

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS (TOPEKA)**

In re:	§	
	§	Chapter 11
LODGING ENTERPRISES, LLC,	§	
	§	Case No. 24-40423
Debtor.	§	

**DEBTOR'S APPLICATION TO EMPLOY 12588391 CANADA INC.
AS CHIEF RESTRUCTURING OFFICER**

Lodging Enterprises, LLC (the “Debtor”) hereby files, through its undersigned counsel, this Application to Employ 12588391 Canada Inc. (“Canada Inc.”) as Chief Restructuring Officer, and in support thereof, states as follows:

1. On June 26, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).¹ The Debtor continues to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, on June 17, 2024, the Debtor engaged the services of Mr. Tom Wenner, through an agreement with Mr. Wenner’s wholly-owned company Canada, Inc., to act as its Chief Restructuring Officer (“CRO”). The Debtor desires to continue to have Mr. Wenner serve, through Canada Inc., as its CRO in order to sustain continuity and efficiency of the management of the Debtor and, otherwise, to ensure that the Debtor complies with the requirements of the Bankruptcy Code during the pendency of the Chapter 11 Case.

3. The Debtor anticipates that the professional services required from Mr. Wenner, through Canada Inc., will be the following:

¹ Capitalized terms used but not otherwise defined herein have the meaning assigned in the *Declaration of Tom Wenner in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 15] (the “First Day Declaration”).

- a. Assist the Debtor with respect to resolving and settling issues with its creditors;
- b. Oversee and supervise the professionals retained by the Debtor;
- c. Review and, on behalf of the Debtor, approve the preparation and filing of documents and pleadings necessary for the Chapter 11 Case;
- d. With the assistance and advise of the professionals retained by the Debtor, to ensure that the Debtor complies with the requirements of the Bankruptcy Code, orders of the Court, and any other applicable requirements during the pendency of the Chapter 11 Case;
- e. Attend meetings with the representative of the Debtor, including its internal management team and its external legal representatives and advisors and manage “working group” professionals assisting the Debtor;
- f. Support and assist with the production of information requests; and
- g. Assist with providing testimony on matters with respect to the Debtor, as required.

4. As set forth in the First Day Declaration, Mr. Wenner:

- (i) has over twenty-years of experience in the real-estate industry, including experience in financial distressed situations; and²
- (ii) is familiar with the Debtor’s business, financial condition, policies and procedures, operations, and books and records.³

Since the Petition Date, Mr. Wenner has been actively involved in supervising the Debtor’s professionals, exploring and assessing the Debtor’s options in an effort to maximize the value of the Debtor’s estate for the benefit of all the Debtor’s stakeholders, and in negotiations with the Prepetition Secured Parties on the path forward. Accordingly, the Debtor submits that the engagement of Mr. Wenner, through Canada Inc., to continue acting as CRO will promote efficiency and be of great benefit to the Debtor’s estate.

² See First Day Declaration, ¶¶ 3-4.

³ *Id.* at ¶ 5.

5. The Debtor seeks to employ Canada Inc. pursuant to 11 U.S.C. § 327(a) and to pay it a monthly fee of \$25,000 per month.

6. To the best of Debtor's knowledge, information, and belief, and relying on the affidavit attached hereto as **Exhibit A** (the "Wenner Affidavit"), Canada Inc. is a "disinterested person" within the meaning of 11 U.S.C. § 101(14). The Affidavit is incorporated by reference herein.

7. In his individual capacity, Mr. Wenner draws a salary from VCM Global Asset Management Inc. ("VCM Inc.") as its Chief Financial Officer. VCM Inc. is a non-debtor affiliate of the Debtor and is directly owned by Mr. Tom A. Vukota. VCM Inc. does not own, directly or indirectly, the Debtor, and Mr. Wenner's compensation at VCM Inc. is not paid by the Debtor.

8. Mr. Wenner, in his individual capacity, was appointed Vice President and Treasurer of the Debtor on February 3, 2021. Mr. Wenner resigned from that role on June 1, 2024.

9. Prior to the Petition Date, Canada Inc. received a retainer of \$50,000 in connection with its retention as CRO. As of the Petition Date, Canada Inc. holds \$43,333.33 on account. The Debtor desires to employ Canada Inc. as described above and to pay it all of its fees and expenses incurred in acting as CRO of the Debtor as otherwise allowed by the Court. In addition, the Debtor requests approval of the employment of Canada Inc. effective as of the Petition Date.

