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## **ARRANGEMENT AGREEMENT**

Made as of December 19, 2019

Between

**MORGUARD CORPORATION**

and

**TEMPLE HOTELS INC.**

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**THIS ARRANGEMENT AGREEMENT** is dated the 19<sup>th</sup> day of December, 2019.

BETWEEN:

**Morguard Corporation**, a corporation existing under  
the laws of Canada;  
("Morguard")

AND

**Temple Hotels Inc.**, a corporation existing under  
the laws of the Canada;  
("Target")

WHEREAS:

- A. Morguard and Target agree to proceed with a business combination transaction providing for the acquisition by Morguard of all of the outstanding common shares of Target not currently owned by Morguard pursuant to the Arrangement as provided for in this Agreement; and
- B. The Parties hereto intend to carry out the proposed business combination transaction by way of a plan of arrangement under the provisions of the CBCA.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT**, in consideration of the respective covenants and agreements hereinafter contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereto agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **Section 1.1 Definitions**

In this Agreement and in the recitals hereto, unless there is something in the context or subject matter inconsistent therewith, the following words and terms shall have the meanings hereinafter set out:

**"Acquisition Proposal"** means any written or oral inquiry, offer or proposal made by a Person or group of Persons, other than from or with Morguard or any of its Affiliates, regarding (i) any direct or indirect sale, disposition, alliance or joint venture (or any lease, long-term supply agreement or other arrangement having the same economic effect as a sale), in a single transaction or series of related transactions, of assets (including assets and/or shares of Target Subsidiaries) representing 20% or more of the consolidated assets or contributing 20% or more of the consolidated revenue, as applicable, of Target and the Target Subsidiaries, taken as a whole; (ii) any direct or indirect take-over bid, tender offer, exchange offer, treasury issuance or other transaction that, if consummated, would result

in a Person or group of Persons (other than Morguard or any Affiliate thereof) beneficially owning 20% or more of any class of voting or equity securities of Target; (iii) any plan of arrangement, merger, amalgamation, consolidation, share exchange, share reclassification, business combination, reorganization, recapitalization, liquidation, dissolution or winding up involving Target or any Target Subsidiary; or (iv) any other similar transaction or series of transactions involving Target or any Target Subsidiary;

**“Affiliate”** has the meaning set out in the CBCA;

**“Agreement”** means this agreement between Morguard and Target entered into for the purpose of effecting the Arrangement, including the schedules attached hereto, as the same may be supplemented or amended from time to time;

**“Applicable Laws”** means any domestic or foreign statute, law, ordinance, rule, regulation, restriction, published and legally binding regulatory policy or guideline, by-law (zoning or otherwise), or order or any consent, exemption, permit, approval or licence of any domestic or foreign Governmental Entity that applies in whole or in part to the Parties hereto, as the context requires, or to their respective businesses, undertakings, properties or securities including, without limitation, Applicable Securities Laws;

**“Applicable Securities Laws”** means the *Securities Act* (Ontario) and the equivalent legislation in the other provinces and in the territories of Canada, as amended from time to time, the rules, regulations and forms made or promulgated under any such statute and the published national instruments, multilateral instruments, policies, bulletins and notices of the securities commissions and similar regulatory authorities of each of the provinces and territories of Canada and the published rules and policies of the TSX;

**“Armoyan”** means, collectively, G2S2 Capital Inc. and Simé Armoyan;

**“Armoyan Support Agreement”** means the support agreement dated November 14, 2019 made between Morguard and Armoyan;

**“Arrangement”** means the arrangement under the provisions of section 192 of the CBCA, on the terms and conditions set forth in the Plan of Arrangement, subject to any amendment or supplement thereto made in accordance with this Agreement and the Plan of Arrangement or made at the direction of the Court in the Final Order;

**“Arrangement Filings”** means all corporate filings as may be necessary to give effect to the Arrangement;

**“Arrangement Resolution”** means the special resolution approving the Arrangement to be considered at the Target Meeting substantially in the form attached at Schedule B;

**“Articles of Arrangement”** means the articles of arrangement of Target in respect of the Arrangement required by the CBCA to be filed with the Director after the Final Order is made;

**“AST”** means AST Trust Company (Canada);

**“Benefit Plans”** means any formal or informal pension, retirement or health and welfare benefit plans, any stock option, stock purchase, stock appreciation right, phantom stock option or other stock or stock-based incentive plan, cash bonus, commission or incentive compensation arrangement, retirement or deferred compensation plan, profit sharing plan,

retention agreement, unemployment or severance compensation plan, or other employee compensation or benefit plans, policies, programs or other arrangements and all related agreements and policies with third parties such as trustees or insurance companies, which are maintained, sponsored, contributed to or required to be contributed to by or binding upon Target or any of the Target Subsidiaries with respect to any of their current or former employees, directors, officers or other individuals providing services to Target or any Target Subsidiary;

**“Business Day”** means any day, other than a Saturday or Sunday, upon which banks in Toronto, Ontario, Canada are open for business;

**“CBCA”** means the *Canada Business Corporations Act*, as amended;

**“Consideration”** means the consideration to be received by Target Shareholders, other than Morguard, pursuant to the Arrangement and in accordance with and subject to the terms of the Plan of Arrangement for their Target Shares, consisting of \$2.10 in cash per Target Share;

**“Constating Documents”** means the charter, the memorandum, the articles of association, the articles of incorporation, the articles of continuance, the articles of amalgamation, the by-laws or any other instrument pursuant to which an entity is created, incorporated, continued, amalgamated or otherwise established, as the case may be, and/or which governs in whole or in part such entity’s affairs, together with any amendments thereto;

**“Contract”** means any legally binding written or oral agreement, note, mortgage, indenture, lease, deed of trust, license, plan, instrument or other contract;

**“Court”** means the Ontario Superior Court of Justice (Commercial List);

**“Depositary”** means any trust company, bank or financial institution agreed to in writing by Morguard and Target for the purpose of, among other things, disbursing Consideration in accordance with the terms of the Plan of Arrangement;

**“Director”** means the Director appointed pursuant to section 260 of the CBCA;

**“Dissent Rights”** means the rights of dissent of Target Shareholders in respect of the Arrangement Resolution described in the Plan of Arrangement;

**“Effective Date”** means the date shown in the certificate of arrangement issued in accordance with section 192 of the CBCA giving effect to the Arrangement or such other date as may be agreed to by the Parties;

**“Effective Time”** means the time when the Arrangement will be deemed to have been completed, which shall be 12:01 a.m., Toronto time, on the Effective Date or such other time in Toronto, Ontario on the Effective Date as Morguard and Target, each acting reasonably, may agree in writing;

**“Fairness Opinion”** means the verbal and subsequent written opinion of Origin Merchant Partners that the Consideration to be received by the Target Shareholders, other than Morguard and Armoyan, pursuant to the Arrangement is fair from a financial point of view to such Target Shareholders, subject to the limitations and qualifications set out in such opinion;

**“Final Order”** means the final order of the Court approving the Arrangement, as such order may be amended by the Court (with the consent of Morguard and Target) at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or dismissed, as affirmed or as amended on appeal;

**“GAAP”** means Canadian generally accepted accounting principles applicable to publicly accountable enterprises, which for the avoidance of doubt includes the adoption of International Financial Reporting Standards;

**“Governmental Entity”** means any applicable (i) multinational, federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau, agency, domestic or foreign; (ii) any subdivision, agent, commission, board or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

**“Interim Order”** means the interim order of the Court providing for, among other things, the calling and holding of the Target Meeting, as such order may be amended, supplemented or varied by the Court;

**“Jurisdictions”** means, collectively, Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut;

**“Lien”** means any mortgage, charge, pledge, hypothec, security interest, prior claim, encroachments, option, right of first refusal or first offer, occupancy right, covenant, assignment, lien (statutory or otherwise), defect of title, or restriction (including any restriction on use, transfer, voting or other exercise of any attributes of ownership) or adverse right or claim, or other third party interest or encumbrance of any kind, including in each case, whether contingent or absolute;

**“Losses”**, in respect of any matter, means all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including all interest, penalties, amounts paid in settlement and reasonable out-of-pocket legal and other professional fees and disbursements) arising directly or indirectly as a consequence of such matter less in all cases any insurance and/or tax benefits received or receivable in respect thereof;

**“Material Adverse Change” or “Material Adverse Effect”** means, in respect of Target, any one or more changes, effects, events, occurrences, developments or state of facts that, either individually or in the aggregate, (i) would, or would reasonably be expected to, prevent or materially delay the ability of Target from consummating the Transactions by the Termination Deadline or (ii) has, or would reasonably be expected to have, an impact that is both material and adverse to the business, assets, liabilities (contingent or otherwise), capitalization, condition (financial or otherwise) or results of operations of Target, on a consolidated basis, other than, with respect to this clause (ii), any change, effect, event, occurrence, development or state of facts set out below:

- (a) any change in general economic, financial, business, regulatory, currency exchange, interest rate, credit, securities market or political conditions;
- (b) any change affecting the industry generally in which Target operates;

- (c) any natural disaster;
- (d) civil unrest, war or similar disorder or terrorist acts;
- (e) any actions taken (or omitted to be taken) upon express written request of Morguard;
- (f) any change in Applicable Laws or accounting standards applicable to Target which have not been publicly announced prior to the date hereof; or
- (g) changes resulting from the announcement of any matter contemplated herein or the performance of the covenants set forth herein;

provided that any such change referred to in clauses (a) and (b) shall not be excluded from the definition of “Material Adverse Effect” or “Material Adverse Change” to the extent such change disproportionately affects Target on a consolidated basis relative to comparable companies;

**“Material Fact”** has the meaning ascribed to such term in the *Securities Act* (Ontario), as amended;

**“MI 61-101”** means Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*;

**“Misrepresentation”** has the meaning ascribed thereto in the *Securities Act* (Ontario);

**“Morguard”** means Morguard Corporation, a corporation incorporated under the laws of Canada;

**“Morguard Board”** means the board of directors of Morguard;

**“Ordinary Course of Business”** means, with respect to an action or actions taken by a Person, that such action or actions is or are consistent with the past practices of such Person and is or are taken in the ordinary course of normal day-to-day operations of such Person;

**“Owned Real Property”** means all Real Property owned by Target or the Target Subsidiaries;

**“Party”** means Target or Morguard and **“Parties”** means both of Target and Morguard;

**“Permitted Liens”** means (i) Liens for Taxes which are not yet due and payable or which are being contested in good faith and for which an adequate reserve has been made; (ii) statutory Liens or legal hypothecs of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carriers and others in respect of the construction, maintenance, repair or operation of the assets of Target or the Target Subsidiaries, provided that such Liens in the aggregate are not material and arose or were incurred in the Ordinary Course of Business; (iii) title defects or irregularities, unregistered easements or rights of way, restrictions in the original grant from the Crown or unregistered servitudes and other unregistered restrictions affecting the use of the Real Property provided that they are not, in the aggregate, material; (iv) the right reserved to or vested in any Governmental Entity by any statutory provision or by the terms of any lease, licence, franchise, grant or permit of Target or any of the Target Subsidiaries, to terminate any such lease, licence, franchise,

grant or permit, or to require annual or other payments as a condition of their continuance; (v) purchase money security interests and refinancings thereof where the amount of indebtedness secured thereby is not material; and (vi) easements, agreements, servitudes, covenants, rights of way and other Liens or restrictions registered on title to the Real Property;

**“Person”** means any individual, corporation, firm, partnership (including, without limitation, a limited partnership), sole proprietorship, syndicate, joint venture, trustee, trust, any unincorporated organization or association, any government or instrumentality thereof and any tribunal;

**“Plan of Arrangement”** means the plan of arrangement to be substantially in the form and content of Schedule A attached hereto as amended or varied pursuant to the terms hereof and thereof;

**“Pre-Acquisition Reorganization”** has the meaning ascribed to such term in Section 6.7(a) hereof;

**“Real Property”** means all real property interests (including, but not limited to, Owned Real Property, licenses of occupation, and real property security) and all buildings, structures, improvements, appurtenances and fixtures thereon or attached thereto, whether created privately or by the action of any Governmental Entity;

**“Record Date”** means the date set by Target at which holders of the Target Shares entitled to vote at, and receive notice of, the Target Meeting shall be determined;

**“Regulatory Filings”** means all documents, registrations, statements, submissions, petitions, filings and applications, if any, required to be filed with Governmental Entities under all Applicable Laws in respect of the Transactions;

**“Representatives”** means, in relation to a Party, its Affiliates and its and their respective directors, officers, employees, agents and professional advisors;

**“Securities Authority”** means the securities commissions or similar regulatory authorities in each of the Jurisdictions;

**“Special Committee”** means the special committee of directors of Target formed to consider, among other things, the proposed Arrangement;

**“Subsidiary”** means, with respect to a specified body corporate, any body corporate of which the specified body corporate is entitled to elect a majority of the directors thereof and shall include any body corporate, partnership, joint venture or other entity over which such specified body corporate exercises direction or control or which is in a like relation to such a body corporate, excluding any body corporate in respect of which such direction or control is not exercised by the specified body corporate as a result of any existing Contract, agreement or commitment;

**“Superior Proposal”** means any unsolicited *bona fide* written Acquisition Proposal from a third party (or third parties acting jointly) made after the date of this Agreement: (i) to acquire not less than all of the outstanding Target Shares (not owned or controlled by such third party or its Affiliates) or substantially all of the assets of Target on a consolidated basis; (ii) that did not result from or involve a material breach of this Agreement by Target,

any Target Subsidiary or any of their Representatives (and for such purposes any breach of Article 5 hereof shall be deemed to be a material breach of this Agreement); (iii) that the directors of Target have determined in good faith is reasonably capable of being completed without undue delay, taking into account all financial, legal, regulatory and other aspects of such Acquisition Proposal and the Person making such Acquisition Proposal; (iv) that is not subject, either by the terms of such Acquisition Proposal or by virtue of any Applicable Laws, to any requirement that the approval of the securityholders or owners of the Person making the Acquisition Proposal be obtained; (v) that is not subject to any financing condition; (vi) that is not subject to any due diligence condition; and (vii) in respect of which the Target Board determines, in its good faith judgment, after receiving the advice of Target's outside legal counsel and financial advisors and after taking into account all the terms and conditions of the Acquisition Proposal, including all legal, financial, regulatory and other aspects of such Acquisition Proposal and the Person making such Acquisition Proposal, would, if consummated in accordance with its terms, and without assuming away the risk of non-completion, result in a transaction which is more favourable, from a financial point of view, to the Target Shareholders (other than Morguard) than the Arrangement;

**"Superior Proposal Notice"** has the meaning ascribed to such term in Section 5.4(a)(ii) hereof;

**"Target"** means Temple Hotels Inc., a corporation existing under the laws of Canada;

**"Target Board"** means the board of directors of Target;

**"Target Convertible Securities"** means any securities, instruments, rights or agreements of, or issued or granted by, Target that are or may become (whether or not on condition and whether or not vested or otherwise presently convertible, exchangeable or exercisable) convertible into or exchangeable or exercisable for Target Shares;

