

COURT FILE NUMBER

25-2386427

25-2386434

Clerk's Stamp

COURT

COURT OF QUEEN'S BENCH OF  
ALBERTA IN BANKRUPTCY AND  
INSOLVENCY

JUDICIAL CENTRE

CALGARY

APPLICANT

IN THE MATTER OF THE DIVISION I PROPOSAL  
PROCEEDINGS OF ASPEN AIR CORPORATION  
and ASPEN AIR U.S. CORP.

DOCUMENT

**APPLICATION**

ADDRESS FOR SERVICE  
AND CONTACT

**McMillan LLP**  
Suite 1700, 421 - 7 Avenue S.W.

INFORMATION OF PARTY  
FILING THIS DOCUMENT

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File No. 258090

**NOTICE TO RESPONDENT(S)**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge. To do so, you must be in Court when the application is heard as shown below:

Date: June 26, 2018  
Time: 3:30 P.M.  
Where: Calgary Courts Center  
Before Whom:

Go to the end of this document to see what else you can do and when you must do it.

**Remedy Claimed or Sought:** Aspen Air Corporation (“**Aspen Air**”) and Aspen Air U.S. Corp. (“**Aspen Air US**”) (collectively, the “**Aspen Companies**”) apply for an Order, substantially in the form attached as Schedule “A” hereto:

1. Declaring that the time for service of this Application and the Affidavit of Onkar Dhaliwal, sworn on June 21, 2018, (“**Dhaliwal Affidavit**”), is abridged, if necessary, the Application is properly returnable today, that service of the Application and the Dhaliwal Affidavit on the service list created and maintained in respect of the within proceedings (the “**Service List**”) is validated, good and sufficient and that no persons other than those on the Service List are entitled to service of the materials filed in connection with the within Application;
2. Extending the period of time within which the Aspen Companies are required to file a proposal to their creditors, under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), up to and including August 20, 2018;
3. Declaring that the proposal trustee, Deloitte Restructuring Inc. (the “**Proposal Trustee**”), counsel to the Proposal Trustee, and counsel to the Aspen Companies shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements) in each case at their standard rates and charges, by the Aspen Companies as part of the costs of these proceedings (the “**Proposal Proceedings**”);

4. Granting the following charges over the property of the Aspen Companies, listed in order of priority:

- (a) first, an administration charge in favour of the Proposal Trustee, counsel to the Proposal Trustee, and Canadian and U.S. counsel to the Aspen Companies in an amount not to exceed CAD \$150,000; and
- (b) second, a director's charge in favour of the directors and officers of the Aspen Companies not to exceed CAD \$150,000;

5. Authorizing the Aspen Companies to pay the Critical Suppliers (as defined below) for amounts owing to them for goods and services provided prior to the filing of the NOIs (as defined below), in an aggregate amount not to exceed CAD \$250,000 or the U.S. equivalent of such amount;

6. Authorizing and empowering the Aspen Companies and the Proposal Trustee in the within proceedings (the "**NOI Proceedings**"), to implement the Sale and Investor Solicitation Process attached as Exhibit "H" to the Dhaliwal Affidavit (the "**SISP**") and to proceed, carry out, and implement any corresponding sales, marketing, or tendering processes, including any and all actions related thereto, substantially in accordance with the proposed SISP, along with entering into any resulting agreement(s) or transaction(s) (collectively, the "**SISP Agreements**") which may arise in connection thereto, as the Aspen Companies and the Proposal Trustee determine are necessary or advisable to close any and all transactions or complete any or all of the various steps, as contemplated by the SISP. However, the transfer and vesting of any and all of the Aspen Companies' property, assets, or undertakings subject to any SISP Agreements will be dealt with by further Order of the Court;

7. Granting the Aspen Companies and the Proposal Trustee leave to apply to this Honourable Court to amend, vary, or seek advice, directions, or the approval of any transactions, in connection with the SISP;

8. Authorizing the Proposal Trustee to act as a foreign representative for Aspen Air US and apply for recognition of the Proposal Proceedings as a "Foreign Main Proceeding" in the United States pursuant to Chapter 15 of the *United States Bankruptcy Code*;

9. Declaring the present proceedings as “Foreign Main Proceedings” for the purpose of the Chapter 15 Relief, and Requesting the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the Proposal Trustee and the Aspen Companies and their respective agents in carrying out the terms of this Order;

10. Ordering that the Orders in this proceeding shall have full force and effect in all provinces and territories of Canada and any other foreign country where creditors and the Aspen Companies are domiciled;

11. Authorizing the Proposal Trustee to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101-1532, including an order for recognition of these proceedings as “Foreign Main Proceedings” in the United States of America (the “**Chapter 15 Relief**”), and for which the Proposal Trustee or any of the Aspen Companies shall be the foreign representative of the Aspen Companies (in such capacity, the “**Foreign Representative**”). All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Proposal Trustee and the Aspen Companies as may be deemed necessary or appropriate for that purpose;

12. Administratively consolidating the Proposal Proceedings of Aspen Air and Aspen Air US; and

13. Ordering and declaring that service of any orders arising from the Application by email, facsimile, registered mail, courier, regular mail, or personal delivery, shall constitute good and sufficient service of such orders and that no persons other than those in attendance at the Application are entitled to be served with a copy of such orders.

14. Such further and other relief as counsel for the Applicant may advise and this Honourable Court may permit.

**Grounds for Making this Application:** The grounds for the Application are as follows:

15. On June 12, 2018, Aspen Air and Aspen Air US each filed Notices of Intention to Make a Proposal (the “**NOIs**”) dated June 6, 2018, pursuant to section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the “**BIA**”) as amended. Deloitte Restructuring Inc. was named as proposal trustee in the Aspen Companies’ NOIs.

16. As a result of the NOIs the Aspen Companies must file a proposal pursuant to section 50.4 of the BIA on or before July 6, 2018.

### **The Aspen Companies**

17. The Aspen Companies manufacture and distribute industrial gases, which are used in a number of industries, including the medical, welding, food, oil and gas, refining, high tech, chemical, and paper sectors. The Aspen Companies specialize in providing liquid and gaseous nitrogen, oxygen and argon, along with storage and transportation solutions, to its customers in Canada and the United States.

18. Aspen Air is an Alberta corporation. Its head office is located in the City of Calgary. Aspen Air US, incorporated in the State of Montana, is a wholly owned subsidiary of Aspen Air.

19. Aspen Air and Aspen Air US operate as an integrated enterprise. The Aspen Companies have a plant located in Billings, Montana (the “**Gas Plant**”) and an office in Calgary, Alberta which serves as the headquarters for the Aspen Companies’ operations and provides general management, accounting, human resources, engineering, and sales and marketing functions for the Aspen Companies (the “**Calgary Head Office**”).