WHEREFORE, the Debtor requests entry of an order authorizing it to employ Canada Inc. in accordance with the terms and conditions herein.

Dated: July 26, 2024

Respectfully submitted,

/s/ Jonathan A. Margolies

Jonathan A. Margolies
SEIGFREID & BINGHAM, P.C.
(MO #30770, KS Fed #70693)
2323 Grand Boulevard, Ste. 1000
Kansas City, MO 64108
Telephone: (816) 421-4460 Email:
jmargolies@sb-kc.com

Timothy A. ("Tad") Davidson II (*pro hac vice* pending)
(Texas Bar No. 24012503)
Brandon Bell (admitted *pro hac vice*)
(Texas Bar No. 24127019)
Kaleb Bailey (*pro hac vice* pending)
(Texas Bar No. 24136717)
HUNTON ANDREWS KURTH LLP
600 Travis Street, Suite 4200
Houston, TX 77002
Telephone: (713) 220-4200
Email: taddavidson@HuntonAK.com
bbell@HuntonAK.com
kbailey@HuntonAK.com

- and -

Jason W. Harbour (admitted *pro hac vice*)
(Virginia Bar No. 68220)
HUNTON ANDREWS KURTH LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Email: jharbour@HuntonAK.com

Proposed Co-Counsel to the Debtor

CERTIFICATE OF SERVICE

On July 26, 2024, the above and foregoing was filed with the United States Bankruptcy Court for the District of Kansas using the CM/ECF Electronic court filing system with notification to all parties requesting electronic notification.

/s/ Jonathan A. Margolies

Proposed Co-Counsel to the Debtor

Exhibit A

Wenner Affidavit

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS (TOPEKA)**

In re:	§	
	§	Chapter 11
	§	
LODGING ENTERPRISES, LLC,	§	Case No. 24-40423
	§	
Debtor.	§	

**AFFIDAVIT IN ACCORDANCE WITH SECTION 327
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 2014**

I, Tom Wenner ("Affiant"), hereby declare under penalty of perjury:

1. Affiant is the owner of 12588391 Canada Inc. ("Canada Inc."), the Debtor's proposed Chief Restructuring Officer ("CRO") in this chapter 11 case. Canada Inc., through Affiant, has intimate knowledge of the Debtor's business and financial affairs.

2. Affiant will lead all day-to-day aspects of this engagement.

3. Affiant has over twenty-years of experience in real estate, having served as the Chief Financial Officer of publicly traded and privately owned real estate businesses. Over the course of Affiant's career, Affiant has been involved in more than 175 property acquisitions and dispositions, and raised financing in excess of \$1.2 billion through initial public offerings, follow-on public offerings, private placements, bank credit facilities and property mortgages.

4. Affiant has also held progressive management positions with The Bank of Nova Scotia in its special accounts management group, and with Deloitte & Touche LLP in its financial advisory services group, focused on resolving financial distressed situations for both creditors and borrowers. Affiant is also a Chartered Professional Accountant, (Canada) and holds a Bachelors of Commerce from the University of Saskatchewan.

5. Affiant is paid a salary in his individual capacity as the Chief Financial Officer of VCM Global Asset Management Inc. ("VCM Inc."). VCM Inc. is a non-debtor affiliate of the

Debtor and is directly owned by Tom A. Vukota. VCM Inc. does not own, directly or indirectly, the Debtor, and Affiant's compensation at VCM Inc. is not paid by the Debtor.

6. In Affiant's role at VCM Inc., Affiant participates in the oversight of the accounting, finance, investment reporting and risk management for VCM Inc. and some of its affiliated companies. As a result of Affiant's tenure with VCM Inc., which, included Affiant's periodic review of public and non-public documents of the Debtor, and Affiant's discussions with members of the Debtor's management team, Affiant is generally familiar with the Debtor's business, financial condition, policies and procedures, day-to-day operations, and books and records.

7. Affiant, in his individual capacity, was appointed Vice President and Treasurer of the Debtor on February 3, 2021. Affiant resigned from that role on June 1, 2024.

8. To the best of Affiant's knowledge and belief, Affiant does not hold an interest adverse to the Debtor or its estate. Affiant understands that there is a continuing duty to disclose the existence of any such adverse interest during the pendency of this case. Affiant also states that Canada Inc. is a "disinterested person" for purposes of its employment as Debtor's CRO.

9. Canada Inc. received a retainer of \$50,000 in connection with its representation of the Debtor and intends to charge \$25,000 per month, in accordance with the engagement agreement attached hereto as **Exhibit 1**. As of the Petition Date, Canada Inc. holds \$43,333.33 on account. Affiant believes this rate structure is fair and reasonable.

10. Affiant further states that this Affidavit is made in accordance with 11 U.S.C. § 327 and Bankruptcy Rule 2014.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: July 26, 2024.

/s/ Tom Wenner

Tom Wenner

Owner

12588391 Canada Inc.

Exhibit 1

Engagement Agreement

THIS AMENDED AND RESTATED INDEPENDENT CONTRACTOR AGREEMENT made
and entered into on this 24th day of July, 2024.

B E T W E E N:

LODGING ENTERPRISES, LLC

Hereinafter referred to as
the “Company”

and

12588391 CANADA INC.

Hereinafter referred to as
the “Contractor”

WHEREAS on June 17, 2024, the Company and Contractor entered into the Independent Contractor Agreement (the “Original Agreement”);

WHEREAS as a result of the Company’s ongoing dispute with its largest creditor, the Prepetition Secured Parties,¹ on June 26, 2024, the Company filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code,² commencing that certain chapter 11 case styled *In re Lodging Enterprises, LLC*, Case No. 24-40423 (the “Chapter 11 Case”) currently pending in the United States Bankruptcy Court for the District of Kansas (the “Bankruptcy Court”);

¹ As of June 26, 2024, the Company owed approximately \$127,596,293.00 (the “Indebtedness”), stemming from that certain Wyndham National Hotel Portfolio Loan (Loan No. 323000003) in the principal amount of \$145,000,000 (the “Loan”) as evidenced by that certain Loan Agreement between the Debtor, as borrower, and UBS AG (“Original Lender”), dated as of November 27, 2019 (the “Loan Agreement”), as assigned in part to Wilmington Trust, National Association (“Master Servicer”), as Trustee for the benefit of the Registered Holders of UBS Commercial Mortgage Trust 2019-C18, Commercial Mortgage Pass-Through Certificates, Series 2019-C18 (the “Prepetition Lender”), in connection with which Rialto Capital Advisors, LLC is the Special Servicer (“Special Servicer” and, together with the Prepetition Lender and the Master Servicer, the “Prepetition Secured Parties”).

² “Bankruptcy Code” shall mean title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

WHEREAS in connection with the Chapter 11 Case the Company is continuing to explore its options including, but not limited to the refinancing of its capital structure, a sale of substantially all of its assets, and restructuring its operations;

WHEREAS the Contractor retains certain personnel experienced in financial and business affairs with the capacity and capability to perform the Services (as defined below);

WHEREAS the Contractor has been providing the Services to the Company in accordance with the Original Agreement, but the Company and the Contractor wish to amend and restate the Original Agreement to account for the Chapter 11 Case (the Original Agreement as amended and restated herein, the “Amended and Restated Agreement”);

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. RELATIONSHIP

- a) The Parties agree that the Contractor will provide the Services, defined below, to the Company as an independent contractor and not as an employee.
- b) The Parties agree that the Company will seek to retain the Contractor as Chief Restructuring Officer in the Chapter 11 Case.
- c) The Parties agree that neither the Contractor nor those employed or retained by the Contractor will be deemed to be employees of the Company for any purpose.
- d) The Contractor further agrees to perform the Services honestly and in good faith, and to exercise the degree of care a reasonable and prudent contractor would exercise in similar circumstances.

2. TERM:

The Parties acknowledge and agree that the term of this Amended and Restated Agreement commenced on June 18, 2023 and will end on June 17, 2025, unless renewed by mutual agreement.