**"Target Deferred Share Plan"** means the amended and restated deferred share plan of Target dated June 30, 2015, which expired on June 25, 2018;

**"Target Deferred Shares"** means deferred shares of Target granted pursuant to the Target Deferred Share Plan;

**"Target Disclosure Documents"** means all documents filed by or on behalf of Target, at any time since December 31, 2017, in Canada with Canadian securities regulatory authorities pursuant to Applicable Securities Laws;

**"Target Financial Statements"** means the audited consolidated financial statements of Target for the years ended December 31, 2017 and 2018 and the unaudited interim financial statements for the period ended September 30, 2019 forming part of the Target Disclosure Documents;

**"Target Information Circular"** means the management information circular (including all appendices attached thereto), notice of meeting and proxy form to be sent by Target to Target Shareholders soliciting the approval of the Arrangement Resolution;

**"Target Meeting"** means the special meeting of Target Shareholders, including any adjournment or adjournments or postponement or postponements thereof, to be held for the

purposes of obtaining approval by Target Shareholders of, among other things, the Arrangement Resolution;

**“Target Shareholder Approval”** has the meaning ascribed to such term in Section 2.3(d) hereof;

**“Target Shareholders”** means holders of Target Shares;

**“Target Shares”** means the common shares of Target which it is authorized to issue as presently constituted;

**“Target Subsidiaries”** means the Subsidiaries of Target, and **“Target Subsidiary”** refers to any one of them;

**“Tax”** and **“Taxes”** means all taxes, assessments, charges, dues, duties, rates, fees imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Entity, including all income taxes (including any tax on or based upon net income, gross income, income as specially defined, earnings, profits or selected items of income, earnings or profits) and all capital taxes, gross receipts taxes, environmental taxes and charges, sales taxes, use taxes, ad valorem taxes, value added taxes, subsoil use or extraction taxes and ownership fees, transfer taxes (including, without limitation, taxes relating to the transfer of interests in Real Property or entities holding interests therein), franchise taxes, licence taxes, withholding taxes, health taxes, payroll taxes, employment taxes, Canada Pension Plan premiums, excise, severance, social security, workers’ compensation, employment insurance or compensation taxes, mandatory pension and other social fund taxes or premium, stamp taxes, occupation taxes, premium taxes, property taxes, windfall profits taxes, alternative or add-on minimum taxes, goods and services tax, harmonized sales tax, customs duties or other taxes, fees, imports, assessments or charges of any kind whatsoever, and any instalments in respect thereof, together with any interest and any penalties or additional amounts imposed by any taxing authority (domestic or foreign) on such entity, and any interest, penalties, additional taxes and additions to tax imposed with respect to the foregoing;

**“Tax Act”** means the *Income Tax Act* (Canada), as amended, and the regulations thereunder, as amended;

**“Termination Deadline”** means March 31, 2020 or such other date as the Parties hereto may otherwise agree upon in writing;

**“Termination Fee”** has the meaning ascribed to such term in Section 9.3 hereof;

**“Transactions”** means the Arrangement and the other transactions contemplated under this Agreement; and

**“TSX”** means the Toronto Stock Exchange.

## **Section 1.2 Number and Gender**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders and neuter.

### **Section 1.3 Interpretation Not Affected by Headings**

The division of this Agreement into articles, sections, subsections, paragraphs and subparagraphs and the insertion of headings herein are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereto**”, “**hereunder**” and similar expressions refer to this Agreement and the schedules attached hereto and not to any particular article, section, subsection, paragraph or other portion hereof and include any agreement, schedule or instrument supplementary or ancillary hereto or thereto. The word “**including**”, when following a general statement or term, is not to be construed as limiting the general statement or term to any specific item or matter set forth or to similar items or matters, but rather as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope.

### **Section 1.4 Date of Any Action**

If the date on which any action is required to be taken hereunder by any Party hereto is not a Business Day, that action will be required to be taken on the next succeeding day which is a Business Day.

### **Section 1.5 References to Statutes**

A reference to a statute includes all regulations made thereunder, all amendments to the statute or regulations in force from time to time, and every statute or regulation that supplements or supersedes such statute or regulations.

### **Section 1.6 References to Persons**

A reference to a Person includes any successor to that Person.

### **Section 1.7 Knowledge**

With respect to any matter, knowledge of Target or a Target Subsidiary shall mean the actual knowledge of the Target’s Chief Executive Officer, K. Rai Sahi, Senior Vice President and Chief Financial Officer, Paul Miatello, and Senior Vice President, Beverley Flynn, after making reasonable inquiry of the directors, officers and employees of, and independent contractors to, Target and the Target Subsidiaries who ought to know concerning the matters in question, whether or not any such inquiry was actually made.

### **Section 1.8 Currency**

Unless otherwise stated herein or in the Plan of Arrangement, all references herein to amounts of money are expressed in lawful money of Canada.

### **Section 1.9 Schedules**

The following are the schedules attached to this Agreement and are deemed to be part hereof:

- Schedule A - Plan of Arrangement under Section 192 of the CBCA
- Schedule B - Arrangement Resolution

## **ARTICLE 2**

### **THE ARRANGEMENT**

#### **Section 2.1 Plan of Arrangement**

The Parties hereto agree to effect the Arrangement under the CBCA pursuant to the terms and conditions set out in this Agreement and the Plan of Arrangement.

#### **Section 2.2 Effective Date**

Subject to the satisfaction of the terms and conditions of this Agreement, the Plan of Arrangement, the Interim Order and the Final Order, the Arrangement shall become effective at the Effective Time on the Effective Date.

#### **Section 2.3 Interim Order**

As soon as is reasonably practicable after the date of execution of this Agreement, Target shall file, proceed with and diligently pursue a motion to the Court for the Interim Order which motion shall request that the Interim Order provide:

- (a) for the class of Persons to whom notice is to be provided in respect of the Arrangement and for the Target Meeting and for the manner in which such notice is to be provided;
- (b) that the securities of Target that shall be entitled to be voted by their holders on the Arrangement Resolution shall be the Target Shares;
- (c) that each Target Shareholder shall be entitled to one vote per Target Share on the Arrangement Resolution;
- (d) that the only approvals required for the Arrangement Resolution shall be (i) not less than 66 2/3% of the votes cast in respect of the Arrangement Resolution by the Target Shareholders voting as a single class present in person or by proxy at the Target Meeting; and (ii) minority approval in accordance with MI 61-101 of the Target Shareholders present in person or by proxy at the Target Meeting (collectively, the “**Target Shareholder Approval**”);
- (e) for the grant of Dissent Rights as contemplated in the Plan of Arrangement;
- (f) that, in all other respects, the terms, restrictions and conditions of the articles and by-laws of Target, including the quorum requirement and other matters, shall apply in respect of the Target Meeting;

- (g) for notice requirements with respect to the hearing of the application to the Court for the Final Order;
- (h) that the Target Meeting may be adjourned or postponed from time to time by Target, subject to the terms of this Agreement, without the need for any additional approval of the Court;
- (i) that the Record Date need not change in respect of any adjournment or postponement of the Target Meeting unless required by Applicable Securities Laws; and
- (j) subject to the consent of Target (such consent not to be unreasonably withheld or delayed), for such other matters as Morguard may reasonably require in connection with the Arrangement.

## **Section 2.4 Target Meeting**

- (a) Subject to the terms of this Agreement, Target agrees to convene and conduct the Target Meeting in accordance with the Interim Order, Target's articles and by-laws and Applicable Laws as soon as reasonably practicable but in any event not later than February 29, 2020. Target agrees that it shall fix and publish a Record Date for the purposes of determining Target Shareholders entitled to receive notice of and vote at the Target Meeting in accordance with the Interim Order.
- (b) Target shall not adjourn, postpone or cancel (or propose or permit the adjournment, postponement or cancellation of) the Target Meeting without Morguard's prior written consent except (i) in the case of adjournment, as required for quorum purposes, by Applicable Laws, by Governmental Entity or by valid Target Shareholder action (which action is not solicited or proposed by Target or the Target Board) or (ii) as permitted under Section 5.4(a) or Section 7.4(e).
- (c) Subject to the terms of this Agreement, Target shall (i) use commercially reasonable efforts to solicit proxies for the approval of the Arrangement Resolution and against any resolution that is inconsistent with the Arrangement Resolution and the completion of the Transactions in accordance with Applicable Laws; (ii) recommend to Target Shareholders that they vote in favour of the Arrangement Resolution; (iii) take all other actions that are reasonably necessary or desirable to obtain the Target Shareholder Approval; and (iv) permit Morguard to assist, consult with Morguard, and keep Morguard apprised, with respect to such solicitation and other actions.
- (d) Target shall report to Morguard as Morguard may reasonably request, and in any event, on a daily basis on each of the last ten Business Days prior to the Target Meeting, as to the aggregate tally of the proxies received by Target in respect of the Arrangement Resolution and any other matters to be considered at the Target Meeting.

- (e) Target shall promptly provide Morguard with any notice relating to the Target Meeting and allow Representatives of Morguard to attend the Target Meeting.
- (f) Target shall promptly advise Morguard of any written notice of dissent or purported exercise by any Target Shareholder of Dissent Rights received by Target and any withdrawal of Dissent Rights received by Target and shall consult with Morguard prior to communicating with any Target Shareholder exercising or purporting to exercise Dissent Rights. Target shall not offer, make or agree to any payment or settlement prior to the Effective Time with respect to any such notice of dissent or purported exercise of Dissent Rights unless Morguard shall have given its prior written consent to such payment or settlement as applicable.

## **Section 2.5 Circular**

- (a) As soon as is reasonably practicable after the execution of this Agreement, Target shall (i) prepare and complete the Target Information Circular together with any other documents reasonably required by Morguard and as required under Applicable Laws in connection with the Target Meeting and the Transactions; (ii) file the Target Information Circular in all jurisdictions where the same is required to be filed; and (iii) mail the Target Information Circular as required under Applicable Laws and the Interim Order, in each case so as to permit the Target Meeting to be held within the time required by Section 2.4(a).
- (b) Target shall ensure that the Target Information Circular complies in all material respects with all Applicable Laws and the Interim Order and contains sufficient detail to permit the Target Shareholders to form a reasoned judgement concerning the matters to be placed before them at the Target Meeting. Without limiting the generality of the foregoing, Target shall ensure that the Target Information Circular does not contain any Misrepresentation; provided that Target shall not be responsible for the accuracy of any information in respect of Morguard and its Affiliates furnished by Morguard in writing specifically for the purpose of inclusion in the Target Information Circular.
- (c) The Target Information Circular shall include the recommendation of the Target Board, other than K. Rai Sahi and Chris J. Cahill who will abstain, and the unanimous recommendation of the Special Committee that the Target Shareholders vote in favour of the Arrangement Resolution and shall include a copy of the Fairness Opinion.
- (d) Morguard shall furnish to Target in a timely manner all such information in respect of Morguard and its Affiliates as may be reasonably required by Target in the preparation of the Target Information Circular and other documents related thereto, and Morguard shall ensure that no such information contains any Misrepresentation.
- (e) Morguard and its legal counsel shall be given a reasonable opportunity to review and comment on drafts of the Target Information Circular and other documents

related thereto prior to the Target Information Circular being printed and filed with any Governmental Entity, and reasonable consideration shall be given by Target to any comments made by them; provided that all information relating solely to Morguard or its Affiliates included in the Target Information Circular shall be in form and content satisfactory to Morguard, acting reasonably.

- (f) Target and Morguard shall each promptly notify the other Party if at any time before the Target Meeting they become aware that the Target Information Circular contains a Misrepresentation, or otherwise requires an amendment or supplement, and the Parties shall cooperate in the preparation of any amendment or supplement to the Target Information Circular, as required or appropriate, and Target shall promptly mail or otherwise publicly disseminate any amendment or supplement to the Target Information Circular as required by the Court or Applicable Laws.

## **Section 2.6 Final Order**

Subject to obtaining the approvals as contemplated by the Interim Order and as may be directed by the Court in the Interim Order, Target shall forthwith take all actions necessary or desirable to submit the Arrangement to the Court and to apply to the Court for the Final Order in form and substance satisfactory to Morguard, acting reasonably. The notice of application for the approval of the Final Order shall be included in the Target Information Circular. Target will oppose any proposal from any other Person that the Final Order contains any provision inconsistent with this Agreement and, if at any time after the issuance of the Final Order and prior to the Effective Date, Target is required by the terms of the Final Order or by Applicable Laws to return to Court with respect to the Final Order, it shall do so after notice to, and in consultation and co-operation with, Morguard.

## **Section 2.7 Closing**

Unless this Agreement is terminated pursuant to the provisions hereof, closing of the Transactions will take place on the Effective Date via electronic document exchange and each of Morguard and Target shall deliver to the other Party:

- (a) the documents required or contemplated to be delivered by it hereunder in order to complete, or necessary or reasonably requested to be delivered by it to the other Party hereto in order to effect, the Transactions, provided that each such document required to be dated the Effective Date shall be dated as of, or become effective on, the Effective Date and shall be held in escrow to be released upon the Arrangement becoming effective; and
- (b) written confirmation as to the satisfaction or waiver of all of the conditions in its favour contained in Article 7 hereof.

## **Section 2.8 Articles of Arrangement**

Subject to the rights of termination contained in Article 9 hereof, on or before the second Business Day after the satisfaction or waiver (subject to Applicable Laws) of the conditions set

forth in Article 7 (excluding conditions that, by their terms, cannot be satisfied until the Effective Date, but subject to the satisfaction or waiver of those conditions as of the Effective Date), and unless another date is agreed to in writing by the Parties, Target shall file the Arrangement Filings with the Director pursuant to the CBCA to give effect to the Arrangement and implement the Plan of Arrangement. Subject to the terms hereof, Target shall specify in a written notice to Morguard the date the Arrangement Filings are to be made.

### **Section 2.9 Payment of Consideration**

Morguard shall, following receipt of the Final Order and at least one Business Day prior to the Effective Date, deliver or cause to be delivered sufficient cash to the Depositary to pay in full the aggregate Consideration payable to Target Shareholders pursuant to the Plan of Arrangement.

### **Section 2.10 Withholding Tax**

Morguard, Target and the Depositary shall be entitled to deduct and withhold from any consideration or other payments payable or otherwise deliverable to any Person hereunder or under the Plan of Arrangement such amounts as Morguard, Target or the Depositary may be entitled or required to deduct and withhold therefrom under any provision of any Applicable Laws, or the interpretation or administration thereof, in respect of Taxes, or as otherwise required or contemplated hereunder. To the extent that such amounts are deducted, withheld and/or remitted to a relevant Governmental Entity, such amounts shall be treated for all purposes under this Agreement and the Plan of Arrangement as having been paid to the Person to whom such amounts would otherwise have been paid.

