

Sale Procedure

Pursuant to an Order (as may be amended from time to time, the “**Receivership Order**”) of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 1, 2016, (the “**Date of Receivership**”), FTI Consulting Canada Inc. (“**FTI**”) was appointed as receiver (in such capacity, the “**Receiver**”) over certain of the assets, undertakings, properties and legal and beneficial ownership interests of Talon International Inc. (“**Talon**”), Midland Development Inc., 1456253 Ontario Inc., 2025401 Ontario Limited, Barrel Tower Holdings Inc., Harvester Developments Inc. (“**Harvester**”), Talon International Development Inc., TFB Inc. (“**TFB**”), 2263847 Ontario Limited and 2270039 Ontario Limited (collectively, the “**Debtors**”) comprising, acquired for, or used in relation to the condominium residence and hotel branded as the Trump International Hotel & Tower and Trump Residences located at 311 and 325 Bay Street, Toronto, Ontario, including those assets, undertakings, and properties described in Schedule “A” to the Receivership Order, and any interest held by Harvester to which the Crown may have rights, but excluding Claims to Deposit Monies Held in Trust and Litigation Matters with Respect to Units (the “**Property**”).

On January 4, 2017, the Court made an order (the “**Sale Procedure Order**”) among other things, approving (a) the marketing and listing agreement between the Receiver and CBRE Limited, dated as of November 1, 2016, (b) the Receiver’s entry into a certain agreement of purchase and sale for the Property between the Receiver and JCF Capital ULC (as party to the agreement, the “**Stalking Horse Bidder**”) dated December 21, 2016 (as may be amended from time to time, the “**Stalking Horse Agreement**”) so as to set a minimum floor price in respect of the Receiver’s sales process; and (c) this Sale Procedure for the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the Property, or some portion thereof.

Accordingly, the following Sale Procedure shall govern the proposed sale of all or substantially all of the Property pursuant to one or more Bids. This Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the Property that, alone or in combination, are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

“Acknowledgement of Sale Procedure” means an acknowledgement of the Sale Procedure in the form attached as **Schedule A** hereto;

“Acquisition Entity” means an entity specially formed for the purpose of effectuating the contemplated transaction;

“Back-up Bid” means the next highest and/or best Qualified Phase II Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale, provided that one or more Portion Bids can form part of the Back-up Bid so long as such Portion Bids, if more than one, do not overlap in respect of the Property sought to be purchased;

“Back-up Bidder” means the bidder submitting the Back-up Bid;

“Bidder” means a Qualified Phase I Bidder or a Qualified Phase II Bidder;

“Cash and Accounts Receivable” means (i) all accounts receivable owing to any Debtor that is not a Residential Account Receivable and (ii) all cash in any account of any Debtor plus deposits in transit and incoming wires, less outstanding cheques and outgoing wires, and excluding, for greater certainty, Claims to Deposit Monies Held in Trust.

“CBRE” means CBRE Limited in its capacity as marketing and listing agent to the Receiver pursuant to an engagement agreement dated as of November 1, 2016;

“Claims to Deposit Monies Held in Trust” means all of any Debtor’s right, title and interest in and to any funds currently held in trust or otherwise by Harris Sheaffer LLP, or any other party relating in whole or in part to agreements for the purchase and sale of Units and that are subject to Litigation Matters with Respect to Units;

“Confidential Information Memorandum” means a confidential information memorandum prepared by CBRE providing certain confidential information in respect of or related to the Property;

“Confidentiality Agreement” means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel;

“Encumbrances” means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against, other than any permitted encumbrances under the Stalking Horse Agreement or another Successful Bidder’s purchase agreement;

“Good Faith Deposit” means a cash deposit equal to five (5) percent of the total purchase price contemplated under the applicable Modified APA;

“Hotel Lot” means all of the Property related to the hotel operations currently branded as the Trump International Hotel & Tower, including without limitation all hotel Units owned by Talon, all parking Units owned by Talon and all commercial, retail and amenity spaces, all parking units owned by TFB and the Cash and Accounts Receivable;

“Interested Party” means a party participating in this Sale Procedure;

“Litigation Matters with Respect to Units” means all of any Debtor’s right, title or interest in any claims related to deposit monies, damages or proprietary interests, whether inchoate or formalized in an action, whether as plaintiff or defendant and whether known or unknown to all parties, in each case arising in whole or in part from agreements for the purchase and sale of Units;

“Modified APA” means an executed mark-up of the Stalking Horse Agreement reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Stalking Horse Agreement;

“Notice Parties” means the Receiver and Cassels Brock & Blackwell LLP;

“Participant Requirements” means, collectively, the requirements set out in Section 4(a) through 4(iv) hereof;

“Phase I Bid” means an initial Bid submitted by an Interested Party pursuant to Section 4 hereof;

“Phase I Bid Deadline” means 10:00 a.m. (Eastern time) on February 15, 2017;

“Phase I Bidder” means a bidder submitting a Phase I Bid;

“Phase I Participant Requirements” has the meaning given to it in Section 4 hereof;

“Phase II Bid” means a Bid submitted by a Qualified Phase I Bidder pursuant to Section 9 hereof;

“Phase II Bid Deadline” means 10:00 a.m. (Eastern time) on March 8, 2017;

“Portion Bid” means a Bid in respect of either the Hotel Lot or the Residential Lot;

“Portion Bidder” means a bidder submitting a Portion Bid;

“Principals” means, collectively, the equity holder(s) of an Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

“Qualified Phase I Bidder” means (i) a Phase I Bidder that delivers the documents described in paragraphs (a) through (d) in Section 4, and that the Receiver, in consultation with the Senior Lender, determines is reasonably likely to submit a binding *bona fide* offer that would have an aggregate purchase price for the Property that exceeds the Stalking Horse Purchase Price and would be able to consummate a transaction if selected as a Successful Bidder or (ii) a Phase I Bidder that is a Portion Bidder and that delivers the

documents described in paragraphs (a) through (d) in Section 4, and that the Receiver, in consultation with the Senior Lender, determines is reasonably likely to submit a binding *bona fide* offer that would have an aggregate purchase price for the Property that, on its own or in combination with other offers, exceeds the Stalking Horse Purchase Price and would be able to consummate a transaction if selected as a Successful Bidder.

“Qualified Phase II Bid” means a Phase II Bid that satisfies the conditions set out in Section 8 hereof. A Portion Bid may be a Qualified Phase II Bid;

“Qualified Phase II Bidder” means a bidder submitting a Qualified Phase II Bid;

“Representative Counsel Order” means the Order of the Court granted November 9, 2016, *inter alia* appointing Chattons LLP as Representative Counsel;

“Residential Account Receivable” means an account receivable owing to any Debtor solely attributable to a Residential Unit or a group of Residential Units;

“Residential Lot” means all Property related to the condominium residence currently branded as the Trump Residences, including without limitation all condominium residence Units and residential locker Units owned by Talon;

“Residential Unit” means a residential condominium Unit;

“Sale Hearing” means a hearing to approve the sale of Property to the Successful Bidder;

“Senior Lender” means JCF Capital ULC in its capacity as a Senior Lender of the Debtors;

“Stalking Horse Purchase Price” means \$298,000,000;

“Successful Bid” means the highest and best Qualified Phase II Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale, provided that one or more Portion Bids can form part of the Successful Bid so long as such Portion Bids, if more than one, do not overlap in respect of the Property sought to be purchased;

“Successful Bidder” means the Bidder submitting the Successful Bid;

“Units” means collectively the hotel, residential, amenity, parking or commercial condominium units of the Trump International Hotel & Tower and Trump Residences, whether owned by any Debtor or otherwise, and **“Unit”** means any one of them.

2. Assets for Sale

The Receiver is soliciting superior offers for all or a portion of the Property.

For the purposes of this Sale Procedure, Bids may be submitted only for the Hotel Lot, the Residential Lot or both, provided that a Bidder may exclude from its Bid any of the Property.

3. Sale Procedure Structure and Bidding Deadlines

The Sale Procedure shall consist of two phases. In the first phase, Interested Parties that meet the preliminary participant requirements set out herein, including having executed a Confidentiality Agreement, shall be provided the Confidential Information Memorandum in order to prepare and submit their Phase I Bid by the Phase I Bid Deadline. Phase I Bidders that are determined by the Receiver to be Qualified Phase I Bidders shall be invited to participate in the second phase wherein they will be given access to additional confidential information in order to complete diligence prior to submitting a Phase II Bid.

The Receiver has engaged CBRE as marketing and listing agent to assist the Receiver with the implementation of the Sale Procedure. Interested Parties wishing to obtain information about the Sale Procedure, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the following representatives of CBRE: bill.stone@cbre.com and deborah.borotsik@cbre.com.