3. SERVICES

- a) The following services (the “Services”) shall be provided by the Contractor:
- i. Assist the Company with respect to resolving and settling issues with its creditors;
 - ii. Oversee and supervise the professionals retained by the Company, in its capacity as a debtor and debtor in possession in the Chapter 11 Case;
 - iii. Review and, on behalf of the Company, approve the professionals’ preparation of and filing of the documents and pleadings necessary for the Chapter 11 Case;
 - iv. With the assistance and advice of professionals retained by the Company for the Chapter 11 Case, ensure the Company complies with the requirements of the Bankruptcy Code, and related local rules, in the Chapter 11 Case;
 - v. Attend meetings with the representative of the Company, including its internal management team and its external legal representatives and advisors and manage “working group” professionals assisting the Company;
 - vi. Support and assist with the production of information requests;
 - vii. Draft correspondence and communications;
 - viii. Review, analyze and advise on matters in a timely manner; and
 - ix. Assist with providing testimony on matters with respect to the Company, as required.

- b) The Contractor shall have authority to bind the Company with respect to its performance of the Services, but the Contractor shall not, otherwise, have management authority.

4. FEES

In exchange for the Contractor providing the Services, the Parties agree that the Contractor will be paid by the Company \$25,000 per month.

5. EXPENSES

The Company shall reimburse the Contractor for all reasonable expenses incurred while providing the Services. Expenses for any period may be billed in a separate invoice from the Fees. The Company agrees that the Contractor may request prepayment of expenses it expects to incur, and the Company agrees to prepay such expected expenses.

6. INVOICES

- a) The Contractor agrees to submit to the Company invoices setting out the Fees on a regular basis and, while the Company remains in bankruptcy and Contractor's compensation is subject to approval by the Bankruptcy Court, all invoices shall be in a format acceptable to the Bankruptcy Court.
- b) The Company agrees to pay the Fees, including the reimbursement of expenses, in accordance with Section 7, to the extent applicable. The Company agrees to pay each and every invoice from Contractor within 10 days following submission of the applicable invoice from the Contractor to the Company. Failure by the Company to pay an invoice within 10 days of submission of such invoice by the Contractor to the Company shall be an event of default.

- c) The Company paid a retainer of \$50,000 on or before June 20, 2024 which will be available to Contractor to set-off against any unpaid obligations of the Company to the Contractor for Services rendered, as applicable, subject to and in accordance with Section 7.

7. PAYMENT TO CONTRACTOR

Notwithstanding anything to the contrary herein, while the Chapter 11 Case remains pending before the Bankruptcy Court and the Company's payment to Contractor, under this Amended and Restated Agreement, remains subject to approval by the Bankruptcy Court, the Company's payment of the Contractor for the Services provided herein, including the reimbursement of expenses and any and all other compensation to which the Contractor may be entitled under this Amended and Restated Agreement, shall be subject to, and paid in accordance with, the Bankruptcy Code and any order of the Bankruptcy Court providing for the allowance of, and timing for, any and all such compensation.

8. ENGAGING IN OTHER ACTIVITIES

The Company and the Contractor acknowledge that the performance of the Services by the Contractor hereunder is being undertaken on a non-exclusive basis and that the Contractor is free to provide other services to any other person.

9. BINDING AUTHORITY

The Contractor has no authority to and will not be requested to have any authority to enter into and conclude any contract or undertake any commitment or obligation for, in the name of, or on behalf of the Company, except as otherwise provided in this Amended and Restated Agreement.

10. CONFIDENTIALITY

- a) Confidential information means all information, proprietary information belonging to the Company, including, without limitation, on-going negotiations and/or results thereof with any level of government or private organizations, proposals, contracts, business records, business information such as product costs, customer/client list, list of approved suppliers, sales and profit or loss information, confidential information supplied by clients.
- b) The term “person” shall be broadly interpreted to include, without limitation, any individual, corporation, company, group, partnership, joint venture, government or regulatory body or authority.
- c) The Contractor shall not disclose any confidential information except as may be required by applicable laws or in filings made on behalf of the Company and shall not make use of the Company’s confidential information, either during or after the termination of this Amended and Restated Agreement, except for the purpose of advancing the business of the Company, or as authorized by the Company, or as required by law.