### **Section 2.11 Lists of Security Holders**

Target will use commercially reasonable efforts to prepare or cause to be prepared and provide to Morguard lists of holders of all classes and series of securities of Target (together with their addressed respective holdings of Target securities), as well as a security position listing from each depositary of its securities, to the extent reasonably practicable, within five Business Days after the date on which Morguard requests such lists and will obtain and deliver to Morguard thereafter on demand supplemental lists setting out any changes thereto, all such deliveries to be in printed form and, if available, in computer-readable format.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

### **Section 3.1 Representations and Warranties of Morguard**

Morguard hereby represents and warrants to Target as follows as of the date hereof and acknowledges that Target is relying upon these representations and warranties in connection with the Transactions and in entering into this Agreement:

- (a) Morguard is (i) a corporation duly incorporated and duly organized and validly existing under the laws of its jurisdiction of incorporation; (ii) to the extent applicable, in good standing, in all material respects, in its jurisdiction of incorporation and in each jurisdiction in which the conduct of its business or the

ownership, leasing or operation of its material property and assets requires such qualification; and (iii) no proceedings have been taken or authorized by Morguard or, to the best of its knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding-up of it;

- (b) Morguard has all necessary power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by Morguard as contemplated by this Agreement, and to perform its obligations hereunder and under such other agreements and instruments. The execution and delivery of this Agreement by Morguard and the completion by Morguard of the Transactions have been authorized by the Morguard Board and no other corporate proceedings on the part of Morguard are necessary to authorize this Agreement or to complete the Transactions. This Agreement has been executed and delivered by Morguard and constitutes a legal, valid and binding obligation of Morguard, enforceable against Morguard in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and other Applicable Laws relating to or affecting creditors' rights generally, and to general principles of equity;
- (c) no consent, approval, order or authorization of, or declaration or filing with, any Governmental Entity is required to be obtained by Morguard in connection with the execution and delivery of this Agreement or the consummation by Morguard of the Arrangement other than:
  - (i) any approvals required by the Interim Order;
  - (ii) any approvals required by the Final Order; and
  - (iii) any other consents, approvals, orders, authorizations, declarations or filings of or with a Governmental Entity which, if not obtained, individually or in the aggregate, would not, and either individually or in the aggregate, could not reasonably be expected to have a material impact on the ability of Morguard to complete the Transactions;
- (d) on and after the second Business Day preceding the date on which the Effective Time occurs, Morguard shall have sufficient cash, available lines of credit, or other sources of immediately available funds to enable Morguard to make payment of the Consideration;
- (e) other than the 54,492,911 Target Shares currently held by Morguard, none of Morguard and its Affiliates own or exercise control or direction over any Target Shares or Target Convertible Securities;
- (f) Morguard reasonably believes, after reasonable inquiry, that at the time of the Armoyan Support Agreement, (i) Armoyan had full knowledge of and access to information concerning Target and its securities, and (ii) any factors peculiar to Armoyan, including non-financial factors, that were considered relevant by

Armoyan in assessing the Consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by Armoyan;

- (g) as of the date hereof, Morguard does not know, and at the time of execution of the Armoyan Support Agreement Morguard did not know, of any material information in respect of Target or the Target Shares that (i) had not been generally disclosed, and (ii) if disclosed, could have reasonably been expected to increase the Consideration;
- (h) Morguard does not know, after reasonably inquiry, of any material information in respect of Target or the Target Shares since the time of execution of the Armoyan Support Agreement (i) that has not been generally been disclosed and (ii) could reasonably be expected to increase the value of the Target Shares; and
- (i) Morguard acknowledges that Target is relying on the representations in Sections 3.1(f), 3.1(g) and 3.1(h) hereof for purposes of availing itself of the “previous arm’s length negotiations” exemption from the formal valuation requirement set forth in Section 4.4(1)(b) of MI 61-101.

### **Section 3.2 Representations and Warranties of Target**

Target represents and warrants to Morguard as follows and acknowledges that Morguard is relying upon such representations and warranties in connection with the Transactions and in entering into this Agreement:

- (a) (i) each of Target and the Target Subsidiaries is a corporation duly incorporated, organized and validly existing and current in all material respect with all filings required under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to carry on its business as now conducted and as currently proposed to be conducted, to own, lease and operate its property and assets; (ii) each of Target and the Target Subsidiaries is duly qualified to carry on its business and, to the extent applicable, is in good standing, in all material respects, in its jurisdiction of incorporation and in each jurisdiction in which the conduct of its business or the ownership, leasing or operation of its property and assets requires such qualification; and (iii) no proceedings have been taken or authorized by Target or any of the Target Subsidiaries or, to the best of the Target’s knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding-up of Target or any Target Subsidiary;
- (b) Target has all necessary power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement, and to perform its obligations hereunder and under such other agreements and instruments. The execution and delivery of this Agreement by Target and the completion by Target of the Transactions have been authorized by Target Board and no other corporate proceedings on the part of Target are necessary to authorize this Agreement or, except as expressly contemplated in this Agreement, to complete the Transactions. This Agreement has been executed and

delivered by Target and constitutes a legal, valid and binding obligation of Target, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and other Applicable Laws relating to or affecting creditors' rights generally, and to general principles of equity;

- (c) each of the Target Board and the Special Committee has received the Fairness Opinion (and a true copy of such Fairness Opinion has been provided to Morguard) and such Fairness Opinion has not been withdrawn, revoked or modified;
- (d) the Special Committee has unanimously recommended that (i) the Target Board approve the Transactions, and authorize the entering into of this Agreement, the execution thereof, and the performance of its provisions by Target and (ii) the Target Shareholders vote in favour of the Arrangement Resolution;
- (e) the Target Board has:
  - (i) approved the Transactions and authorized the entering into of this Agreement, the execution thereof, and the performance of its provisions by Target;
  - (ii) determined, based in part on the Fairness Opinion, that the Arrangement is fair to the Target Shareholders and that the Arrangement is in the best interests of Target; and
  - (iii) recommended that the Target Shareholders vote in favour of the Arrangement Resolution;
- (f) no consent, approval, order or authorization of, or declaration, registration or filing with, any Governmental Entity or other Person is required to be obtained or made by Target or any of the Target Subsidiaries in connection with the execution and delivery of this Agreement or the completion of the Transactions other than:
  - (i) any approvals required by the Interim Order;
  - (ii) any approvals required by the Final Order;
  - (iii) any filings or approvals required under the CBCA or under Applicable Securities Laws; and
  - (iv) any other consents, approvals, orders, authorizations, declarations or filings of or with a Governmental Entity which, if not obtained, either individually or in the aggregate would not, and either individually or in the aggregate, could not reasonably be expected to, have a Material Adverse Effect on Target or a material impact on the ability of Target to complete the Transactions;

- (g) subject to receipt of the approvals set out in Section 3.2(f) hereof, the execution and delivery of this Agreement and the completion of the Transactions do not and will not:
  - (i) result in a violation, contravention or breach of, require any consent to be obtained under or give rise to any termination rights under any provision of:
    - (A) the Constatting Documents of Target or any of the Target Subsidiaries;
    - (B) any Applicable Law that would have a Material Adverse Effect on Target; or
    - (C) any Contract, agreement, license or permit to which Target or any of the Target Subsidiaries is bound or is subject to or of which Target or any of the Target Subsidiaries is the beneficiary;
  - (ii) result in the imposition of any Lien upon any of the property or assets of Target or any of the Target Subsidiaries or restrict, hinder, impair or limit the ability of Target or any of the Target Subsidiaries to conduct the business of Target or the Target Subsidiaries as and where it is now being conducted which would, individually or in the aggregate, have a Material Adverse Effect on Target; or
  - (iii) result in any material, individually or in the aggregate, payment (including severance, unemployment compensation, “golden parachute”, bonus or otherwise) becoming due to, or in the acceleration, vesting or increase in benefits with respect to, any director, officer, employee or consultant of Target, or any of the Target Subsidiaries or to any other Person or increase any benefits otherwise payable under any Benefit Plan or result in the acceleration of the time of payment or vesting of any such benefits;
- (h) there are no agreements, covenants, undertakings or other commitments of or on behalf of Target or any of the Target Subsidiaries under which the completion of the Transactions would have the effect of imposing restrictions or obligations on Target or any of the Target Subsidiaries (other than obligations to provide notice of the completion of the Arrangement);
- (i) each of Target and the Target Subsidiaries has conducted and is conducting its business in compliance, in all material respects, with all Applicable Laws of each jurisdiction in which its business is carried on, and each of Target and the Target Subsidiaries holds all necessary licences, permits, approvals, consents, certificates, registrations and authorizations, whether governmental, regulatory or otherwise, to enable its business to be carried on as now conducted and its property and assets to be owned, leased and operated, and the same are validly existing and in good standing and none of the same contain or is subject to any term, provision, condition or limitation which has or may have a Material Adverse Effect or which may

adversely change or terminate such licence, permit, approval, consent, certification, registration or authorization by virtue of the completion of the Transactions;

- (j) there is no judgment, injunction, order or decree binding upon Target or any Target Subsidiary that has or could have (including following the Transactions) the effect of prohibiting, restricting or impairing in any material respect the type of business which may be conducted by Target and the Target Subsidiaries or any business practice of Target or any of the Target Subsidiaries;
- (k) the authorized capital of Target consists of an unlimited number of Target Shares without par value. As of the date of this Agreement, (i) 75,039,215 Target Shares are issued and outstanding as validly issued and fully paid and non-assessable shares in the capital of Target and Target has no other shares of any kind issued and outstanding; and (ii) there are Target Deferred Shares outstanding entitling the holders thereof to acquire an aggregate of 122,552 Target Shares. No securities issued by Target from the date of its incorporation to the date hereof have been issued in violation of any pre-emptive rights or similar privileges. Except for the Target Deferred Shares, there are no issued and outstanding Target Convertible Securities and no agreements, options, rights, warrants, rights of conversion or pre-emption or other rights pursuant to which Target or any of the Target Subsidiaries is or may become obligated:
  - (i) to issue any securities of Target or any of the Target Subsidiaries, or securities exercisable, convertible or exchangeable, directly or indirectly, into any securities of Target or any of the Target Subsidiaries;
  - (ii) to issue any instrument, agreement, security or exchange contract the value or market price of which are derived from, referenced to or based on the value or market price of the Target Shares;
  - (iii) to create any additional class of securities of Target or any of the Target Subsidiaries;
  - (iv) to sell, transfer, assign, pledge, mortgage or in any way dispose of or encumber any securities of Target or any of the Target Subsidiaries to or in favour of any Person; or
  - (v) to sell, transfer, assign, pledge, mortgage or in any other way dispose of or encumber any of the assets of Target or any of the Target Subsidiaries other than in the Ordinary Course of Business;
- (l) all outstanding securities of Target have been issued in compliance, in all material respects, with all Applicable Securities Laws and all securities of Target to be issued upon exercise of any rights to acquire Target Shares will be issued in compliance with all Applicable Securities Laws;

- (m) neither Target nor any of the Target Subsidiaries has committed an act of bankruptcy or is insolvent, has proposed a compromise or arrangement to its creditors generally, has had a petition or a receiving order in bankruptcy filed against it, has made a voluntary assignment in bankruptcy, has taken any proceedings with respect to a compromise or arrangement, has taken any proceedings to have itself declared bankrupt or wound-up, has taken any proceedings to have a receiver appointed for any of its property or has had any execution or distress become enforceable or become levied upon any of its property or assets;
- (n) since December 31, 2017, Target has filed all documents and information required to be filed by it under Applicable Securities Laws. The Target Disclosure Documents do not contain any untrue statement of a Material Fact or omit to state a Material Fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which and at the time they were made, not misleading. All of the Target Disclosure Documents, as of their respective dates (and as of the dates of any amendments thereto), complied as to both form and content in all material respects with the requirements of Applicable Securities Laws. Target has not filed any confidential material change report with any securities regulatory authority that at the date hereof remains confidential. There is no Material Fact concerning Target required to be disclosed under Applicable Securities Laws which has not been disclosed in the Target Disclosure Documents filed on or before the date hereof, and (other than relating to the matters contemplated in this Agreement) Target is not in possession of undisclosed Material Facts;
- (o) Target is a “reporting issuer” or the equivalent under Applicable Securities Laws in each of the Jurisdictions and is not noted in default of any such Applicable Securities Laws, and since December 31, 2017, no material change relating to Target (except in respect of the Transactions) has occurred with respect to which the requisite material change report has not been filed under Applicable Securities Laws and no such disclosure has been made on a confidential basis;
- (p) no order, ruling or determination by any Governmental Entity or stock exchange having the effect of delisting, suspending the sale or ceasing the trading of any securities of Target has been issued or made and is continuing in effect and no proceedings for that purpose have been instituted or are pending or, to Target’s knowledge, contemplated or threatened by any such authority or under any Applicable Securities Laws, other than any delisting of the Target Shares from the TSX upon completion of the Arrangement;
- (q) to Target’s knowledge, the auditors of Target who audited Target’s financial statements for the fiscal years ended December 31, 2017 and 2018 and who provided their audit report thereon are independent public accountants in accordance with the CPA Manitoba Code of Professional Conduct. There has not been any “reportable event” (within the meaning of National Instrument 51-102

*Continuous Disclosure Obligations*, as amended) with the present or, to Target's knowledge, former auditors of Target;

- (r) the Target Shares are listed and posted for trading on the TSX and Target is in compliance with all rules and policies of the TSX and Applicable Securities Laws in all material respects;
- (s) other than as disclosed in the Target Disclosure Documents, since December 31, 2018:
  - (i) no Material Adverse Effect has occurred with respect to Target;
  - (ii) Target and the Target Subsidiaries have carried on their respective businesses in the ordinary course and there has been no transaction entered into by Target or the Target Subsidiaries which is material to Target and the Target Subsidiaries, taken as a whole, other than those in the Ordinary Course of Business and as contemplated hereunder; and
  - (iii) Target has not effected any material change in its accounting methods, principles or practices;
- (t) Target has not, since December 31, 2018, directly or indirectly declared or paid any dividend or declared or made any other distribution on any of its securities of any class, or directly or indirectly, redeemed, purchased or otherwise acquired any of its securities, or agreed to do any of the foregoing, other than pursuant to (i) its normal course issuer bids for the periods of March 15, 2018 to March 14, 2019 and July 9, 2019 to July 8, 2020 and (ii) the rights offerings completed by Target on April 4, 2019 and June 5, 2019;
- (u) except as disclosed to Morguard or as would not have a Material Adverse Effect on Target, neither Target nor any of the Target Subsidiaries is in violation of its Constating Documents or resolutions of its securityholders, directors, or any committee of its directors, or in default in the performance or observance of any material term, obligation, agreement, covenant or condition contained in any Contract, indenture, trust, deed, mortgage, loan agreement, note, lease or other agreement or instrument to which it is a party or by which it or its property may be bound and there exists no state of facts which, after notice or lapse of time or both, or otherwise, would constitute a default under or breach of a material term, obligation, agreement, covenant or condition of any of such documents and all such Contracts, indentures, trusts, deeds, mortgages, loan agreements, notes, leases and other agreements are in good standing;
- (v) the Target Financial Statements (i) have been prepared in accordance with GAAP applied on a basis consistent with those of the preceding fiscal year; (ii) are in all material respects consistent with the books and records of Target and the Target Subsidiaries; (iii) present fairly, in all material respects, the assets, liabilities and financial condition of Target and the Target Subsidiaries on a consolidated basis as

at the dates and for the periods indicated in such financial statements; and (iv) contain and reflect adequate provision or allowance as required by GAAP for all reasonably anticipated liabilities, expenses and Losses of Target and the Target Subsidiaries required by GAAP to be provided for therein as at the dates of such Target Financial Statements;

- (w) Target maintains a system of internal accounting controls sufficient to provide reasonable assurance that, (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. To the knowledge of Target, there is no "material weakness" (as such term is defined in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* of the Canadian Securities Administrators) relating to the design, implementation or maintenance of its internal control over financial reporting;
- (x) the financial books, records and accounts of Target and the Target Subsidiaries, in all material respects:
  - (i) have been maintained in accordance with GAAP on a basis consistent with prior years (since the adoption by Target and Target Subsidiaries of International Financial Reporting Standards);
  - (ii) accurately and fairly reflect the material transactions and dispositions of the assets of Target and the Target Subsidiaries; and
  - (iii) accurately and fairly reflect the basis for their financial statements;
- (y) the corporate minute books of Target and the Target Subsidiaries contain minutes of all proceedings and resolutions of the directors and securityholders of Target and the Target Subsidiaries, as applicable for such period. All proceedings and actions reflected in the corporate minute books have been taken in compliance in all material respects with Applicable Laws and the Constatting Documents of Target or the Target Subsidiary, as applicable;
- (z) AST has been duly appointed as transfer agent and registrar for the Target Shares;
- (aa) no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions, based upon any arrangement made by or on behalf of Target or a Target Subsidiary, which would make Target or a Target Subsidiary liable for any fees or commissions;
- (bb) neither Target nor any of the Target Subsidiaries, nor to Target's knowledge any director, officer, employee, agent or Representative of Target or any of the Target

Subsidiaries, has, acting directly or indirectly, (i) made or agreed to make any unlawful contribution or other payment to any official of, or candidate for, any federal, provincial, state, municipal, local or foreign office in violation of any Applicable Laws; (ii) failed to disclose and record fully in the accounts of Target or the Target Subsidiaries any contribution or other payment to any such official or candidate; or (iii) made or agreed to make any payment to any Canadian or other country's governmental officer or official, or other Person charged with public or quasi public duties, other than payments required or permitted by Applicable Laws. Without limiting the generality of the foregoing, neither Target nor any of the Target Subsidiaries nor, to the knowledge of Target, any director, officer, employee, agent or Representative of Target or any of the Target Subsidiaries, has (A) violated by any means, directly or indirectly, applicable domestic or foreign corrupt practices laws, including the *Corruption of Foreign Public Officials Act* (Canada) or (B) taken any action that could reasonably be perceived as a violation of applicable domestic or foreign corrupt practices laws by the relevant government enforcement agencies. Neither Target nor any of the Target Subsidiaries, nor any director, officer, employee, agent or Representative of Target or any of the Target Subsidiaries has, acting directly or indirectly, made or agreed to make a contribution or other payment to any customer, supplier, trading company, shipping company, agent, Representative, governmental employee or other Person who is or may be in a position to help or hinder the business of Target or any of the Target Subsidiaries (or assist Target or any of the Target Subsidiaries in connection with any actual or proposed transaction or Contract) which (w) may subject Target or any of the Target Subsidiaries to any material civil, criminal, regulatory or governmental litigation or proceeding; (x) if not given in the past, may have had a Material Adverse Effect on Target; (y) if not continued in the future, may have a Material Adverse Effect on Target or subject Target or any Target Subsidiary to any material civil, criminal, regulatory or governmental litigation or proceeding; or (z) is not disclosed and recorded fully in the accounts of Target or the Target Subsidiaries or that are inadequately identified in such accounts. None of Target or any of the Target Subsidiaries is or has been debarred under any domestic or foreign government procurement laws or rules;

- (cc) except as disclosed to Morguard, there are no pending or to the knowledge of Target, threatened actions, suits, claims or proceedings, against or affecting Target or any of the Target Subsidiaries or affecting any of their respective properties or assets before any Governmental Entity or before or by any Person or before any arbitrator of any kind which, individually or in the aggregate, would prevent or hinder the consummation of the Transactions or which, individually or in the aggregate, involve the possibility of any judgement or liability which could be reasonably expected to have a Material Adverse Effect on Target;
- (dd) no employment, consulting, contractor, severance or indemnification arrangements, agreements, or understandings between Target or a Target Subsidiary and any of their respective employees or consultants, or any officer or director, provides for the acceleration or change in the award, grant, vesting or determination of options, warrants, rights, severance payments, or other contingent

obligations of any nature whatsoever of Target or the Target Subsidiaries in favour of any such parties in connection with any of the Transactions or otherwise;

- (ee) no material asset of Target or the Target Subsidiaries has been taken or expropriated by any Governmental Entity or Person nor has any notice or proceeding in respect thereof been given or commenced nor, to the knowledge of Target, is there any intent or proposal to give any such notice or commence any such proceeding;
- (ff) except as would not have a Material Adverse Effect, one or more of Target and the Target Subsidiaries have good and marketable title in fee simple to the Owned Real Property free and clear of all Liens except for Permitted Liens. Except as would not have a Material Adverse Effect, the Owned Real Property and the current use of it comply with all provisions of all Applicable Laws in all material respects. Except as would not have a Material Adverse Effect, no written notice of a material violation of any covenant, restriction or easement affecting the Owned Real Property or with respect to the use or occupancy of the Owned Real Property has been given to Target or any of the Target Subsidiaries by any Person entitled to enforce the same;
- (gg) Target and the Target Subsidiaries have good and valid title to, or a valid leasehold interest in, all other material property that is not Real Property, free and clear of all Liens other than Permitted Liens;
- (hh) to the knowledge of Target, except as disclosed to Morguard, no “related party” of Target (as such term is defined in MI 61-101) will receive a “collateral benefit” (as such term is defined in MI 61-101) as a consequence of the Transactions; and
- (ii) the only securityholder vote or securityholder approval necessary to approve the Arrangement Resolution is, subject to the Interim Order, the Target Shareholder Approval.

### **Section 3.3 Survival of Representations and Warranties**

The representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and shall expire and be terminated and extinguished on the Effective Date. Any investigation by Morguard or Target and their respective Representatives shall not mitigate, diminish or affect the representations and warranties contained in this Agreement.

## **ARTICLE 4 CONDUCT OF BUSINESS**

### **Section 4.1 Maintenance of Business by Target Until Closing**

Target covenants and agrees that, prior to the earlier of the Effective Date and the termination of this Agreement, unless Morguard otherwise consents in writing (which consent will not be unreasonably withheld or delayed; provided that where Target requests consent of the Morguard (such request to be sent by e-mail in accordance with Section 10.3) and Morguard has not provided a response to such request within three Business Days of the receipt thereof,

Morguard shall be deemed to have consented in writing to such request); and except as expressly permitted by this Agreement, Target will, and will cause each Target Subsidiary to:

- (a) not issue, sell, or agree to issue or sell, any Target Shares, Target Convertible Securities or other securities of Target, not create any Lien on any of the shares of the Target Subsidiaries, or permit the Target Subsidiaries to issue, sell, or agree to issue, sell, pledge, lease or dispose of, any shares of, or any options, warrants, calls, conversion privileges or rights of any kind to acquire any shares of, the Target Subsidiaries, other than the issue of Target Shares pursuant to the exchange of the Target Deferred Shares outstanding on the date hereof in accordance with their terms as of the date hereof;
- (b) not amend or propose to amend its Constatting Documents or, except as agreed to with Morguard, any of the terms of any securities convertible into securities of Target or other rights to acquire securities of Target as they exist on the date hereof;
- (c) not split, combine or reclassify any of the securities of Target or any of the Target Subsidiaries;
- (d) not redeem, purchase or offer to purchase any Target Shares or any options or obligations or rights under Contracts, agreements and commitments existing as of the date hereof relating thereto;
- (e) not adopt any resolution or enter into any agreement providing for an amalgamation, merger, consolidation, reorganization, liquidation, dissolution or other extraordinary transaction, adopt any plan of liquidation or reorganize, amalgamate or merge with any other Person;
- (f) not authorize, recommend, propose or agree to any release or relinquishment of any standstill agreement or of any other material contractual right;
- (g) not change any accounting method, principle or practice except for any changes as required by Applicable Laws or by GAAP;
- (h) not make or change any Tax election, change an annual Tax accounting period, adopt or change any Tax accounting method, enter into any closing agreement, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment, (other than in the Ordinary Course of Business or as required by Applicable Laws);
- (i) not engage in any business, enterprise or other activity different from that carried on by it at the date of this Agreement that could reasonably be expected to have a Material Adverse Effect on Target;
- (j) not take any action, or refrain from taking any action (subject to commercially reasonable efforts), or permit any action to be taken or not taken, inconsistent with the provisions of this Agreement or that would reasonably be expected to materially interfere with, or impede, the completion of the Transactions, or that would render,

or that could reasonably be expected to render, any representation or warranty made by Target in this Agreement untrue or inaccurate in any material respect at any time prior to the Effective Time if then made, or that would or could have a Material Adverse Effect on Target;

- (k) not declare, set aside or pay any dividends or any other distributions payable in cash, securities, property or otherwise with respect to the Target Shares or any other class or type of securities of Target;
- (l) not declare, set aside or pay any dividend on or make any other distributions on or in respect of any shares, partnership interests or other equity interests of any Target Subsidiary (other than dividends declared and paid by a Target Subsidiary to Target or another Target Subsidiary wholly-owned by Target);
- (m) not acquire or agree to acquire (by merger, amalgamation, arrangement, acquisition of stock or assets or otherwise) any Person or division of any Person or make any investment either by purchase of shares or securities, contributions of capital, property transfer or purchase of any property or assets of any other Person, except for purchases of property or assets in the Ordinary Course of Business;
- (n) not adopt a plan of liquidation or resolutions providing for the liquidation or dissolution of any Target Subsidiary and not create any Subsidiary;
- (o) notify Morguard immediately orally and then promptly in writing of any material change (within the meaning of Applicable Securities Laws) in relation to Target and of any material complaints, investigations or hearings (or communications indicating that the same may be contemplated) by or from any Governmental Entity or other person;
- (p) notwithstanding Article 5 hereof or any other provision herein, not enter into any agreement that provides for the payment, on or prior to the termination of this Agreement or the termination of any transaction with Morguard agreed to prior to the termination of this Agreement, of (i) any expenses incurred by any Person making or proposing to make a Superior Proposal or (ii) any break, termination or other fee to any Person making or proposing to make a Superior Proposal; and
- (q) not announce an intention, enter into any formal or informal agreement, or otherwise make a commitment to do, or authorize, propose or permit, any of the things prohibited by any of the foregoing subsections.

## **ARTICLE 5**

### **COVENANTS RELATING TO ACQUISITION PROPOSALS**

#### **Section 5.1 Covenants of Target Regarding Non-Solicitation**

- (a) Target shall, and Target shall direct and cause its Representatives and the Target Subsidiaries and their respective Representatives to, immediately cease and cause to be terminated any solicitation, encouragement, activity, discussion, negotiation

or process with any Person that may be ongoing with respect to any proposal that constitutes, or may reasonably be expected to constitute, an Acquisition Proposal whether or not initiated by Target or any of the Target Subsidiaries and, in connection therewith, Target shall discontinue to give access to (and to the extent it is legally able to do so, request the return of) all confidential information regarding Target and the Target Subsidiaries previously provided to any Person (other than Morguard or an Affiliate or Representative thereof). Target further agrees not to release any such Person from any confidentiality, standstill or similar agreement, restriction or provision to which such Person is a party with Target or any of the Target Subsidiaries and to take all required actions to enforce such standstill and confidentiality agreements and provisions. Target represents and warrants that Target has not waived any confidentiality, standstill or similar agreement, restriction or provision to which Target or any Target Subsidiary is a party and entered into in connection with any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to, an Acquisition Proposal. It is acknowledged that the automatic termination of standstill restrictions or provisions as a result of Target entering into this Agreement shall not constitute a breach or violation of this Section 5.1(a).

- (b) Subject to Section 5.3(a) hereof and Section 5.4 hereof, Target hereby covenants and agrees that it shall not, and shall not authorize or permit any of the Target Subsidiaries or permit any of the Representatives of Target or of any of the Target Subsidiaries, directly or indirectly, to:
  - (i) make, solicit, initiate, encourage, entertain, promote or facilitate, including by way of furnishing information, permitting any visit to facilities or properties of Target or any of the Target Subsidiaries or entering into any form of agreement, written or verbal, any inquiries or the making of any proposal which does or could constitute an Acquisition Proposal;
  - (ii) encourage or participate, directly or indirectly, in any discussions or negotiations regarding any Acquisition Proposal or potential Acquisition Proposal, it being acknowledged and agreed that Target may advise third parties that it is unable to respond to Acquisition Proposals, except in accordance with this Agreement;
  - (iii) withdraw, modify, qualify or change in a manner adverse to Morguard, or publicly state that it intends to withdraw, modify, qualify or change in a manner adverse to Morguard, the approval or recommendation of the Target Board of the Arrangement (it being understood that failing to affirm the approval or recommendation of the Target Board of the Arrangement after an Acquisition Proposal has been publicly announced shall be considered a modification which is adverse to Morguard for the purposes of this subsection if the Target Board has not affirmed the approval or recommendation of the Arrangement on or prior to the date which is the earlier of (A) 10 calendar days after the date on which the Acquisition Proposal has been publicly announced; and (B) five Business Days prior to

the Target Meeting, unless the Acquisition Proposal was publicly announced within seven Business Days of the Target Meeting, in which case as soon as practicable but in any event no later than two Business Days after such announcement);

- (iv) approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal; or
- (v) enter into, or propose publicly to enter into, any agreement, written or verbal, related to any Acquisition Proposal or requiring Target to abandon, terminate or fail to consummate the Transactions.

