# 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.

FIRST REPORT OF FTI CONSULTING CANADA INC, in its capacity as Receiver of DIONYMED BRANDS INC.

November 19, 2019

## **TABLE OF CONTENTS**

1.	INTRODUCTION	1
2.	BACKGROUND OF THE COMPANY	2
3.	CREDITORS	3
4.	ACTIVITIES OF THE RECEIVER SINCE APPOINTMENT	5
5.	SALE OF THE COMPANY'S ASSETS	6
6.	GOTHAM GREEN LITIGATION	. 11
7.	CONCLUSION	. 12

### **APPENDICES**

 $APPENDIX "A" - Receivership \ Order$ 

 $APPENDIX \ "B"-Corporate \ chart$ 

APPENDIX "C" – Letter from Bennett Jones LLP dated November 11, 2019

APPENDIX "D" – Bidding Procedures

#### 1. INTRODUCTION

- 1.1 By the order (the "Receivership Order") of the Honourable Mr. Justice Marchand of the Supreme Court of British Columbia pronounced October 29, 2019, FTI Consulting Canada Inc. was appointed receiver (the "Receiver"), without security, of all of the assets, undertakings and property of DionyMed Brands Inc. (the "Company"), including all proceeds thereof.
- 1.2 A copy of the Receivership Order is attached as **Appendix "A"** to this report. This proceeding is referred to in this report as the "**Receivership Proceeding**".
- 1.3 This is the first report of the Receiver in the Receivership Proceeding, the purpose of which is to provide the Court with:
  - 1.3.1 certain background information regarding the Company and its creditors;
  - 1.3.2 an update on certain of the activities of the Receiver since the date of the Receivership Order;
  - 1.3.3 information regarding proposed bidding procedures (the "Bidding Procedures") for the sale of the Company's Property (as defined in the Receivership Order);
  - 1.3.4 details regarding litigation commenced against the Company and certain of its subsidiaries in the Superior Court of the State of California, County of Los Angeles, Central Division (the "Gotham Green Litigation"), and the Receiver's proposed next steps in relation thereto;

#### And to seek an Order of the Court:

- 1.3.5 authorizing but not requiring the Receiver to provide financing to Herban Industries Inc. ("Herban Delaware") to acquire the Gotham Green Debt and Security (as defined below);
- 1.3.6 approving the Bidding Procedures; and
- 1.3.7 approving this First Report and the activities of the Receiver as set out herein.
- 1.4 Unless otherwise stated, all monetary amounts referenced in this First Report are expressed in United States dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order.
- 1.5 In preparing this First Report, the Receiver has relied upon audited and unaudited financial information provided by the Company and its direct and indirect subsidiaries, including their books and records, financial information, and forecasts and analysis, in addition to discussions with various parties, including senior

management ("Management") of the Company and its direct and indirect subsidiaries (collectively, the "Information").

- 1.6 Except as otherwise described in this First Report:
  - 1.6.1 the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - 1.6.2 the Receiver has not examined or reviewed the financial forecasts or projections referred to in this First Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 1.7 Future-oriented financial information reported in or relied on in preparing this First Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
- 1.8 The Receiver has prepared this First Report in connection with the application to be heard November 26, 2019. This First Report should not be relied upon for any other purpose.
- 1.9 A copy of the filed First Report, along with all other materials filed in the Receivership Proceeding, will be available on the Receiver's website at <a href="http://cfcanada.fticonsulting.com/Dionymed">http://cfcanada.fticonsulting.com/Dionymed</a> (the "Website").

#### 2. BACKGROUND OF THE COMPANY

- 2.1 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.
- 2.2 Since 2018, the Company has been listed on the Canadian Securities Exchange under the symbol "DYME".
- 2.3 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.
- 2.4 Certain of the Company's subsidiaries hold cannabis licenses in California and Oregon, two of the largest recreational cannabis markets in the United States, allowing for the vertical integration of cultivation, manufacturing, branding, sale and distribution of medicinal and adult-use cannabis.

- 2.5 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:
  - 2.5.1 DionyMed Inc. ("**DMI**");
  - 2.5.2 Herban Delaware;
  - 2.5.3 Gourmet Green Room, Inc ("GGR");
  - 2.5.4 Herban Industries CA LLC dba Rise Logistics ("Herban CA");
  - 2.5.5 Herban Industries OR LLC dba Winberry Farms (**Herban OR**");
  - 2.5.6 Herban CA 2 LLC ("**Herban 2**");
  - 2.5.7 Herban Industries CO LLC ("Herban CO");
  - 2.5.8 Herban Industries MI LLC ("Herban MI");
  - 2.5.9 Herban Industries NJ LLC ("Herban NJ"); and
  - 2.5.10 Herban Industries NV LLC ("Herban NV").
- 2.6 In addition, the Company has an interest through a master services agreement 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.
- 2.7 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 fund those employees.
- 2.8 The Company indirectly owns the shares or membership interests as applicable, in the entities set out at paragraphs 2.5.3 to 2.5.10 above through its U.S. subsidiary, Herban Delaware. DMI and Herban Delaware are owned directly by the Company.
- 2.9 A corporate chart for the Company and its subsidiaries is attached to this First Report as **Appendix B**.

#### 3. CREDITORS

3.1 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 \$13 million.

- 3.2 As of the date of this First Report, the syndicate of Lenders was comprised of only one lender, SP1 Credit Fund ("SP1") (there have, at other times, been more Lenders).
- 3.3 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.
- 3.4 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 in connection therewith.
- 3.5 Pursuant to the Credit Agreement, the petitioner in the Receivership Proceeding, 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.
- 3.6 According to the Affidavit of Yana Kislenko made October 22, 2019 in support of the Receivership Order, as at October 15, 2019, the Company was indebted to the Lenders pursuant to the Credit Agreement in the following amounts (with interest and fees continuing to accrue):
  - 3.6.1 \$24,078,106.80, representing the principal amount of outstanding indebtedness of the Company pursuant to the Credit Agreement, including the applicable prepayment premium;
  - 3.6.2 \$610,971.36, representing accrued and unpaid interest on the principal amount as of but excluding October 15, 2019; and
  - 3.6.3 \$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.
- 3.7 The Receiver's counsel, Bennett Jones LLP ("**Bennett Jones**"), provided an opinion to the Receiver with respect to the Collateral Agent's security. Bennett Jones is of the opinion 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. A copy of the security opinion will be made available to the Court should the Court wish to review it.
- 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. As of October 2, 2019, Flow Capital held registered financing statements in respect of the Company and its various subsidiaries as follows:

**Entity** Financing Statement Registration Jurisdiction

The Company British Columbia

HomeTown California
Herban CA California
GGR California
Herban Delaware Delaware

II 1 OD

Herban OR Oregon

Herban NJ New Jersey

Herban NV Nevada Herban CO Colorado

(collectively, the "Flow Capital Registrations")

3.9 The debt and security of Flow Capital are discussed in further detail below.

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

#### 4. ACTIVITIES OF THE RECEIVER SINCE APPOINTMENT

4.1 Certain of the activities of the Receiver since being appointed are described below.

#### **Notice to Creditors**

- 4.1.1 Pursuant to section 245(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3. (the "**BIA**"), on or about November 7, 2019 the Receiver sent notice of its appointment, in the prescribed form, and statement pursuant to section 246(1) of the BIA to all known creditors of the Company, the Office of the Superintendent of Bankruptcy and to the Company.
- 4.1.2 Out of an abundance of caution, the Receiver also provided a notice to the known of creditors of DMI, advising about the appointment of the Receiver, that the Company is insolvent, and that the Receiver will not be able to fund the operations of DMI.

#### **Dealings with Flow Capital**

- 4.1.3 The Company is indebted to Flow Capital pursuant to two Royalty Purchase Agreements dated April 4, 2018 and May 25, 2018.
- 4.1.4 In or around September 2019, Flow Capital registered the Flow Capital Registrations under the *Uniform Commercial Code* in effect in California

- and certain other states and the *Personal Property Security Act* (British Columbia) against the Company and certain of its subsidiaries as outlined above.
- 4.1.5 In its review of the Flow Capital Registrations, the Receiver has identified certain potential issues with Flow Capital's alleged security.
- 4.1.6 On November 11, 2019, counsel for the Receiver sent a letter to counsel for Flow Capital requesting that Flow Capital withdraw the security registrations made in respect of the Company, Herban CA and GGR, or in the alternative, to immediately provide the Receiver with any missing documentation to justify the Flow Capital Registrations. A copy of the letter, which provides additional details regarding the Receiver's views on the security registrations, is attached as **Appendix C**.
- 4.1.7 As noted in the letter, to the extent this matter is not resolved to the satisfaction of the Receiver in the near term, the Receiver intends to seek the Court's assistance to obtain a discharge of all Flow Capital Registrations.
- 4.1.8 On November 18, 2019, the Receiver received a responding letter from counsel to Flow Capital. The Receiver is currently in the process of reviewing that letter, and reserves its right to seek the Court's assistance if needed.

#### **Commencement of sale process**

- 4.1.9 As described in section 5 of this First Report, the Receiver, in consultation with SP1, has developed the Bidding Procedures for the solicitation of offers to purchase the Company's Property, and has commenced marketing the Property for sale and implementing the Bidding Procedures.
- 4.1.10 Key elements of the Bidding Procedures, and the steps taken by the Receiver in connection therewith, are described below.
- 4.2 In addition to the other activities described in this First Report, including in subsequent sections, the Receiver has, pursuant to the Receivership Order, established the Website, where all materials filed with the Court and all orders granted by the Court in connection with the Receivership Proceeding will be made available in electronic form.

#### 5. SALE OF THE COMPANY'S ASSETS

- 5.1 Pursuant to the Receivership Order, the Receiver is authorized to market any or all of the Property of the Company.
- 5.2 With the support and input of SP1, the Receiver has developed procedures for the solicitation of offers to purchase the Company's Property, including the following:

- 5.2.1 all shares in the capital of Herban Delaware;
- 5.2.2 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 Delware, 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
- 5.2.3 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.
- 5.3 The Receiver has prepared:
  - 5.3.1 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;
  - 5.3.2 an initial offering summary (the "**Teaser Letter**") to notify Potential Bidders of the existence of the opportunity and to invite the Potential Bidders to make an offer to acquire all or any part of the Property;
  - 5.3.3 a form of confidentiality agreement (the "Confidentiality Agreement"); and
  - 5.3.4 a form of acknowledgement (the "**Acknowledgement**") whereby Potential Bidders agree to be bound by the provisions of the Bidding Procedures.
- 5.4 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. Since then, the Receiver has had many discussions and meetings with Potential Bidders that have expressed interest in this opportunity. As of the date hereof, approximately 27 Potential Bidders have executed the Confidentiality Agreement and are performing diligence on the Company and the Property.
- 5.5 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.
- 5.6 The proposed Bidding Procedures are attached as **Appendix D** to this First Report.

5.7 Key elements of the Bidding Procedures are as follows (unless otherwise defined herein, all capitalized terms in this section are as defined in Appendix D):

### **Due Diligence**

- 5.7.1 the Receiver, among other things:
  - 5.7.1.1 created an electronic due diligence data site for the Company and the Property and will continue to populate and manage the data site, which will include a template asset purchase agreement to be used by interested parties to submit binding offers;
  - 5.7.1.2 prepared a detailed confidential information memorandum describing the opportunity to acquire all or part of the Property the ("CIM"), which has been uploaded to the data site;

(collectively, the "Due Diligence Access");

5.7.2 interested parties are required to execute and deliver to the Receiver the Confidentiality Agreement and the Acknowledgment before being provided with Due Diligence Access;

### **Bidding**

- 5.7.3 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;
- 5.7.4 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:
  - 5.7.4.1 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
  - 5.7.4.2 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;

<sup>&</sup>lt;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 not include all of the shares of Herban Delaware), which is referred to below, 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\$3,000,000 minimum in that circumstance.