11. INDEMNITY

The Company covenants and agrees to save harmless and indemnify the Contractor from and against all claims, charges, taxes or penalties and demands. The Company shall indemnify the Contractor to the same extent as the most favorable indemnification it extends to its officers or directors, whether under the Company’ bylaws, its certificate of formation, or pursuant to applicable laws of its state of formation, or otherwise, and no reduction or termination in any of the benefits provided under any such indemnities shall affect the benefits provided to the Contractor. The Contractor shall be covered as if an officer under the Company’s director and

officer liability insurance policies, if any, to the extent that same remain in full force and effect. The Company shall also maintain any such insurance coverage for the Contractor for a period of not less one year following the date of the termination of this Amended and Restated Agreement. The termination of this Amended and Restated Agreement shall not affect these indemnity provisions, which shall survive termination. The provisions of this section 11 are in the nature of contractual obligations and no change in applicable law or the Company's charter, bylaws, or other organizational documents or policies shall affect the rights of the Contractor hereunder.

12. SET-OFF

The Company agrees that the Contractor may set-off, subject in all respects to the Bankruptcy Code and any order of the Bankruptcy Court, any amount owing by the Contractor to the Company against any amount owing by the Contractor to the Company.

13. COMPLIANCE WITH LAWS

The Contractor shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, contractors, service providers and volunteers, if any, at all times comply with any and all applicable regulations.

14. TERMINATION

- a) This Amended and Restated Agreement may be extended by mutual agreement, failing which will terminate on June 17, 2025, unless terminated earlier as set forth below.
- b) The Company may terminate this Amended and Restated Agreement at any time upon (30) thirty days' prior written notice, provided the Company shall pay the Contractor any fees and expenses owing up to the effective date of termination.

- c) The Contractor may terminate this Amended and Restated Agreement immediately upon the Company being in breach of any provision of this Amended and Restated Agreement where such breach is not rectified to the reasonable satisfaction of the Contractor within five (5) days of the Contractor notifying the Company of such breach.
- d) The Contractor may terminate this Amended and Restated Agreement at any time upon (30) thirty days' prior written notice.
- e) In the event the Amended and Restated Agreement is terminated pursuant to Section 14 b) or c), the Company agrees to pay the Contractor for any unpaid fees and expenses earned or incurred up to the date of termination, plus \$40,000. The Parties confirm that the provisions contained in this clause are valid and reasonable and are fair and equitable. The Company acknowledges and agrees that this provision is and constitutes a material inducement to the Contractor to enter into this Amended and Restated Agreement. The Company acknowledges and understands that the Contractor would not enter into this Amended and Restated Agreement without this provision.

15. GOVERNING LAW

This Amended and Restated Agreement shall be governed in all respects by the laws of the State of Kansas.

16. ASSIGNMENT

The Contractor may assign the benefit, in whole or in part, of this Amended and Restated Agreement at any time, provided that the Contractor shall at all times have the personnel with the experience and capacity to perform the Services.

17. SEVERABILITY

If any provision of this Amended and Restated Agreement is found to be void, invalid, illegal or unenforceable by a Court of competent jurisdiction, the Contractor shall have the right but not the obligation to choose if such finding, will affect any other provision of this Amended and Restated Agreement which may continue to be in full force and effect, unless the Contractor provides notice otherwise.

18. ENTIRE AGREEMENT AND ACKNOWLEDGEMENT

This Amended and Restated Agreement constitutes the entire understanding between the Contractor and the Company with respect to the Services and Fees, supersedes all prior oral or written communications and this Amended and Restated Agreement may be amended or modified only in writing and signed by both Parties.

19. INDEPENDENT LEGAL ADVICE

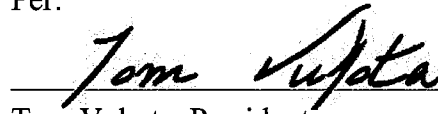
The Parties acknowledge and represent that they have been afforded the opportunity to obtain independent legal advice and are executing this Amended and Restated Agreement freely, voluntarily, and without duress.

The Parties hereto have caused this Amended and Restated Agreement to be executed by their duly authorized representatives on July 23, 2024, and that this Amended and Restated Agreement is effective as of 17th day of June 2024.

[Signature pages follow]

LODGING ENTERPRISES, LLC

Per:

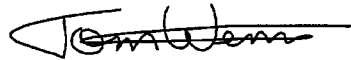
A handwritten signature in black ink, appearing to read "Tom Vukota", is written over a horizontal line.

Tom Vukota, President

I have the authority to bind Lodging Enterprise, LLC.

12588391 CANADA INC.

Per:

A handwritten signature in black ink, appearing to read "Tom Wenner", is written over a horizontal line.

Tom Wenner

I have the authority to bind 12588391 Canada Inc.