## **Section 5.2 Notification of Acquisition Proposals**

From and after the date of this Agreement, Target shall promptly (and in any event within 24 hours of receipt of an Acquisition Proposal) notify Morguard, at first orally and then in writing, of any inquiry, proposal or offer relating to or constituting an Acquisition Proposal, or any request for non-public information relating to Target or any of the Target Subsidiaries. Such notice shall include a description of the terms and conditions of any such proposal, inquiry or offer, the identity of the Person making such proposal, inquiry or offer and provide such other details of the proposal, inquiry or offer as Morguard may reasonably request. Target shall keep Morguard fully informed on a prompt basis of the status, including any change to the material terms, of any such inquiry, proposal or offer. Target shall keep Morguard promptly informed of the status, including any change to the material terms, of such proposal, inquiry, offer or request and shall provide copies of any material written documents or material correspondence provided to Target relating to such Acquisition Proposal.

## **Section 5.3 Responding to an Acquisition Proposal**

- (a) Notwithstanding Section 5.1(b) hereof or any other provision of this Agreement, the Target Board may, prior to the approval of the Arrangement Resolution by the Target Shareholders, consider and participate, directly or indirectly, in any discussions or negotiations with, or provide information to, or permit any visit to the properties or facilities of Target or any of the Target Subsidiaries by, any Person who has delivered a *bona fide* written Acquisition Proposal:
  - (i) which was not solicited or encouraged after the date of this Agreement;
  - (ii) that did not otherwise result from a breach of this Article 5; and
  - (iii) that the Target Board determines in good faith, after consultation with its financial advisors and outside legal counsel, is or would, if completed in accordance with its terms (disregarding for the purposes of such determination any term of such Acquisition Proposal that provides for due diligence access which does not exceed 21 calendar days), reasonably be expected to constitute, a Superior Proposal in accordance with its terms;

provided, however, that prior to taking any such action, Target must:

- (iv) give notice to Morguard of such Acquisition Proposal as provided in Section 5.2 hereof; and
- (v) enter into a confidentiality and standstill agreement with the Person on commercially reasonable terms.

If Target or any of the Target Subsidiaries receives a request for material non-public information from a Person who has made an unsolicited *bona fide* written Acquisition Proposal and Target is permitted, as contemplated under this Section 5.3(a), to consider and participate, directly or indirectly, in any discussions or negotiations with, or provide information to, such Person or permit any visit to the properties or facilities of Target or any of the Target Subsidiaries by such Person, subject to giving notice to Morguard and the execution by such Person of the confidentiality and standstill agreement as described above, Target may provide such Person with such information and access provided that such due diligence access is not provided for a period of more than 21 calendar days; and further provided that Target sends a copy of any such confidentiality and standstill agreement to Morguard promptly upon its execution and Morguard is provided with a list of, and a copy of, the information provided to such Person (if not previously provided with such information) and is immediately provided with access to similar information to which such Person is provided (if not previously provided with such access).

For greater certainty, notwithstanding any provision herein, none of Target or any Target Subsidiary shall, directly or indirectly, consider, discuss, negotiate, accept, approve or recommend an Acquisition Proposal or provide information to any Person proposing an Acquisition Proposal, in each case after the Target Shareholder Approval is obtained.

- (b) Nothing contained in Section 5.1(b) above shall prohibit the Target Board from taking any action prohibited by Section 5.1(b)(iii), if the Target Board determines, in good faith (after consultation with outside legal counsel) that such action or inaction is necessary for the Target Board to comply with its fiduciary duties or Applicable Laws, provided that Target may not proceed with the announcement of such decision before giving written notice of such decision to Morguard. The foregoing shall not relieve Target from its obligation to proceed to call and hold the Target Meeting and to hold a vote of the Target Shareholders on the Arrangement Resolution, except in circumstances where this Agreement is terminated in accordance with the terms hereof prior to the date of the Target Meeting.

#### **Section 5.4 Right to Accept a Superior Proposal**

- (a) If Target and the Target Subsidiaries have complied with Section 5.1, Section 5.2 and Section 5.3 hereof with respect to a Superior Proposal, Target may enter into any agreement, understanding or arrangement in respect of a Superior Proposal prior to the approval of the Arrangement Resolution by the Target Shareholders and terminate this Agreement if, and only if:

- (i) Target has provided Morguard with a copy of the document containing the Superior Proposal;
- (ii) five Business Days have elapsed from the later of (A) the date Morguard received written notice (a “**Superior Proposal Notice**”) advising Morguard that the Target Board has resolved, subject only to compliance with this Section 5.4, to accept, approve, recommend or enter into an agreement in respect of such Superior Proposal, specifying the terms and conditions of such Superior Proposal and identifying the Person making such Superior Proposal; and (B) the date Morguard received a copy of the document containing such Superior Proposal;
- (iii) the Target Board has determined in good faith (after consultation with outside legal counsel) that it is necessary for the Target Board to take such action in order to discharge properly its fiduciary duties;
- (iv) taking into account any revised proposal made by Morguard since receipt of the Superior Proposal Notice, such Superior Proposal remains a Superior Proposal and the Target Board has again made the determinations referred to in Section 5.4(a)(iii) hereof; and
- (v) Target has previously or concurrently paid or caused to be paid to Morguard the Termination Fee payable under Section 9.3 hereof.

Notwithstanding any other provision herein, in the event that Target provides Morguard with a Superior Proposal Notice on a date that is less than five Business Days prior to the Target Meeting, Target shall adjourn the Target Meeting to a date that is not less than five Business Days and not more than 10 Business Days after the date of receipt by Morguard of the Superior Proposal Notice if Morguard so requests.

- (b) During the five Business Day period referred to in Section 5.4(a)(ii) above, Morguard shall have the right, but not the obligation, to offer to amend the terms of this Agreement. The Target Board will review any proposal by Morguard to amend the terms of this Agreement in good faith, after consultation with its financial advisors and outside legal counsel, in order to determine whether Morguard’s amended proposal upon acceptance by Target would result in such Superior Proposal ceasing to be a Superior Proposal. If the Target Board so determines, Target shall enter into an amended agreement with Morguard reflecting Morguard’s amended proposal. If the Target Board continues to believe, in good faith and after consultation with its financial advisors and outside legal counsel, that such Superior Proposal remains a Superior Proposal and therefore rejects Morguard’s amended proposal, Target may, on termination of this Agreement in accordance with Section 9.1 hereof and payment of the Termination Fee as required pursuant to Section 9.3 hereof, accept, approve, recommend or enter into an agreement, understanding or arrangement in respect of such Superior Proposal.

- (c) Target hereby acknowledges and agrees that each successive material modification of any Acquisition Proposal shall constitute a new Acquisition Proposal for purposes of Article 5 hereof and the requirement under Section 5.4(a)(ii) hereof to initiate an additional five Business Day notice period.
- (d) The Target Board will promptly reaffirm its recommendation of the Arrangement Resolution and the Arrangement by press release after any of (i) an Acquisition Proposal is publicly announced or made and the Target Board determines it is not a Superior Proposal; (ii) the Target Board determines that a proposed amendment to the terms of the Arrangement pursuant to Section 5.4(b) hereof would result in an Acquisition Proposal not being a Superior Proposal when assessed against the Arrangement as it is proposed to be amended as of immediately prior to the termination of the five Business Day period referred to in Section 5.4(a)(ii) hereof; and (iii) except in the case of a Superior Proposal, Morguard, acting reasonably, deliver a written request for reaffirmation of such recommendation by the Target Board. Morguard will be given a reasonable opportunity to review and comment on the form and content of any such press release.
- (e) Subject to the concluding paragraph of Section 5.4(a) hereof, if the Target Information Circular has been sent to the Target Shareholders prior to the expiry of the five Business Day period set forth in Section 5.4(a)(ii) hereof and, during such period, Morguard requests in writing that the Target Meeting proceeds, unless otherwise ordered by the Court, Target shall continue to take all reasonable actions necessary to hold the Target Meeting and to cause the Arrangement to be voted on at the Target Meeting provided that such obligation shall cease to apply upon termination of this Agreement in accordance with Section 9.1 hereof and payment of the Termination Fee, if applicable, pursuant to Section 9.3 hereof.

### **Section 5.5 Responsibility for Breaches**

Target shall ensure that each of its Representatives and the Target Subsidiaries' Representatives are aware of the provisions of this Article 5, and Target shall be liable and responsible for any breach of this Article 5 by any such Representatives.

## **ARTICLE 6 OTHER COVENANTS**

### **Section 6.1 Notification of Certain Matters**

Each Party shall give prompt notice to the other Parties of:

- (a) the receipt of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions;
- (b) the receipt of any notice or other communication from any Governmental Entity in connection with the Transactions; and

- (c) any proceedings commenced or, to the knowledge of the Party, threatened against, relating to or involving or otherwise affecting Target or a Target Subsidiary or which relates to the consummation of the Transactions;

in each case, to the extent such event or circumstance is or becomes known to the Party required to give such notice; provided, however, that the delivery of any notice pursuant to this Section 6.1 shall not be deemed to be an amendment of this Agreement and shall not cure any breach of any representation or warranty requiring disclosure of such matter prior to the execution and delivery of this Agreement.

## **Section 6.2 Covenant Regarding Information and Access**

Target hereby covenants and agrees with Morguard that, prior to the Effective Date, except with the prior written consent of Morguard or other than as expressly contemplated or permitted by this Agreement:

- (a) except for proxies and other non-substantive communications, Target shall furnish promptly to Morguard a copy of any filings made under any Applicable Law and any dealings or communications with any Governmental Entity, Securities Authority or stock exchange in connection with, or in any way affecting, the Transactions;
- (b) Target shall keep Morguard fully informed as to all material decisions or actions required or required to be made with respect to the operations of the business of Target, unless such matters are in the Ordinary Course of Business; and
- (c) Target will promptly notify Morguard in writing if there has been any Material Adverse Change in respect of Target.

## **Section 6.3 Target Deferred Shares**

- (a) All Target Deferred Shares outstanding immediately prior to the Effective Time shall be exchanged for Target Shares in accordance with the terms of the Target Deferred Shares and the Plan of Arrangement.
- (b) Target shall ensure that, following the Effective Time, no holder of Target Deferred Shares or other stock-based awards (or former holder of any Target Deferred Shares or other stock-based award) or any current or former participant in any Benefit Plan of Target or any of its Affiliates shall have any right thereunder to acquire (or any interest in) any securities of Target or any Target Subsidiaries or any other equity interest therein or any right that has a payment obligation or benefit derived from or based on the value or market price of any such security other than a right to payment for Target Shares in accordance with the terms of the Plan of Arrangement.

## Section 6.4 Regulatory Filings and Approvals

- (a) As soon as reasonably practicable after the date hereof, each Party shall make all necessary or advisable filings, applications and submissions with Governmental Entities under all Applicable Laws in respect of the Transactions. Each Party shall provide such additional information and make or cause to be made such additional filings reasonably required by any Governmental Entity in respect of the Transactions, and shall comply at the earliest practicable date with any request for additional information or documentary material received by Morguard, Target or any of their Affiliates from any Governmental Entity concerning the Transactions.
- (b) Each Party shall use its commercially reasonable efforts to promptly obtain all consents, approvals, authorizations or waivers required to be obtained by it from Governmental Entities in respect of the Transactions (including participating and appearing in any proceedings before Governmental Entities) and to avoid or resolve any suit or threatened suit so as to permit the consummation of the Transactions on a timely basis.
- (c) Notwithstanding anything to the contrary in this Agreement, it is expressly understood and agreed that, in connection with obtaining all consents, approvals, authorizations or waivers required or advisable from Governmental Entities in respect of the Transactions:
  - (i) no Party shall have any obligation to litigate or contest any administrative or judicial action or proceeding or any decree, judgment, injunction, order or other Applicable Law, whether temporary, preliminary or permanent; and
  - (ii) Morguard shall not be under any obligation to enter into consent decrees or submit to orders providing for (A) the sale, divestiture, license or other disposition or holding separate (through the establishment of a trust or otherwise) of any assets or categories of assets of Morguard or any of its Affiliates or Target or any of the Target Subsidiaries, (B) the imposition of any limitation or regulation on the ability of Morguard or any of its Affiliates to freely conduct their business or own such assets, or (C) the holding separate of the Target Shares or any limitation or regulation on the ability of Morguard or any of its Affiliates to exercise full rights of ownership of the Target Shares.
- (d) The Parties shall not agree to participate in any substantive meeting or discussion with any Governmental Entity or any Representative thereof in respect of any filings, investigation or inquiry concerning the Transactions, whether oral or in person, unless it consults with the other Party in advance and, to the extent permitted by any Governmental Entity or any Representative thereof, gives the other Party the opportunity to attend and participate therein; and if that participation is either declined or not permitted, furnishes promptly thereafter a memorandum setting forth the material terms of that meeting or those discussions.

- (e) Subject to Applicable Laws, each Party shall, upon the reasonable request of another Party, use commercially reasonable efforts to furnish such Party with all reasonable information concerning itself, its Affiliates, Representatives and shareholders and such other matters as may be reasonably necessary in connection with any correspondence, filing or communication between them and their Affiliates and their respective Representatives, on the one hand, and any Governmental Entity or any Representative thereof, on the other hand, with respect of this Agreement and the Transactions.
- (f) Subject to Applicable Laws relating to the exchange of information, each Party agrees to furnish the other Party in advance with copies of all correspondence, filings and communications between them and their Affiliates and their respective Representatives, on the one hand, and any Governmental Entity or any Representative thereof, on the other hand, with respect of this Agreement and the Transactions and provide the other Party a reasonable opportunity to comment thereon and agrees to consider those comments in good faith.

### **Section 6.5 Further Assurances**

Subject to the terms and conditions of this Agreement, each Party hereto agrees to cooperate with the other Party in good faith and use commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable (i) to satisfy (or cause the satisfaction of) the conditions, and take all steps, set out in this Agreement, the Plan of Arrangement, the Interim Order and the Final Order to the extent the same is within its control and to consummate and make effective as promptly as is practicable the Transactions, and (ii) for the discharge by each Party hereto of its respective obligations under this Agreement, the Plan of Arrangement, the Interim Order and the Final Order, including its obligations under Applicable Laws, in each case including the execution and delivery of such documents as the other Party hereto may reasonably require.

### **Section 6.6 Securityholder Claims**

Target shall promptly notify Morguard of any claim brought by (or threatened to be brought by) any present, former or purported holder of any securities of Target in connection with the Arrangement or any transactions contemplated thereunder. Target shall consult with Morguard prior to settling any such claim and shall not settle or compromise, or agree to settle or compromise, any such claim without the prior written consent of Morguard, such consent not to be unreasonably withheld or delayed.

### **Section 6.7 Pre-Acquisition Reorganizations**

- (a) Subject to Applicable Laws, Target shall and, where appropriate, shall cause the Target Subsidiaries to use commercially reasonable efforts to effect such reorganizations of the business, operations and assets of Target or any Target Subsidiaries or such other transactions as Morguard may request, acting reasonably, (each a “**Pre-Acquisition Reorganization**”) and cooperate with Morguard and its advisors in order to determine the nature of any Pre-Acquisition Reorganization

that might be undertaken and the manner in which they might most effectively be undertaken; provided, however, that Target shall not be required to carry out any Pre-Acquisition Reorganization which (i) would impede or delay the completion of the Arrangement; (ii) would expose Target (in the event the Arrangement is not completed) to additional Tax liabilities or other adverse Tax consequences that it would not otherwise be exposed to in the absence of completing the Pre-Acquisition Reorganization; (iii) would require Target or any of the Target Subsidiaries to contravene any Applicable Law; or (iv) cannot be unwound in the event the Arrangement is not consummated without adversely affecting Target in any manner that cannot be readily compensated for by a payment of cash. Morguard shall provide written notice to Target of any proposed Pre-Acquisition Reorganization at least 10 Business Days prior to the Effective Time. Upon receipt of such notice, Morguard and Target shall work co-operatively and use commercially reasonable efforts to prepare prior to the Effective Time all documentation necessary and do all such other acts and things as are necessary to give effect to such Pre-Acquisition Reorganization as close as reasonably practicable prior to the Effective Time, or such other time as may be agreed to by Morguard. Morguard acknowledges and agrees that the planning for and implementation of any Pre-Acquisition Reorganization shall not be considered a breach of any covenant under this Agreement and shall not be considered in determining whether a representation or warranty of Target hereunder has been breached. Morguard and Target shall work cooperatively and use commercially reasonable efforts to prepare prior to the Effective Time all documentation necessary and do such other acts and things as are necessary to give effect to such Pre-Acquisition Reorganization. Morguard will promptly reimburse Target or any Target Subsidiary, as the case may be, for all reasonable Losses, liabilities and adverse consequences resulting from, or costs and expenses (including reasonable legal fees and disbursements) incurred in connection with any proposed Pre-Acquisition Reorganization or the unwinding of a Pre-Acquisition Reorganization.

- (b) Target will not, and will cause the Target Subsidiaries not to, undertake any reorganization or enter into any transactions or series of transactions that would be reasonably likely to have the effect of preventing Morguard from obtaining the benefit of a full tax cost “bump” pursuant to paragraphs 88(1)(c) and (d) of the Tax Act in respect of the non-depreciable capital properties owned by Target and the Target Subsidiaries as of the date of this Agreement or acquired by such entities subsequent to the date of this Agreement in accordance with the terms of this Agreement, without first consulting with, and obtaining the approval of, Morguard on the same. Without limiting the generality of the foregoing, Target acknowledges that Morguard may enter into transactions designed to step up the tax basis in certain capital property of Target for purposes of the Tax Act and agrees to use commercially reasonable efforts to provide information reasonably required by Morguard in this regard on a timely basis and to assist in the obtaining of any such information in order to facilitate a successful completion of such transactions or any such other reorganizations or transactions as is reasonably requested by

Morguard; provided that any reasonable expenses incurred by Target in providing such information shall be promptly reimbursed by Morguard.

## **ARTICLE 7 CONDITIONS PRECEDENT**

### **Section 7.1 Mutual Conditions Precedent of Target and Morguard**

The respective obligations of Morguard and Target to complete the Arrangement shall be subject to the satisfaction, at or before the Effective Time, of the following conditions precedent, each of which may only be waived, in whole or in part, by mutual consent of Morguard and Target:

- (a) the Interim Order shall have been granted in form and substance satisfactory to the Parties hereto, acting reasonably, and shall not have been set aside or modified in a manner unacceptable to the Parties hereto, acting reasonably, on appeal or otherwise;
- (b) the Target Shareholder Approval shall have been obtained at the Target Meeting in accordance with the provisions of the Interim Order;
- (c) the Final Order shall have been granted in form and substance satisfactory to the Parties hereto, acting reasonably, and shall not have been set aside or modified in a manner unacceptable to the Parties hereto, acting reasonably, on appeal or otherwise;
- (d) no Governmental Entity shall have after the date of this Agreement enacted, issued, promulgated, made, enforced or entered, any Applicable Law (whether temporary, preliminary or permanent) that restrains, enjoins or otherwise prohibits consummation of, or dissolves, the Arrangement; and
- (e) this Agreement shall not have been terminated pursuant to Article 9 hereof.

### **Section 7.2 Conditions Precedent to Obligations of Target**

The obligation of Target to complete the Arrangement is subject to the satisfaction, on or before the Effective Time, of each of the following conditions, which conditions are for the sole benefit of Target and may be waived by Target in whole or in part by notice in writing to Morguard without prejudice to the rights of Target to rely on any other condition:

- (a) Morguard shall have performed or complied in all material respects with all of its respective obligations, covenants and agreements contained in this Agreement to be performed or complied with by it at or prior to the Effective Time, except to the extent that such non-compliance does not have an adverse effect on Morguard's ability to complete the Transactions in accordance with the provisions of this Agreement;

- (b) the representations and warranties made by Morguard in this Agreement that are qualified by materiality shall be true and correct as of the Effective Time as if made on and as of such date (except to the extent that such representations and warranties speak as of an earlier date, in which event such representations and warranties shall be true and correct as of such earlier date), and all other representations and warranties made by Morguard in this Agreement that are not so qualified shall be true and correct in all material respects as of the Effective Date as if made on and as of such date (except to the extent that such representations and warranties speak as of an earlier date, in which event such representations and warranties shall be true and correct as of such earlier date), in either case, except where the failure to be so true and correct in all respects, individually or in the aggregate, could not be reasonably expected to prevent or impede, restrict or delay consummation of the Arrangement;
- (c) Target shall have received a certificate of Morguard confirming the matters described in Section 7.2(a) and Section 7.2(b) addressed to Target and dated the Effective Date, signed on behalf of Morguard (and without personal liability) by two senior executive officers of Morguard; and
- (d) Morguard shall have complied with its obligations under Section 2.9.

### **Section 7.3 Conditions Precedent to Obligations of Morguard**

The obligation of Morguard to complete the Arrangement is subject to the satisfaction of each of the following conditions on or before the Effective Time, which conditions are for the sole benefit of Morguard and may be waived by Morguard in whole or in part by notice in writing to Target without prejudice to the rights of Morguard to rely on any other condition:

- (a) there shall not have been any event, change, occurrence or state of facts that, either individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect on Target;
- (b) Target shall have performed or complied in all material respects with all of its obligations, covenants and agreements contained in this Agreement to be performed or complied with by it at or prior to the Effective Time;
- (c) the representations and warranties made by Target in this Agreement that are qualified by the expression “Material Adverse Change” or “Material Adverse Effect” shall be true and correct as of the Effective Time as if made on and as of such date (except to the extent that such representations and warranties speak as of an earlier date, in which event such representations and warranties shall be true and correct as of such earlier date), and all other representations and warranties made by Target in this Agreement that are not so qualified shall be true and correct in all material respects as of the Effective Date as if made on and as of such date (except to the extent that such representations and warranties speak as of an earlier date, in which event such representations and warranties shall be true and correct as of such earlier date);

- (d) Morguard shall have received a certificate of Target confirming the matters described in Section 7.3(a), Section 7.3(b) and Section 7.3(c) addressed to Morguard and dated the Effective Date, signed on behalf of Target (and without personal liability) by two senior executive officers of Target;
- (e) the Armoyan Support Agreement shall not have been terminated; and
- (f) (i) all consents, waivers, permits, exemptions, orders and approvals of, and any registrations and filings with, any Governmental Entity and the expiry of any waiting periods, in connection with, or required to permit, the completion of the Arrangement and (ii) all third Person and other consents, waivers, permits, exemptions, orders, approvals, agreements and amendments, supplements and modifications to agreements, indentures or arrangements, the failure of which to obtain or the non-expiry of which, either individually or in the aggregate would, or could reasonably be expected to materially impede the completion of the Arrangement or have a Material Adverse Effect on Target, in each case considered necessary or desirable by Morguard, acting reasonably, shall have been obtained or received on terms that are reasonably satisfactory to Morguard.

#### **Section 7.4 Notice and Cure Provisions**

Each Party hereto shall give prompt notice to the other Party hereto of the occurrence, or failure to occur, at any time from the date hereof until the Effective Date, of any event or state of facts which occurrence or failure would be likely to:

- (a) cause any of the representations or warranties of such Party hereto contained herein to be untrue or inaccurate in any material respect between the date hereof and the Effective Date;
- (b) result in the failure to comply with or satisfy any covenant or agreement to be complied with or satisfied by such Party hereto prior to the Effective Date; or
- (c) result in the failure to satisfy any of the conditions precedent in favour of the other Parties hereto contained in Sections 7.1, 7.2 or 7.3 hereof, as the case may be.

Subject to the provisions hereof, a Party hereto may elect not to complete the Arrangement pursuant to the conditions contained in Sections 7.1, 7.2 or 7.3 hereof in favour of such Party hereto or exercise any termination right arising therefrom; provided, however, that:

- (d) promptly and in any event prior to the Effective Date, the Party hereto intending to rely thereon has delivered a written notice to the other Party hereto specifying in reasonable detail the breaches of covenants or untruthfulness or inaccuracy of representations and warranties or other matters which the Party hereto delivering such notice is asserting as the basis for the exercise of the termination right, as the case may be; and

- (e) if any such notice is delivered, and a Party hereto is proceeding diligently, at its own expense, to cure such matter, if such matter is susceptible to being cured, the Party hereto which has delivered such notice may not terminate this Agreement until the earlier of the Termination Deadline and the expiration of a period of 14 days from the date of delivery of such notice, provided that, if such notice has been delivered prior to the date of the Target Meeting, the Target Meeting shall be adjourned or postponed until the expiry of such period.

### **Section 7.5 Merger of Conditions**

The conditions set out in Sections 7.1, 7.2 or 7.3 hereof shall be conclusively deemed to have been satisfied, fulfilled or waived upon the issue of a certificate of arrangement by the Director in respect of the Arrangement. Target hereby acknowledges and agrees that it shall not file the Articles of Arrangement with the Director unless such conditions have been satisfied, fulfilled or waived and Morguard has consented in writing to such filing of the Articles of Arrangement.

## **ARTICLE 8 INSURANCE**

Morguard hereby covenants and agrees to maintain all current rights to indemnification or exculpation in favour of the current and former directors and officers of Target provided in the articles or by-laws of Target, or any agreement and any directors and officers insurance now existing in favour of the directors or officers of Target. Prior to the Effective Date, Target shall, at its expense, take all action deemed appropriate or necessary for the continuance (or replacement with substantially equivalent coverage from another provider) of insurance in respect of such rights (either directly or via run-off insurance or insurance provided by an alternative provider) for a period of not less than six years after the Effective Date, provided that Target shall have consulted with Morguard as to the pricing and scope of such insurance and shall have provided a copy of such insurance policy to Morguard as soon as practicable.

## **ARTICLE 9 TERMINATION AND AMENDMENT**

### **Section 9.1 Rights of Termination**

This Agreement may be terminated at any time prior to the Effective Date:

- (a) by the mutual written consent and agreement of Target and Morguard;
- (b) by Morguard if (i) the Target Board shall have withdrawn or modified in a manner adverse to Morguard its approval or recommendation of the Arrangement or failed to affirm such approval or recommendation (including as contemplated by Sections 5.1 and 5.4 hereof); or (ii) the Target Board shall have approved or recommended an Acquisition Proposal;

- (c) by Target in order to enter into a definitive written agreement with respect to a Superior Proposal, subject to compliance with Section 5.4 hereof and payment of the Termination Fee pursuant to Section 9.3;
- (d) by Target or Morguard if the Target Shareholder Approval is not obtained at the Target Meeting;
- (e) by Morguard if Target shall have failed to hold the Target Meeting on or before February 29, 2020 unless such failure results from (i) the failure to obtain an Interim Order despite Target's compliance with Section 2.3 hereof; (ii) delays in obtaining all required regulatory approvals that are beyond the control of Target; (iii) an adjournment or postponement of the Target Meeting pursuant to Section 5.4(a) hereof; or (iv) an adjournment of the Target Meeting pursuant to Section 7.4(e) hereof;
- (f) by Morguard if there is a breach by Target or any of the Target Subsidiaries or any of their respective Representatives of any of the covenants provided in Section 4.1(p), Section 5.1 or Section 5.4 hereof, in each case, prior to the Effective Date;
- (g) subject to Section 7.4 hereof, by Morguard if Morguard is not in material breach of its obligations under this Agreement in a manner that would cause any of the conditions in Section 7.1 or Section 7.2 hereof to not be satisfied, and Target breaches any of its representations, warranties, covenants or agreements contained in this Agreement, which breach would give rise to the failure of a condition set forth in Section 7.1 or Section 7.3 hereof; or
- (h) subject to Section 7.4 hereof, by Target if Target is not in material breach of its obligations under this Agreement in a manner that would cause any of the conditions in Section 7.1 or Section 7.3 hereof to not be satisfied, and Morguard breaches any of their representations, warranties, covenants or agreements contained in this Agreement, which breach would give rise to the failure of a condition set forth in Section 7.1 or Section 7.2 hereof.

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give notice of such termination to the other Party, specifying in reasonable detail the basis for such Party's exercise of its termination right and if applicable shall comply with Section 7.4.

## **Section 9.2 Termination Deadline**

If the Effective Date does not occur on or before the Termination Deadline, this Agreement will terminate on notice by a Party hereto to the other Party hereto. The right to terminate this Agreement under this Section 9.2 shall not be available to any Party hereto whose action or failure to act has been a principal cause of or resulted in the failure of the Effective Date to occur on or before the Termination Deadline and such action or failure to act constitutes a breach of this Agreement.

### Section 9.3 Termination Fee

If:

- (a) Morguard shall terminate this Agreement pursuant to Section 9.1(b) hereof;
- (b) Target shall terminate this Agreement pursuant to Section 9.1(c) hereof;
- (c) either of Morguard or Target shall terminate this Agreement pursuant to Section 9.1(d) in circumstances where a *bona fide* Acquisition Proposal has been publicly announced or made publicly by any Person other than Morguard or an Affiliate of Morguard prior to the Target Meeting and not publicly withdrawn more than ten Business Days prior to the Target Meeting, and (i) Target enters into an agreement with respect to that Acquisition Proposal, or (ii) an Acquisition Proposal is completed after the date of this Agreement and prior to the expiration of 12 months following the termination of this Agreement;
- (d) Morguard shall terminate this Agreement pursuant to Section 9.1(e) hereof; or
- (e) Morguard shall terminate this Agreement pursuant to Section 9.1(f) hereof;

then in any such case Target shall pay or cause to be paid to Morguard a termination fee (the “**Termination Fee**”) of \$1,250,000, in immediately available funds by wire transfer to an account designated by Morguard. In the circumstances set forth in Section 9.3(a), (b), (d) or (e) above, the Termination Fee shall be payable at the time of termination and, in the circumstances set forth in Section 9.3(c) above, the Termination Fee shall be payable within three Business Days following the earlier of the date on which Target enters into an agreement in respect of an Acquisition Proposal or the date on which Target consummates an Acquisition Proposal. Target shall not be obligated to make more than one payment pursuant to this Section 9.3. Target hereby acknowledges that the payment amount set out in this Section 9.3 is a payment of liquidated damages which is a genuine pre-estimate of the damages which Morguard will suffer or incur as a result of the event giving rise to such damages and the resultant non-completion of the Arrangement and is not a penalty. Target hereby irrevocably waives any right it may have to raise as a defence that any such liquidated damages are excessive or punitive. Morguard agrees that the payment of the Termination Fee, in accordance with this Section 9.3, is its sole monetary remedy in respect of the event giving rise to the payment (subject to Section 9.4). Nevertheless, the Parties shall also have the right to injunctive relief and other equitable relief in accordance with Section 9.5 to prevent breaches or threatened breaches of this Agreement and to enforce compliance with the terms of this Agreement. Notwithstanding the foregoing, nothing in this Section 9.3 shall relieve any Party to this Agreement of liability for wilful, knowing or intentional breach. The Parties further acknowledge and agree that for the purposes of Section 9.3(c), all references to “20%” in the definition of “Acquisition Proposal” shall be changed to “50%”.

### Section 9.4 Miscellaneous Termination Fee Matters

- (a) In the event that Target terminates this Agreement at a time when Morguard would have had the right to terminate this Agreement and be entitled hereunder to receive the Termination Fee, Morguard shall be entitled to receipt of the Termination Fee

that would have been (or would have subsequently become) payable had Morguard terminated this Agreement at such time unless, at the time of such termination, Morguard was in breach of its obligations hereunder.

- (b) If Target fails to pay the Termination Fee when due hereunder, and, in order to obtain such payment, Morguard commences any action that results in a judgment or decision against Target for such amount, Target shall pay the reasonable costs and expenses (including fees and expenses of legal counsel) incurred by Morguard in connection with such action.

## **Section 9.5 Remedies**

The Parties hereto acknowledge and agree that an award of money damages may be inadequate for any breach of this Agreement by any Party hereto or its Representatives and advisors and that such breach may cause the non-breaching Party hereto irreparable harm. Accordingly, the Parties hereto agree that, in the event of any such breach or threatened breach of this Agreement by one of the Parties hereto, Morguard (if Target is the breaching Party) or Target (if Morguard is the breaching Party) will be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including injunctive relief and specific performance. Subject to any other provision hereof including, without limitation, Section 9.3 hereof, such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available hereunder or at law or in equity to each of the Parties hereto.

## **ARTICLE 10 GENERAL**

### **Section 10.1 Amendment**

This Agreement and the Plan of Arrangement may, at any time and from time to time before or after the holding of the Target Meeting but not later than the Effective Time, be amended by mutual written agreement of the Parties hereto, and any such amendment may, subject to the Interim Order and the Final Order and Applicable Law, without limitation:

- (a) change the time for the performance of any of the obligations or acts of either of the Parties hereto;
- (b) waive any inaccuracies or modify any representations or warranty contained herein or in any document delivered pursuant hereto;
- (c) waive compliance with or modify any of the covenants herein contained and waive or modify the performance of any of the obligations of either of the Parties hereto; or
- (d) waive compliance with or modify any conditions precedent contained herein.

## Section 10.2 Waiver

At any time prior to the Effective Date, any Party hereto may, by written instrument:

- (a) extend the time for the performance of the obligations or other acts of the other Parties hereto; or
- (b) waive compliance with any of the covenants or agreements of the other Parties hereto or with any conditions to its own obligations, but in each case only to the extent such obligations, agreements and conditions are intended for its benefit;

provided, for greater certainty, any waiver or release of any of the provisions of this Agreement, to be effective, must be in writing executed by the Party hereto granting such waiver or release. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

## Section 10.3 Notice

Any notice or other communication that is required or permitted to be given hereunder shall be in writing and shall be validly given if delivered in person (including by courier service) or transmitted by electronic transmission to such Party, as follows:

- (a) To Target:

Temple Hotels Inc.  
55 City Centre Drive, Suite 1000  
Mississauga, Ontario L5B 1M3

Attention: Eugene Hretzay, Secretary  
E-mail: [ehretzay@morguard.com](mailto:ehretzay@morguard.com)

With a copy (which shall not constitute notice to Target) to:

MLT Aikins LLP  
30th Floor, 360 Main Street  
Winnipeg, Manitoba R3C 4G1

Attention: David C. Filmon  
E-mail: [dfilmon@mltaikins.com](mailto:dfilmon@mltaikins.com)

- (b) To Morguard:

Morguard Corporation  
55 City Centre Drive, Suite 1000  
Mississauga, Ontario L5B 1M3

Attention: Beverley G. Flynn, Senior Vice President, General Counsel

E-mail: [bflynn@morguard.com](mailto:bflynn@morguard.com)

With a copy (which shall not constitute notice to Morguard) to:

McMillan LLP  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, Ontario M5J 2T3

Attention: Paul Davis  
E-mail: [paul.davis@mcmillan.ca](mailto:paul.davis@mcmillan.ca)

or at such other address or e-mail address, as may be given by either of them to the other in writing from time to time and such other notices or communications will be deemed to have been received when delivered personally or by e-mail.

#### **Section 10.4 No Assignment and Binding Effect**

This Agreement may not be assigned by any Party hereto without the prior written consent of the other Parties hereto, except that Morguard, upon prior written notice to Target, may assign, in its sole discretion, any of or all its rights, interests and obligations under this Agreement to any direct or indirect wholly-owned Subsidiary, but no such assignment shall (A) relieve Morguard of any of its obligations hereunder; (B) materially impede or delay the consummation of the Transactions; or (C) adversely impact the tax consequences of the Transaction on Target Shareholders other than Morguard. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns.

#### **Section 10.5 Public Statements**

No Party hereto shall make any announcement regarding the Transactions which has not been previously reviewed and agreed to by the other Parties hereto, except that any Party hereto may issue a press release or make a filing with a regulatory authority if counsel for such Party hereto advises that such press release or filing is necessary in order to comply with Applicable Laws or the rules and policies of any stock exchange, in which case such Party hereto will: (i) provide prior notice to the other Parties as to the content and distribution of such press release or filing; (ii) use reasonable commercial efforts to provide the other Parties with a reasonable opportunity to consult and comment in respect of such content and distribution; and (iii) make a reasonable effort to obtain the approval of the other Parties.

#### **Section 10.6 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties hereto and supersedes all other prior agreements, negotiations, discussions, understandings and undertakings, both written and oral, between the Parties hereto relating to the subject matter hereof.

### **Section 10.7 Time of Essence**

Time shall be of the essence in this Agreement.

### **Section 10.8 Severability**

If any provision of this Agreement, or the application thereof, is determined for any reason and to any extent to be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons and circumstances shall remain in full force and effect, provided that the legal or economic substance of the Transactions is not thereby affected in a manner adverse to either of the Parties hereto.

### **Section 10.9 Fees and Expenses**

Subject to Sections Section 6.7, 9.3 and 9.4 hereof, each Party hereto shall be responsible for its own fees and expenses relating to the Transactions including, without limitation, regulatory fees and fees of professional advisers, including legal counsel and auditors.

### **Section 10.10 Further Assurances**

The Parties hereto will do all such further acts and things and will execute such further documents and agreements as may be necessary to give effect to the terms and conditions of this Agreement.

### **Section 10.11 Governing Law**

This Agreement shall be governed by, and be construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein but the reference to such laws shall not, by conflict of laws rules or otherwise, require the application of the law of any jurisdiction other than the Province of Ontario and the federal laws of Canada applicable therein.

### **Section 10.12 No Third Party Beneficiaries**

Except as provided in Article 8 hereof, this Agreement is not intended to confer on any Person other than the Parties any rights or remedies.

### **Section 10.13 Counterparts**

This Agreement may be executed by facsimile or in pdf form by other electronic means and in counterpart, no one copy of which need be executed by the Parties. A valid and binding contract shall arise if and when counterpart execution pages (including those delivered by facsimile or in pdf form by other electronic means) are executed and delivered by the Parties.

*[Signature page follows]*

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the date first above written.

**MORGUARD CORPORATION**

By: "Beverley G. Flynn"

Name: Beverley G. Flynn

Title: Senior Vice President

By: "Paul Miatello"

Name: Paul Miatello

Title: Chief Financial Officer

**TEMPLE HOTELS INC.**

By: "Donald W. Turple"

Name: Donald W. Turple

Title: Director

## **Schedule A – Plan of Arrangement**

**PLAN OF ARRANGEMENT UNDER SECTION 192  
OF THE *CANADA BUSINESS CORPORATIONS ACT***

**1. INTERPRETATION**

- (a) **Definitions:** In this Plan of Arrangement, unless the context otherwise requires, the following words and terms shall have the meaning hereinafter set forth below. Capitalized terms used herein and not otherwise defined have the respective meanings ascribed to them in the Arrangement Agreement:

**“Acquirer”** means Morguard Corporation, a corporation existing under the laws of Canada;

**“Arrangement”** means the arrangement under the provisions of Section 192 of the CBCA, on the terms and conditions set forth in this Plan of Arrangement, subject to any amendment or supplement thereto made in accordance with the Arrangement Agreement and the provisions hereof or made at the direction of the Court in the Final Order with the consent of Target and Acquirer, each acting reasonably;

**“Arrangement Agreement”** means the arrangement agreement dated December 19, 2019 between Acquirer and Target to which this Plan of Arrangement is attached as Schedule A, as supplemented, modified or amended;

**“Arrangement Resolution”** means the resolutions approving the Arrangement to be considered at the Target Meeting;

**“Articles of Arrangement”** means the articles of arrangement of Target in respect of the Arrangement required by the CBCA to be filed with the Director after the Final Order is made, which shall include this Plan of Arrangement and otherwise be in a form and content satisfactory to Target and Acquirer, each acting reasonably;

**“Business Day”** means any day, other than a Saturday or Sunday, upon which banks in Toronto, Ontario, Canada are open for business;

**“CBCA”** means the *Canada Business Corporations Act*;

**“Certificate of Arrangement”** means the certificate of arrangement to be issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement;

**“Consideration”** means \$2.10 in cash per Target Share;

**“Court”** means the Ontario Superior Court of Justice (Commercial List);

**“Depository”** means any trust company, bank or financial institution agreed to in writing by Acquirer and Target for the purpose of disbursing Consideration in accordance with the terms of the Arrangement;

**“Director”** means the Director appointed pursuant to Section 260 of the CBCA;

**“Dissent Procedures”** means the procedures set forth in Section 190 of the CBCA, as may be modified by the Interim Order, and Section 4 of this Plan of Arrangement, which are required to be taken by a registered Target Shareholder to exercise the right of dissent in respect of Target Shares in connection with the Arrangement;

**“Dissent Rights”** means the right of a registered Target Shareholder to dissent to the Arrangement Resolution and to be paid the fair value of the Target Shares in respect of which the holder dissents, all in accordance with the Interim Order and Section 4 hereof;

**“Dissent Shares”** has the meaning ascribed thereto in Section 3(a)(ii);

**“Dissenting Target Shareholder”** means a registered Target Shareholder who has duly exercised a Dissent Right in strict compliance with the Dissent Procedures;

**“Effective Date”** means the date shown on the Certificate of Arrangement giving effect to the Plan of Arrangement;

**“Effective Time”** means 12:01 a.m., Toronto time, on the Effective Date, or such other time in Toronto, Ontario on the Effective Date as Target and Acquirer, each acting reasonably, may agree in writing prior to the Effective Date;

**“Encumbrance”** means any mortgage, hypothec, pledge, assignment, charge, lien, claim, security interest, adverse interest, other third person interest or encumbrance of any kind, whether contingent or absolute, and any agreement, option, right or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, and **“Encumber”** means to create an Encumbrance;

**“Final Order”** means the final order of the Court approving the Arrangement, as such order may be amended, modified, supplemented or varied by the Court (with the consent of Target and Acquirer, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn, abandoned or denied, as affirmed or as amended (provided that any such amendment is acceptable to Target and Acquirer, each acting reasonably) on appeal;

**“Former Target Shareholders”** means a Target Shareholder immediately prior to the Effective Time and any Person who surrenders to the Depository

certificates representing Target Shares duly endorsed for transfer in accordance with the provisions set forth in the Letter of Transmittal, in each case other than a Dissenting Target Shareholder and Acquirer but including holders of the Target Deferred Shares;

**“Interim Order”** means the interim order of the Court providing for, among other things, the calling and holding of the Target Meeting, as such order may be amended, supplemented or varied by the Court (with the consent of Acquirer and Target);

**“Letter of Transmittal”** means the letter of transmittal contemplated pursuant to which Target Shareholders are required to deliver certificates representing Target Shares, and other documents as may be reasonably required by the Depositary, in order to receive the Consideration payable to them pursuant to the Arrangement;

**“Person”** means any individual, corporation, firm, partnership (including, without limitation, a limited partnership), sole proprietorship, syndicate, joint venture, trustee, trust, any unincorporated organization or association, any government or instrumentality thereof and any tribunal;

**“Plan of Arrangement”** means this plan of arrangement as amended or supplemented from time to time in accordance with the terms hereof and the Arrangement Agreement, or at the direction of the Court;

**“Target”** means Temple Hotels Inc., a corporation existing under the laws of Canada;

**“Target Deferred Share Plan”** means the amended and restated deferred share plan of Target dated June 30, 2015, which expired on June 25, 2018;

**“Target Deferred Shares”** means deferred shares of Target granted pursuant to the Target Deferred Share Plan;

**“Target Meeting”** means the annual and special meeting of Target Shareholders, including any adjournment or adjournments or postponement or postponements thereof, to be held for the purpose of obtaining approval by Target Shareholders of the Arrangement Resolution;

**“Target Securities”** means, collectively, Target Shares, Target Deferred Shares and any other shares or securities of any nature heretofore issued by Target from time to time;

**“Target Shareholder”** means a holder of Target Shares;

**“Target Shares”** means the common shares in the capital of Target; and

“**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time.

- (b) Interpretation Not Affected by Headings. The headings contained in this Plan of Arrangement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Plan of Arrangement. The terms “this Plan of Arrangement”, “hereof”, “herein”, “hereto”, “hereunder” and similar expressions refer to this Plan of Arrangement and not to any particular article, section, subsection, paragraph, subparagraph, clause or sub-clause hereof and include any agreement or instrument supplementary or ancillary hereto.
- (c) Date for any Action. If the date on which any action is required to be taken hereunder is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.
- (d) Number and Gender. In this Plan of Arrangement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders and neuter.
- (e) References to Persons and Statutes. A reference to a Person includes any successor to that Person. A reference to any statute includes all regulations made pursuant to such statute and the provisions of any statute or regulation which amends, supplements or supersedes any such statute or regulation.
- (f) Currency. Unless otherwise stated in this Plan of Arrangement, all references herein to amounts of money are expressed in lawful money of Canada.
- (g) Governing Law. This Plan of Arrangement shall be governed, including as to validity, interpretation and effect, by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## **2. ARRANGEMENT AGREEMENT**

This Plan of Arrangement is made pursuant to and subject to the provisions of the Arrangement Agreement. This Plan of Arrangement will become effective at the Effective Time and will be binding at and after the Effective Time on Acquirer, Target, the Depositary, Dissenting Target Shareholders and the registered and beneficial holders of the Target Securities.