### **Summary of Current Financial Position**

20. As industrial gases are commonly used in the oil and gas sector, the Aspen Companies’ business has suffered from the global decline in the price of oil and gas.

21. Pursuant to the terms of an arrangement between the Aspen Companies and Sanjel Corporation (“**Sanjel**”), Sanjel contracted with the Aspen Companies to purchase approximately 85-90% of the Aspen Companies’ gas (the “**Sanjel Contract**”).

22. In reliance on the Sanjel Contract, the Aspen Companies obtained financing from ATB, to in part finance the expansion of the Gas Plant to meet the demands of the Sanjel Contract.

23. However, after the Aspen Companies upgraded the Gas Plant, Sanjel failed to purchase the contracted for amount of gas and subsequently failed to pay a significant receivable to the Aspen Companies, which resulted in protracted and expensive legal proceedings between the parties. Before the Aspen Companies could collect all amounts owing from Sanjel, Sanjel filed for protection under the *Companies' Creditors Arrangement Act*.

24. ATB and Aspen Air entered into a commitment letter dated August 26, 2015, which was amended and restated to establish new payment terms on October 6, 2017 (the "**Commitment Letter**"). Under the Commitment Letter, ATB, as primary secured lender, extended various credit facilities to Aspen Air. Aspen Air US was a guarantor of Aspen Air with respect to the Commitment Letter. ATB is presently owed approximately \$6,041,094.99 (the "**ATB Loan**"). The ATB Loan is secured by a general security agreement over all present and after acquired property of the Aspen Companies, a floating charge on all lands, and a \$10,000,000 mortgage on the Gas Plant.

25. On or about May 28, 2018, ATB, through its counsel, demanded payment from Aspen Air US for all amounts then owing to ATB, and issued a 10-day Notice of Intention of Enforce Security to Aspen Air US (the "**ATB Demand**").

26. Following receipt of the ATB Demand, the Aspen Companies reached out to ATB to discuss alternatives. Such efforts were ultimately unsuccessful.

27. As a consequence of the foregoing, each of Aspen Air and Aspen Air US filed NOIs. Deloitte Restructuring Inc. was named as Proposal Trustee of Aspen Air and Aspen Air US.

### **Restructuring Efforts**

28. The Proposal Trustee has been working with the Aspen Companies to assist the Aspen Companies in preparing Statements of Projected Cash Flow for the Thirteen Week Period Ended September 1, 2018, which are exhibited to the Dhaliwal Affidavit (the "**Cash Flow Forecasts**").

29. In addition, the Aspen Companies have been working with their counsel and the Proposal Trustee in formulating a restructuring plan.

30. In connection with a possible restructuring plan, the Aspen Companies were approached by C.F. Capital Corporation, which expressed an interest in acquiring the ATB debt or purchasing the assets of the Aspen Companies. During the Proposal Proceedings the Aspen Companies have therefore been communicating with C.F. Capital Corporation and assisting it with its due diligence efforts in respect of the Aspen Companies. While the definitive plan has not yet been formulated, the present intention is for the Aspen Companies to continue to communicate and negotiate with C.F. Capital Corporation to determine whether a transaction or investment acceptable to the Aspen Companies can be reached. If such a transaction or investment cannot be reached, the Aspen Companies intend to conduct the SISP and make a proposal to their creditors if sufficient proceeds are generated.

#### **Administration Charge**

31. There are a number of financial and operational issues for which the Aspen Companies will require the expertise of the Proposal Trustee during the Proposal Proceedings. The Proposal Trustee and its counsel, together with the Aspen Companies' counsel are integral to the success of the Proposal Proceedings.

32. The Proposal Trustee, its counsel, and the Aspen Companies' counsel are essential to the success of the Proposal Proceedings.

33. Based on the Cash Flow Forecasts the anticipated professional fees over the reporting period for the Proposal Trustee, its counsel, and the Aspen Companies' Canadian and U.S. counsel are \$150,000. The Aspen Companies therefore seek a charge (the "**Administration Charge**") against all of the assets, property and undertakings of the Aspen Companies (the "**Property**") in the maximum amount of CAD \$150,000 to secure the fees and disbursements incurred in connection with services rendered to the Aspen Companies, both before and after the commencement of the Proposal Proceedings, by:

- (a) the Proposal Trustee and its counsel, Cassels Brock and Blackwell LLP;

- (b) McMillan LLP, the Aspen Companies' Canadian counsel; and
- (c) the Aspen Companies' U.S. counsel.

### **Directors and Officers Charge**

34. The Aspen Companies' ability to make a successful proposal to its creditors is only possible with the continued participation of the company's directors & officers ("**D&Os**"). The D&O's are essential to the viability of the Aspen Companies' continuing business and the implementation of the SISP. The D&Os have in-depth knowledge of the Aspen Companies' operations and maintain valuable experience and expertise.

35. The Aspen Companies are granting the D&Os an indemnity with respect to all post-filing claims that may arise against the D&Os in their capacity as the Aspen Companies' directors or officers.

36. The Aspen Companies, in consultation with the Proposal Trustee, have determined that CAD \$150,000 is an amount sufficient to pay employees for a single payroll cycle and to pay estimated outstanding vacation pay, other than vacation pay for directors who are also employees.

37. The Aspen Companies are therefore seeking a second ranking charge on the Property in the amount of CAD \$150,000 to secure payment under the indemnity granted by the initial order in favour of the D&Os (the "**D&O Charge**").

### **Critical Suppliers**

38. The Aspen Companies have identified a number of suppliers that are critical to the ongoing operation of their business (the "**Critical Suppliers**"). Any interruption of supply or service by the Critical Suppliers could have an immediate material adverse impact on the Aspen Companies' business, operations and cash flow, and could materially impact the value of the business and jeopardize the Aspen Companies' ability to restructure and continue as a going concern, or to find a suitable purchaser. It is important for the Aspen Companies to be authorized to pay the Critical Suppliers for pre-filing amounts owing to them. The Aspen Companies, with the assistance of the Proposal Trustee, have calculated an approximate aggregate exposure to the



Critical Suppliers at CAD \$250,000. The Aspen Companies request that they be authorized to pay the Critical Suppliers for pre-filing amounts owing to them up to the maximum aggregate amount of CAD \$250,000 or the U.S. equivalent of such amount.

### **The Sale and Investor Solicitation Process**

39. The Aspen Companies, in consultation with the Proposal Trustee, have developed the SISP which is intended to be implemented if a transaction or investment acceptable to the Aspen Companies is not reached with C.F. Capital Corporation.

40. The SISP contemplates that the Aspen Companies' property, assets, and undertakings will be marketed in an open and transparent manner by a third party advisor or the Aspen Companies with the assistance of the Proposal Trustee.