- 5.7.5 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;
- 5.7.6 all Bids will be considered by the Receiver, but the Receiver reserves the right to reject any and all Bids;

#### Auction

- 5.7.7 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;
- 5.7.8 The Auction will commence on December 11, 2019, at a time and place to be determined by the Receiver. Key elements of the auction include:
  - 5.7.8.1 the Receiver and its professionals will direct and preside over the Auction and only Qualified Bidders are eligible to participate in the Auction;
  - 5.7.8.2 bidding at the Auction will be conducted in rounds, with the Qualified Bid or Aggregated Bid with the highest and/or best value to constitute the Opening Bid for the first round of bidding. The highest Overbid at the end of each round will constitute the Opening Bid for each round in accordance with the Bid Assessment Criteria set out in the Bidding Procedures;
  - 5.7.8.3 the Receiver will determine which Qualified Bid or Aggregated Bid constitutes the Opening Bid for the first round of bidding, and will determine which Overbid or Aggregated Overbid constitutes the Opening Bid for each subsequent round of bidding taking into account all factors that the Receiver, with the assistance of its advisors, reasonably deems relevant to the value of such Bid;
  - 5.7.8.4 the Receiver will maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid(s) and the Back-up Bids.
- 5.8 The Property is being offered for sale on an "as-is, where is" basis.
- 5.9 In accordance with the Bidding Procedures, the Receiver will apply to this Honourable Court for approval of the Successful 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.

- 5.10 Notwithstanding anything else contained in the Bidding Procedures, the Receiver may 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.
- 5.11 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. Additionally, in that circumstance, 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,

#### **Recommendation regarding Bidding Procedures**

- 5.12 The Receiver is of the view that offering the Property for sale pursuant to the Bidding Procedures represents the best opportunity to recover the value of the Property in the circumstances. Among other reasons:
  - 5.12.1 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;
  - 5.12.2 the Bidding Procedures are designed to maximize value for the benefit of all of the Company's stakeholders;
  - 5.12.3 the Bidding Procedures provide certain flexibility for the Receiver to maximize value, including by granting the Receiver the ability (but not the obligation) to conduct the Auction;
  - 5.12.4 the Bid Deadline is appropriate in the circumstances given that (i) the Receiver commenced the Bidding Procedures by sending the Teaser Letter to the Potential Bidders commencing on October 31, 2019, (ii) the Receiver has limited funding and must complete a sale 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<sup>2</sup>; and

<sup>&</sup>lt;sup>2</sup> The Company engaged Cormark Securities Inc. in June, 2018 as its strategic financial advisor to explore various strategic alternatives, including, among other things, a sale or merger of the Company. That process did not result in an executable transaction, but it did result in the Company being well exposed to the market of potential purchasers.

5.12.5 the Bidding Procedures are consistent with other procedures that have been approved by the Court in other insolvency proceedings.

#### 6. GOTHAM GREEN LITIGATION

- 6.1 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 \$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.
- 6.2 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 \$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.
- 6.3 Pursuant to the Secured Notes, Gotham Green and Gotham Q collectively loaned \$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. Interest and fees continue to accrue.
- 6.4 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".
- 6.5 On September 16, 2019, Gotham Green called the Secured Notes and sent a letter to the Company and Herban 2 demanding repayment of the Secured Notes in full. No amounts have been repaid to Gotham Green.
- 6.6 On October 30, 2019, the Gotham Green Litigation was commenced against GGR, the Company, Herban 2, Herban Delaware, and Herban CA. GGR is the holder of various cannabis licenses issued by the State of California and the City of Los Angeles.
- 6.7 The Receiver is of the view that it would be detrimental to the Company and the proposed sale process (described above) if the Gotham Green Litigation were to continue, and in particular if the licenses held by GGR were affected by such litigation. 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, as a result of enforcement steps by Gotham Green, GGR ceased to be a subsidiary of the Company.

- 6.8 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.
- 6.9 To the extent the Receiver determines it advisable to fund Herban Delaware to acquire the Gotham Green Debt and Security, the Receiver is seeking the Court's authorization to do so.

#### 7. CONCLUSION

- 7.1 The Receiver respectfully recommends that the Court issue an order:
  - 7.1.1 authorizing but not requiring the Receiver to fund Herban Delaware to acquire the Gotham Green Debt and Security;
  - 7.1.2 approving the Bidding Procedures and authorizing the Receiver to implement the Bidding Procedures; and
  - 7.1.3 approving the First Report and the activities of the Receiver as set out herein.

This report is respectfully submitted this 19 day of November, 2019.

FTI Consulting Canada Inc., solely in its capacity as receiver and manager of the assets, undertakings and property of DionyMed Brands Inc., and not in its personal capacity

Jeffrey Rosenberg

Senior Managing Director

## APPENDIX "A"

OCT 2 9 2019

ENTERED

No. S1912098 Vancouver Registry

#### IN THE SUPREME COURT OF BRITISH COLUMBIA

#### **GLAS Americas LLC**

Petitioners

- and -

DionyMed Brands Inc.

Respondent

# IN THE SUPREME COURT OF BRITISH COLUMBIA IN BANKRUPTCY AND INSOLVENCY

# IN THE MATTER OF THE RECEIVERSHIP OF DIONYMED BRANDS INC.

#### **ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE	)	29/10/2019
MR_ JUSTICE MARCHAND	) ) .	, ,

ON THE APPLICATION of GLAS USA LLC and GLAS Americas LLC for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing FTI Consulting Canada Inc. ("FTI"), as Receiver and Manager (in such capacity, the "Receiver") without security, 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, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Yana Kislenko sworn October 22, 2019 and the consent of FTI to act as the Receiver; AND ON HEARING from Cindy Cheuk, Counsel for GLAS Americas LLC, and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

#### **APPOINTMENT**

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, FTI is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor, including all proceeds (the "Property").

#### **RECEIVER'S POWERS**

- 2. The Receiver is 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 expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all 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, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
  - (d) 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;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
  - (g) to settle, extend or compromise any indebtedness owing to the Debtor;
  - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
  - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
  - (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the

- Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (k) 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;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of a single transaction for consideration up to \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,
  - and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) 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, free and clear of any liens or encumbrances;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) 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, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

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

- 3. Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "Persons" and each 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 (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
- 4. All Persons, other than governmental authorities, 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 Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
- 5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of 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 solicitor client privilege or statutory provisions prohibiting such disclosure.
- 6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an 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 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 require including, without limitation, 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

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

#### NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

#### NO INTERFERENCE WITH THE RECEIVER

10. 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 the Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

#### **CONTINUATION OF SERVICES**

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are 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 Receiver, and the Receiver shall be entitled to the continued use of the Debtor's current

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 in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### RECEIVER TO HOLD FUNDS

12. 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.

#### **EMPLOYEES**

13. Subject to the employees' right to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

#### PERSONAL INFORMATION

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of 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 ensure that all other personal information is destroyed.

#### LIMITATION ON ENVIRONMENTAL LIABILITIES

- 15. Nothing in this Order shall require the Receiver to occupy or to 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 relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
- 16. 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 the Receiver is actually in possession.
- 17. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
  - (a) before the Receiver's appointment; or,
  - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- 18. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

#### LIMITATION ON THE RECEIVER'S LIABILITY

- 19. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
  - (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

- 20. The Receiver and its legal counsel, if any, are granted a charge (the "Receiver's Charge") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 21. 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 referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
- 22. Prior to the 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 or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

- 23. The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed US\$8,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 24. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
- 25. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

26. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## ALLOCATION

27. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

#### SERVICE AND NOTICE OF MATERIALS

- 28. The Receiver shall establish and maintain a website in respect of these proceedings at: http://cfcanada.fticonsulting.com/Dionymed (the "Website") and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
- 29. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule "C" (the "Demand for Notice"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
- 30. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "Service List"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
- 31. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
- 32. Notwithstanding paragraph 31 of this Order, service of the Petition and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance

- with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
- 33. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

#### **GENERAL**

- 34. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
- 35. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
- 36. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
- 37. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are 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.
- 38. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
- 39. The Applicant shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
- 40. Endorsement of this Order by counsel appearing on this application other than the Applicant is dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY

Signature of: Undy Cheuk

Counsel for the Petitioner

my my

BY THE COURT

DISTRICT REGISTRA



## SCHEDULE "A"

## OTHER COUNSEL

Party
SP1 Credit Fund
FTI Consulting Canada Inc.
Ad Moc Bondliwldurg

## SCHEDULE "B"

## RECEIVER CERTIFICATE

CER	TIFICATE NO.	
AM	OUNT	\$
1.	"Receiver") of acquired for, of proceeds thereof of British Colu- Insolvency) (the in SCBC Action certificate (the	ERTIFY that FTI Consulting Canada Inc., the Receiver and Manager (the all of the assets, undertakings and properties of DionyMed Brands Incor used in relation to a business carried on by the Debtor, including all of (collectively, the "Property") appointed by Order of the Supreme Court mbia and/or the Supreme Court of British Columbia (In Bankruptcy and e "Court") dated the day of, 2019 (the "Order") made in No. S1912098 has received as such Receiver from the holder of this "Lender") the principal sum of \$, being part of the total of \$ which the Receiver is authorized to borrow under and Order.
2.	interest thereor day of ea	um evidenced by this certificate is payable on demand by the Lender with a calculated and compounded [daily] / [monthly] not in advance on the ach month after the date hereof at a notional rate per annum equal to the er cent above the prime commercial lending rate of from time
3.	principal sums pursuant to the Property, in pri of the charges s	sum with interest thereon is, by the terms of the Order, together with the and interest thereon of all other certificates issued by the Receiver Order or to any further order of the Court, a charge upon the whole of the ority to the security interests of any other person, but subject to the priority et out in the Order and in the Bankruptcy and Insolvency Act, and the right to indemnify itself out of the Property in respect of its remuneration and
4.		le in respect of principal and interest under this certificate are payable at of the Lender at
5.	charges ranking Receiver to any	y in respect of this certificate has been terminated, no certificates creating g or purporting to rank in priority to this certificate shall be issued by the person other than the holder of this certificate without the prior written older of this certificate.
6.		uring this certificate shall operate to permit the Receiver to deal with the horized by the Order and as authorized by any further or other order of

7.		er this Certifica		s not under any personal liability, to pay any nich it may issue certificates under the terms of
DATE	ED the	_ day of	_, 20	
				FTI Consulting Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity
				Per: Name: Title:

#### Schedule "C"

#### **Demand for Notice**

TO:

**GLAS Americas LLC** 

c/o **Dentons Canada LLP** 77 King Street West, Suit 400 Toronto, ON M5K 0A1

Attention: John Salmas

Email: john.salmas@dentons.com

AND TO:

FTI Consulting Canada Inc.

c/o Bennett Jones LLP

66 Burrard Street, Suite 2500 Vancouver, BC V6C 2X8

Attention: David Gruber & Sean Zweig

Email: gruberd@bennettjones.com zweigs@bennettjones.com

Re: In the matter of the Receivership of DionyMed Brands Inc.

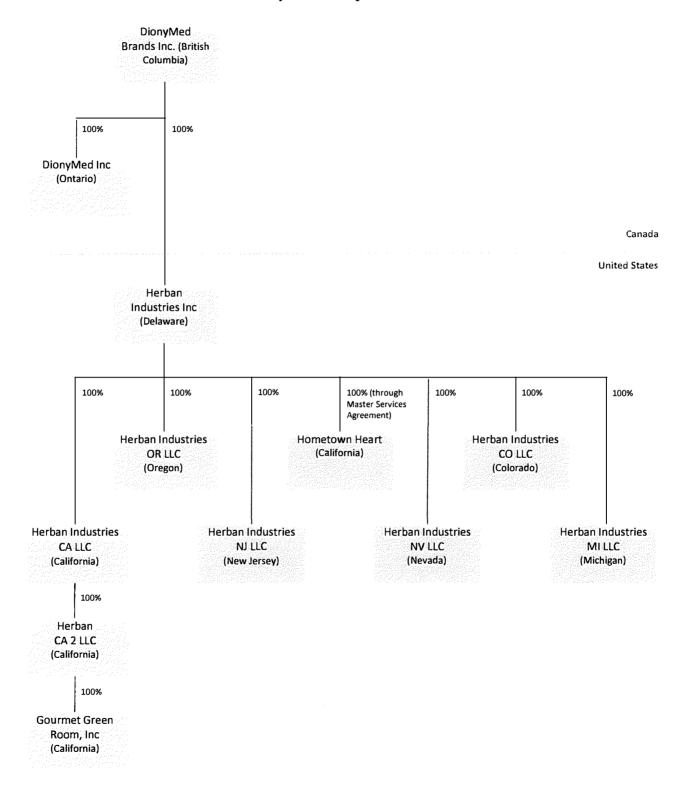
I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1.	By email, at the following address (or addresses):
2.	OR By facsimile, at the following facsimile number (or numbers):
3.	OR By mail, at the following address:
	Name of Creditor:
	Name of Counsel (if any):
	Creditor's Contact Address:
	Creditor's Contact Phone Number:

N THE SUPREME COURT OF BRITISH COLUME  GLAS Americas LLC  Petition  - and -  DionyMed Brands Inc.  Response  ND:  N THE SUPREME COURT OF BRITISH COLUME IN BANKRUPTCY AND INSOLVENCY  IN THE MATTER OF THE RECEIVERSHIP OF DIONYMED BRANDS INC.
GLAS Americas LLC Petition - and - DionyMed Brands Inc. Respond ND: N THE SUPREME COURT OF BRITISH COLUME IN BANKRUPTCY AND INSOLVENCY IN THE MATTER OF THE RECEIVERSHIP OF
- and -  DionyMed Brands Inc.  Respond  ND:  N THE SUPREME COURT OF BRITISH COLUME IN BANKRUPTCY AND INSOLVENCY  IN THE MATTER OF THE RECEIVERSHIP OF
DionyMed Brands Inc. Respond  ND:  N THE SUPREME COURT OF BRITISH COLUME IN BANKRUPTCY AND INSOLVENCY  IN THE MATTER OF THE RECEIVERSHIP OF
Respond  ND:  N THE SUPREME COURT OF BRITISH COLUME  IN BANKRUPTCY AND INSOLVENCY  IN THE MATTER OF THE RECEIVERSHIP OF
N THE SUPREME COURT OF BRITISH COLUME IN BANKRUPTCY AND INSOLVENCY IN THE MATTER OF THE RECEIVERSHIP OF
IN BANKRUPTCY AND INSOLVENCY IN THE MATTER OF THE RECEIVERSHIP OF
B.C. MODEL RECEIVERSHIP ORDER VERSION NO. 3, 2015

## APPENDIX "B"

## DionyMed's Corporate Chart



## APPENDIX "C"



Bennett Jones LLP 3400 One First Canadian Place, P.O. Box 130 Toronto, Ontario, M5X 1A4 Canada T: 416.863.1200 F: 416.863.1716

Sean H. Zweig
Partner
Direct Line; 416,777.6254
e-mail: zweigs@bennettjones.com

November 11, 2019

#### Via E-Mail

Torkin Manes LLP 151 Yonge Street Suite 1500 Toronto, Ontario M5C 2W7

**Attention: Jeffrey Simpson** 

Dear Sir:

Re: Flow Capital Corp. Security Registrations

We write to you in your capacity as counsel to Flow Capital Corp. ("Flow"). As you know, we are counsel for FTI Consulting Canada Inc., in its capacity as receiver and manager of the assets, undertakings and properties of DionyMed Brands Inc. (the "Receiver").

Based on UCC and PPSA searches, Flow has made security registrations against Herban Industries CA LLC, Gourmet Green Room, Inc. and DionyMed Brands Inc. ("DYME") purported to be registered in accordance with two separate Royalty Purchase Agreements dated April 4, 2018 and May 25, 2018. As described below, the Receiver does not believe that any security interests have been granted by any of these entities in favour of Flow. Accordingly, the UCC and PPSA registrations are not valid and we hereby request that Flow voluntarily withdraw the registrations, or immediately provide documentation that supports the validity of Flow's purported security.

