Deposit**”), and the Good Faith Deposit shall be paid to the Receiver, to be held by the Receiver in trust in accordance with these Bidding Procedures<sup>2</sup>;
- (f) Financial Wherewithal. The Bid must include evidence satisfactory to the Receiver of the Bidder’s financial ability to close by the Closing Date (as defined below);
- (g) Closing Date. The Bid must contain a binding commitment by the Bidder to close on the terms and conditions set forth in the Proposed Purchase Agreement as soon as practicable after satisfaction or waiver of all conditions; provided that such closing must take place by no later than December 31, 2019 (the “**Closing Date**”);
- (h) Irrevocable. The Bid must be accompanied by a letter which confirms that the Bid: (i) may be accepted by the Receiver, by the Receiver countersigning the Proposed Purchase Agreement, and (ii) is irrevocable and capable of acceptance until the earlier of (I) the day on which the Bidder is notified that the Bid is not a Qualified Bid (as defined below); (II) the day on which a Successful Bid or Successful Bids are selected, if the Bid is neither a Successful Bid nor a Back-Up Bid (as defined below) selected on such day; (III) if the Bid is the Back-Up Bid, then the day on which the Successful Bid(s) closes; and (IV) December 20, 2019 (the “**Termination Date**”);
- (i) No Representations and Warranties. The Bid shall include an “as is, where is” clause substantially on the same terms as the “as is, where is” clause set out in the Template APA;
- (j) Contingencies. The Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence;
- (k) No Fees Payable to Bidder. The Bid may not request or entitle the Bidder to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting a Bid, a Bidder shall be deemed to irrevocably waive any right to pursue a claim in any way related to the submission of its Bid or these Bidding Procedures; and
- (l) Other Information. A Bid shall contain such other information reasonably requested by the Receiver.

Each Bidder shall comply with all reasonable requests for additional information by the Receiver regarding such Bidder and its contemplated transaction. Failure by the Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Bidder is not a Qualified Bidder (as defined below).

## 7. Designation as Qualified Bidder

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<sup>2</sup> In connection with an offer for individual assets of the Debtor and/or any of its direct or indirect subsidiaries (i.e. an offer that does not include all of the shares of Herban), the Good Faith Deposit must be equal to at least twenty-five percent (25%) of the total cash purchase price contemplated by the offer. For greater certainty, there is no US\$3,000,000 minimum in that circumstance.

The Receiver may discuss, negotiate or seek clarification of any Bid. A Bidder may not modify, amend or withdraw its Bid without the written consent of the Receiver. Any purported modification, amendment or withdrawal of a Bid by a Bidder without the written consent of the Receiver shall result in a forfeiture of such Bidder's Deposit.

After any clarifying discussions or negotiations, the Receiver shall review all Bids and other documentation and information submitted by the Bidders, and shall determine, in its reasonable judgment, those Bidders, if any, that are qualified to participate in the Auction (the "**Qualified Bidders**" and the Bid of each Qualified Bidder, a "**Qualified Bid**"). The Receiver shall notify all Qualified Bidders with respect to whether such Bidder is a Qualified Bidder as soon as practicable after the Bid Deadline. All Bids will be considered, but the Receiver reserves the right to reject any and all Bids.

## 8. Auction

If the Receiver determines that there are less than two (2) Qualified Bids, then there will be no auction.

If the Receiver determines that there are at least two (2) Qualified Bids for the Property, or any combination thereof, or a combination of non-overlapping Qualified Bids (an "**Aggregated Bid**"), the Receiver may conduct an auction to determine the highest and/or best Qualified Bid or Aggregated Bid (the "**Auction**").

In all cases, the Receiver shall post notice of such facts on its website established in connection with the receivership of the Debtor, at <http://cfcandata.fticonsulting.com/DionyMed/>

If the Auction is to take place, then as soon as practicable after the Bid Deadline, and in any event not less than two days prior to the Auction, the Receiver shall provide all Qualified Bidders with a copy of the Opening Bid (as defined below) for the Auction.