41. The Aspen Companies believe that the SISP will derive the maximum value in connection with the sale of the Aspen Companies' property, in the current circumstances, to the benefit all of the Aspen Companies' stakeholders.

42. The Aspen Companies' constrained cash-flows are such that the SISP must be carried out in an expedient and efficient manner, if the Aspen Companies is to successfully restructure and continue as a going concern.

### **Extension of Stay Period**

43. The period within which the Aspen Companies have to file their proposals expires on July 6, 2018.

44. In order for the Aspen Companies to continue with its financial restructuring and to properly carry out and conduct the SISP, the Aspen Companies require an extension of the time within which they may file a proposal (the "**Filing Period**"), pursuant to section 50.4(9) of the BIA, by 45 days up to and including August 20, 2018.

45. The extension of the Filing Period is appropriate as: (i) the Aspen Companies have acted and continue to act in good faith and with due diligence; (ii) the businesses of the Aspen Companies will likely be able to restructure and emerge as viable businesses, if, among other

relief sought as part of the Application, the extension of the Filing Period is granted; and, (iii) the extension of the Filing Period will not materially prejudice any of the Aspen Companies' creditors.

### **Jurisdiction and Consolidation of the Proceeding**

46. The Aspen Companies' center of main interest is Canada. Aspen Air and Aspen Air US operate as an integrated enterprise. The Calgary Head Office provides general management, accounting, human resources, engineering, and sales and marketing functions for the Aspen Companies on an integrated basis. The Aspen Companies' major creditor, ATB, is also located in Alberta.

47. It is therefore most expedient and efficient that the treatment of debt obligations be implemented through one reorganization proceeding that is overseen and directed by the Court in Canada, which is the home jurisdiction of Aspen Air and the nerve centre of the Aspen Companies' management, business and operations.

48. It is currently anticipated that Aspen Air US will continue to operate on a business as usual basis, although the Aspen Companies will also be considering certain other limited restructuring initiatives with respect to Aspen Air US. It is further anticipated that Aspen Air US will continue to pay its employee obligations in the ordinary course, for payroll and accrued vacation pay amounts incurred prior to and after the commencement of the Proposal Proceedings.

49. Given the consolidated nature of the business of the Aspen Companies, it is also proposed that the estates be administratively consolidated for the purpose of efficiency and the lowering of professional costs associated with dealing with the estates on a non-consolidated basis.

50. Such further and other grounds as counsel for the Aspen Companies may advise and this Honourable Court may permit.

**Material or Evidence to be Relied On:** The Applicants will rely on the following evidence:

51. The Affidavit of Onkar Dhaliwal, sworn on June 21, 2018;

52. The First Report of the Proposal Trustee, to be filed; and

53. Such further and other evidence as counsel for the Applicant may advise.

**Applicable Rules:**

54. Rules 6.3(1), 6.9, 6.28, 11.27 of the Alberta Rules of Court; and

55. Such further and other rules as counsel for the Applicants may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

56. The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, sections 43(4), 50.4(9), 65.13, 64.2 and 66(1); and

57. Such further and other acts and regulations as counsel for the Applicants may advise and this Honourable Court may permit.

**Any Irregularity Complained of or Objection Relied On:**

58. There are no irregularities complained of, or objections relied on.

**How the Application is Proposed to be Heard or Considered:**

59. The Applicants propose that the Application be heard in person with one, some, or all of the parties present.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicants.

**SCHEDULE "A"**

COURT FILE NUMBER 25-2386427  
25-2386434

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF  
ALBERTA IN BANKRUPTCY AND  
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JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE DIVISION I PROPOSAL  
PROCEEDINGS OF ASPEN AIR CORPORATION  
and ASPEN AIR U.S. CORP.

DOCUMENT **ORDER**

ADDRESS FOR SERVICE **McMillan LLP**  
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Kourtney Rylands  
Phone: 403-355-3326  
Email: kourtney.rylands@mcmillan.ca

File No. 258090

**DATE ON WHICH ORDER WAS PRONOUNCED: June 26, 2018**

**LOCATION OF HEARING OR TRIAL: Calgary, Alberta**

**NAME OF MASTER/JUDGE WHO MADE THIS ORDER:**

**UPON THE APPLICATION** of Aspen Air Corporation (“**Aspen Air**”) and Aspen Air U.S. Corp. (“**Aspen Air US**”) (collectively, the “**Aspen Companies**”), **AND UPON** having read the Affidavit of Onkar Dhaliwal, sworn on June 21, 2018 (the “**Dhaliwal Affidavit**”), filed; **AND UPON** having read the First Report of Deloitte Restructuring Inc. (the “**Proposal Trustee**”), filed; **AND UPON** having read the Affidavit of Service of [●], sworn [●] (the “**Service Affidavit**”), filed; **AND UPON** hearing counsel to the Aspen Companies, counsel to the Proposal Trustee, counsel for Alberta Treasury Branches (“**ATB**”), and any counsel present for other parties;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the corresponding Application and the Dhaliwal Affidavit is abridged to the date parties were served, the Application is properly returnable today, service of the Application and the Dhaliwal Affidavit on the service list prepared by the Aspen Companies and maintained in these proceedings (the “**Service List**”), in the manner described in the Affidavit of Service, is validated, good and sufficient and no other persons are entitled to service of the Dhaliwal Affidavit or the Application.

**FILING EXTENSION**

2. The period of time within which the Aspen Companies are required to file a proposal to their creditors, under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), shall be and is hereby extended up to and including August 20, 2018.

**ADMINISTRATION CHARGE**

3. The Proposal Trustee, counsel to the Proposal Trustee, and Canadian and U.S. counsel to the Aspen Companies shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Aspen Companies as part of the costs of these proceedings (the “**Proposal Proceedings**”). The Aspen Companies are hereby authorized and directed to pay the accounts of the Proposal Trustee,

counsel for the Proposal Trustee and Canadian and U.S. counsel to the Aspen Companies for work performed in connection with these Proposal Proceedings, on a periodic basis.

4. The Proposal Trustee (including in its capacity as trustee in bankruptcy, if applicable), counsel to the Proposal Trustee (including in its capacity as counsel for the trustee in bankruptcy, if applicable) and Canadian and U.S. counsel to the Aspen Companies, shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on all of the assets, rights, undertakings and properties of the Aspen Companies, of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these Proposal Proceedings, provided that such charge shall not exceed an aggregate amount of CAD \$150,000. The Administration Charge shall have the priority set out in paragraph 8 of this Order.

#### **DIRECTORS’ AND OFFICERS’ CHARGE**

5. The Aspen Companies shall indemnify their directors and officers from all claims relating to any obligations or liabilities they may incur and which have accrued after the commencement of the Proposal Proceedings by reason of or in relation to their respective capacities as directors or officers of the Aspen Companies, except where such obligations or liabilities were incurred as a result of such directors’ or officers’ gross negligence, willful misconduct or gross or intentional fault.

6. The directors and officers of the Aspen Companies shall be entitled to the benefit of and are hereby granted a charge against the Property (the “**D&O Charge**”) in an amount not to exceed CAD \$150,000, as security for the indemnity provided in paragraph 5 of this Order as it relates to obligations and liabilities the directors or officers may incur in such capacity after the commencement of the Proposal Proceedings. The D&O Charge shall have the priority set out in paragraph 8 of this Order.

7. Notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be subrogated to or claim the benefit of the D&O Charge and (b) the directors and officers of the Aspen Companies shall only be entitled to the benefit of the D&O Charge to the

extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the directors or officers are entitled to be indemnified in accordance with paragraph 5 of this Order.

### **PRIORITY AND VALIDTY OF CHARGES**

8. The priorities of the Administration Charge and the D&O Charge (collectively, the “**Charges**”), as among them, shall be as follows:

- (a) First– the Administration Charge (to the maximum amount of CAD \$150,000);  
and
- (b) Second – the D&O Charge (to the maximum amount of CAD \$150,000).

9. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register, record or perfect.

10. Each of the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, deemed trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, in favour of any person, notwithstanding the order of perfection or attachment (collectively, the “**Encumbrances**”).

11. The Aspen Companies shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Aspen Companies also obtain the prior written consent of the Proposal Trustee and the beneficiaries of the Administration Charge and the D&O Charge, or upon further Order of this Court.

12. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made herein;



- (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (c) any deemed bankruptcy pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Aspen Companies and notwithstanding any provision to the contrary in any Agreement:
  - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof including the Definitive Documents shall create or be deemed to constitute a breach by the Aspen Companies of any Agreement to which any one of them is a party;
  - (ii) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the Companies entering into the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
  - (iii) any payments made by the Aspen Companies pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at under value, oppressive conduct, or other challengeable or voidable transactions under any applicable law.
- (f) Any of the Charges created by this Order over leases of real property shall only be a charge in the Aspen Companies’ interest in such real property leases.

## **ALLOCATION**

13. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Charges amongst the various assets comprising the Property.

## **CRITICAL SUPPLIERS**

14. Each of the entities listed in Schedule “A” hereto is a critical supplier of the Aspen Companies (each, a “**Critical Supplier**”). The Aspen Companies are authorized to pay to each Critical Supplier amounts owing to such Critical Supplier for goods and services supplied by such Critical Supplier and received by the Aspen Companies prior to June 6, 2018, to a maximum aggregate amount not to exceed CAD \$250,000, or the U.S. equivalent to such amount.

## **SALE AND INVESTOR SOLICITATION PROCESS**

15. The Aspen Companies and the Proposal Trustee are hereby authorized and empowered to implement the Sale and Investor Solicitation Process attached hereto as Schedule “B”, and to proceed, carry out, and implement any corresponding sales, marketing, or tendering processes, including any and all actions related thereto, substantially in accordance with the proposed SISP, and, furthermore, the Aspen Companies are hereby authorized to enter into any resulting agreement(s) or transaction(s) (collectively, the “**SISP Agreements**”) which may arise in connection thereto, as the Aspen Companies and the Proposal Trustee determine are necessary or advisable in connection with or in order to complete any or all of the various steps, as contemplated by the SISP.

16. Nothing herein shall act as authorization or approval of the transfer or vesting of any or all of the Aspen Companies’ property, assets, or undertakings under any SISP Agreements, or otherwise. Such transfer and vesting shall be dealt with and shall be subject to further Order of this Honourable Court.

17. The Aspen Companies and the Proposal Trustee are hereby authorized and empowered to apply to this Honourable Court to amend, vary, or seek any advice, directions, or the approval or vesting of any transactions, in connection with the SISP.

## **RECOGNITION OF PROPOSAL PROCEEDINGS**

18. The Aspen Companies or the Proposal Trustee are authorized to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this order and any subsequent orders of this Court and without limitation to the foregoing, any orders under Chapter 15 of the United States Bankruptcy Code, including for an order for recognition of these proceedings as “Foreign Main Proceedings” in the United States of America (the “**Chapter 15 Relief**”) and for which the Aspen Companies or the Proposal Trustee shall be the foreign representative of the Aspen Companies (in such capacity, the “**Foreign Representative**”). All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance as may be deemed necessary or appropriate for that purpose.

19. This Court requests the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the Aspen Companies, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Aspen Companies and the Proposal Trustee as may be necessary or desirable to give effect to this Order, including by recognizing the present proceedings as “Foreign Main Proceedings” for the purpose of the Chapter 15 Relief, to grant representative status to the Foreign Representative in any foreign proceeding, to assist the Aspen Companies and the Proposal Trustee, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

20. For the purpose of the Chapter 15 Relief, and/or any applications authorized pursuant to this Order, the centre of main interest of the Aspen Companies is located in the Province of Alberta, Canada.

## **PROCEDURAL CONSOLIDATION**

21. The Notice of Intention Proceedings of Aspen Air Corporation and Aspen Air U.S. Corp. be and the same are hereby administratively consolidated. The Clerk of the Court is hereby directed to open a single, consolidated file for both proceedings.

## **SERVICE AND NOTICE**

22. Service of this Order by email, facsimile, registered mail, courier or personal delivery to the persons listed on the Service List shall constitute good and sufficient service of this Order, and no persons other than those listed on the Service List are entitled to be served with a copy of this Order.

23. The Proposal Trustee shall establish and maintain a website in respect of these proceedings at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca) and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publically available; and
- (b) all applications, reports, affidavits, orders or other materials filed in these Proposal Proceedings by or behalf of the Proposal Trustee, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

## **GENERAL**

24. The Aspen Companies or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

25. Nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, monitor or a trustee in bankruptcy of the Aspen Companies or the Property.

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J.C.Q.B.A.

## **SCHEDULE “A”**

### **LIST OF CRITICAL SUPPLIERS**

1. WAPPO Information Services
2. TKT Trailers
3. CVA Leasing
4. Jack B Kelley
5. Talon Energy
6. Northwestern Energy
7. Lockwood Water & Sewer District
8. Airgas
9. ChemTreat
10. Dataonline
11. Hawkins
12. Norco

**SCHEDULE "B"**

**SALE AND INVESTOR SOLICITATION PROCESS**

## ASPEN AIR CORPORATION AND ASPEN AIR U.S. CORP

### Sale and Investor Solicitation Process

1. On June 6, 2018, Aspen Air Corporation and Aspen Air U.S. Corp. (the "**Aspen Companies**") filed Notices of Intention to Make a Proposal (the "**NOI(s)**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act, RSC 1985, c-B-3*. On June 26, 2018, the Court of Queen's Bench of Alberta granted an Order approving the administration of the NOI proceedings for the Aspen Companies on a consolidated basis (the "**June 26 Order**").
2. The June 26 Order also approved the Aspen Companies entering into a sale and investor solicitation process (the "**SISP**").
3. Set forth below are the procedures (**the "SISP Procedures"**) to be followed with respect to the SISP for the purpose of seeking one or more Successful Bid(s) (as defined below), and if there is/are any Successful Bid(s), to complete the transaction(s) contemplated by the Successful Bid(s).

### Defined Terms

4. All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the First Report of the Trustee dated [DATE]. In addition, in these **SISP Procedures**:

"**Advisor**" means Whitehorn Capital;

"**Aspen Companies**" means Aspen Air Corporation and Aspen Air U.S. Corp.;

"**ATB**" means Alberta Treasury Branches, Aspen Air Corporation's first secured creditor and its successors and assigns;

"**Business**" means the business being carried on by the **Aspen Companies**;

"**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday, on which banks are open for business in the City of Calgary;

"**Court**" means the Court of Queen's Bench of Alberta;

"**Investment**" means an offer for the restructuring, recapitalization or refinancing of the **Aspen Companies** by way of an investment of funds including a proposal to creditors;

"**Investment Proposal**" means an offer to invest in either or both of the **Aspen Companies**;

"**Non-Binding Indication(s) of Interest**" means non-binding indication(s) of interest from **Qualified Phase I Bidders** to acquire all or part of the **Property** or to invest in the **Aspen Companies**;

"**Offer**" means a credible, reasonably certain and financially viable offer for the acquisition of all or any part of the **Property** or for an **Investment**;

"**Phase I Bid Deadline**" means 5:00 p.m. (Mountain Time) on Friday, August 10, 2018 or such later date or time as the **Aspen Companies** may determine appropriate in consultation with the **Trustee** and ATB;

"**Phase II Bid Deadline**" means 5:00 p.m. (Mountain Time) on Friday, August 31, 2018 or such later date or time as the **Aspen Companies** may determine appropriate in consultation with the **Trustee** and ATB;



**"Potential Bidder"** means a party that in the view of the **Advisor** may be interested in submitting an Offer;

**"Priority Charges"** means the charges defined in the June 26 Order as the Administration Charge and the DIP Charge;

**"Property"** means the undertakings, property and assets of the **Aspen Companies** or any portion thereof;

**"Qualified Bid(s)"** means **Qualified Purchase Bids** and **Qualified Investment Bids**;

**"Qualified Investment Bid"** means an **Investment Proposal** submitted by a **Qualified Phase II Bidder**;

**"Qualified Non-Binding Indication of Interest"** means a **Non-Binding Indication of Interest** that is submitted by a **Qualified Phase I Bidder**, received on or before the **Phase I Bid Deadline**, and that contains all required information;

**"Qualified Phase I Bidder"** means a **Potential Bidder** that has satisfied all of the requirements set out in the **SISP** and that the **Aspen Companies** determine has a reasonable prospect of completing a transaction;

**"Qualified Phase II Bidder"** means a **Qualified Phase I Bidder** that has submitted a **Qualified Non-Binding Indication of Interest** and that is determined by the **Aspen Companies** to be likely to be able to complete a transaction;

**"Qualified Purchase Bid(s)"** means a **Sale Proposal** submitted by a **Qualified Phase I Bidder**;

**"Sale"** means the acquisition of all or any part of the **Property**;

**"Sale Proposal"** means an offer to acquire all or part of the **Property**;

**"Successful Bid(s)"** means the highest or otherwise best **Qualified Bid(s)** accepted by the **Aspen Companies**;

**"Successful Bidder"** means any **Qualified Bidder** who made a **Successful Bid**;

**"Target Closing Date"** means the date agreed upon between the **Successful Bidder** and the **Aspen Companies** to close the transaction contemplated in the **Successful Bid**; and

**"Trustee"** means Deloitte Restructuring Inc., in its capacity as the trustee under the Notice of Intention to Make a Proposal filed by the **Aspen Companies**.

### **SISP Procedures**

5. The **SISP Procedures** set forth herein describe, among other things, the **Property** available for sale, the opportunity for an investment in the **Aspen Companies**, the debt and the equity interests of the **Aspen Companies** available for restructuring, the manner in which the **Potential Bidders** may gain access to or continue to have access to due diligence materials concerning the Property and the Business, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received in the ultimate selection of any Successful Bidder(s) and the Court's approval thereof. The **Advisor** shall administer the **SISP Procedures** without prejudice to the rights and powers of the **Trustee** under the **SISP** and the **BIA**. In the event that there is a disagreement as to the interpretation or application of the **SISP Procedures**, the **Court** will have jurisdiction to hear and resolve such dispute.

### **Purchase or Investment Opportunity**

6. A confidential information memorandum (the "**Confidential Information Memorandum**") describing: (i) the opportunity to acquire all or any part of the Property; or (ii) the opportunity to make an Investment, which will be made available by the **[Companies/Aspen Advisor]** to **Potential Bidders** that have executed a non-disclosure agreement, in a form satisfactory to the **Aspen Companies** and the **Trustee**.

### **"As is, Where is"**

7. Any **Sale** or **Investment** will be on an "as is, where is", "without recourse" basis and without surviving representations, warranties, covenants, or indemnities of any kind, nature, or description by the **Aspen Companies**, **[the Advisor]**, the **Trustee** or any of their agents, except to the extent set forth in a relevant agreement with one or more **Successful Bidder(s)**.

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

8. Except to the extent otherwise set forth in the relevant sale agreement with one or more **Successful Bidder(s)**, in the event of a Sale, pursuant to an Approval and Vesting Order made by the **Court** upon the application of the **Aspen Companies** or the Trustee, all of the rights, title and interests of the **Aspen Companies** in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively the "**Claims and Interests**"), such **Claims and Interests** to attach to the net proceeds of the sale of such portion of the **Property** (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof).

### **Publication of Notice and Teaser**

9. As soon as reasonably practicable after **Court** approval of this **SISP**, and in any event within 7 **Business Days** following such **Court** approval, the **[Aspen Companies/the Advisor]** shall cause a notice of the **SISP**, as contemplated by these **SISP Procedures** and such other relevant information, which the **[Aspen Companies/the Advisor]** considers appropriate, to be published in the **[Globe & Mail]**. At the same time, the **Advisor** shall invite, pursuant to a teaser letter, including a summary description of the purchase or investment opportunity, bids from Potential Bidders.

### **Participation Requirements**

10. Unless otherwise provided for herein, ordered by the **Court**, or agreed by the **Aspen Companies** and the Trustee, in order to participate in the **SISP** and be considered for qualification as a **Qualified Phase I Bidder**, a **Potential Bidder** must deliver to the **Advisor** at the address specified in Schedule "A" hereto (including by email or fax transmission), and prior to the distribution of any confidential information by the **Advisor** to such **Potential Bidder** (including the **Confidential Information Memorandum**):
  - a. an executed non-disclosure agreement in form and substance satisfactory to the **[Advisor and the] Aspen Companies** which shall inure to the benefit of any purchaser of any part of the **Property** or any investor;
  - b. a specific indication of the anticipated sources of capital for such **Potential Bidder** and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow the **Advisor** to make, in their reasonable business or professional judgment, a reasonable determination as to the **Potential Bidder's** financial and other capabilities to complete a sale or an investment
  - c. a letter setting forth the identity of the **Potential Bidder**, the contact information for such a **Potential Bidder** and their principals; and

- d. a written acknowledgement of receipt of a copy of the **Court** Order approving the **SISP** (including these **SISP Procedures**) and agreeing to accept and be bound by the provisions contained herein.
11. A **Potential Bidder** that has satisfied all of the requirements described in Section 10 above and who the **Advisor**, in consultation with the **Aspen Companies** and the **Trustee**, determines has a reasonable prospect of completing a transaction contemplated herein, will be deemed a **Qualified Phase I Bidder** and will be promptly notified of such classification by the **Advisor**. Notwithstanding these requirements, the **Advisor** may designate any **Potential Bidder** as a **Qualified Phase I Bidder**.

#### **Due Diligence**

12. The **Advisor** shall provide any person deemed to be a **Qualified Phase I Bidder** with a copy of the **Confidential Information Memorandum** and access to an electronic data room and the **Advisor** shall provide to **Qualified Phase I Bidders** further access to such due diligence material and information related to (i) the **Property** available for sale; and (ii) the debt and equity interests of the **Aspen Companies** as the **Advisor** deems appropriate, including, as appropriate, access to further information in the electronic data room.
13. None of the **Advisor**, the **Aspen Companies** or the **Trustee** makes any representation or warranty as to the information contained in the **Confidential Information Memorandum** or the information to be provided through the due diligence process, or otherwise, except to the extent otherwise contemplated under any definitive sale or investment agreement with a **Successful Bidder** executed and delivered by the **Aspen Companies**.

#### **Phase I**

##### **Seeking Non-Binding Indications of Interest from Qualified Phase I Bidders**

14. From the date of the **Court** approval of the **SISP** until the **Phase I Bid Deadline**, the **Advisor** will seek to identify and qualify **Qualified Phase I Bidders**, and will solicit **Non-Binding Indications of Interest** from **Qualified Phase I Bidders** to acquire all or part of the **Property** or to invest in the **Aspen Companies**.
15. In order to continue to participate in the **SISP**, a **Qualified Phase I Bidder** must deliver a **Non-Binding Indication of Interest** to the **Advisor** at the address specified in Schedule "A" hereto (including by email or fax transmission) so as to be received by the **Phase I Bid Deadline** or such later date or time as the **Advisor** may determine appropriate in consultation with the **Aspen Companies, ATB** and the **Trustee**.

##### **Non-Binding Indications of Interest by Qualified Phase I Bidders**

16. Unless otherwise ordered by the **Court** or agreed by the **Aspen Companies** and the **Trustee** in consultation with **ATB**, a **Non-Binding Indication of Interest** will be considered a **Qualified Non-Binding Indication of Interest** only if it is submitted by a **Qualified Phase I Bidder**, received on or before the **Phase I Bid Deadline**, and contains the following information:
  - a. an indication of whether the **Qualified Phase I Bidder** is making a **Sale Proposal** or an **Investment Proposal**;
  - b. in the case of a **Sale Proposal**, it shall identify:
    - i. the purchase price (including liabilities to be assumed by the **Qualified Phase I Bidder**);
    - ii. the assets included, any of the assets expected to be excluded, and/or any additional assets desired to be included in the transaction;
    - iii. the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain the

- financing and complete the proposed transaction and any related contingencies, as applicable);
- iv. an acknowledgment that the contemplated sale will be made on an “as is, where is”, “without recourse” basis;
  - v. any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - vi. a timeline to closing with critical milestones and a statement with respect to the **Qualified Phase I Bidder’s** ability to complete the contemplated transaction by the **Target Closing Date**;
  - vii. a detailed description of any additional due diligence required or desired to be conducted prior to the **Phase II Bid Deadline**;
  - viii. contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction;
  - ix. a specific indication of sources of capital for the **Qualified Phase I Bidder** and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement, including contact information for capital/financing sources, that will allow the **Aspen Companies** to make a reasonable business judgement as to the **Qualified Phase I Bidder’s** financial or other capabilities to complete the contemplated transaction;
- c. in the case of an **Investment Proposal**, it shall identify:
- i. the aggregate amount of the equity and debt investment (including, the sources of such capital, preliminary evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and complete the proposed transaction and any related contingencies, as applicable) to be made in the **Aspen Companies**;
  - ii. the underlying assumptions regarding the capital structure (including the anticipated debt levels, debt service fees, interest and amortization);
  - iii. the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of the **Aspen Companies**;
  - iv. the structure and financing of the transaction including all requisite financial assurance including a specific indication of sources of capital for the **Qualified Phase I Bidder** and the preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit quality support or enhancement, including contact information for the capital/financial sources, that will allow the **Aspen Companies** to make a reasonable business judgement as to the **Qualified Phase I Bidder’s** financial or other capabilities to complete the contemplated transaction;
  - v. any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - vi. the proposed corporate governance structure of the entity or entities owning/operating the business, following implementation of the **Investment**;
  - vii. contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction;
  - viii. additional due diligence required or desired to be conducted prior to the **Phase II Bid Deadline**, if any;
  - ix. a timeline to closing the critical milestone and a statement with respect to the **Qualified Phase I Bidder’s** ability to complete the contemplated transaction by the **Target Closing Date**;

- x. to the extent not addressed elsewhere, the proposed treatment of stakeholders, including lenders, trade creditors, debenture holders and shareholders;
  - xi. any conditions to closing that the **Qualified Phase I Bidder** may wish to impose;
  - xii. any other terms or conditions of the **Investment Proposal** which the **Qualified Phase I Bidder** believes are material; and
- d. such other information reasonably requested by the **Aspen Companies** and the **Trustee**.
17. The **Aspen Companies**, subject to the approval of the **Trustee** and in consultation with ATB, may waive compliance with any one or more of the requirements specified herein and deem any non-compliant **Non-Binding Indication of Interest** to be a **Qualified Non-Bidding Indication of Interest**.
18. For the purposes of the **SISP** and **SISP Procedures**, no party (including individuals, companies, partnerships or other corporate entities) shall be entitled to any consultation with the **Aspen Companies** or **Qualified Phase I Bidders**, or any other information in connection with the **SISP** and the **SISP Procedures**, except such consultations and information which are generally available to the public or other **Qualified Phase I Bidders** or as expressly provided herein.

