

COURT FILE NUMBER

Q.B. 61 of 2018

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

SWIFT CURRENT

IN THE MATTER OF THE RECEIVERSHIP OF SWIFT HOTELS GROUP LTD.

**DUPLICATE ORIGINAL**  
**SALE APPROVAL AND VESTING ORDER**

Before the Honourable Mr. Justice R.S. Smith in Chambers the 18th day of December, 2020.

On the application of Jeffrey M. Lee, Q.C. and Marek Coutu, counsel on behalf of Deloitte Restructuring Inc. (the "**Receiver**") in its capacity as the Court-appointed receiver of the assets, undertakings and properties of Swift Hotels Group Ltd. (the "**Debtor**") pursuant to the Order of this Court made on November 28, 2019 (the "**Receivership Order**"), and upon hearing from Jeffrey M. Lee, Q.C., counsel on behalf of the Receiver, and upon reading the Notice of Application dated December 4, 2020, the Second Report of the Receiver dated December 3, 2020 (the "**Second Report**"), the Confidential Supplement to the Second Report of the Receiver dated December 3, 2020 (the "**Confidential Supplement**"), the Brief of Law on behalf of the Receiver and a proposed draft Order, all filed; and the pleadings and proceedings herein:

The Court Orders:

**SERVICE**

1. Service of the Notice of Application on behalf of the Receiver and the materials filed in support thereof (collectively, the "**Application Materials**") shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials is deemed to be timely and sufficient.

**APPROVAL OF TRANSACTION**

2. The sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Sale Agreement**") between the Receiver and First Canadian Management Corporation dated September 13, 2020, and amended on October 29, 2020 and November 2, 2020, respectively, and appended to the Confidential Supplement of the Receiver, for the sale to First Canadian Management Corporation (or its nominee) of the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**") is declared to be commercially reasonable and in the best interests of the Debtor and its creditors and other stakeholders and is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. For clarity, 12547091 Canada Ltd. is the nominee of First Canadian Management Corporation and 12547091 Canada Ltd. is hereinafter referred to as the "**Purchaser**".
3. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable (including any steps necessary or desirable to satisfy and/or comply with any applicable laws, regulations or orders of any courts, tribunals, regulatory bodies or administrative bodies in any jurisdiction in which the Purchased Assets may be located) for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser, subject to such amendments as the Receiver and the Purchaser may agree upon, provided that any such amendments do not materially affect the Purchase Price.

## VESTING OF PROPERTY

4. Upon the Receiver determining that the proposed Transaction has closed to its satisfaction and on terms substantially as approved by this Honourable Court pursuant to this Order, the Receiver shall deliver to the Purchaser a Receiver's certificate substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**").
5. The Receiver may rely on written notices from the Purchaser regarding fulfillment or, if applicable, waiver of conditions to closing of the Proposed Sale under the Sale Agreement and shall have no liability with respect to the delivery of the Receiver's Certificate.
6. Upon delivery of the Receiver's Certificate all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall, save and except for the encumbrances listed in **Schedule "C"** hereto (the "**Permitted Encumbrances**"), vest absolutely in the name of the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, interests, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, enforcement charges, levies, charges, or other financial or monetary claims (collectively, "**Encumbrances**") and all rights of others, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:
  - (a) any encumbrances or charges created by the Receivership Order;
  - (b) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act, 1993* SS 1993, c P-6.2, or any other personal property registry system; and
  - (c) those Encumbrances listed in **Schedule "D"** hereto;

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

7. Upon delivery of the Receiver's Certificate to the Purchaser, the Receiver shall be and is hereby authorized to effect such discharges or revisions in the Saskatchewan Personal Property Registry as may be reasonably required to conclude the Transaction.
8. Pursuant to section 109 of *The Land Titles Act, 2000*, SS 2000, c L-5.1 and section 12 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01 the Saskatchewan Registrar of Titles shall be and is hereby directed:
  - (a) to accept an application (the "**Land Titles Application**") to surrender the existing title to the real property legally described as:

Surface Parcel #144225750, Blk/Par A Plan No DX1385 Extension 0, as described on Certificate of Title 86SC07538

(the "**Real Property**")

and to set up a new title to such Real Property in the name of the Purchaser as owner free and clear of any and all Encumbrances, save and except for the Permitted Encumbrances as set out in Schedule "C"; and

- (b) for greater certainty, to discharge all interests described in Schedule "D" hereto.
9. Any and all registration charges and fees payable in regard to the Land Titles Application shall be to the account of the Purchaser.
  10. For the purposes of determining the nature and priority of the Encumbrances:
    - (a) the net proceeds from the sale of the Purchased Assets (the "**Net Sale Proceeds**") shall stand in the place and stead of the Purchased Assets; and
    - (b) from and after the delivery of the Receiver's Certificate to the Purchaser, all Encumbrances and all rights of others shall attach to the Net Sale Proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to closing of the Transaction.
  11. The Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.
  12. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.
  13. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
  14. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtor.
  15. Forthwith after the delivery of the Receiver's Certificate to the Purchaser, the Receiver shall file a copy of the Receiver's Certificate with the Court, and shall serve a copy of the Receiver's Certificate on the recipients listed in the Service List maintained with respect to these proceedings.
  16. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtor and the Receiver are hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
  17. Notwithstanding:
    - a) the pendency of these proceedings;

- b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to such applications;
- c) any assignment in bankruptcy made in respect of the Debtor; and
- d) the provisions of any federal statute, provincial statute or any other law or rule of equity,

the vesting of any of the Purchased Assets in the Purchaser pursuant to this Order and the obligations of the Debtor under the Sale Agreement, shall be binding on any trustee in bankruptcy that has been or that may in future be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. The Transaction is exempt from any requirement under any applicable federal or provincial law to obtain shareholder approval and is exempt from the application of any bulk sales legislation in any Canadian province or territory.

#### APPROVAL OF DISTRIBUTIONS

19. The Receiver is authorized and directed to deal with the Net Sale Proceeds as follows:
- (a) the Receiver shall maintain a residual holdback (the "**Residual Holdback**") in full and final satisfaction of the Receiver's Charge, to be applied to:
    - (i) any outstanding professional fees and disbursements of the Receiver and the Receiver's legal counsel, MLT Aikins LLP, as of the date of this Order; and
    - (ii) such further fees and disbursements as may be incurred in the performance of such incidental duties by the Receiver or MLT Aikins LLP as may be required to complete the administration of these proceeds and apply for the Receiver's discharge; and
  - (b) after the deduction of the Residual Holdback from the remaining balance of the Net Sale Proceeds, the Receiver is hereby authorized and directed to make the following holdbacks and distributions:
    - (i) a distribution to the City of Swift Current in the amount of \$1,017,913.18 in respect of outstanding property taxes on the Real Property;
    - (ii) a holdback (to be held by the Receiver, until directed to release same by written agreement of Canada Revenue Agency and Innovation Credit Union, or further Order of the Court, whichever shall first occur) of the amount of \$313,717.67 in respect of Canada Revenue Agency's claim against the Debtor for unremitted employee source deduction arrears;
    - (iii) a distribution to the Government of Canada, in the amount of \$9,576.80 in respect of the Debtor's obligations pursuant to the *Wage Earner Protection Program Act*; and
    - (iv) to Innovation Credit Union ("**Innovation**"), after making the payments described above in paragraphs 19(a)(i), 19(a)(ii), 19(b)(i), 19(b)(ii), and 19(b)(iii) hereof, the Receiver shall pay the remainder of the Net Sale Proceeds to Innovation on account of the additional amounts owing by the Debtor to Innovation, which amounts were formerly

secured by Innovation's first mortgage, assignment of rents and general security agreement in respect of the Purchased Assets.

#### **MISCELLANEOUS MATTERS**

20. The Receiver, the Purchaser and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction, including, without limitation, an application to the Court to deal with interests which are registered against title to the Real Property after the time of the granting of this Order.
21. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
22. Service of this Order on any party not attending this application is hereby dispensed with. Parties attending this application shall be served in accordance with the Electronic Case Information and Service Protocol adopted in the Receivership Order.

#### **APPROVAL OF ACTIVITIES AND DISBURSEMENTS OF THE RECEIVER**

23. All activities, actions and proposed courses of action of the Receiver to date in relation to the discharge of its duties and mandate as receiver of the Property, as such Actions of the Receiver are more particularly described in the First Report of the Receiver dated December 11, 2019, the Second Report and the Confidential Supplement, as well as the statement of receipts and disbursements contained in the Report, shall be and are hereby approved and confirmed.
24. The professional fees and disbursements of the Receiver, as set out in the Second Report, are hereby approved without the necessity of a formal passing of its accounts.
25. The professional fees and disbursements of the Receiver's legal counsel, MLT Aikins LLP, as set out in the Second Report, are hereby approved without the necessity of a formal assessment of its accounts.

#### **SEALING ORDER**

26. Counsel for the Receiver having complied with Practice Directive #3, the Confidential Supplement shall be kept sealed and confidential and shall not form part of the public record, but rather shall be placed, kept separate and apart from all other contents of the Court file, in sealed envelopes each of which shall bear a notice which sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of the Court or upon the filing of the Receiver's Certificate.

**ISSUED** at Swift Current, Saskatchewan, this 18<sup>th</sup> day of December, 2020.



(Deputy) Local Registrar

**CONTACT INFORMATION AND ADDRESS FOR SERVICE:**

Name of the firm:	MLT Aikins LLP
Lawyer in charge of file :	Jeffrey M. Lee Q.C. / Marek Coutu
Address of firm:	1201, 409 3 <sup>rd</sup> Avenue S, Saskatoon SK S7K 5R5
Telephone number:	306.975.7100
Fax number:	306.975.7145
Email address:	JMLee@mltaikins.com / MCoutu@mltaikins.com

**SCHEDULE "A"**

**FORM OF RECEIVER'S CERTIFICATE**

**COURT FILE NUMBER**                      **Q.B. 61 of 2018**

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**JUDICIAL CENTRE**                      **SWIFT CURRENT**

**IN THE MATTER OF THE RECEIVERSHIP OF SWIFT HOTELS GROUP LTD.**

**RECEIVER'S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Mr. Justice R.S. Smith of the Court of Queen's Bench of Saskatchewan (the "**Court**") dated November 28, 2019, Deloitte Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and property of Swift Hotels Group Ltd. (the "**Debtor**").
- B. Pursuant to an Order of the Court dated December 18, 2020, the Court approved the asset purchase agreement dated September 13, 2020, and amended on October 29, 2020 and November 2, 2020, respectively (the "**Sale Agreement**") between the Receiver and First Canadian Management Corporation and provided for the vesting in the nominee of First Canadian Management Corporation known as 12547091 Canada Ltd. (the "**Purchaser**") of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 12 and 13 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE RECEIVER CERTIFIES** the following:

27. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
28. The conditions to Closing as set out in sections 12 and 13 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
29. The Transaction has been completed to the satisfaction of the Receiver; and

This Certificate was delivered by the Receiver at \_\_\_\_\_ on \_\_\_\_\_, 202\_\_.

**DELOITTE RESTRUCTURING INC.**, in its capacity as Receiver of SWIFT HOTELS GROUP LTD., and not in its personal capacity.

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

**CONTACT INFORMATION AND ADDRESS FOR SERVICE:**

Name of the firm:	MLT Aikins LLP
Lawyer in charge of file :	Jeffrey M. Lee Q.C. / Marek Coutu
Address of firm:	1201, 409 3 <sup>rd</sup> Avenue S, Saskatoon SK S7K 5R5
Telephone number:	306.975.7100
Fax number:	306.975.7145
Email address:	JMLee@mltaikins.com / MCoutu@mltaikins.com



**SCHEDULE "B"**  
**PURCHASED ASSETS**

1. Real property in the City of Swift Current, Saskatchewan, legally described as follows:
  - a. Surface Parcel #144225750  
Reference Land Description: Blk/Par A Plan No DX1385 Extension 0  
As described on Certificate of Title 86SC07538
2. Personal property, more particularly described as follows:
  - a. All personal property of Swift Hotels Group Ltd., whether tangible or intangible, including:
    - i. chattels of every nature or kind whatsoever, such as furniture, equipment, tools, utensils, vehicles, linens and fabrics;
    - ii. inventory; and
    - iii. any other personal property of Swift Hotels Group Ltd. used in the operation of the Days Inn Hotel located at 105 George Street West, Swift Current, Saskatchewan;
  - b. Notwithstanding the preceding paragraphs, the Purchased Assets will exclude Swift Hotels Group Ltd.'s interest in all accounts receivable accrued prior to the Closing Date, as defined in the Sale Agreement.

**SCHEDULE "C"  
PERMITTED ENCUMBRANCES**

Nil.

**SCHEDULE "D"**  
**ENCUMBRANCES TO BE DISCHARGED**

1. Mortgage registered in favour of Innovation Credit Union, bearing the interest register #115964950;
2. Assignment of Rents registered in favour of Innovation Credit Union, bearing the interest register #115964961;
3. Mortgage registered in favour of Primewest Mortgage Investment Corporation, bearing the interest register #120800168;
4. Assignment of Rents registered in favour of Primewest Mortgage Investment Corporation, bearing the interest register #120848384;
5. Mortgage registered in favour of Swift Motel Ltd., bearing the interest register #120879175;
6. Miscellaneous Interest registered in favour of Primewest Mortgage Investment Corporation, bearing the interest register #121689467;
7. Miscellaneous Interest registered in favour of Primewest Mortgage Investment Corporation, bearing the interest register #121825212;
8. Mortgage registered in favour of Ostrander Family Holdings Ltd., bearing the interest register #122265413;
9. Enforcement Charge – Provincial Judgment registered in favour of Brunsdon Lawrek & Associates, bearing the interest register #122647899;
10. Tax Lien registered in favour of the City of Swift Current, bearing the interest register #123188148; and
11. Builders' Lien registered in favour of LMO Landscaping Ltd., bearing the interest register #123683531.