Section 2.13 of each of the Royalty Purchase Agreements provide that a condition precedent to the grant of any security is that an Event of Default (as defined in the Agreements) "continues and remains uncured for a period of 180 consecutive days". The Receiver is not aware of any purported Event of Default having remained uncured for a period of 180 consecutive days, in which case no security interests were validly created pursuant to that provision. This would invalidate all security registrations purported to be made pursuant to this provision.

Even if there was the requisite Event of Default uncured for a period of 180 consecutive days (which the Receiver does not understand to be the case), the Receiver believes the security registrations against Herban Industries CA LLC and Gourmet Green Room, Inc. are still invalid. Section 2.13 of the Royalty Purchase Agreements provide that each member of the DionyMed Group will grant a first-ranking continuing security interest in favour of the "Purchasers". DionyMed Group is defined to

mean DionyMed Holdings Inc. (a predecessor of DYME) and DionyMed Subsidiaries. "DionyMed Subsidiaries" expressly includes Herban Industries CA LLC but not Gourmet Green Room, Inc. Neither Herban Industries CA LLC nor Gourmet Green Room, Inc. were party to these Agreements and did not agree to grant any such security interest. The Royalty Purchase Agreements with their parent entity, DYME, does not create a grant of security in favour of Flow by DYME's subsidiaries, which are separate corporate entities and not signatories to either Agreement. Furthermore, Gourmet Green Room, Inc. was not a subsidiary of DYME at the time the Royalty Purchase Agreements were executed. As such, the purported grant of security cannot, in any event, bind that entity.

Moreover, even if the Royalty Purchase Agreements granted such authority (which the Receiver denies), the security is invalid as there is no debt owed to Flow by Herban Industries CA LLC and/or Gourmet Green Room, Inc. The Royalty Purchase Agreements create a debt owed by DYME but do not provide for a guarantee or other obligation by either Herban Industries CA LLC or Gourmet Green Room, Inc. As such, the security registered against both of these entities is invalid as it does not secure any underlying obligation on behalf of the relevant companies.

In light of the above, we hereby request that Flow withdraw the security registrations in respect of DYME, Herban Industries CA LLC and Gourmet Green Room, Inc. Alternatively, if Flow believes the Receiver is missing the requisite documentation in respect of the purported security, we would ask that you immediately forward it to our attention. If Flow does not withdraw the security registrations, or provide the necessary documentation to satisfy the Receiver, by November 18, 2019, the Receiver intends to seek the assistance of the Court in discharging the security registrations and will seek costs against Flow in connection with same. In addition, the Receiver will seek to hold Flow liable for any damages that may occur as a result of the invalid registrations, including any damages relating to the sale process that the Receiver is currently undertaking. We note that we requested certain information with respect to Flow's security on our call on November 5, 2019, but we have not yet been provided with anything.

Yours truly,

BENNETT JONES LLP

Sean H. Zweig

Cc: Jeff Rosenberg, FTI Consulting Canada Inc.



# APPENDIX "D"

### **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. 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.

<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) <u>Confidentiality</u>: The Bidder must deliver an executed Confidentiality Agreement and Acknowledgement (if not already delivered);
- (b) <u>Identification</u>: 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) <u>Form and Content</u>. 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) <u>Allocation</u>. 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) <u>Financial Wherewithal</u>. 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) <u>Closing Date</u>. 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) <u>Irrevocable</u>. 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) <u>No Representations and Warranties</u>. 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) <u>Contingencies</u>. The Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence;
- (k) <u>No Fees Payable to Bidder</u>. 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) <u>Other Information</u>. 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. <u>Designation as Qualified Bidder</u>

-

<sup>&</sup>lt;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 Bidder"). 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 <a href="http://cfcanada.fticonsulting.com/DionyMed/">http://cfcanada.fticonsulting.com/DionyMed/</a>

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 aftertax 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) <u>Minimum Consideration</u>. 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;
- 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) <u>Consent to Jurisdiction as Condition to Bid.</u> 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) <u>No Collusion</u>. 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.