The Auction shall commence on December 11, 2019, at a time and place to be determined by the Receiver, and shall be conducted according to the following procedures:

- (a) Participation at the Auction. The Receiver and its professionals shall direct and preside over the Auction. Only Qualified Bidders are eligible to participate in the Auction. Each Qualified Bidder must have present or available, the individual or individuals with the necessary decision making authority to submit Overbids (as defined below) and to make such necessary and ancillary decisions as may be required during the Auction. Only the authorized representatives, including counsel and other advisors, of each of the Qualified Bidders and the Receiver shall be permitted to attend the Auction;
- (b) Rounds. Bidding at the Auction shall be conducted in rounds. The Qualified Bid or Aggregated Bid with the highest and/or best value shall constitute the "**Opening Bid**" for the first round of bidding. The highest Overbid at the end of each round shall constitute the "**Opening Bid**" for the following round. The Receiver shall determine what constitutes the Opening Bid for each round in accordance with the Bid Assessment Criteria set out in Section 8(d) below. An Aggregated Bid may be

an Opening Bid in the opening round. A combination of non-overlapping Overbids (an “**Aggregated Overbid**”) may also be an Opening Bid in any subsequent round, if such Aggregated Overbid is determined to be the highest Bid. In each round, a Qualified Bidder may submit no more than one Overbid. The Receiver reserves the right to impose time limits for the submission of Overbids;

- (c) Failure to Submit an Overbid. If, at the end of any round of bidding, a Qualified Bidder or Aggregated Bidder (other than the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) fails to submit an Overbid, then such Qualified Bidder may not participate in any further round of bidding at the Auction. Any Qualified Bidder or Aggregated Bidder that submits an Overbid or Aggregated Overbid during a round (including the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction;
- (d) Bid Assessment Criteria. The Receiver shall determine which Qualified Bid or Aggregated Bid constitutes the Opening Bid for the first round of bidding and the determination of which Overbid or Aggregated Overbid constitutes the Opening Bid for each subsequent round of bidding taking into account all factors which the Receiver, with the assistance of its advisors, reasonably deems relevant to the value of such Bid, including, among other things: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities; (iii) the ability of the Bidder(s) to close the proposed transaction(s); (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) the net after-tax consideration to be received by the Receiver (including assumed liabilities and other obligations to be performed or assumed by the Bidder(s) and any purchase price adjustments); (vi) the claims likely to be created by such Bid in relation to other Bids; (vii) the proposed revisions to the Template APA and the terms of any other transaction documents; (viii) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals or third party consents required to close the transaction); (ix) the Property included or excluded from the Bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Property; (x) the transition services required from the Receiver post-closing and any related costs; (xi) the monetary value that may reasonably be attributed to any non-cash consideration by the Receiver in its reasonable discretion; and (xii) such other considerations as the Receiver deems relevant in its reasonable business judgment.
- (e) Overbids. All Bids made during the Auction shall be “**Overbids**”. Overbids will be submitted in a form to be determined by the Receiver, in its reasonable discretion, including further revised and executed purchase agreements. The identity of each Qualified Bidder and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders participating in the Auction. The Receiver shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid(s) (as defined below) and the Back-Up Bid(s) (as defined below). To be considered an “Overbid”, a Bid made during the Auction must satisfy the following criteria:



- (i) Minimum Consideration. The amount of purchase price consideration of any Overbid shall not be less than the purchase price consideration of the Opening Bid of the applicable round of bidding plus US\$250,000 or such lower or higher amount as the Receiver may determine in advance of such round of bidding in order to facilitate the Auction (the “**Minimum Overbid Increment**”).

The Receiver reserves the right to attribute monetary value to certain non-monetary terms and conditions contained in an Overbid and credit such value to the purchase price consideration of an Overbid. The Receiver will disclose to all Bidders any monetary value attributed to non-monetary terms and conditions prior to soliciting Overbids in any given round; and

- (ii) Remaining terms are the same as for Qualified Bids. Except as modified herein, an Overbid must comply with the conditions for a Bid set forth in Section 6 above; provided, however, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits (subject to subsection (h) hereof).

To the extent not previously provided (which shall be determined by the Receiver), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence acceptable to the Receiver demonstrating such Qualified Bidder’s ability (including financial ability) to close the transaction contemplated by its Overbid;

- (f) Announcing Highest Overbids. At the end of each round of bidding, the Receiver, with the assistance of its advisors, shall (i) immediately review each Overbid made in such round; (ii) identify the highest and/or best Overbid or Aggregated Overbid; and (iii) announce the terms of such highest and/or best Overbid or Aggregated Overbid to all Qualified Bidders entitled to participate in the next round of bidding. Such highest and/or best Overbid or Aggregated Overbid shall be the Opening Bid for the next round of the Auction;

- (g) Adjournments. The Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (i) facilitate discussions between the Receiver and individual Qualified Bidders, including any discussion, negotiation or clarification of any Overbid; (ii) allow individual Qualified Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and/or best Overbid or Aggregated Overbid at any given time during the Auction; (iv) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require, in its reasonable business judgment, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the Overbid amount; and (v) subject to such rules and guidelines as the Receiver may consider appropriate, facilitate any appropriate consultation by the Receiver and/or Qualified Bidders with third party stakeholders;

- (h) Closing the Auction. If, in any round of bidding, no Overbid or Aggregated Overbid is made, the Auction shall be closed and the Receiver shall, with the assistance of its advisors: (i) declare the last Opening Bid as the successful Bid(s) (the “**Successful Bid(s)**” and the party or parties submitting such Successful Bid(s), the “**Successful Bidder(s)**”); (ii) immediately review the other Overbids or Aggregated Overbids made in the previous round (or the Qualified Bids and Aggregated Bids if no Overbids were made at the Auction) and identify and record the next highest and/or best Overbid or Aggregated Overbid (or Qualified Bid or Aggregated Bid) (the “**Back-Up Bid(s)**” and the party or parties submitting such Back-Up Bid(s), the “**Back-Up Bidder(s)**”); and (iii) advise the Successful Bidder(s) and the Back-Up Bidder(s) of such determinations and all other Qualified Bidders that they are not a Successful Bidder or a Back-Up Bidder.

To the extent not already provided, the Successful Bidder(s) and the Back-Up Bidder(s) shall each, within two (2) business days of the conclusion of the Auction, provide the Receiver with an additional cash deposit to increase its original Good Faith Deposit to equal at least twenty percent (20%) of the total cash purchase price contemplated by its Successful Bid or Back-Up Bid, as applicable, to be held by the Receiver in trust as such party’s “Good Faith Deposit” in accordance with these Bidding Procedures;

- (i) Consent to Jurisdiction as Condition to Bid. All Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidder’s transaction documents, as applicable; and
- (j) No Collusion. Each Qualified Bidder shall be required to confirm that it has not engaged in any discussions or any other collusive behaviour with respect to the submissions of Overbids. The Receiver may permit discussions between Qualified Bidders at the Auction, subject to such rules and guidelines as the Receiver considers appropriate.

## 9. Receiver’s Reservation of Rights

In addition to the other reservations of rights set out herein, the Receiver reserves the right in its reasonable discretion to: (a) waive strict compliance with any one or more of the Bid requirements specified herein, and deem such non-compliant Bids to be Qualified Bids; provided that such non-compliance is not material in nature; (b) reject any or all Bids if, in the Receiver’s reasonable business judgment, no Bid is for fair and adequate consideration; and (c) adopt such ancillary and procedural rules not otherwise set out herein for these Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of these Bidding Procedures and facilitate the Auction; provided that the adoption of any rule that materially deviates from these Bidding Procedures shall require an order of the Court.

Subject to such confidentiality arrangements as the Receiver deems appropriate, the Receiver shall consult regularly with Tribeca Global Resources Credit Pty Ltd., the investor representative of

Evolution Trustees Limited as sole trustee of SP1 Credit Fund (the “**SP1 Representative**”), with respect to the conduct and status of these Bidding Procedures, and shall provide the SP1 Representative with true and complete copies of any and all Bids received by the Receiver and such other information as is reasonably requested from time to time by the SP1 Representative in respect of the conduct and status of these Bidding Procedures.

For greater certainty, the Receiver is under no obligation to conduct an Auction under any circumstances, and the Receiver retains the sole discretion as to whether to conduct an Auction.

10. **Sale Motion**

The Receiver shall, within seven (7) days of the conclusion of the Auction, or if there is no Auction by December 13, 2019, serve notice of an application seeking approval of the Successful Bidder(s) and the sale of the applicable Property to the Successful Bidder(s) free and clear of all liens and encumbrances, other than those liens and encumbrances expressly to be assumed by the Successful Bidder(s) (the “**Sale Motion**”). The Sale Motion shall be conducted by the Court as soon as possible thereafter at 800 Smithe Street, Vancouver, British Columbia. At the Sale Motion, the Receiver may also seek, in its sole discretion, conditional approval of the Back-Up Bid(s) authorizing the Receiver to close the Back-Up Bid(s) if the Successful Bid(s) is/are not closed by the Closing Date.

11. **Closing the Successful Bid**

The Receiver and the Successful Bidder(s) shall take all reasonable steps to complete the sale transaction contemplated by the Successful Bid(s) as soon as possible after the Successful Bid(s) are approved by the Court. Notwithstanding the foregoing, in the event that there is more than one Successful Bid, the Receiver reserves the right to impose a condition in each Successful Bid that the obligation of the Receiver to complete the sale transaction contemplated by each Successful Bid is conditional upon the completion of the transaction(s) contemplated by each other Successful Bid. The Receiver will be deemed to have accepted the Successful Bid(s) only when the Successful Bid(s) has/have been approved by the Court. If the transaction(s) contemplated by the Successful Bid(s) has/have not closed by the Closing Date or the Successful Bid(s) is/are terminated for any reason prior to the Closing Date, the Receiver may elect, in its sole discretion seek to complete the transaction(s) contemplated by the Back-Up Bid(s), and upon making such election, the Receiver will seek Court approval of the Back-Up Bid(s) (if such approval has not already been obtained) and promptly seek to close the transaction(s) contemplated by the Back-Up Bid(s) after such Court approval. The Back-Up Bid(s) will be deemed to be the Successful Bid(s) and the Receiver will be deemed to have accepted the Back- Up Bid(s) only when the Back-Up Bid(s) has/have been approved by the Court and the Receiver has made such election.

12. **Return of Good Faith Deposit**

- (a) All Good Faith Deposits shall be held in an interest-bearing account until returned to the applicable Bidder or otherwise dealt with in accordance with Section 6 or this Section 12;

- (b) Good Faith Deposits of all Bidders who are determined not to be Qualified Bidders shall be returned to such Bidders within two (2) business days after the day on which the Bidder is notified that it is not a Qualified Bidder;
- (c) Good Faith Deposits of all Qualified Bidders other than the Successful Bidder(s) and the Back-Up Bidder(s) shall be returned to such Qualified Bidders within two (2) business days after the day on which one or more Successful Bidders is selected;
- (d) The Good Faith Deposit(s) of the Successful Bidder(s) shall be applied to the purchase price of such transaction(s) at closing. If the Successful Bid(s) fail(s) to close by the Termination Date because of a breach or failure to perform on the part of the Successful Bidder(s), the Receiver shall be entitled to retain the Good Faith Deposit of the applicable Successful Bidder(s) as part of its damages resulting from the breach or failure to perform by the applicable Successful Bidder(s). The Good Faith Deposit of the Successful Bidder(s) shall otherwise be returned to the Successful Bidder(s) in accordance with the terms of the Successful Bid(s);
- (e) If the Back-Up Bid(s) has/have not been deemed to be a Successful Bid(s), the Good Faith Deposit(s) of the Back-Up Bidder(s) shall be returned to the Back-Up Bidder(s) as soon as practicable after the earlier of: (i) the closing of the transaction(s) contemplated by the Successful Bid(s); (ii) the date on which the Receiver provides written notice to the Back-Up Bidder(s) that the Receiver will not elect to complete the transaction(s) contemplated by the Back-Up Bid(s) and (iii) the Termination Date; and
- (f) If a Back-Up Bid is deemed to be a Successful Bid, the Good Faith Deposit of such Back-Up Bidder shall be applied to the purchase price of such transaction at closing. If a Back-Up Bid fails to close by the Termination Date because of a breach or failure to perform on the part of such Back-Up Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of such Back-Up Bidder as part of its damages resulting from the breach or failure to perform by such Back-Up Bidder. The Good Faith Deposit of a Back-Up Bidder shall otherwise be returned to the applicable Back-Up Bidder in accordance with the terms of its Back-Up Bid.

13. **No Qualified Bid**

If the Receiver determines that no Qualified Bid was received, or at least one Qualified Bid was received but it is not likely that the transactions contemplated in any such Qualified Bid will be consummated, the Receiver shall notify the SP1 Representative forthwith, and within ten (10) Business Days of such determination, file an application with the Court seeking directions and/or such other relief as the Receiver deems appropriate in the circumstances. In the circumstances described in this subsection, the Secured Lenders shall have the option within five (5) Business Days from such determination to submit a credit bid (that would constitute a binding agreement if accepted) even if they did not submit a credit bid at any other point during the bidding process, and notwithstanding the receipt of any new information regarding bids or offers after the Bid Deadline.