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline. All Phase II Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Procedure so that they are actually received no later than the Phase II Bid Deadline. In addition, written copies of the Bids shall be delivered by the applicable deadline to the Notice Parties at the following addresses: (a) the Receiver, TD Waterhouse Tower, 79 Wellington Street, Suite 2100, Toronto, Ontario M5K 1G8 Attn.: Nigel Meakin, nigel.meakin@fticonsulting.com; and (b) counsel to the Receiver, Cassels Brock & Blackwell LLP, 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario M5H 3C2, Attn: Jane Dietrich, jdietrich@casselsbrock.com. A Bid received after the Phase I Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. Participant Requirements

Phase I Participant Requirements.

To participate in Phase I of the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following prior to being provided with the Confidential Information Memorandum: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the “**Phase I Participant Requirements**”).

Phase II Participant Requirements.

Only Qualified Phase I Bidders shall be allowed to participate in Phase II of the Sale Procedure. In order for the Receiver to determine whether an Interested Party is a Qualified

Phase I Bidder, the Interested Party must provide, in form and substance satisfactory to the Receiver, in consultation with the Senior Lender, each of the following on or before the Phase I Bid Deadline:

- (a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Accredited Investor. Confirmation that the Phase I Bidder is an accredited investor for the purposes of the *Securities Act (Ontario)*;
- (c) Non-Binding Expression of Interest. An executed non-binding indication of interest satisfactory to the Receiver that must reasonably identify the contemplated transaction, including whether one or both of the Hotel Lot and Residential Lot (or such portions thereof) are proposed to be acquired, the proposed purchase price, and any contingencies, and conditions precedent to closing;
- (d) Corporate Authority. Written evidence of the Phase I Bidder's chief executive officer or other appropriate senior executive's approval of the Phase I Bid; provided, however, that, if the Phase I Bidder is an Acquisition Entity, then the Phase I Bidder must furnish written evidence reasonably acceptable to the Receiver of the approval of the Phase I Bid by the Acquisition Entity's Principals; and
- (e) Proof of Financial Ability to Perform. Written evidence upon which the Receiver may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:
 - (i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);
 - (ii) contact names and numbers for verification of financing sources;
 - (iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
 - (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Receiver shall determine, in its reasonable discretion, in consultation with the Senior Lender, whether the written

evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

5. Designation as Qualified Bidder

Following the Phase I Bid Deadline, the Receiver, in consultation with the Senior Lender, shall determine which Phase I Bidders are Qualified Phase I Bidders. The Receiver shall notify each Phase I Bidder of its determination as to whether the Phase I Bidder is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline.

Following the Phase II Bid Deadline, the Receiver, in consultation with the Senior Lender, shall determine which Phase II Bidders are Qualified Phase II Bidders. The Receiver shall notify each Phase II Bidder of its determination as to whether the Phase II Bidder is a Qualified Phase II Bidder as soon as practicable after the Phase II Bid Deadline.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Phase I Bidder and a Qualified Phase II Bidder for all purposes of this Sale Procedure.

6. Access to Due Diligence Materials

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive the Confidential Information Memorandum. If the Receiver determines that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive additional due-diligence access or additional non-public information. Qualified Phase I Bidders will be given access to a data room maintained by CBRE following the Phase I Bid Deadline.

CBRE will be responsible for the coordination of all reasonable requests for additional information and due-diligence access from Qualified Phase I Bidders. Neither the Receiver nor CBRE shall be obligated to furnish any due diligence information after the Phase II Bid Deadline. Neither the Receiver nor CBRE is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property.

7. Information From Interested Parties

Each Interested Party shall comply with all reasonable requests for additional information by the Receiver regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Receiver to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

8. Phase II Bid Requirements

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. In order to be considered a Qualified Phase II Bid, as determined by the Receiver, in consultation with the Senior Lender, a Phase II Bid must satisfy each of the following conditions:

- (a) Written Submission of Modified APA and Commitment to Close. The Phase II Bid must be submitted by the Phase II Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Stalking Horse Agreement), and a written and binding commitment to close on the terms and conditions set forth therein.
- (b) Irrevocable. A Phase II Bid must be irrevocable until March 31, 2017;
- (c) Contingencies. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Phase II Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
- (d) Financing Sources. A Phase II Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- (e) No Fees payable to Qualified Phase II Bidder. A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break-up fee, expense reimbursement or similar type of payment;
- (f) Good-Faith Deposit. Each Phase II Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver by wire transfer or banker's draft, to be held by the Receiver in trust in accordance with this Sale Procedure; and
- (g) Stalking Horse Purchase Price. The aggregate consideration in a Phase II Bid must, on its own or, in the case of Portion Bids, in combination with any other Portion Bid, have a purchase price that exceeds the Stalking Horse Purchase Price.