## **3. THE ARRANGEMENT**

- (a) The Arrangement. Commencing at the Effective Time, the following shall occur and be deemed to occur in the following order without any further act or formality and, except as otherwise noted in this Section 3, with each transaction or event being deemed to occur immediately after the occurrence of the transaction or event immediately preceding it:

- (i) each Target Deferred Share outstanding immediately prior to the Effective Time, notwithstanding the terms of the Target Deferred Shares, shall without any further action by or on behalf of the holders of the Target Deferred Shares, be exchanged for Target Shares on a one-to-one basis and (A) the holders of such Target Deferred Shares shall cease to be the holders thereof, and to have any rights as holders of such Target Deferred Shares; (B) such holders' name shall be removed from the register of the Target Deferred Shares maintained by or on behalf of Target; and (C) such holders will be deemed to be the holders of such Target Shares on the Effective Date and will be entered in Target's register of holders of Target Shares as the registered holders of such Target Shares and shall be deemed the legal and beneficial owner thereof;
- (ii) the Target Shares held by Dissenting Target Shareholders who have exercised Dissent Rights which remain valid immediately before the Effective Time ("**Dissent Shares**") shall, as of the Effective Time, be deemed to have been transferred to Acquirer (free and clear of any Encumbrances of any nature whatsoever) and Acquirer shall thereupon be obligated to pay the amount therefor determined and payable in accordance with Section 4 hereof and, as of the Effective Time, such Dissenting Target Shareholders shall cease to have any rights as Target Shareholders, other than the right to be paid the fair value of their Target Shares by Acquirer in accordance with the Dissent Rights and the name of each such Dissenting Target Shareholder shall be removed from the register of Target Shareholders maintained by or on behalf of Target;
- (iii) each issued and outstanding Target Share (including, for greater certainty, the Target Shares issued pursuant to the exchange of Target Deferred Shares pursuant to Section 3(a)(i)), other than those Target Shares acquired from a Dissenting Target Shareholder pursuant to Section 3(a)(ii) and those Target Shares held by Acquirer, shall be, and shall be deemed to be, transferred to, and acquired by, Acquirer (free and clear of any Encumbrance) in exchange for the Consideration;
- (iv) each Former Target Shareholder shall cease to be a holder of the Target Shares so transferred and the names of each such Former Target Shareholder shall be removed from the register of Target Shareholders maintained by or on behalf of Target as it relates to the Target Shares so transferred, and Acquirer shall become the holder of the Target Shares so transferred; and
- (v) Target shall make an election to cease to be a "public corporation" under section 89(1) of Tax Act.

#### **4. RIGHTS OF DISSENT**

Each registered Target Shareholder shall be entitled to exercise Dissent Rights with respect to the Target Shares pursuant to and in the manner set forth in Section 190 of the CBCA as modified by the Interim Order and this Section 4; provided that, notwithstanding subsection 190(5) of the CBCA, the written objection to the Arrangement Resolution referred to in subsection 190(5) of the CBCA must be received by Target not later than 5:00 p.m., Toronto time, on the Business Day that is two Business Days prior to the date of the Target Meeting (as it may be adjourned or postponed from time to time) and must strictly comply with all other provisions of Section 190 of the CBCA as modified by the Interim Order.

If the Arrangement is concluded, a registered Target Shareholder who exercises Dissent Rights in strict compliance with the Dissent Procedures shall be entitled to be paid by Acquirer the fair value of the Target Shares held by such Dissenting Target Shareholder in respect of which such Dissenting Target Shareholder dissents, determined as provided for in the CBCA, as modified by the Interim Order and this Section 4. Any such Dissenting Target Shareholder who exercises Dissent Rights and who:

- (a) is ultimately entitled to be paid fair value for its Target Shares will be deemed to have transferred such Target Shares (free and clear of all Encumbrances) to Acquirer in accordance with Section 3(a)(ii) in consideration for a right to receive a payment for such fair value from Acquirer and will not be entitled to any other payment or consideration, including any payment that would be payable under the Plan of Arrangement had such holder not exercised its Dissent Rights in respect of such Target Shares; or
- (b) is ultimately not entitled, for any reason, to be paid fair value for its Target Shares in respect of which they dissent, will be deemed to have participated in the Arrangement in respect of those Target Shares, on the same basis as a non-dissenting Target Shareholder (other than Acquirer) and will be entitled to receive only the Consideration that such non-dissenting Target Shareholders are entitled to receive, on the basis set forth in Section 3(a)(iii) and, for greater certainty, will be considered to have transferred such Target Shares in exchange for the Consideration pursuant to, and at the same time as the Target Shares were transferred by the other Former Target Shareholders pursuant to Section 3(a)(iii).

In no case shall Acquirer, Target, or any other Person be required to recognize a Dissenting Target Shareholder as a registered or beneficial owner of Target Shares or any interest therein (other than the rights set out in this Section 4) at or after the Effective Time, and at the Effective Time the names of such Dissenting Target Shareholders shall be removed from the share register of Target and Acquirer shall be recorded as the registered holder of such Target Shares.

For greater certainty, in addition to any other restrictions in the Interim Order or under Section 190 of the CBCA, no Person will be entitled to exercise Dissent Rights with respect to Target Shares in respect of which a Person has voted in favour of the Arrangement Resolution.

## 5. DELIVERY OF CASH

- (a) Deposit. At least one Business Day prior to the Effective Date, in accordance with the Arrangement Agreement, Acquirer shall deposit or cause to be deposited with the Depositary, for the benefit of the Former Target Shareholders cash in an amount equal to the Consideration payable to Former Target Shareholders pursuant to Section 3(a)(iii).
- (b) Letter of Transmittal. The Depositary will forward to each Target Shareholder other than Acquirer, at the address of such Target Shareholder as it appears on the register for Target Shares, a Letter of Transmittal and instructions for obtaining delivery of the aggregate Consideration payable to such Target Shareholder.
- (c) Entitlement to Consideration.
  - (i) Acquirer and Target shall cause the Depositary, as soon as practicable following the later of the Effective Date and the date of deposit with the Depositary of a duly completed Letter of Transmittal and the certificates representing the Target Shares or other documentation as provided in the Letter of Transmittal, to:
    - (1) forward or cause to be forwarded by first class mail (postage prepaid) to the Former Target Shareholders at the address specified in the Letter of Transmittal;
    - (2) if requested by the Former Target Shareholders in the Letter of Transmittal, make available at the Depositary for pick-up by the Former Target Shareholders; or
    - (3) if the Letter of Transmittal neither specifies an address nor contains a request as described in (2) above, forward or cause to be forwarded by first class mail (postage prepaid) to the Former Target Shareholders at the address of such Former Target Shareholders as shown on the share register maintained by Target as at the Effective Time,a cheque representing the cash payment payable to such Former Target Shareholders to such Former Target Shareholders as determined in accordance with the provisions hereof.
  - (ii) No Former Target Shareholder shall be entitled to receive any consideration with respect to the Target Shares, other than the Consideration which they are entitled to receive in accordance with this Plan of Arrangement and, for greater certainty, no Former Target Shareholder will be entitled to receive any interest, dividends, premium or other payment in connection therewith.

- (iii) After the Effective Time and until surrendered as contemplated by Section 5(c)(i) hereof, each certificate that immediately prior to the Effective Time represented one or more Target Shares shall be deemed at all times to represent only the right to receive in exchange therefor the Consideration to which the holder of such certificate is entitled to receive in accordance with Section 5(c)(i) hereof.
- (d) Other Target Securities. At the Effective Time, each and every certificate, document, agreement or other instrument, if any, formerly representing any and all other Target Securities or that represents or may be exercised for, or converted into, shares or other securities of Target shall be and shall be deemed to be cancelled, void and of no further force and effect without any further authorization, act or formality.
- (e) Lost Certificates. In the event that any certificate which immediately prior to the Effective Time represented one or more Target Shares which were exchanged for Consideration in accordance with Sections 3 and 5 hereof shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the holder claiming such certificate to be lost, stolen or destroyed, the Depositary shall deliver in exchange for such lost, stolen or destroyed certificate, the Consideration which such Target Shareholder is entitled to receive in accordance with Sections 3 and 5 hereof. When authorizing such delivery of cash which such Target Shareholder is entitled to receive in exchange for such lost, stolen or destroyed certificate, the Target Shareholder to whom cash is to be delivered shall, as a condition precedent to the delivery of such consideration, give a bond satisfactory to Acquirer, Target and the Depositary in such amount as Acquirer, Target and the Depositary may reasonably direct, or otherwise indemnify Acquirer, Target and the Depositary in a manner satisfactory to Acquirer, Target and the Depositary, against any claim that may be made against Acquirer, Target or the Depositary with respect to the certificate alleged to have been lost, stolen or destroyed and shall otherwise take such actions as may be required by the by-laws of Acquirer and Target, as the case may be.
- (f) Termination of Rights. Any certificate formerly representing Target Shares that is not deposited, with all other documents as provided in this Section 5 on or before the sixth anniversary of the Effective Date, shall cease to represent any claim or interest of any kind or nature against Acquirer, Target or the Depositary and will be deemed to have been donated, surrendered and forfeited to Acquirer for no consideration.
- (g) Withholding Rights. Acquirer, Target and the Depositary and any person acting on their behalf shall be entitled to deduct and/or withhold from any consideration payable or otherwise deliverable to any Person pursuant to the Arrangement and from all dividends or other distributions otherwise payable to any former holders of Target Securities such amounts as Acquirer, Target or the Depositary is required to deduct and/or withhold therefrom under any provision of the Tax Act

or any other Applicable Law in respect of taxes including without limitation any amounts payable to Target Dissenting Shareholders or payable in respect of Target Securities. To the extent that such amounts are so deducted, withheld and/or remitted, such amounts shall be treated for all purposes under this Plan of Arrangement as having been paid to the Person to whom such amounts would otherwise have been paid; provided that, with respect to amounts withheld pursuant to the foregoing clause such withheld amounts are actually remitted to the appropriate taxing authority.

- (h) Transfer Free of Claim. Any exchange or transfer of Target Shares pursuant to this Plan of Arrangement shall be free and clear of any Encumbrances or other claims of third parties of any kind.

## **6. DIVIDENDS AND DISTRIBUTIONS**

If, on or after the date of the Arrangement Agreement, Target declares, sets aside or pays any dividend or other distribution payable in cash, securities, property or otherwise with respect to the Target Shares, or sets a record date therefor that is prior to the Effective Time, in either case with the written consent of Acquirer, then the consideration to be received under this Plan of Arrangement shall be adjusted to reflect each such dividend or other distribution by way of a reduction in such consideration by an amount equal to the amount of such dividend or distribution per Target Share.

## **7. AMENDMENT**

- (a) Amendment.

- (i) Acquirer and Target reserve the right to amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, provided that any amendment, modification or supplement must be approved by Acquirer and Target in a written document which is filed with the Court and, if made following the Target Meeting, then approved by the Court, and communicated to the Target Shareholders in the manner required by the Court (if so required).
- (ii) Any amendment, modification or supplement to this Plan of Arrangement, if agreed to by Acquirer, may be made at any time prior to or at the Target Meeting, with or without any other prior notice or communication and, if so proposed and accepted by Persons voting at the Target Meeting (other than as may be required under the Interim Order) shall become part of this Plan of Arrangement for all purposes.
- (iii) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Target Meeting will be effective only if it is consented to by Target, and Acquirer and, if required by the Court, by the Target Shareholders.

- (iv) Notwithstanding the foregoing provisions of this Section 7, no amendment, modification or supplement of this Plan of Arrangement may be made prior to the Effective Time except in accordance with the terms of the Arrangement Agreement.

## Schedule B – Arrangement Resolution

### BE IT RESOLVED, AS A SPECIAL RESOLUTION, THAT:

1. the arrangement (the “**Arrangement**”) under Section 192 of the *Canada Business Corporations Act* (the “**CBCA**”) involving Temple Hotels Inc. (the “**Company**”) and shareholders of the Company, all as more particularly described and set forth in the management information circular (the “**Circular**”) of the Company dated ●, 2020 accompanying the notice of this meeting (as the Arrangement may be, or may have been, modified or amended in accordance with its terms), is hereby authorized, approved and adopted;
2. the arrangement agreement (the “**Arrangement Agreement**”) between the Company and Morguard Corporation dated December 19, 2019 and all the transactions contemplated therein, the full text of which is attached as Appendix “B” to the Circular, the actions of the directors of the Company in approving the Arrangement and the actions of the directors and officers of the Company in executing and delivering the Arrangement Agreement and any amendments thereto are hereby ratified and approved;
3. the plan of arrangement (the “**Plan of Arrangement**”) of the Company implementing the Arrangement, the full text of which is set out in Schedule “A” to the Arrangement Agreement (as the Plan of Arrangement may be, or may have been, modified or amended in accordance with its terms), is hereby authorized, approved and adopted;
4. notwithstanding that this resolution has been passed (and the Arrangement approved) by the shareholders of the Company or that the Arrangement has been approved by the Ontario Superior Court of Justice, the directors of the Company are hereby authorized and empowered, without further notice to, or approval of, the shareholders of the Company to:
  - (i) amend the Arrangement Agreement or the Plan of Arrangement to the extent permitted by the Arrangement Agreement or the Plan of Arrangement; or
  - (ii) subject to the terms of the Arrangement Agreement, not proceed with the Arrangement;
5. any director or officer of the Company is hereby authorized and directed for and on behalf of the Company to execute, whether under corporate seal of the Company or otherwise, and to deliver any and all documents as are necessary or desirable, to the Director under the CBCA in accordance with the Arrangement Agreement;
6. any one or more directors or officers of the Company is hereby authorized, for and on behalf and in the name of the Company, to execute and deliver, whether under corporate seal of the Company or otherwise, all such agreements, forms, waivers, notices, certificate, confirmations and other documents and instruments, and to do or cause to be done all such other acts and things, as in the opinion of such director or officer may be necessary,

desirable or useful for the purpose of giving effect to these resolutions, the Arrangement Agreement and the completion of the Plan of Arrangement in accordance with the terms of the Arrangement Agreement, including:

- (i) all actions required to be taken by or on behalf of the Company, and all necessary filings and obtaining the necessary approvals, consents and acceptances of appropriate regulatory authorities; and
- (ii) the signing of the certificates, consents and other documents or declarations required under the Arrangement Agreement or otherwise to be entered into by the Company;

such determination to be conclusively evidenced by the execution and delivery of such document, agreement or instrument or the doing of any such act or thing.