

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT entered into as of the _____ day of _____, 2019.

AMONG:

GENCO HOLDINGS LTD. and GENCO (WALDEN) LTD.

by and through their Court appointed receiver Ernst & Young Inc. not acting in its personal capacity

(the "**Vendor**")

- and -

CUSHMAN & WAKEFIELD LTD.

- and -

_____ (the "**Recipient**")

WHEREAS pursuant an order of the Honourable Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta granted on April 5, 2019 and an order of the Honourable Justice P.R. Jeffrey of the Court of Queen's Bench of Alberta granted on March 22, 2019, Ernst & Young Inc. was appointed receiver, without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof, but excluding certain real property of Genco Holdings Ltd. and Genco (Walden) Ltd.

AND WHEREAS in connection with a possible negotiated transaction, Recipient has requested that the Vendor and/or Cushman disclose, and the Vendor and Cushman (collectively, the "**Disclosing Party**") have agreed to disclose, certain confidential information.

NOW THEREFORE in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereto covenant and agree as follows:

1. Following are definitions which form part of this Confidentiality Agreement (the "**Agreement**"):
 - (a) "**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with that specified Person. For the purposes of this definition, "control" (including with correlative meanings, controlling, controlled by and under common control with) means the power to direct or cause the direction of the management and policies of that Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and, it being understood and agreed that with respect to a corporation or partnership, control shall mean direct or indirect ownership of more than 50% of the voting shares in any such corporation or of the general partnership interest or voting interest in any such partnership.

- (b) **"Confidential Information"** has the meaning ascribed thereto in Section 2.
 - (c) **"Party"** or **"Parties"**, as the context requires, means the signatories to this Agreement.
 - (d) **"Person"** means any individual or entity, including any partnership, body corporate, trust, unincorporated organization, union or governmental entity or authority and any heir, executor, administrator or other legal representative of an individual.
 - (e) **"Recipient"** has the meaning ascribed thereto in the preamble hereto.
 - (f) **"Related Parties"** means, in reference to a Party, its and their respective Affiliates, successors and assigns each of their respective directors, officers and employees.
 - (g) **"Representatives"** means, in reference to a Party, its and their Related Parties and each of their respective representatives, agents, legal counsel, consultants and advisors.
 - (h) **"Transaction"** has the meaning ascribed thereto in Section 2.
 - (i) **"Vendor"** has the meaning ascribed thereto in the preamble hereto.
2. In connection with Recipient's evaluation of a possible negotiated transaction with the Vendor (hereinafter referred to as the **"Transaction"**), the Disclosing Party is willing, in accordance with the terms and conditions of this Agreement, to disclose to Recipient certain confidential information relating to the Vendor. **"Confidential Information"** refers to any and all information acquired by Recipient or its Representatives from or on behalf of a Disclosing Party in the course of Recipient's consideration of a Transaction (including information acquired prior to the execution of this Agreement in connection with a Transaction), which shall include, without limitation all agreements, correspondence, financial information, reports, models, data and compilations, client personal and financial information, whether provided in oral, written or electronic form, together with analyses, interpretations, compilations, data, studies, notes and any documents prepared by or on behalf of Recipient and its Representatives containing or based upon, in whole or in part, information acquired by Recipient and its Representatives hereunder.
3. The Recipient agrees that the Confidential Information shall be kept strictly confidential and shall not be sold, traded, published or otherwise disclosed in any manner whatsoever, including by means of photocopy or reproduction, without the prior written consent of the Disclosing Party (which consent may be withheld in the Disclosing Party's sole and absolute discretion), except as provided in Sections 4 and 5.
4. Recipient may disclose Confidential Information without the prior written consent of the Disclosing Party only to the extent that Recipient can establish, through documentary evidence, that such information:
- (a) was known to Recipient prior to disclosure hereunder and was acquired without any obligation of confidentiality;
 - (b) is as of the date of this Agreement publicly available or becomes available to the public other than through the act or omission of Recipient or any of its

Representatives; *provided, however*, that if some portion of the Confidential Information becomes publicly available, the balance of the Confidential Information, whether related or not to said portion, shall not be considered to have become publicly available;