The Receiver shall be entitled to seek additional information and clarifications from Phase II Bidders in respect of their Phase II Bids at any time.

9. No Further Bid by the Stalking Horse Bidder or the Senior Lender

No Bid, other than the Stalking Horse Agreement, shall be made by the Stalking Horse Bidder, the Senior Lender or a person related thereto.

10. Determination of Successful Bid

If no Qualified Phase II Bid other than the Stalking Horse Bid is received by the Phase II Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for

therein at the Sale Hearing and the Receiver shall post notice of such facts on its website established in connection with the Receivership Proceedings.

If only one Qualified Phase II Bid other than the Stalking Horse Bid is received, the Qualified Phase II Bid that is not the Stalking Horse Bid shall be declared the Successful Bid and the Stalking Horse Bid shall be declared the Back-up Bid. In such circumstances, the Sale Procedure shall be terminated and the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Successful Bid and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of such facts on its website established in connection with the Receivership Proceedings.

If more than one Qualified Phase II Bid other than the Stalking Horse Bid is received by the Phase II Bid Deadline, the Receiver shall have the option to:

- (a) Conduct an auction amongst the Qualified Phase II Bidders, on terms to be determined by the Receiver, to determine the Successful Bid and the Back-up Bid;
- (b) Negotiate with the Qualified Phase II Bidders and determine the Successful Bid and the Back-up Bid; or
- (c) Determine which of the Qualified Phase II Bids shall be the Successful Bid and which of the Qualified Phase II Bids shall be the Back-up Bid.

11. Acceptance of Successful Bid

The Receiver shall complete the sale transaction or transactions with the Successful Bidder following approval of the Successful Bid by the Court. The Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

12. "As Is, Where Is"

The sale of any of the Property pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, CBRE or their respective directors, officers, employees or agents except to the extent set forth in the Successful Bid. The Stalking Horse Bidder and each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Property in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or (a) as to the Stalking Horse Bidder, the terms of the sale of the Property shall be set forth in the Stalking Horse Agreement, or (b) as to another

Successful Bidder, the terms of the sale of the Property shall be set forth in the applicable purchase agreement.

13. Free Of Any And All Encumbrances

Except as otherwise provided in the Successful Bid, all of the Property subject thereto shall be sold free and clear of all Encumbrances, in accordance with a vesting order of the Court, with such Encumbrances to attach to the net proceeds of the sale of the Property.

14. Sale Hearing

A Sale Hearing shall be conducted by the Court as soon as practicable after the determination by the Receiver of the Successful Bidder. If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Receiver shall, provided it is so authorized by the Court, be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Receiver shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Receiver on a conditional basis at the Sale Hearing, at the Receiver's discretion.

15. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Phase II Bidders shall be held in an account of the Receiver. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-Up Bidder, shall be returned to such Qualified Phase II Bidders within three (3) business days of the selection of the Successful Bidder and Back-Up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder within three (3) business days of the closing of the transactions contemplated by the Successful Bid. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-Up Bidder, the Good Faith Deposit of the Back-Up Bidder shall be applied to the purchase price of the transactions contemplated by the purchase agreement of the Back-Up Bidder at closing.

16. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver, after consultation with the Senior Lender, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made with the written consent of the Senior Lender, or by order of the Court.

The Receiver may, after consultation with the Senior Lender, reject at any time before entry of an order of the Court approving a Successful Bid, any Bid (except the Stalking Horse Agreement, other than in accordance with its terms) that is (a) inadequate or insufficient, (b) not in conformity with the requirements of this Sale Procedure, or the terms and conditions of sale, or (c) contrary to the best interests of the receivership estates.

Acknowledgement of Sale Procedure

The undersigned hereby acknowledges receipt of the Sale Procedure approved by the Order of the Honourable Mr. Justice Hainey by Order of the Ontario Superior Court of Justice (Commercial List) dated January 4, 2017 and that compliance with the terms and provisions of the Sale Procedure is required in order to participate in the Sale Procedure and for any Phase I Bid or Phase II Bid to be considered by the Receiver.

This _____ day of 2017.

[LEGAL NAME OF INTERESTED PARTY]

By:

[Signature of Authorized Signing Officer]

[Name of Authorized Signing Officer]