#### **Assessment of Qualified Non-Binding Indications of Interest**

19. The **Aspen Companies** will assess any **Qualified Non-Binding Indications of Interest** received as promptly as practicable after the **Phase I Bid Deadline**.
20. In the event that no **Qualified Non-Binding Indications of Interest** are submitted to the **Aspen Companies** as contemplated herein, this **SISP** shall be deemed to be immediately terminated and the Trustee shall report to the Aspen Companies' creditors and/ or the Court as required.
21. If the **Aspen Companies**, in consultation with the **Trustee** and ATB, determine that (i) one or more **Qualified Non-Binding Indications of Interest** were received, and (ii) proceeding with these **SISP Procedures** is in the best interests of the **Aspen Companies** and its stakeholders, these **SISP Procedures** will continue and each **Qualified Phase I Bidder** who has submitted a **Qualified Non-Binding Indication of Interest** that is determined by the **Aspen Companies** likely to be able to complete a **Transaction**, shall be deemed to be, and notified by the **Advisor** that it is, a "**Qualified Phase II Bidder**".

### **Phase II**

#### **Seeking Qualified Bids by Qualified Phase II Bidders**

22. In order to continue to participate in the **SISP**, a **Qualified Phase I Bidder** must deliver a **Qualified Purchase Bid** or a **Qualified Investment Bid** to the **Advisor** and such bids must be received by the **Advisor** no later than 5:00pm (Mountain Time) on Friday, August 31, 2018 or such later date or time as the **Aspen Companies** may determine appropriate in consultation with ATB and the Trustee (the "**Phase II Bid Deadline**").

#### **Qualified Purchase Bids**

23. A **Sale Proposal** submitted by a **Qualified Phase I Bidder** will be considered a **Qualified Purchase Bid** only if the **Sale Proposal** complies with all of the following:
- a. it includes a letter stating that the **Sale Proposal** is irrevocable until the earlier of (i) the closing of a transaction with a **Successful Bidder**, and (ii) 45 **Business Days** following the **Phase II Bid Deadline**; provided, however, that if such **Sale Proposal** is selected as a **Successful Bid**, it shall remain irrevocable until the closing of the **Successful Bid** or **Successful Bids**, as the case may be;
  - b. it includes a duly authorized and executed purchase and sale agreement specifying the purchase price, expressed in Canadian or U.S. dollars (the "**Purchase Price**"), and such ancillary agreements as may be required by the **Qualified Phase II Bidder** with all exhibits and schedules thereto (or term sheets that describes the material terms and

- provisions of such ancillary agreement) and such ancillary agreements and the proposed Orders to approve the sale by the **Court**;
- c. it does not include any request or entitlement to any break-fee, expense reimbursement or similar type payment;
  - d. it includes evidence sufficient to allow the **Aspen Companies** to make a reasonable determination as to the **Successful Bidder's** (and its direct and indirect owners' and their principals') financial and other capabilities to complete the transaction contemplated by the **Sale Proposal**, which evidence could include but is not limited to evidence of a firm, irrevocable commitment for all required funding and/or financing from a credit-worthy bank or financial institution;
  - e. it is not conditioned on (i) the outcome of unperformed due diligence by the **Qualified Phase II Bidder** and/or (ii) obtaining any financing capital and includes an acknowledgement and representation that the **Qualified Phase II Bidder** has an opportunity to conduct any and all required due diligence prior to making its **Sale Proposal**;
  - f. it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the **Sale Proposal**, including the identification of the **Qualified Phase II Bidder's** direct and indirect owners and their principals, and the completed terms of any such participation;
  - g. it includes an acknowledgement and representation that the **Qualified Phase II Bidder**:  
(i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its **Sale Proposal**; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the **Advisor**, the **Aspen Companies**, or any of its advisors, or the **Trustee** except as expressly stated in the purchase and sale agreement submitted by it; (iii) is a sophisticated party capable of making its own assessments in respect of making its **Sale Proposal**; and (iv) has had the benefit of independent legal advice in connection with its **Sale Proposal**;
  - h. it includes evidence, in form and substance reasonably satisfactory to the **Aspen Companies** of authorization and approval from the **Qualified Phase II Bidder's** board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the **Sale Proposal**;
  - i. it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer to (to a trust account specified by the **Aspen Companies' legal counsel**), or such other form acceptable to the **Aspen Companies**, payable to the order of McMillan LLP, in trust, in an amount not less than 10% of the proposed gross purchase price, to be held and dealt with in accordance with these **SISP Procedures**;
  - j. it provides for closing of a **Qualified Purchase Bid** by no later than the **Target Closing Date**;
  - k. if the **Qualified Phase II Bidder** is an entity newly formed for the purpose of the transaction, the bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the **Aspen Companies**, that names the **Aspen Companies** as a third party beneficiary or any such commitment letter with recourse against such parent entity or sponsor;
  - l. it includes evidence, in a form and substance reasonably satisfactory to the **Aspen Companies**, of compliance or anticipated compliance with any and all applicable Canadian and any foreign regulatory approvals, the anticipated time frame for such compliance and any anticipated impediments to obtaining such approvals;
  - m. it provides for the retirement of the **Priority Charges**;

- n. it contains other information reasonably requested by the **Aspen Companies** and the **Trustee**; and
- o. it is received by no later than the **Phase II Bid Deadline**.

### **Qualified Investment Bids**

24. An **Investment Proposal** submitted by a **Qualified Phase II Bidder** will be considered a **Qualified Investment Bid** only if the **Investment Proposal** complies with all of the following:
- a. it includes a letter stating that the **Investment Proposal** is irrevocable until the earlier of (i) the closing of a transaction with a **Successful Bidder** (as defined below) and (ii) 45 **Business Days** following the **Phase II Bid Deadline**; provided, however that if such **Investment Proposal** is selected as a **Successful Bid**, it shall remain irrevocable until the closing of the **Successful Bid** or **Successful Bids**, as the case may be;
  - b. it includes duly authorized and executed binding definitive documentation setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and/or debt investment and details regarding the proposed equity and/or debt structure of the **Aspen Companies**, if applicable following completion of the proposed transaction (a "**Definitive Investment Agreement**");
  - c. it does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment;
  - d. it includes evidence sufficient to allow the **Aspen Companies** to make a reasonable determination as to the **Successful Bidders'** (and its indirect owners' and their principals') financial and other capabilities to complete the transaction contemplated by the **Qualified Investment Bid**, which evidence could include but is not limited to evidence of a firm, irrevocable commitment for all required funding and/or financing from a credit-worthy bank or financial institution;
  - e. it is not conditioned on (i) the outcome of unperformed due diligence by the **Qualified Phase II Bidder** and/or (ii) obtaining any financial capital and includes an acknowledgement and representation that the **Qualified Phase II Bidder** has had an opportunity to conduct any and all required due diligence prior to making its **Investment Proposal**;
  - f. it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the **Investment Proposal**, including the identification of the **Qualified Phase II Bidder's** direct and indirect owners and their principals, and the completed terms of any such participation;
  - g. it includes an acknowledgement and representation that the **Qualified Phase II Bidder**: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its **Investment Proposal**; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees, whatsoever, whether expressed or implied (by operation of law or otherwise), regarding the business of the **Aspen Companies**, or the completeness of any information provided in connection therewith, including by the **Advisor**, the **Aspen Companies** or any of its advisors or the **Trustee**, except as expressly stated in the **Definitive Investment Agreement**; (iii) is a sophisticated party capable of making its own assessments in respect of making its **Investment Proposal**; and (iv) has had the benefit of independent legal advice in connection with its **Investment Proposal**;
  - h. it includes evidence in form and substance reasonably satisfactory to the **Aspen Companies**, of authorization and approval from the **Qualified Phase II Bidder's** board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the **Investment Proposal**;
  - i. it is accompanied by a refundable deposit in the form of a wire transfer (to a trust account specified by the **Aspen Companies'** legal counsel), or such other form acceptable to the **Aspen Companies**, payable to the order of McMillan LLP in trust, in an amount not less

than 10% of the total proposed investment, to be held and dealt with in accordance with these **SISP Procedures**;

- j. it provides for closing a **Qualified Investment Bid** by no later than the **Target Closing Date**;
- k. if the **Qualified Phase II Bidder** is an entity newly formed for the purpose of the transaction, the **Investment Proposal** shall contain an equity or debt commitment letter from the parent entity of sponsor, satisfactory to the **Aspen Companies**, that names the **Aspen Companies** as a third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- l. it includes evidence, in a form and substance reasonably satisfactory to the **Aspen Companies**, of compliance with any and all applicable Canadian and foreign regulatory approvals, the anticipated time frame for such compliance and any anticipated impediment for obtaining such approvals;
- m. it provides for the retirement of the **Priority Charges**;
- n. it contains other information reasonably requested by the **Aspen Companies** and the **Trustee**; and
- o. it is received by no later than the **Phase II Bid Deadline**.

#### **Qualified Bids**

- 25. Qualified Purchase Bids and Qualified Investment Bids shall hereinafter be referred to as **Qualified Bids** and each a **Qualified Bid** and each bidder who has submitted a Qualified Bid shall hereinafter be referred to as a **Qualified Bidder**.
- 26. Notwithstanding Sections 23 and 24 hereof, the **Aspen Companies** in consultation with ATB, subject to the approval of the **Trustee**, may waive compliance with any one or more of the **Qualified Bid** requirements specified herein, and deem such non-compliant bids to be **Qualified Purchase Bids** or **Qualified Investment Bids**, as the case may be.

#### **Assessment of Qualified Bids**

- 29. The **Aspen Companies**, in consultation with the **Trustee** and ATB, will assess any **Qualified Bids** received, if any, and will determine whether it is likely that the transactions contemplated by such **Qualified Bids** are likely to be able to be completed and whether proceeding with these **SISP Procedures** is in the best interests of the **Aspen Companies** and its stakeholders. Such assessments will be made as promptly as practicable after the **Phase II Bid Deadline**.
- 30. In the event that the **Aspen Companies** determine, in consultation with the **Trustee** and ATB, that (a) no **Qualified Bid** was received or (b) at least one **Qualified Bid** was received but it is not likely that the transactions contemplated in any such **Qualified Bids** will be completed, this **SISP** shall be deemed to be immediately terminated and the Trustee shall report to the creditors and the Court, as required.

#### **Selection of the Successful Bid or Successful Bids**

- 31. Beginning Friday, August 31, 2018, the **Aspen Companies**, in consultation with the **Trustee** and ATB, shall select the **Successful Bid(s)** by reviewing each **Qualified Bid**.
- 32. The **Aspen Companies** may select **Qualified Bids** for further negotiation and/or clarification of any term or conditions or such **Qualified Bids**, including the amounts offered, before identifying the highest or otherwise best **Qualified Bid(s)** received, as the case may be.
- 33. Upon completion of any further negotiations or clarifications that may be conducted pursuant to Section 32 above, the **Aspen Companies** will identify the **Successful Bid(s)**. Any **Qualified Bidder** who made a **Successful Bid** is a **Successful Bidder**. The **Aspen Companies** will notify any **Successful Bidder** it is a **Successful Bidder**.
- 34. The **Aspen Companies** will finalize definitive agreement(s) in respect of any **Successful Bidder**, condition upon approval of the **Court**, by the **Target Closing Date** or such later date or time as the **Aspen Companies** may determine appropriate in consultation with the **Trustee**.



### **Approval Hearing**

35. The **Aspen Companies** shall apply to the **Court** (the "**Approval Hearing**") for: (i) an order approving the **Successful Bid(s)** and authorizing the **Aspen Companies** to enter into any and all necessary agreements with respect to a **Successful Bidder**; and (ii) any order that may be required vesting title to **Property** in the name of a **Successful Bidder**.
36. The **Approval Hearing** will be held on a date to be scheduled by the **Court** upon application by the **Aspen Companies**. The **Approval Hearing** may be adjourned or rescheduled by the **Aspen Companies** without further notice by an announcement of the adjourned date at the **Approval Hearing** and emailing same to the service list in these proceedings.
37. All **Qualified Bids** (other than any **Successful Bid(s)**) shall be deemed rejected on and as of the date of closing of the **Successful Bid** or **Successful Bids**, as the case may be.

### **Deposits**

38. All **Deposits** shall be retained by legal counsel of the **Aspen Companies** in a non-interest bearing trust account. If there is a **Successful Bid**, the **Deposit** (plus accrued interest) paid by the **Successful Bidder** whose bid is approved at the **Approval Hearing** shall be applied to the purchase price to be paid by the **Successful Bidder** upon closing of the approved transaction and will be non-refundable. The **Deposits** (plus accrued interest) of **Qualified Bidders** not selected as a **Successful Bidder** shall be returned to such bidders within five (5) **Business Days** after the date on which **Qualified Bids** are deemed rejected in accordance with Section 37. If there is no **Successful Bid**, all **Deposits** shall be returned to the bidders within five (5) **Business Days** of the date upon which the **SISP** is terminated in accordance with these procedures.

### **Approvals**

39. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the applicable law in order to implement a **Successful Bid**.

### **Further Orders**

40. At any time during the **SISP**, the **Aspen Companies** or the **Trustee** may apply to the **Court** for advice and directions with respect to the discharge of its powers and duties hereunder.