- (c) is required to be disclosed under applicable law or by court order or by a governmental order, decree, regulation or rule of any stock exchange and the Recipient provides a formal written legal opinion from its external legal counsel confirming such disclosure is required (provided that Recipient shall give written notice to the Disclosing Party prior to such disclosure and shall comply with the requirements of Section 10); or
 - (d) is acquired independently by Recipient, without any obligation of confidentiality, from a third party that has the right to disseminate such information without restrictions at the time it is acquired by Recipient.
- 5. Recipient shall be entitled to disclose Confidential Information, without the prior written consent of the Disclosing Party, to the following Persons who have a clear need-to-know such information in order to evaluate the Transaction:
 - (a) Recipient's Related Parties; and
 - (b) any professional consultant, agent or professional advisor retained by Recipient for the purpose of evaluating or financing the Transaction.

Prior to making any such disclosures to persons under subsection 5(b), Recipient shall obtain an undertaking of confidentiality in favour of the Disclosing Party, of substantially the same content as set forth in this Agreement, from each such Person. Recipient shall, upon request, provide the Disclosing Party with a list of all Persons to whom Confidential Information has been provided. Recipient agrees to be responsible for any breach of or failure to adhere to any of the terms of this Agreement by any such Person receiving Confidential Information.

- 6. Recipient and its Representatives receiving Confidential Information shall only use or permit the use of the Confidential Information to evaluate the Transaction and determine whether to enter into or continue negotiations concerning the Transaction and for no other purpose. Recipient undertakes that neither it nor any of its Representatives shall, without the prior written consent of the Disclosing Party (which consent may be withheld in the Disclosing Party's sole and absolute discretion), prior to closing of the Transaction, enter into any discussion or agreement with any Person to acquire any separate, joint or subdivided interest in any asset or property potentially forming part of the Transaction.
- 7. Recipient shall ensure that its Representatives to whom Confidential Information is disclosed under this Agreement keep such information confidential and shall not disclose or divulge the same to any unauthorized Person. In addition to any other rights the Disclosing Party may have against Recipient arising by reason of any breach of this Agreement, Recipient shall:
 - (a) be liable to the Vendor for all losses, costs, damages and expenses whatsoever which any of them may suffer, sustain, pay or incur; and

- (b) indemnify and hold the Vendor harmless against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever which may be brought against or suffered by any of them or which any of them may suffer, sustain, pay or incur;

as a result of any breach of this Agreement by Recipient, its Representatives, or any other Persons receiving Confidential Information hereunder.

- 8. The obligations of the Parties herein shall remain in full force and effect for a period of three (3) years from the date hereof (notwithstanding that Confidential Information may have been returned or copies or other reproductions thereof destroyed prior to the expiration of such period and whether or not a Transaction is implemented).
- 9. Recipient agrees that the Vendor may be irreparably injured by a breach of this Agreement and that the Vendor may be entitled to equitable relief, including injunctive relief and specific performance in the event of any breach of this Agreement. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available in law or in equity.
- 10. Should any Person seek to legally compel Recipient or any of its Representatives receiving Confidential Information to disclose any Confidential Information, Recipient will provide the Disclosing Party with prompt written notice thereof so that the Disclosing Party may seek a protective order or other appropriate remedy. Recipient shall cooperate fully with the Disclosing Party on a reasonable basis in any attempt by the Disclosing Party to obtain a protective order or other appropriate remedy. In any event, Recipient or other Person receiving Confidential Information hereunder who is so compelled to disclose will only furnish that portion of the Confidential Information that is legally required to be disclosed.
- 11. To the extent that Recipient is given physical access to any of the properties or premises owned, leased, used or otherwise held or occupied by the Vendor, Recipient hereby agrees to indemnify, defend and hold harmless the Vendor and their respective Representatives from and against any and all liabilities, claims and causes of action by Recipient or any of its Representatives for personal injury, death or property damage occurring on such property or premises as a result of the access to such properties or premises by Recipient or its Representatives.
- 12. It is understood that neither this Agreement nor the disclosure of any Confidential Information to Recipient or its Representatives shall be construed as granting to any of them any license or rights in respect of any part of the Confidential Information.
- 13. The Confidential Information shall remain the property of the Vendor and their Related Parties, as applicable, and the Disclosing Party may demand the return and/or destruction thereof at any time upon giving written notice to Recipient. Within seven (7) business days of receipt of such notice, Recipient shall return all of the original Confidential Information, destroy all copies and reproductions (both written and electronic) and analyses, interpretations, compilations, data, studies, notes and any documents prepared by or on behalf of Recipient or any of its Representatives containing or based upon, in whole or in part, Confidential Information, and promptly upon request of the Disclosing Party, Recipient shall cause one of its senior officers to certify such destruction in writing. Notwithstanding the destruction or return of the Confidential Information, Recipient and its

Representatives will continue to be bound by the obligations of confidentiality and all other obligations hereunder during the term of this Agreement.

14. The Disclosing Party makes no representations or warranties, express or implied, as to the quality, accuracy or completeness of the Confidential Information disclosed hereunder. Recipient hereby releases, indemnifies and holds the Vendor and each of its Representatives harmless with respect to the use of or reliance upon Confidential Information by Recipient and its Representatives.
15. No contract or agreement providing for a Transaction shall be deemed to exist unless and until a definitive agreement in respect of a Transaction has been executed by the Recipient and the Vendor. Nothing contained herein is intended to confer upon Recipient any right whatsoever to require or force the Vendor to enter into or close a Transaction with Recipient. Recipient understands and agrees that, except as may be otherwise agreed by Recipient and the Vendor in a definitive agreement executed by them in respect of the Transaction:
 - (a) the Vendor shall conduct the process for a possible Transaction as it in its sole discretion shall determine, including negotiating with any other Person and entering into a definitive agreement in respect of a Transaction with any other Person without prior notice to Recipient or any other Person; and
 - (b) the Recipient shall not have any claims whatsoever against the Vendor or its Representatives arising out of or relating to a Transaction.
16. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta (exclusive of any conflicts of laws principles that could require the application of any other laws). The Parties irrevocably and unconditionally consent to and submit to the jurisdiction of the courts of the Province of Alberta for any actions, suits or proceedings arising out of or relating to this Agreement.
17. All notices, consents and other instruments which are required or may be given pursuant to this Agreement must be given in writing and delivered personally or by facsimile or electronic mail as follows:

If to the Disclosing Party (in each case with a copy to the Vendor):

CUSHMAN & WAKEFIELD LTD.

Attention:
Facsimile:
Email:

If to the Vendor:

Ernst & Young Inc.
2200, 215 2nd Street SW
Calgary, AB
T2P 1M4

Attention: Dylan Holwell
Facsimile: (403) 206-5075
Email: dylan.holwell@ca.ey.com

If to Recipient:

Attention: _____
Facsimile: _____
Email: _____

or in accordance with the latest unrevoked instructions delivered by one Party to the other. All notices will be deemed to have been duly given at the time of delivery or, in the case of facsimile or electronic mail, on the first business day after faxing or electronic mailing, as the case may be.

18. Recipient shall not assign this Agreement or any rights and benefits hereunder, in whole or in part to any Person without the prior written consent of the Disclosing Party and the Vendor, which consent may be withheld in each of the Disclosing Party's and the Vendor's sole discretion. This Agreement shall enure to the benefit of the Parties and their lawful successors and permitted assigns.
19. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties. No waiver of any provision of this Agreement shall be valid except if provided in writing by a duly authorized representative of the Party proposing to grant the same. Further, no failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
20. This Agreement comprises the full and complete agreement of the Parties with respect to the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties in respect hereof, whether written or oral, expressed or implied. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Time is of the essence with respect to this Agreement.
21. Recipient agrees that the Disclosing Party is trustee of the covenants and agreements of Recipient in this Agreement that are for the benefit of its Related Parties.
22. This Agreement may be executed and delivered in counterpart and by facsimile or emailed copies, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

[Remainder of page left blank. Signature page follows.]

IN WITNESS WHEREOF, the duly authorized representative of each of the Parties has caused this Agreement to be executed on the date first written above.

GENCO HOLDINGS LTD. and GENCO (WALDEN) LTD. by and through their Court appointed receiver Ernst & Young Inc. not acting in its personal capacity

Per: _____
Name:
Title:

CUSHMAN & WAKEFIELD LTD.

Per: _____
Name:
Title:

[RECIPIENT]

Per: _____
Name:
Title:

_____(Recipient)

Per: _____
Name:
Title:

Per: _____
Name:
Title: