Court of Appeal File No.: Court File No. CV-23-00004031-0000

COURT OF APPEAL FOR ONTARIO

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant

and

1000093910 ONTARIO INC.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED

MOTION RECORD OF 2557904 ONTARIO INC.

VOLUME 1 OF 3

July 8, 2024

MILLER THOMSON LLP

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TO: THE SERVICE LIST

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NOTICE OF MOTION

THE MOVING PARTY, 2557904 ONTARIO INC. ("255") will make a will make a motion to a single Judge of the Court of Appeal, a date to be determined by the Court.at 10:00 a.m. or as soon after that time as the motion can be heard, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario

PROPOSED METHOD OF HEARING: The Motion is to be heard:

at the following location:		
[x]	By video conference.	
[]	By telephone conference;	
[]	In person;	
[]	In writing as an opposed motion under subrule 37.12.1(4);	
[]	In writing under subrule 37.12.1(1) because it is;	

130 Queen St., W., Toronto.

THE MOTION IS FOR:

- (a) If required, an Order extending the time for service of this Motion Record, validating service of this Motion Record in the manner effected, abridging time for service thereof, and or/dispensing with service on any party other than the parties served;
- (b) the advice and directions of this Honourable Court as to whether leave to appeal to the Court of Appeal, and a stay of the Order of the Honourable Mr. Justice Sutherland dated July 4, 2024 (the "Sutherland Order") is necessary in light of the provisions of s.193 and s.195 of the Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)(the "BIA");
- (c) Assuming that such leave it required, pursuant to Rule 61.03.1, an Order granting leave to appeal the Sutherland Order;
- (d) pursuant to s. 195 of the BIA, a stay of the Sutherland Order *nunc pro tunc* to the date of service of the Notice of Motion and pending the hearing of 255's appeal and a stay of the Endorsement of Justice Sutherland granted on July 8, 2025 granting the Debtor provisional enforcement of the Sutherland Order;
- (e) The costs of this motion on a substantial indemnity scale, or to be determined by the panel hearing the appeal;
- (f) Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) On September 7, 2023, 255 made an unconditional offer to 1000093910 Ontario Inc. (the "**Debtor**") to purchase the property municipally known as 20 Regina Road, Vaughan, Ontario (the "**Property**") for \$28,000,000.00;
- (b) 255's original offer was not accepted and the parties negotiated the price that 255 would be willing to pay, with several counter-offers being signed back to each respective party. Eventually, on September 9, 2023, 255 made a final counter-offer to purchase the Property for \$31,000,000.00 and to pay a deposit of \$1,000,000.00 to Ren/Tex Realty Inc. as part of that agreement;
- (c) 255's offer was eventually accepted and the Original APS was signed by the Debtor on September 15, 2023, with a completion date set for December 21, 2023 (the "Original APS"). At that time, 255 believed that the Debtor was fully authorized to enter into the Original APS and that it was able to freely deal with the Property as it saw fit;
- (d) It transpires that the Debtor was not, in fact, fully authorized to deal with the Property was it saw fit when it executed the Original APS. When the Debtor executed the Original APS, the Debtor had already consented to the appointment of a receiver, KSV Restructuring Inc. (the "Receiver") to take possession and exercise control over all of its assets, including the Property. In fact, the Receivership Order was issued by Justice Lavine of the Superior Court of Justice on September 13, 2023 and was ordered to come into effect on October 2, 2023

(the "Receivership Order"). The Receivership Order was not brought to 255's attention until October 3, 2023;

- (e) As a result of the Receivership Order, certain representations made by the Debtor to 255 in the Original APS were false. For instance, Schedule 'A', s. 4(e) of the Original APS provides that that the Vendor was "duly authorized to enter Into the Agreement with power and capacity to complete the transaction provided herein in accordance with the terms, thereof". As of September 15, 2023, the Debtor was fully aware that the Receiver would take possession and control of the Property and that the Debtor lacked the capacity to either enter or close the sale of the Property if the conditions were not satisfied in the consent to receivership;
- (f) The Debtor's financial difficulties, and the possibility that the Receiver was appointed and may take over, was never disclosed to 255 at any point by the Debtor during the course of the negotiations. Given the existence of the lease back provision in the Original APS, 255 would not have purchased the Property had it known of the Debtor's financial difficulties, that the mortgage registered against the Property was substantially in default, and a receivership motion had already been served;

The Receiver Proposes the Amending Agreement

(g) To 255's surprise, on October 3, 2023, 255 was approached by the Receiver and its counsel regarding the Original APS. The Receiver informed 255's counsel that the Receiver needed comfort that 255 had the means to close the transaction and asked for a number of financial documents evidencing 255's ability to do so. These

discussions took place throughout October 2023, with 255 providing the Receiver with considerable amounts of financial information over that period;

- (h) On October 23, 2023, the Receiver wrote to counsel for 255 and provided 255 with a draft "amending agreement" (the "Amending Agreement"). According to the Receiver, it could not proceed with the Original APS in its current form. The Amending Agreement was necessary in order to, amongst other things, reflect the fact that the Original APS needed to be completed by the Receiver, rather than the Debtor. The Receiver told 255 that, in the event that 255 was not prepared to agree to the Amending Agreement, the Receiver would "go back to the market" for the sale of the Property;
- (i) The Amending Agreement was more than just a procedural document. The Amending Agreement contained materially different terms than those agreed in the Original APS, and therefore was not acceptable to 255. The Amending Agreement, for instance, removed the lease back provision from the Original APS;
- (j) 255 was also concerned that the Amending Agreement required the assignment of the Original APS to the Receiver, as vendor, as well as the proposed Vesting Order that the Receiver was requiring to be issued by the Court as part of the sale closing. The proposed assignment and Vesting Order in the Amending Agreement could potentially relinquish certain rights and remedies that would have otherwise been available to 255 in the event that the Receiver, as vendor, breached certain warranties and representations under the Original APS and potential statutory remedies post-closing;

(k) It was for these reasons that 255 confirmed, both on a Microsoft Teams call with the Receiver and its counsel and in writing, that it would not be executing the Amending Agreement on October 31, 2023 and that, as far as 255 was concerned, the Original APS was null and void. The Receiver also treated the Original APS as terminated. 255 did not pay any further deposit as required by the Original APS and neither the Receiver nor 255 did any work as if the Original APS remained operative and of course did not tender on the date scheduled for closing;

The Stalking Horse APS

- (I) Notwithstanding that 255 advised the Receiver that the Original APS was now null and void, 255 was still potentially interested in purchasing the Property. Following the termination of the Original APS, 255 advised the Receiver that it was prepared to purchase the Property at a reduced purchased price;
- (m) 255 and the Receiver engaged in further discussions to see if a new agreement could be reached with respect to the purchase of the Property. These discussions were concluded on November 13, 2023 when the stalking horse agreement was signed by the parties (the "Stalking Horse APS");
- (n) The Stalking Horse APS contains the following key terms:
 - the purchased assets include all of the Debtor's title and interest in and to,
 among other things, the Property;
 - (ii) the purchase price for the Property is \$24,255,000.00, subject to adjustments on closing for property taxes and other adjustments standard for a real estate transaction;

- (iii) 255 will acquire the Property on an 'as is, where is' basis, with limited representations and warranties;
- (iv) closing of the transaction contemplated under the Stalking Horse APS is conditional upon, among other things, receipt of Court approval;
- (v) the Stalking Horse APS contemplates a break fee of \$200,000.00 (inclusiveof HST) if 255 is not the successful bidder in the sale process; and
- (vi) the Stalking Horse APS also contemplates an expense reimbursement of up to \$50,000.00 (inclusive of HST) in respect of legal, diligence and other costs incurred by 255 Ontario in respect of the sale process;

The Receiver's Motion and the Debtor's First Late-Breaking Cross-Motion

- (o) On December 13, 2023, the Receiver served a motion record for a motion hearing that was to take place on December 20, 2023. In its notice of motion, the Receiver sought various forms of relief to approve the sale process, the bidding procedure, Stalking Horse APS, and the entering into a new listing agreement with a realtor and formally terminating the Original APS (the "Sale Process Approval Order"). According to the Receiver, the order terminating the Original APS was necessary because the real estate agents, Ren/Tex, expressed concerns that they could not release 255's original deposit given the possibility of a breach of trust claim as a result of the Confirmation of Co-operation and Representation Agreement that was executed with 255's brokerage as part of the Original APS;
- (p) Given that the Original APS had already been terminated and the Stalking HorseAPS had been executed, 255 did not take a position at that hearing;

(q) On December 19, 2023, less than 24 hours before the motion hearing, the Debtor served a cross-motion on the Receiver and the Service List in the receivership proceedings (the "First Cross-Motion") seeking, among other things, an order approving the Original APS and directing the Receiver to permit the Debtor to complete the purchase transaction as contemplated by the Original APS;

The December 20, 2023 Order and Endorsement of Justice Vallee

- (r) On December 20, 2023, the Motion Judge, The Honourable Justice Vallee, granted the Sale Process Approval Order, which, among other things:
 - (i) approved the sale process for the Real Property (the "Sale Process"); and
 - (ii) approved the Stalking Horse Agreement between 255 and the Receiver dated November 13, 2023, as amended by the Amending Agreement dated June 11, 2024 (the "Amended Stalking Horse Agreement"), to purchase the Real Property, which acted as the "stalking horse bid" in the Sale Process;
- (s) The endorsement issued by Justice Vallee in connection with the Sale Process Approval Order noted that the Court would not consider the First Cross Motion for several reasons, including: (i) the fact that it was not served on proper notice; (ii) it was not properly scheduled with the Court; and (iii) it had "little chance of success";
- (t) On December 29, 2023, the Debtor appealed the Sale Process Approval Order and requested that the Sale Process Approval Order be set aside and in its place an order be made allowing the Debtor or the Receiver to enforce the terms of the Original APS, including the right to specific performance;

- (u) The Appeal materials asserted, amongst other things:
 - the learned Motion Judge, notwithstanding the late delivery of the First Cross-Motion, ought to have considered the merits of the First Cross-Motion;
 - (ii) the learned Motion Judge erred in law in failing to consider, or properly consider, the interests of the Debtor; and;
 - (iii) the learned Motion Judge erred in law by failing to apply, or consider, the principles outlined in *Soundair*¹;
 - (iv) The Appeal was dismissed by the Court of Appeal on April 2, 2024, with reasons issued by the Court on April 9, 2024;
 - (v) Following the dismissal of the Appeal, the Receiver conducted and completed the Sale Process in accordance with the Sale Process Approval Order;
- (v) On May 31, 2024, the Receiver served its Motion seeking, amongst other things, the AVO and the Distribution and Discharge Order (the "Receiver's Motion");

The Second Cross-Motion

(w) On June 10, 2024 at approximately 3:52 p.m. (being 2 days before the hearing), the Debtor and Ravi Aurora, Akash Aurora, and Nick Aurora (collectively, the "Guarantors") and Countertop Solutions Inc. and Grafco International Laminating

¹ Royal Bank of Canada v. Soundair Corp., 199 CanLII 2727 (ON CA)

Inc. (collectively, the "**Tenants**") served a Responding and Cross-Motion in connection with the Receiver's Motion (the "**Second Cross-Motion**");

- (x) In its Second Cross-Motion, the Debtor sought, amongst other things:
 - (i) an adjournment of the Receiver's Motion;
 - (ii) an interim order staying the Receivership Order and the Sale Process
 Approval Order pending completion of the "Refinance" (as defined in the
 Second Cross-Motion materials) or, in the alternative, an interim order
 staying the Sale Process Approval Order until June 30, 2024, and without
 prejudice to the Debtor's right to bring a further motion to extend the stay
 to complete the Refinance; and
 - (iii) on completion of the Refinance, an order terminating the Stalking Horse Agreement;
- (y) Despite being on notice of the return date of the Receiver's Motion since at least May 31, 2024, the Debtor improperly served its Second Cross-Motion. The Second Cross-Motion was not served on proper notice, no motion had been booked with the Court nor was there time for cross-examinations and responding materials to be filed;
- (z) At the time when it served its Second Cross-Motion, the Debtor had yet to obtain the financing that it purported to have obtained. The Debtor initially refused to serve a firm commitment letter from Firm Capital Corporation, the proposed lender for the Refinance;

- (aa) On June 11, 2024 (on the eve of the Receiver's Motion), the Debtor finally provided the Commitment Letter from Firm Capital Corporation (the "Commitment Letter");
- (bb) The Commitment Letter contained a number of conditions which, as of June 11, 2024, no evidence had been provided by the Debtor that suggested that a number of conditions had been satisfied;
- (cc) On June 12, 2024, the parties appeared before the Honourable Justice Lavine who determined that she did not have time to address the Debtor's motion as the Court was under the assumption that the Receiver's Motion was not contested. The matter was subsequently adjourned to June 14, 2024;
- (dd) On June 14, 2024, the parties appeared before Justice Sutherland. Much like Justice Lavine, Justice Sutherland determined that he did not have enough time to review the materials and make a determination on the threshold issue of whether or not to hear the Debtor's motion. Justice Sutherland set the matter down to be heard on June 28, 2024;
- (ee) On June 20, 2024, the Court released the Decision on Adjournment of Justice Sutherland (the "Decision on Adjournment") which, among other things, provided the reasons for which the Court adjourned the Receiver's Motion and the Second Cross-Motion to June 28, 2024;
- (ff) On June 21, 2024, following receipt of the Decision on Adjournment, the Receiver served upon the Debtor and the Service List a Notice of Examination of Mr. Ravi Aurora returnable on June 25, 2024 at 10:00 a.m. (the "Cross-Examination") on

the affidavits sworn by Mr. Aurora June 10, 2024, June 12, 2024 and June 13, 2024;

- (gg) On June 25, 2024, Mr. Aurora was cross-examined by counsel for the Receiver and Counsel for 255. There were a number of important undertakings and under advisements provided and requests for production made of the Mr. Aurora (on behalf of the Debtor) throughout the course of the Cross-Examination, which Counsel for the Debtor agreed to be answered and delivered by 4:00 p.m. on June 26, 2024. They were not. Some of the requested undertakings went to the heart of the circumstances surrounding the second mortgage loan, and others went to the status of the proposed refinancing. The under advisements were ultimately refused;
- (hh) A number of the questions, undertakings and production requests during the Cross-Examination (the "Zaherali Inquiries") related to the second mortgage loan provided by Zaherali Visram (the "Zaherali Loan"), which benefits from a second mortgage registered on title to the Real Property, were either taken under advisement or refused;
- (ii) The Zaherali Inquiries, which were for the most part refused, related to, among other things, when the Zaherali Loan documentation was prepared and executed, the relationship between the principals of the Debtor and Mr. Visram, the timing of the advances under the Zaherali Loan and the use of the advances under the Zaherali Loan. In the absence of full responses, 255 has significant concerns around the integrity of the Debtor's transparency;

- (jj) On June 28, 2024, Justice Sutherland found that he could not determine the Debtor's Second Cross-Motion and the matter was scheduled for a further hearing on July 2, 2024;
- (kk) On July 2, 2024, Justice Sutherland heard submissions from the parties on the threshold issue of whether or not the Debtor's Second Cross-Motion ought to be heard and, if so, should the Debtor be allowed to Redeem the First Mortgage and discharge the Receivership. On the same day, the Debtor confirmed that, as of July 2, 2024, it had received the financing to discharge the Receivership;
- (II) The learned Motion Judge, in his endorsement, held, amongst other things:
 - 1. On July 2, 2024, I heard the motion brought by the Receiver for an approval and vesting order, among other relief, and motion by the respondent to permit it to redeem the first mortgage.
 - 2. There is urgency with respect to the decision of this Court. Interest and expenses are being incurred and the parties require a decision on either approving the proposed sale or redeeming the first mortgage. I indicated that I would provide my disposition of the motions given the urgency with reasons to follow.
 - 3. My disposition is that the respondent be permitted to redeem the first mortgage to pay fully the amount owing on the first mortgage, the costs and fees of the Receiver which on Tuesday July 2, 2024, the total amount was \$23,450,000 which includes the sum of \$250,000 to be paid into either Court or held in trust for the benefit of the prospective purchaser 23557904 Ontario Inc. per the Sale Agreement or Second Report.
 - 4. I was also advised that the parties have a draft Order that has been approved to deal with the redemption of the first mortgage. That Order, approved as to form and content by all parties, to be sent to me for my review and signature. The draft approved Order to be sent to my judicial assistant at meghan.billings@ontario.ca.
- (mm) On July 4, 2024, 255 served and filed a Notice of Appeal, a copy of which is attached as **Schedule "A"** to this Notice of Motion, relying on s. 193(b), 193(c)

and 193(e) and s. 195 of the BIA and Rule 31 of the *Bankruptcy and Insolvency* Rules (C.R.C. c. 368);

(nn) 255 now seeks the relief set forth in the Notice of Motion;

Grounds for the Appeal

- (oo) The Moving Party, 255, submits that:
 - (i) The learned Motion Judge ought to have dismissed the Debtor's lateserved cross- motion on the basis that it was not filed in accordance with the timelines set out in the *Rules of Civil Procedure*;
 - (ii) The learned Motion Judge ought not to have used his discretion to allow the Moving Parties to exercise a right of redemption after a Court ordered sale process had commenced, a bid accepted, and a hearing date for a vesting order set;
 - (iii) The Learned Motion Judge erred in law in failing to consider, or properly consider, the impact of allowing late breaking requests to redeem will have on the integrity of a Court Ordered Sale process;
 - (iv) The learned Motion Judge erred in law by preferring the interests of the Debtor, the Tenants, the Guarantors and the Second Mortgagee over 255 without sufficient reasons;
 - (v) The learned Motion Judge erred in law by failing to apply, or consider, the principles laid out in *Rose-Isli Corp. v. Smith*, 2023 ONCA 548 (CanLII)

regarding when a Court should exercise its discretion to allow a late redemption in the face of a complete sales process;

(vi) Had the Learned Motion Judge considered the principles set out in that case, he would have denied the Moving Parties right to redeem at such a late stage of the sale process;

Grounds for the Stay

- (vii) 255's position is that, as a matter of right, there is an automatic stay of the Order pursuant to section 195 of the *Bankruptcy and Insolvency Act*;
- (viii) If a stay is not automatic and an order be required, should a stay not be granted and should the Debtor be allowed to redeem the First Mortgage and terminate the Amended Stalking Horse Agreement as set out in the Redemption Order, the rights of the moving party and other stakeholders will be foreclosed and damaged.

Jurisdiction to Hear This Motion and Estimated Time for Argument

(ix) The Jurisdiction of this motion lies to a single Judge of the Court of Appeal in accordance with Section 193€ of the BIA, and the ruling of this Court in Cardillo v Medcap Real Estate Holdings Inc., 2023 ONCA 852 (CanLII).

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion: (List the affidavits or other documentary evidence to be relied on)

(a) This Motion Record; and

(b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

THE FOLLOWING RULES AND STATUTES WILL BE RELIED UPON

- (c) Rules 37, 61.03.1, 61.16, and 63.02 of the Rules of Civil Procedure;
- (d) Sections 193(c) and 193(e) and 195 of the *Bankruptcy and Insolvency Act* (R.S.C., 1985 c. B-3); and
- (e) Such further statutes and rules as counsel may advise and this Honourable Court may permit.

Estimated time for oral argument of the appeal (not including reply): 1.5 hours

July 5, 2024

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PEAKHILL CAPITAL INC. et al. Applicants

Court of Appeal File No.: Court File No. CV-23-00004031-0000

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at NEWMARKET

NOTICE OF MOTION

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RCP-F 4C (September 1, 2020)

Tab 1A

Court of Appeal File No.: Court File No. CV-23-00004031-0000

COURT OF APPEAL FOR ONTARIO

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Respondent

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED

NOTICE OF APPEAL

The Appellant, 2557904 Ontario Inc. ("255") appeals to the Court of Appeal from the Endorsement, Order and Reasons to follow of the Honourable Mr. Justice Sutherland ("Justice Sutherland" or "Motion Judge") dated July 4, 2024 made at Newmarket, whereby the learned Motion Judge granted 1000093910 Ontario Inc. (the "Debtor"), Ravi Aurora, Akash Aurora, and Nick Aurora (collectively, the "Guarantors") and Countertop Solutions Inc. and Grafco International Laminating Inc. (collectively, the "Tenants") (collectively, the "Moving Parties") an order allowing the Debtor to redeem Peakhill Capital Inc.'s mortgage (the "Order") after the sales process had already run its course.

The Appellant, 255, asks that the Order be set aside and that, in its place, an Order be granted as follows:

(a) an Order (the "Approval and Vesting Order"), among other things, approving the sale transaction (the "Transaction") contemplated by the Stalking Horse APS dated November 15, 2023 (as may be amended, the "Sale Agreement"), and vesting in 255 all of the Debtor's rights, title and interest in and to the property described in the Sale Agreement; and (ii) an order (the "Distribution and Discharge Order"), among other things:

- (i) authorizing KSV Restructuring Inc. (the "Receiver") to:
 - (1) first, pay the \$140,000 work fee (the "Work Fee") owing to Jones Lang LaSalle Real Estate Service, Inc. ("JLL") in accordance with the terms of the listing agreement (the "Listing Agreement") by and between JLL and the Receiver;
 - (2) second, make one or more distributions from the sale proceeds of the Sale Agreement (the "Sale Proceeds") to repay in full the amounts owing to Peakhill Capital Inc. ("Peakhill") in respect of the Debtor's obligations to it; and
 - (3) third, following the repayment of Peakhill in full, authorizing the Receiver to make one of more distributions from the Sale Proceeds to partially repay the amounts owing to Zaherali Visram in respect of the Debtor's obligations to him;
- (b) approving the Second Report of the Receiver dated May 31, 2024 (the "Second Report");
- approving the fees and disbursements of the Receiver and its counsel, Bennett

 Jones LLP ("Bennett Jones"), including the \$150,000 fee accrual (the "Fee

 Accrual") (as defined below), as detailed in the fee affidavits (together, the "Fee

 Affidavits") appended to the Second Report;

- (d) discharging the Receiver upon the filing of a certificate with the Court certifying that all outstanding matters in these receivership proceedings (the "Receivership Proceedings") have been completed to the satisfaction of the Receiver (the "Discharge Certificate"); and
- (e) releasing and discharging the Receiver, upon the filing of the Discharge Certificate, from any and all liabilities that it now has or may hereafter have by any reason of, or in any way arising out of, its acts or omissions while acting as Receiver, save and except for its gross negligence or willful misconduct.
- (f) Such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

- (a) The learned Motion Judge ought to have dismissed the Debtor's late-served crossmotion on the basis that it was not filed in accordance with the timelines set out in the *Rules of Civil Procedure*;
- (b) The learned Motion Judge ought not to have used his discretion to allow the Moving Parties to exercise a right of redemption after a Court ordered sale process had commenced, a bid accepted, and a hearing date for a vesting order set;
- (c) The Learned Motion Judge erred in law in failing to consider, or properly consider, the impact of allowing late breaking requests to redeem on the integrity of an advanced Court Ordered Sale process;

- (d) The learned Motion Judge erred in law by preferring the interests of the Debtor, the Tenants, the Guarantors and the Second Mortgagee over 255 without sufficient reasons;
- (e) The learned Motion Judge erred in law by failing to apply, or consider, the principles laid out by this Court in <u>Rose-Isli Corp. v. Smith</u>, 2023 ONCA 548 regarding when a Court should exercise its discretion to allow a late redemption in the face of a complete sales process;
- (f) Had the Learned Motion Judge considered the principles set out in that case, he would have denied the Moving Parties right to redeem at such a late stage of the sale process;
- (g) If required or necessary, a stay of the Order appealed from pending the hearing of this appeal by this Honourable Court;
- (h) If required or necessary, leave to Appeal the Order; and
- (i) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (j) Rule 61.04 of the *Rules of Civil Procedure*;
- (k) Section 6(1)(b) of the Courts of Justice Act, R.S.O., c. C.43;
- (g) Sections 193(b), 193(c) and 195 of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3);

- (h) Rule 31 of the Bankruptcy and Insolvency General Rules (C.R.C., c. 368); and
- (i) Such further and other statutes/rules as counsel may advise and this Honourable Court may permit.

July 5, 2024

MILLER THOMSON LLP

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Lawyers for the Intervener, 2557905 Ontario Inc.

TO: ROBINS APPLEBY LLP

Barristers and Solicitors 120 Adelaide Street West Suite 2600 Toronto ON M5H 1T1

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Lawyers for the Applicant Peakhill Capital Inc.

AND TO: **MANIS LAW**

2300 Yonge Street Suite 1600

Toronto ON M4P 1E4

Howard F. Manis (LSO#:34366V)

hmanis@manislaw.ca 416-364-5289 Tel:

Lawyers for the Applicant 1000093910 Ontario Inc.

RCP-E 61A (February 1, 2021)

PEAKHILL CAPITAL INC. et al. Applicants

Court of Appeal File No.: Court File No. CV-23-00004031-0000

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at NEWMARKET

NOTICE OF APPEAL

MILLER THOMSON LLP

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Lawyers for 2557904 Ontario Inc.

Served by Email: Dominique Michaud:

dmichaud@robapp.com

Howard F. Manis: hmanis@manislaw.ca

RCP-F 4C (September 1, 2020)

Tab 2

Court of Appeal File No.: Court File No. CV-23-00004031-0000

COURT OF APPEAL FOR ONTARIO

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant

and

1000093910 ONTARIO INC.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED

AFFIDAVIT OF STEPHANIE FILOSA

I, STEPHANIE FILOSA of the City of Vaughan, in the Regional Municipality of York, in the Province of Ontario, MAKE OATH AND SAY:

- 1. I am a legal assistant with the law firm of Miller Thomson LLP, lawyers for 2557904 Ontario Inc. ("255"), the proposed Stalking Horse Purchaser and, as such, have knowledge of the matters contained in this Affidavit and where I do not have knowledge, I cite the source of my information and verily believe it to be true. I make this affidavit in support of 255's motion for, amongst other things, directions on whether or not leave is necessary for either a stay or to appeal the Order of the Honourable Justice dated July 4, 2024.
- 2. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on June 10, 2024 at approximately 3:52 p.m. (being 2 days before the hearing of the Receiver's motion scheduled for June 12, 2024), the Debtor, 1000093910 Ontario Inc. ("Debtor") and Ravi Aurora, Akash Aurora, and Nick Aurora (collectively, the "Guarantors") and Countertop Solutions Inc. and Grafco International Laminating Inc. (collectively, the "Tenants")

served a Responding and Cross-Motion in connection with the Receiver's Motion (the "Second Cross-Motion"). A true copy of the email from counsel for the Debtor serving the Motion Record is attached hereto as Exhibit "A".

- 3. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that in its Second Cross-Motion, the Debtor sought, amongst other things:
 - (a) an adjournment of the Receiver's Motion;
 - (b) an interim Order staying the Receivership Order and the Sale Process Approval Order pending completion of the "Refinance" (as defined in the Second Cross-Motion materials) or, in the alternative, an interim order staying the Sale Process Approval Order until June 30, 2024, and without prejudice to the Debtor's right to bring a further motion to extend the stay to complete the Refinance; and
 - (c) on completion of the Refinance, an order terminating the Stalking Horse Agreement.

A true copy of the Notice of Motion regarding the Second Cross-Motion dated June 10, 2024 is attached hereto as **Exhibit "B"**.

- 4. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that at the time when it served its Second Cross-Motion, the Debtor had yet to obtain the financing that it purported to have obtained. The Debtor initially refused to serve a firm commitment letter from Firm Capital Corporation ("Firm Capital"), the proposed lender for the Refinance.
- 5. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on June 11, 2024 (on the eve of the Receiver's Motion), the Debtor provided

the Commitment Letter from Firm Capital Corporation (the "Commitment Letter"). A true copy of the Commitment Letter dated May 30, 2024 is attached hereto as Exhibit "C".

- 6. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that The Commitment Letter contained a number of conditions which, as of June 11, 2024, no evidence had been provided by the Debtor evidencing that the conditions had been satisfied.
- 7. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on June 12, 2024, the parties appeared before the Honourable Justice Lavine who determined that she did not have time to address the Debtor's motion as the Court was under the assumption that the Receiver's Motion was not contested. The matter was subsequently adjourned to June 14, 2024. A true copy of the Endorsement of Justice Lavine dated June 12, 2024 is attached hereto as **Exhibit "D"**.
- 8. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on June 14, 2024, the parties appeared before the Honourable Justice Sutherland. Much like Justice Lavine, Justice Sutherland determined that he did not have enough time to review the materials and make a determination on the threshold issue of whether or not to hear the Debtor's motion. Justice Sutherland set the matter down to be heard on June 28, 2024. A true copy of the Endorsement of Justice Sutherland dated June 14, 2024 is attached hereto as **Exhibit "E"**.
- 9. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on June 20, 2024, the Court released the Decision on Adjournment of Justice Sutherland (the "**Decision on Adjournment**") which, among other things, provided the reasons for which the Court adjourned the Receiver's Motion and the Second Cross-Motion to June 28,

- 2024. A true copy of the Decision on Adjournment of Justice Sutherland dated June 20, 2024 is attached hereto as **Exhibit "F"**.
- 10. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on June 21, 2024, following receipt of the Decision on Adjournment, the Receiver served upon the Debtor and the Service List a Notice of Examination of Mr. Ravi Aurora returnable on June 25, 2024 at 10:00 a.m. (the "Cross-Examination") on the affidavits sworn by Mr. Aurora June 10, 2024, June 12, 2024 and June 13, 2024. True copies of the email from counsel for the Receiver with the attached Notice of Examination dated June 21, 2024 is attached hereto as Exhibit "G".
- 11. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that, on June 25, 2024, Mr. Aurora was cross-examined by counsel for the Receiver and Counsel for 255. Mitchell was present at that Cross-Examination. There were a number of undertakings and under advisements provided and requests for production made of Mr. Aurora (on behalf of the Debtor) throughout the course of the Cross-Examination, which Counsel for the Debtor agreed to be answered and delivered by 4:00 p.m. on June 26, 2024. They were not. Some of the requested undertakings went to the heart of the circumstances surrounding the second mortgage loan, and others went to the status of the proposed refinancing. The under advisements were ultimately refused. A true copy of email correspondence from counsel for the Receiver requesting the answers to undertakings dated June 27, 2024 is attached hereto as **Exhibit "H"**.
- 12. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that a number of the questions, undertakings and production requests during the Cross-Examination (the "Zaherali Inquiries") related to the second mortgage loan provided by

Zaherali Visram (the "**Zaherali Loan**"), which benefits from a second mortgage registered on title to the Real Property, were either taken under advisement or refused.

- 13. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that the Zaherali Inquiries, which were for the most part refused, related to, among other things, when the Zaherali Loan documentation was prepared and executed, the relationship between the principals of the Debtor and Mr. Visram, the timing of the advances under the Zaherali Loan and the use of the advances under the Zaherali Loan.
- 14. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on June 28, 2024, Justice Sutherland found that he could not determine the Debtor's Second Cross-Motion and the matter was scheduled for a further hearing on July 2, 2024. A true copy of the Endorsement of Justice Sutherland dated June 28, 2024 is attached hereto as **Exhibit "I"**.
- 15. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on July 2, 2024, Justice Sutherland heard submissions from the parties on the threshold issue of whether or not the Debtor's Second Cross-Motion ought to be heard and, if so, should the Debtor be allowed to Redeem the First Mortgage and discharge the Receivership. On the same day, the Debtor confirmed that, as of July 2, 2024, it had received the financing to discharge the Receivership. Justice Sutherland reserved his decision. A true copy of the July 2, 2024 Endorsement of Justice Sutherland is attached hereto as **Exhibit "J"**.
- 16. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on July 4, 2024, Justice Sutherland released his Endorsement regarding the motion heard July 2, 2024, with the following decision:

- (a) There was urgency with respect to the decision of the Court, as interest and expenses were being incurred and the parties require a decision on either approving the proposed sale or redeeming the first mortgage; and
- (b) That the Respondent be permitted to redeem the first mortgage to pay fully the amount owing on the first mortgage, the costs and fees of the Receiver.

A true copy of the Endorsement of Justice Sutherland dated July 4, 2024 is attached hereto as **Exhibit "K"**.

- 17. I am advised and due verily believe from Mitchell Lightowler, an Associate with carriage of the matter, that on July 4, 2024, 255 served and filed a Notice of Appeal, relying on s. 193(b), 193(c) and 193(e) and s. 195 of the BIA and Rule 31 of the *Bankruptcy and Insolvency Rules* (C.R.C. c. 368). A true copy of the Notice of Appeal is attached hereto as **Exhibit "L"**.
- 18. I make this affidavit in support of the relief sought by 255 in the within motion.

SWORN by Stephanie Filosa of the City of Vaughan, in the Regional Municipality of York, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on July 5 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DE

Commissioner for Taking Affidavits (or as may be)

STEPHANIE FILOSA

KEVIN D. SHERKIN

PEAKHILL CAPITAL INC.

and

1000093910 ONTARIO INC.

Court of Appeal File No.: Court File No. CV-23-00004031-0000

Applicant (Respondent in Appeal)

Respondent (Appellant)

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at TORONTO

AFFIDAVIT OF STEPHANIE FILOSA

MILLER THOMSON LLP

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Mitchell Lightowler (LSO#: 76305T)

mlightowler@millerthomson.com

Tel: 416-595-7938

Lawyers for the Plaintiff

Served by Email: Service List

RCP-F 4C (September 1, 2020)

This is Exhibit "A" referred to in the Affidavit of Stephanie Filosa

4-10

Commissioner for Taking Affidavits (or as may be)
KEVIN D. SHERKIN (LSO#: 27099B)

Sweet, Kayla

From: Derek Ketelaars <derek@sclawpartners.com>

Sent: Monday, June 10, 2024 3:52 PM

To: Sean Zweig; Aiden Nelms; Noah Goldstein; Ben Luder; Dominique Michaud; jjamil@robbapp.com;

Barry Polisuk; Toronto-Tax-Fiscal@justice.gc.ca; insolvency.unit@ontario.ca; Ran He; George Benchetrit; Mr Howard Manis; dmagisano@lerners.ca; Louis Raffaghello; Gary Caplan; Aram Simovonian; Sherkin, Kevin; Lightowler, Mitchell; vkolenc8965@rogers.com; jsquire@lerners.ca

Subject: [**EXT**] 1000093910 ONTARIO INC. ats Peakhill Capital Inc. - Responding and Cross-Motion Record

Good afternoon,

We are counsel for the Debtor, the personal guarantors of the first and second mortgagees, and the tenants Countertop Solutions Inc. and Grafco International Laminating Corp. of 20 Regina Road, Vaughan, ON.

Please find attached our clients' Responding and Cross-Motion Record and Responding Factum to the Receiver's AVO motion returnable June 12, 2024. The Debtor on the cross-motion seeks to redeem and refinance the mortgages and to discharge the receiver. In the event that relief is not granted, the tenants seek relief from forfeiture to permit them to vacate the property on July 19, 2024.

We anticipate that we will need at least two hours to argue the cross-motion. Our office advised the trial coordinator of our intention to bring this cross-motion earlier today, but unfortunately they were not able to allocate additional court time. We intend to raise this at the start of Wednesday's motion.

Thank you,

DEREK KETELAARS

Lawyer

SCALZI CAPLAN LLP

20 Caldari Road Unit #2 Vaughan, Ontario, L4K 4N8

D: 437-242-4088

derek@sclawpartners.com



Challenging the Status Quo

www.sclawpartners.com

I am excited to share that Bernard Gasee and I have now joined Scalzi Caplan LLP! Please note my new contact information for your records.

Confidentiality Notice:

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and privileged information legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed in error, please immediately alert the sender by replying to this email and then delete this message and any attachments. If you are not the intended recipient, please note that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

Factum - Respondent - 10JUN2024.pdf

Motion and Cross-Motion Record - Respondent - 10JUN2024(I).pdf

Motion and Cross-Motion Record - Respondent - 10JUN2024(II).pdf

[EXTERNAL EMAIL / COURRIEL EXTERNE]

Please report any suspicious attachments, links, or requests for sensitive information.

Veuillez rapporter la présence de pièces jointes, de liens ou de demandes d'information sensible qui vous semblent suspectes.

This is Exhibit "B" referred to in the Affidavit of Stephanie Filosa

Commissioner for Taking Affidavits (or as may be)
KEVIN D. SHERKIN (LSO#: 27099B)

Court File No.: CV-23-00004031-0000

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant

(Respondent on Motion)

and

1000093910 ONTARIO INC.

Respondent (Applicant on Motion)

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED.

RESPONDING MOTION RECORD AND CROSS MOTION OF THE RESPONDENT

The applicants, 1000093910 ONTARIO INC. ("1000 Ontario" or the "Debtor"); Ravi Aurora, Akash Aurora, and Nick Aurora (collectively, the "Guarantors"); and, Countertop Solutions Inc. and Grafco International Laminating Inc. (collectively, the "Tenants") will make a motion to a Judge on WEDNESDAY JUNE 12, 2024, at 10:00 A.M., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

	In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);
	In writing as an opposed motion under subrule 37.12.1 (4);
	In person;
	By telephone conference;
\boxtimes	By video conference.

at the following location: 50 Eagle Street West, Newmarket, ON L3Y 6B1.

THE MOTION IS FOR:

1. To the extent required, orders validating service and abridging the time for service of this Motion Record so that the within motion is properly returnable on the date that it is heard.

A. Matters pertaining to a refinance, redemption of the security and the discharge of the Receiver

- 2. An interim Order staying the Receivership and the Sales Process Order (as defined below) pending the completion of the "Refinance" (as hereinafter defined);
- 3. In the alternative, an interim Order staying the Sales Process Order until June 30, 2024, and without prejudice to 1000 Ontario bringing a further motion to extend the stay so that the Refinance can be completed;
- 4. An Order discharging KSV Restructuring Inc. ("Receiver") as Receiver of the property, assets, and undertakings of 1000 Ontario on completion of the Refinance and upon the Receiver filing a discharge certificate;
- 5. On completion of the Refinance, an Order directing the Land Registrar for the Land Titles
 Division of York to delete the Order of Lavine J. dated September 13, 2023, ("Appointment
 Order") from title of the Property (as hereinafter defined);
- 6. On completion of the Refinance, an order terminating the Stalking Horse APS (as defined below);
- 7. A Declaration that no Break Fee or amount under the Reimbursement Clause is payable to the Stalking Horse Purchaser under the terms of the Stalking Horse APS; and
- 8. Further, and/or in the alternative, an Order that the Debtor pay \$250,000 into Court to the credit of the within proceedings, representing the Break Fee and any amounts payable under the Reimbursement Clause, until further order of the Court.
- 9. Further an Order Granting the Tenants, Countertop Solutions Inc. and Grafco International Laminating Corp., relief from forfeiture in connection with a notice of termination delivered by Peakhill Capital Inc. on May 28, 2024, so as to allow these tenants sufficient time to remove their goods, chattels, equipment, and customers' property from the premises;

- 10. Further, that the Receiver's discharge motion be adjourned pending the performance of an Order that Peakhill Capital Inc. provide an accounting of monies due and owing under its security;
- 11. An order sealing the confidential exhibits attached to the Affidavit of Ravi Aurora sworn June 10, 2024, until the Refinance is completed;
- 12. 1000 Ontario's costs of this motion, if opposed; and
- 13. Such further relief as this Honourable Court deems just and the circumstances require.

THE GROUNDS FOR THE MOTION ARE:

Background

1. 1000 Ontario is the sole registered owner of the property municipally known as 20 Regina Road, Vaughan, Ontario, and which is more particularly described as follows ("**Property**"):

03221-0039 (LT)	
PCL 3-1 SEC 65M2720; BLK 3PL	
65M2720 ; S/T LT576260,LT576262	
VAUGHAN	

- 2. On or about April 29, 2022, Peakhill Capital Inc. ("Peakhill"), as mortgagee, registered a first charge/mortgage ("Peakhill Mortgage") against the Property with 1000 Ontario as mortgagor.
- 3. As additional security for the Mortgage, Ravi Aurora, Nick Aurora, and Akash Aurora, all executed a personal Guarantee dated April 14, 2022, ("Peakhill Guarantee") wherein they guaranteed payment as principal debtors of all amounts owing under the Peakhill Mortgage.
- 4. The Property is the only material asset of 1000 Ontario. It leases the Property to Countertop Solutions Inc. ("CSI") and Grafco International Laminating Corporation ("GILC). Both tenants are related corporations to 1000 Ontario.

- 5. At all material times, CSI has carried on business at the Property as a manufacturer and fabricator of stone countertops and other stone building components. Its manufacturing operations are located exclusively at the Property.
- 6. At all material times, GILC has carried on business at the Property as a plastic extrusion laminating company. Its manufacturing operations are located exclusively at the Property.
- 7. Both CSI and GILC operate multiple pieces of heavy machinery and store significant quantities of inventory at the Property. In the case of CSI, that inventory includes large, fragile slabs of granite.
- 8. Furthermore, CSI and GILC collectively employ over forty (40) people who work at the Property. Some of those employees have been working at the Property for over twenty (20) years.
- 9. As of the date hereof, both CSI and GILC continue to occupy their respective leased premises. On May 28, 2024, Peakhill, and not the Receiver, sent written notice to CSI and 1000 Ontario alleging to terminate the leases at the Property effective June 10, 2024.
- 10. GILC is licenced and approved by the United States Customs and Border Protection Agency, the Canadian Border Services Agency, and the Canada Revenue Agency to export its manufactured goods to the United States. GILC is required to maintain strict security controls governing who can access the Property, and it is subject to more stringent record keeping requirements in order to maintain these licenses and approvals.
- 11. On or about September 13, 2023, Peakhill obtained the Appointment Order which appointed the Receiver as receiver and manager over the property, assets and undertakings of 1000 Ontario.
- 12. In addition to appointing the Receiver, the Appointment Order includes the following:
 - a. Section 18 of the order creates a first priority charge over 1000 Ontario's assets ("Receiver's Charge") to secure the fees and costs of the Receiver; and
 - b. Section 21 of the Order creates a second priority charge ("Receiver's Borrowing Charge") (the Receiver's Charge and the Receiver's Borrowing Charge are

collectively the "Receiver's Security") to secure any amounts borrowed by the

Receiver to fund its activities.

13. On or about December 20, 2023, the Receiver obtained an order ("Sales Process Order")

which, inter alia, approved a sales process under which the Receiver could sell the Property.

14. The Sales Process Order also authorized the Receiver, nunc pro tunc, to enter into an

agreement of purchase and sale dated November 13, 2023, (the "Stalking Horse APS") to sell the

Property to 2557004 Ontario Inc. ("Stalking Horse Purchaser").

15. The material terms of the Stalking Horse APS are as follows:

a. Purchase Price: \$24,255,000.00;

b. Deposit: \$2,400,000.00; and

c. Closing date: Five business days following the receipt of an Approval and Vesting

Order.

16. The Stalking Horse APS includes a condition for the benefit of the Receiver allowing the

Receiver to terminate the agreement if the Court does not issue an Approval and Vesting Order.

If terminated in this manner, both the Receiver and the Stalking Horse Purchaser would be

released from their respective obligations under the agreement and the deposit would be

returned to the Stalking Horse Purchaser.

17. Section 14 of the Stalking Horse APS further states that the Receiver must pay the Stalking

Horse Purchaser a "break fee" of \$200,000, inclusive of HST, ("Break Fee") and reimburse the

Stalking Horse Purchaser for its costs incurred to participate in the bidding process up to a

maximum of \$50,000 ("Reimbursement Clause") where: i) the Receiver accepts another bid to

purchase the Property; ii) that other bid is approved by the Court; and, iii) that sale is completed.

18. The Receiver therefore is under no obligation to pay the Break Fee or to reimburse any

amounts under the Reimbursement Clause where the Stalking Horse APS was the successful but

the agreement was otherwise terminated.

19. 1000 Ontario therefore states that the Receiver would be under no obligation to pay the

Break Fee or to reimburse the Stalking Horse Purchaser under the Reimbursement Clause if this

Honourable Court were to grant 1000 Ontario's relief sought and terminate the Stalking Horse APS.

20. The deadline to submit bids for the Property was May 7, 2024. On or about May 8, 2024, the Receiver, through its counsel, advised the Applicant, through its counsel, that apart from the Stalking Horse APS, no bids to purchase the Property were received. As a result, the Receiver intended to complete the Stalking Horse APS.

A. New Financing and Discharge

- 21. 1000 Ontario has raised sufficient funds and is ready, willing and able to repay all relevant creditors and discharge the Receiver ("Refinance").
- 22. As of the date of this motion, the relevant creditors are as follows:
 - a. The Receiver, who is owed approximately \$525,000 under the Receiver's Security;
 - the current first mortgagee, Peakhill, which is owed \$21,963,175.06 as of May 27,
 2024; and
 - c. The second mortgagee, Zaherali Visram ("VISRAM"), who has a second mortgage ("Second Mortgage") registered against the Property securing the principal amount of \$8,000,000.
- 23. The funds required to discharge the Receiver will be derived from:
 - a new first mortgage loan to be granted by Firm Capital Corporation in the principal sum of about \$18,668,000,000 net of fees and deductions, which is conditional on the discharge of the receivership;
 - b. A further advance of \$3,500,000 by the second mortgagee, VISRAM, pursuant to a signed mortgage amending agreement, which is conditional on the discharge of the receivership; and
 - c. Cash to be advanced by the Guarantors in the sum of \$950,000.
- 24. The proposed new first mortgagee and VISRAM have each consented to the other's mortgage being registered in their respective priority.

- 25. Firm Capital Corporation is a well-known lender with sufficient assets to finance the new first mortgage.
- 26. VISRAM has provided, or will provide prior to the hearing of this motion, proof that the funds for his further advance have been deposited into his lawyer's trust account.
- 27. Funds available from the Refinance will be sufficient to repay or refinance all outstanding obligations to the Receiver, Peakhill, and VISRAM.
- 28. Should the relief sought by the Receiver be granted, the second mortgagee, VISRAM, will suffer a significant shortfall and the Guarantors will face exposure on their Guarantees. On the other hand, should the relief being sought by these moving parties be granted, the shortfall to be suffered by the second mortgagee and the exposure of the Guarantors will be eliminated.
- 29. The only party that may be adversely affected, if any, by the granting of the relief would be the disappointed Stalking Horse Purchaser, who assumed the risk that the Stalking Horse APS would not close.
- 30. The disappointed Stalking Horse Purchaser may take the position that it is entitled to its Break Fee, but these moving parties wish to preserve their right to challenge the entitlement to the Break Fee.
- 31. However, in order to obtain a discharge of the Receivership, 1000 Ontario is prepared pay an additional \$250,000 for these amounts into Court pending further order of this Court.
- 32. Once the Refinance is completed, this receivership will serve no purpose. As such, on payment of the proceeds received from the Refinance to the Receiver and the Disputed Amount into Court, the Receiver's appointment should come to an end and the Receiver should be discharged, subject to the Receiver completing such final administrative tasks as the Receiver may be required to do, such as issuing a discharge certificate.

B. Relief From Forfeiture Should the Relief Sought Not be Granted

33. On May 28, 2024, Peakhill purported to terminate the leases held by the Tenants, which termination was to be effective as of June 10, 2024, effectively giving the Tenants nine (9) business days to vacate the premises.

- 34. The leased premises contain large and bespoke equipment, inventory, and goods belonging to third parties. It is impossible for the Tenants to move these items in the time set by Peakhill.
- 35. The Tenants have already secured alternate premises but require additional time to move the aforesaid items.
- 36. These Tenants therefore seek relief from forfeiture pursuant to <u>Section 20</u> of the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7. In the absence of such relief, these Tenants will suffer irreparable harm and prejudice to their business operations.

C. Accounting

- 37. The Receiver's motion materials contain no particulars or evidence with respect to the sums due and owing to Peakhill under its security.
- 38. It is fair and equitable that the Debtor and Guarantors be provided with these particulars and have the opportunity to challenge those amounts, if necessary.
- 39. The Debtor requested a payout statement from Peakhill on May 16, 2024. Despite this request, Peakhill has only delivered a bald statement which does not accurately describe the amounts set out therein. 1000 Ontario is unable to assess the fees and charges set out on Peakhill's statement in the circumstances.

Prejudice - Other Grounds

- 40. 1000 Ontario has a right to redeem the mortgages and discharge the Receiver.
- 41. No person, including the Stalking Horse Purchaser, would suffer non-compensable prejudice if this motion is granted.
- 42. Specifically, 1000 Ontario states that the Stalking Horse Purchaser has already acknowledged that any prejudice it may suffer, if any, (which prejudice is again denied) from terminating the Stalking Horse APS can be compensated. It further defined the circumstances where that compensation should be paid and the appropriate quantum of that when it negotiated a \$200,000 Break Fee.

- 43. On the other hand, if this motion is dismissed and 1000 Ontario is prevented from exercising its right to redeem, its principals, the Tenants and their respective employees would all likely suffer significant and irreparable prejudice.
- 44. It would be in the interests of justice to permit 1000 Ontario to exercise its right to redeem and discharge the Receiver in these circumstances.
- 45. As of the date hereof, a date for an approval and vesting order motion has been booked but the Receiver has not served their motion materials.

THE FOLLOWING STATUTES AND RULES will be relied upon at the hearing of the motion:

- 46. Rules 1.04, 2.03, 3.02 and 41.06 of the *Rules of Civil Procedure*;
- 47. Section 20 of the Commercial Tenancies Act, as amended;
- 48. Sections 12 and 22 of the *Mortgages Act*, R.S.O. 1990, c. M.40 as amended
- 49. Subsection 137(2) of the Courts of Justice Act, R.S.O. 990, c. C.43 as amended; and
- 50. Such further grounds as counsel may submit and this Honourable Court permits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The affidavit of Ravi Aurora with Exhibits, to be sworn; and
- 2. Such further evidence as counsel may submit and this Honourable Court Permits.

June 10, 2024

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AND TO: HER MAJESTY IN RIGHT OF ONTARIO

REPRESENTED BY THE MINISTER OF

FINANCE - INSOLVENCY UNIT

Ontario Ministry of Finance - Legal Services

Branch

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L1H 8H5

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PEAKHILL CAPITAL INC
Applicant (Respondent on Motion)

-and-

1000093910 ONTARIO INC.
Respondent (Applicant on Motion)

Court File No. CV-23-00004031-0000

ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT NEWMARKET

NOTICE OF MOTION OF THE RESPONDENT (APPLICANT ON MOTION)

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Lawyers for the Respondent (Applicant on Motion)

This is Exhibit "C" referred to in the Affidavit of Stephanie Filosa

Commissioner for Taking Affidavits (or as may be)
KEVIN D. SHERKIN (LSO#: 27099B)



FIRM CAPITAL CORPORATION, AS TRUSTEE MORTGAGE LOAN COMMITMENT (the "Commitment")

May 30, 2024

TO: 1000093910 ONTARIO INC., C/O RAVI AURORA

RE: 20 REGINA ROAD, VAUGHAN, ONTARIO

We are pleased to advise that your application for **first mortgage** financing on the above-noted property (the "Loan") has been approved, subject to the following terms and conditions, and subject to all legal matters and documentation being to the complete satisfaction of Firm Capital Corporation ("FCC"), the registered mortgagees under the subject loan (the "Lender"), and their solicitors.

PURPOSE : Refinance

BORROWER : 1000093910 Ontario Inc. (the "Borrower").

LOAN AMOUNT : A \$20,250,000.00 first mortgage loan.

INTEREST RATE: Floating at the greater of 12.25% Per Annum, or the TD Canada Trust

Posted Bank Prime Rate of Interest from time to time plus 5.05% Per Annum, with a portion of the interest being payable monthly and a portion to accrue. The Borrower shall make monthly interest payments based on a rate of 9.00% Per Annum (the "Pay Rate"). The balance of the interest due shall accrue until the earlier of (i) an event of default under the Loan, (ii)

the repayment of the Loan, or (iii) the maturity date of the Loan...

TERM : 1 year, from the interest adjustment date.

AMORTIZATION : 0, interest only.

REPAYMENT: During the first 11 Months of the Term of the Loan:

Interest shall be payable monthly based on the Pay Rate, not in advance, calculated and compounded monthly, interest only, on the outstanding principal balance on each payment date, plus all accrued interest, based on the principal balance outstanding exclusive of the \$1,250,000.00 advanced to pay the Funding Fee (i.e. for the first 11 months of the term of the Loan, the Borrower will pay interest based on a principal balance of

\$19,000,000.00 plus all accrued interest)

Commencing on the first day of the 12th Month of the term of the Loan:

Interest shall be payable monthly at the Pay Rate, not in advance, calculated and compounded monthly, interest only, on the outstanding principal balance on each payment date, plus all accrued interest, inclusive of the \$1,250,000.00 advanced to pay the Funding Fee (i.e. Commencing on the first day of the 12th month of the term of the Loan, the Borrower will pay interest based on a principal balance of \$20,250,000.00 plus all accrued interest)

PREPAYMENT PRIVILEGES

Open for repayment on any date upon NIL (0) month interest penalty, with thirty (30) days written notice.

LOAN SECURITY

The Lender under this facility will receive the following security:

- A first mortgage on the lands and buildings municipally known as 20 REGINA ROAD, VAUGHAN, ONTARIO.
- A registered Assignment of Rents and Leases. 2.
- A General Security Agreement for the Borrower and corporate 3. Guarantors, registered under PPSA.
- An assignment and pledge of the shares of the Borrower. 4.
- Postponements of Claim from (i) all shareholders/unit holders of the 5. Borrower, and (ii) all related party debt holders of the Borrower and corporate guarantors.
- Guarantees and Assignment & Postponements of Claim from (i) 6. RAVI AURORA, (ii) NAKUL AURORA, (iii) AKASH AURORA, (iv) COUNTERTOP SOLUTIONS INC., AND (v) GRAFCO INTERNATIONAL LAMINATING (collectively the "Guarantors") jointly and severally with the Borrower as principal debtors and not as surety, to repay the loan.
- Any other reasonable security documentation requested by the 7. Lender's solicitor.

DISBURSEMENTS:

Funds must be advanced on or before June 30, 2024, failing which this Commitment will be cancelled or extended at FCC's sole option.

PROPERTY

DESCRIPTION

The subject property is comprised of 64,204 sq. ft. industrial building, which contains 54,440 sq. ft. of warehouse space with 4,756 sq. ft. of office space on the main floor and 5,008 sq. ft. of second floor/mezzanine office space.

LOAN FEES:

The Borrower and Guarantors acknowledge and agree that in consideration for FCC furnishing this Commitment, to pay to FCC the following fees:

Commitment Fee: \$ 570,000.00 TO: Firm Capital Corporation Firm Capital Corporation Funding Fee : \$1,250,000.00 TO:

Page 2 of 7 Borrower(s) &

Dono ii or (b) co	
Guarantor(s) Initials:	

The \$570,000 Commitment Fee shall be deemed to have been fully earned by FCC upon acceptance of this Commitment. The Borrower hereby irrevocably directs the Lenders solicitor to pay from the closing proceeds, the outstanding balance of the subject fees. At the time of acceptance of this Commitment, the Borrower and Guarantors agree to pay \$250,000.00 as a partial payment on account of the above fees (the "Standby Deposit"), and the balance thereof shall be due and payable on the closing date. Should the Borrower fail to close this transaction through no fault of the Lender's, the Standby Deposit shall be retained and the outstanding balance shall be due and payable to FCC as liquidated damages, and not as a penalty, and this Commitment shall be, at FCC's option, cancelled. The Borrower and Guarantors acknowledge and agree that no interest shall be paid to the Borrower and/or Guarantors on the Standby Deposit. The \$1,250,000.00 Funding Fee is payable pursuant to the section entitled "Payment of Fees" herein.

The Borrower shall be permitted to defer the payment of \$190,000 of the Commitment Fee (the "Deferred Fee") until the earlier of (i) the first day of the 7th month of the term of the Loan, (ii) an event of default under the Loan, and (iii) the repayment of the Loan. A failure to pay the Deferred Fee to FCC when due, shall be and event of default under the Loan.

The Borrower acknowledges that the Commitment Fee is payable to FCC as a brokerage fee, and the Funding Fee is payable to the Lenders for lending the funds under the Loan.

PAYMENT OF FEES:

The \$570,000.00 Commitment is fully earned by FCC on acceptance of this Commitment, and the \$1,250,000.00 Funding Fee is fully earned by the Lenders and payable on closing of the subject transaction (being the time of first advance under the Loan). The Borrower hereby irrevocably directs the Lenders solicitor to pay from the closing proceeds, the outstanding balance of the Commitment, less the Deferred Fee amount, and the Funding Fee.

SPECIAL LOAN CONDITIONS:

The subject loan facility shall be subject to the following conditions, which the Borrower and Guarantors jointly covenant to meet:

- 1. Prior to the advance of funds the Lender must be provided with a satisfactory appraisal report confirming a value of at least \$27,000,000.00. The Appraisal Report is to be to the complete satisfaction of FCC as to content and value and is to be prepared by an appraiser that is satisfactory to FCC. FCC reserves the right not to release the appraisal. This Commitment is conditional for 48 hours upon receiving the appraisal report to enable FCC to review the report and to be satisfied with the report to its sole, subjective and arbitrary discretion.
- 2. Confirmation of the following Pro-Forma Net Operating Income:

Net Operating Income (Not Less Than)

\$1,250,000.00

The Borrower agrees to provide satisfactory documentation to FCC to confirm the above noted figures. Assignment of rents and lease to apply (as per General Mortgage Loan Conditions clause #20). The Borrower is to provide copies of all leases. All documentation to be satisfactory to FCC's and its solicitor.

Borrower(s) &	
Guarantor(s) Initials:	

- 5. This loan is subject to credit review (including but not limited to Credit Checks, Bank & Mortgage Ratings) on all the applicants (as per general condition clause #15), same to be to the complete satisfaction of FCC.
- 6. Any subsequent financing of the property is subject to the approval of the Lender.
- 7. The Borrower and Guarantors hereby warrant and represent that they have the ability to service the Loan debt.
- 8. No funds shall be advanced until the Lender has been provided with a copy of executed lease(s) between the current tenant(s) and Borrower, with the leases representing 100% of the building area (64,204 sq. ft.). The term of the lease must not be less than 5 years (to mature no earlier than May 31, 2029), at a rental rate of at least \$20.00 per sq. ft. on a triple net basis. The lease must postpone to the subject loan facility. With the Lender having the right to terminate the leases upon an event of default under the Loan, with the tenant having to vacate the property within 90 days of the issuance by the Lender of said termination notice.
- 9. Until the Loan is repaid in full, the Borrower and Guarantor acknowledge and agree that all leases entered into after the registration of the security documents for this Loan will include the following clauses:
 - (i) The tenant agrees that in the event that the Lender takes possession of the property, or brings an action for foreclosure, or exercises its right of Power of Sale, or exercises any other remedy against the property, said tenant, at request of Lender, shall attorn to and recognize the Lender as the landlord under their lease, and
 - (ii) The tenant agrees to postpone their lease to the Lender's security, provided that no such postponement shall have the effect of permitting the Lender to disturb the possession of the leased premises by said tenant as long as the tenant is not in default under their lease.

GENERAL MORTGAGE LOAN CONDITIONS:

Please see the attached Schedule "A", which forms a part of this Commitment, for the General Loan Conditions.

SYNDICATION:

FCC shall have 10 business days following the acceptance of this Commitment, and upon receipt of all the requested underwriting information to syndicate a portion of the Loan in an amount to be determined by FCC at its sole discretion and subject to terms satisfactory to FCC, failing which this Commitment will be cancelled and the Standby Deposit will be returned to the Borrower without deduction or interest. It is further agreed that the Borrower's acceptance and return of this Commitment shall not bind FCC or the Lender to advance the Loan and that this Commitment is conditional for a period of 3 business days following the provision of all required underwriting information by the Borrower, upon FCC and/or the Lender's credit committee approval of the Loan.

Borrower(s) &
Guarantor(s) Initials: _____

REQUIRED PRIOR TO CLOSING:

The advance of funds under the Loan is subject to the following conditions and subject to receiving the following documentation, which must be to the Lender's satisfaction in their sole, arbitrary and subjective discretion:

- (A) A completed Firm Capital Corporation Mortgage Loan Application and statement of net worth for the personal Guarantors.
- (B) A copy of the Financial Statements for the past 2 years of the Borrower and corporate Guarantors. The financial statements for the most recent year must be audited.
- (C) A current appraisal report, not older than 30 days prior to funding, and being addressed to the Lender.
- (D) Environmental Site Assessment of the property, addressed to the Lender, confirming the site is free of all environmental contamination. The report is to be completed by an environmental engineer that is satisfactory to the Lender, and the Lender is to be provided with confirmation that the engineer's liability is limited to an amount that is satisfactory to the Lender.
- (E) A Building Inspection Report for the subject property, addressed to the Lender, on the structural and mechanical condition of building, by an engineer satisfactory to the Lender, and confirming that the engineer's liability is limited to an amount that is satisfactory to the Lender.
- (F) A copy of the Transfer/Deed for the property.
- (G) A copy of the existing mortgage charges on the property, along with mortgage discharge statement(s).
- (H) A copy of the lease agreements for the property.
- (I) A copy of a current signed Rent Roll for the property.
- (J) A copy of the most recent operating expense statement for the properties, with all supporting documentation.
- (K) A copy of all court documentation relating to the current receivership that the Borrower/property are subject to.
- (L) A copy of the survey of the property.
- (M) The Borrower agrees it is responsible for obtaining and negotiating a price for legal fees and estimated disbursements from the Lender's appointed solicitor.
- (N) At the Lender's solicitor's option, the Borrower and or Guarantors are to obtain I.L.A. for this transaction.
- (O) At FCC's option, subject to a satisfactory site inspection.
- (P) At FCC's option, subject to a satisfactory meeting between the Borrower, the Guarantors and FCC at FCC's office.
- (Q) Any further reasonable documentation that FCC deems necessary to complete the underwriting of a loan on a property of this nature.

SCHEDULES ATTACHED:

The following attached schedule(s) form a part of this Commitment;

SCHEDULE "A": General Loan Conditions
SCHEDULE "B": Borrower Disclosure Form

COMMITMENT ACCEPTANCE:

The Borrower / Guarantors agree that Firm Capital Corporation's <u>services are rendered</u> at the time this Commitment is accepted by the Borrower / Guarantors. By signing this Commitment, the Borrower and Guarantors acknowledge and agree that (i) it is the responsibility of the Borrower and Guarantors to determine the suitability of the Loan, either through advice from their financial advisor or another qualified professional, (ii) FCC is acting on behalf of the Lender and for the Lender's benefit only, (iii)

Borrower(s) &	Page 5 of 7
Guarantor(s) Initials:	

FCC acts exclusively for managed accounts and related entities and is deemed to be acting as a principal herein, (iv) the Borrower and/or Guarantors should view FCC's role as that of a lender, and (iv) the Lender has advised the Borrower and Guarantors to obtain independent legal advice and financial advice with respect to the impact of this transaction, including the risks associated with the Borrower providing the Lender with the Loan security, and the resulting remedies available to the Lender should a default occur, including, but not limited to, the disposition of the security for the Loan in the event a Loan default occurs and is not cured within the permitted cure periods. If the terms and conditions set out herein are satisfactory, kindly acknowledge acceptance by initialling each page and signing below. Please return one copy of this Commitment to our office within six (6) days of this date, otherwise this Commitment may be considered by us to be null and void. The Borrower acknowledges having received and/or executed a Borrower Disclosure Form at least 48 hours prior to signing this Commitment and a copy has been retained by the Borrower. In case of any inconsistency or conflict between any provisions of this Commitment and any provisions of the security documents for the Loan, the Lender may, in their sole discretion, determine which shall prevail.

FIRM CAPITAL CORPORATION PER:	PER:
	Koku
Eli Dadouch President	Forrest Todd Vice-President, Mortgage Banking
E. & O. E.	
BORROWER & GUARANTORS ACCEPTANCE I/we hereby acknowledge that I/We have been advised legal advice with respect to the Loan and have been a commitment.	by Firm Capital Corporation to seek independent
I/we hereby accept the terms and conditions of this Cothe Lender to duly carry out same terms and condition 2024.	——————————————————————————————————————
BORROWER:	
1000093910 ONTARIO INC. PER:	
A.S.O.	

Borrower(s) & Guarantor(s) Initials:

Yours truly

GUARANTORS:	
GRAFCO INTERNATIONAL LAMINATING CORP. PER:	COUNTERTOP SOLUTIONS INC. PER:
A.S.O.	A.S.O.
RAVI AURORA	NAKUL AURORA
AKASH AURORA	

GENERAL MORTGAGE LOAN CONDITIONS:

- ADMINISTRATION FEES: There is a Late Payment Administration Fee payable by the Borrower in the amount of \$2,000.00 for each payment not made when due or for each payment not honoured (and the Borrower hereby waives notice of dishonour). There is an Advance Administration Fee payable by the Borrower in the amount of \$500.00 per advance for each advance of funds made by the Lender under the Loan. There is a Compliance Finance Capital Fee in the amount of \$200 due at the time of the initial advance under the Loan.
- 2. <u>ADMINISTRATIVE SET UP FEE:</u> There is a \$1,000.00 administrative set up fee payable to FCC at the time of the initial advance under the Loan.
- 3. <u>LENDER PROPERTY INSPECTION FEE:</u> There is a \$1,000,000 Lender Property Inspection Fee payable to FCC at the time of the initial advance under the Loan.
- 4. MAINTENANCE FEE: The Borrower agrees to pay to FCC \$450.00 Per Annum for ongoing maintenance of the Loan account, which includes, but is not limited to, system upgrades, document management, data storage, software licensing, and related customer services. The Maintenance Fee shall be payable to FCC and shall be due on each anniversary date of the interest adjustment date for the Loan, or upon full Loan discharge.
- 5. <u>WIRE TRANSFER FEE:</u> There is wire transfer fee of \$100.00 payable to the Lender for all advances made by way of a wire transfer.
- 6. <u>PIN MONITIRING FEE:</u> The Borrower shall pay a \$70.00 fee for each separate property provided as security for the Loan, payable to FCC at the time of the initial advance under the Loan. An additional fee of \$25.00 shall be due on each anniversary date of the interest adjustment date for the Loan.
- 7. ENFORCEMENT FEE: If there is a default under the Loan and the Lender enforces its security, an Enforcement Fee equivalent to 3% of the principal balance outstanding under the Loan, which is a reasonable estimate of the cost/damages to the Lender to undertake the enforcement. The Enforcement Fee shall be payable by the Borrower and/or Guarantors on the initial date that such enforcement action was taken and such fee shall be secured by the security for the Loan. In addition, if the Lender is required to attorn rents at the property(s) provided as security for the Loan, a ten (10%) percent property management fee will be charged to the Borrower (based on 10% the gross rents collected).
- 8. <u>ASSIGNMENT:</u> This Commitment and the security may be assigned by FCC in whole or in part. The borrower acknowledges and agrees that FCC may be the lender in whole or in part or may be acting for an investor client or institution, in which case FCC shall have the right to assign this agreement to another party. FCC further hereby reserves all its rights and claims it may have to any commissions and/or brokerage fees due and owing by the Borrower and Guarantors under the Commitment, and this obligation of the Borrower / Guarantors shall survive and not merge on the closing of the subject transaction.
- 9. TAXES: Any tax bills issued and unpaid at the interest adjustment date are to be paid in full from the proceeds of the Loan. At closing, and at the Lender's option, the Borrower shall establish with the Lender a property tax escrow account (and undertakes to provide funds to establish the subject account satisfactory to the Lender), and the Borrower agrees to pay to the Lender 1/12 of the annual taxes on a monthly basis, and the Lender will remit same to the local municipality as taxes are due. No interest will be paid to the Borrower on funds held in the property tax escrow account. If a property tax escrow account is required, the Borrower agrees to pay the Lender a \$275.00 Per Annum Tax Account Administration Fee for servicing the tax account.
- 10. <u>POST DATED CHEQUES:</u> The Borrower shall provide the Lender with a series of twelve post dated cheques on the execution of the mortgage documents and on each and every anniversary date thereof, or P.A.C's. form if requested by the Lender.
- 11. <u>SALE OF PROPERTY:</u> The Borrower and Guarantors agree that in the event of a sale, conveyance, lease, or transfer of the title to the mortgaged property to a purchaser, grantee, transferee, mortgagee, or lessee not approved in writing by the Lender, then at the option of the Lender, all monies secured under the Loan shall forthwith become due and payable, other than with respect to sales that occur pursuant to partial discharge provisions detailed herein.
- 12. <u>INSURANCE:</u> The Borrower and Guarantors agree that at least 3 days prior to registration of the mortgage documents, the Borrower and Guarantors shall provide to the Lender or its solicitors, with evidence that the property to be mortgaged is adequately insured with an insurance company satisfactory to the Lender and such insurance may be straight insurance,

Borrower(s) &	Page 1 of 5
Guarantor(s) Initials:	

but if the Lender so requests, then such insurance must provide for boiler coverage, liability, insurance loss of profits, or rental insurance as the case may be. The Borrower and Guarantors shall provide a certified copy of such insurance policy to the Lender or its solicitors, denoting loss payable to the Lender, such insurance policy shall insure the mortgaged property for the principal amount secured by the Loan. Co-Insurance is not acceptable. An independent insurance consultant selected by the Lender, the cost of which shall be borne by the Borrower and or/guarantors, shall review evidence of such coverages, consisting of the full policies. If a material change is made to the insurance policy, the independent insurance consultant will review the amended insurance policy, the cost of which shall be borne by the Borrower and/or Guarantors.

13. SOLICITORS:

FCC will appoint the legal firm of:

TO BE DETERMINED BY FCC

to act on its behalf on this transaction. Upon the execution of this Commitment, and prior to the commencement of the legal work for the subject transaction, the Borrower shall pay a retainer to the Lender's solicitor, with the amount of said retainer to be determined by the Lender's solicitor, acting reasonably. All legal fees and disbursements are to be paid by the borrower whether or not any funds are advanced, which legal fees shall be deducted by the solicitors from the first Loan advance.

- 14. <u>SURVEY:</u> An up to date survey or Plan of Subdivision prepared by a duly qualified land surveyor is required, satisfactory to FCC
- 15. MORTGAGE: The Loan to be made to the Borrower and Guarantors shall be subject to all extended terms and conditions set forth in the Lender's standard form of mortgage contract or in the mortgage contract prepared by the Lender's solicitors, whichever the case may be. Irrespective of the prepayment privilege noted previously herein, the Loan shall not be open for prepayment by the Borrower if such prepayment would result in a violation of Section 347 of the Criminal Code.
- 16. <u>REPRESENTATIONS & INFORMATION:</u> The Borrower and Guarantors undertake that all representations made by the Borrower and Guarantors and all information submitted by the Borrower and Guarantors or their broker to FCC in connection with their mortgage application are true and accurate; and that the Borrower and Guarantors agree to supply promptly, on request, any further information concerning the Borrower and Guarantors, their financial standing, or about the property, which may be required by FCC or its solicitors.
- 17. MATERIAL CHANGE: In the event that there are any material adverse changes in the financial position of the Borrower and/or Guarantors, or to the project, either physically or financially, as determined by the Lender in its sole, arbitrary and subjective discretion, then such shall be considered to be an event of default under the loan and the Lender may, at its option, refuse to make any further advances under the mortgage and may, at its option, require that all monies secured by the mortgage shall forthwith become due and payable. In the event that there are any material adverse changes to the credit markets, as determined by the Lender in its sole, arbitrary and subjective discretion, the Lender may, at its option, refuse to make any further advances under the mortgage.
- 18. <u>CREDIT:</u> That the Lender, after completing credit investigations which it will make from time to time concerning the Borrower and Guarantors, must in its absolute discretion be satisfied with all information obtained, prior to any advance being made under the Loan.
- 19. <u>FINANCIAL AND PROPERTY UPDATES:</u> Within 30 days of a request from the Lender, the Borrower shall provide the Lender with (i) an update on the financial status of the Borrower and Guarantors, including but not limited to updated financial statements and/or personal net worth statements, and/or (ii) an update on the status of the subject property/project, failing which the Loan shall be in default.
- 20. <u>INDEMNIFY:</u> The Borrower and Guarantors irrevocably agree to indemnify and hold FCC harmless from and against any loss, cost, liability or expense incurred as result of the enforcement for any claims for Brokerage, Legal, Appraisal, Finders Fees, or any other matter in relation to this loan. It is understood that neither the preparation nor the registration of any of the documents contemplated by this agreement shall not bind FCC or the Lender to advance the funds hereby intended to be secured. FCC may refer to this property/Loan in its corporate advertising.
- 21. <u>HAZARDOUS SUBSTANCE INDEMNITY:</u> The Borrower and Guarantors acknowledge and agree that they shall indemnify the Lender and hold harmless the Lender from and against all claims, demands, liabilities, losses, costs damages and expenses that the Lender may incur or suffer, directly or indirectly, as a result of the presences of any hazardous

Borrower(s) &	
Guarantor(s) Initials:	

- substance on, upon or within the subject property or the escape, seepage, leakage or spillage from the subject property. The form and content of said indemnity shall be to the complete satisfaction of the Lender in their sole discretion.
- 22. ASSIGNMENT OF COMMITMENT LETTER: At closing, FCC will be assigning this Commitment to the Lender. At the time of assignment, FCC shall be relieved by the Borrower and or Guarantors of all liabilities and claims relating to this loan, at which time FCC shall become the loan servicer (the "Servicer"). The Borrower acknowledges that the registered Lender has retained the services of FCC as Servicer to service the subject loan and the Loan including the collection of payments under the Loan and that title to the Loan will be registered directly in the Lender's name. The Borrower further acknowledges that the Servicer is not the Lender and the Servicer owes no obligation to the Borrower to advance funds under the Loan, or continue to be the Servicer of the Loan. For the purposes of this Commitment, all references to the Lender shall be deemed to be the registered named Lender. The Lender shall have and may exercise at all times and without restriction all of the rights and benefits under this Commitment. The Borrower shall not assign any of its rights hereunder without the prior written approval of FCC.
- 23. <u>TITLE:</u> The Borrower and Guarantors have represented and hereby warrant that they have or will have a good and marketable title to the property to be mortgaged. Work orders will not be accepted. At the Lender's sole option, the Borrower may be required to provide title insurance for the mortgaged property. In the event that the Lender requires title insurance, said title insurance shall be provided by Stewart Title. The cost of the title insurance shall be at the Borrower's expense.
- 24. SECTION 118 RESTRICTION: The Borrower and Guarantors acknowledge and agree that the Lender shall register a Section 118 Restriction on title to the subject property(s) prohibiting any further mortgages to be registered without the consent of the Lender in its sole discretion. The Lender agrees that upon the Land Registry Office certifying the Lender's security documents (including the Mortgage Charge and Assignment and Rents), and upon written request from the Borrower, the Lender shall discharge the Section 118 Restriction. All costs related to the registration and discharge of the Section 118 Restriction shall be at the sole expense of the Borrower and Guarantors.
- 25. PAYMENT OF FEES: All Loan costs, including brokerage fees, commitment fees, legal, appraisal and survey costs, as well as insurance premiums in connection with the application and any resulting loan, are to be paid by the Borrower and Guarantors whether or not money is advanced under this loan, and may be deducted from the proceeds of the loan. The Lender will charge a reasonable fee for the preparation of the Mortgage Discharge Statement, and the Lender's solicitor will charge a reasonable fee for the preparation of the Discharge of Mortgage. The Borrower and Guarantors acknowledge and agree that if government legislation requires that GST/HST is payable on any Loan costs, including but not limited to brokerage fees, commitment fees, renewal fees, funding fees, and administration fees, the Borrower and Guarantors will be responsible for the payment of the GST/HST, including any GST/HST that is payable due to the retroactive implementation of legislative changes.
- 26. <u>SOLICITORS OPINION:</u> Borrower's counsel shall provide such opinions as required by the Lender, including, without limitation, corporate and enforceability opinions. Such opinions must be to the complete satisfaction of the Lender.
- 27. GENERAL ASSIGNMENT OF RENTS/LEASES: A general assignment of rents/leases which shall include a covenant of the Borrower not to accept rent more than thirty days in advance, not to amend leases, and not to accept surrender of leases without approval. When the Loan is not in default, rents may continue to be paid to the Borrower. The assignment of Rents/Leases is to be registered on title. All existing leases are to be satisfactory to FCC and its solicitors as to form and content.
- 28. <u>TIME OF PAYMENT:</u> Any payment (other than payment of regular payments of principal and interest) that is made after 1:00p.m. on any date, shall be deemed, for the purpose of calculation of interest, to have been made and received on the next bank business day.
- 29. CROSS-DEFAULT /SERVICE FEE: The occurrence of an event of default under any one of the security documents held by the Lender relating to the Borrower and/or Guarantors or a company related to the Borrower and/or Guarantor, will constitute an event of default under all other security documents and loans to the Borrower and/or Guarantor, or a company related to the Borrower and/or Guarantor, held by the Lender, or in the name of any associated or affiliated corporation to the Lender. If the Lender takes any proceeding pursuant to the Loan or other security document by reason of the Borrower's default the Lender shall be entitled to add to the Loan debt a service and administrative fee and a property inspection fee in addition to all other fees, cost, claims or demands to which the Lender are also entitled.

Borrower(s) &	
Guarantor(s) Initials:	

- 30. <u>MERGER OF COMMITMENT:</u> It is agreed that the execution, delivery and registration, as applicable, of the mortgage and the security required herein shall not operate as a merger of the terms and provisions of this Commitment and this Commitment shall survive such delivery and registration, as applicable, and remain in full force and effect.
- 31. AUTOMATIC RENEWAL: In the event that the Borrower fails to repay the principal and interest outstanding on the maturity date, or fails to accept a renewal offer tendered by the Lender (for any reason not attributable to the Lender) within 10 business days of the maturity date, then the Lender may, at their sole option, automatically renew the Loan for a period of one month from the maturity date, at an interest rate equal to the greater of 15.00% Per Annum or the TD Canada Trust Prime Lending Rate plus 8.00% per annum, calculated daily, and compound and payable monthly, In the event that the renewal has not been finalized within this one month period, then there will be no further extensions, and the Lender will exercise its remedies under the mortgage charge. The Lender shall not be obligated to offer any renewal. All other terms and covenants under the Loan shall continue to apply. The Loan may be paid in full at any time during the one month renewal period. A Processing Fee which is the greater of \$1,000.00 or 1/10 of 2.50% of the outstanding balance shall be added to the principal balance if this extension is utilized.
- 32. <u>GUARANTORS</u>: In consideration of the Lender committing to make the Loan available to the Borrower, the receipt and sufficiency of which is hereby acknowledged by Guarantors, the Guarantors do hereby covenant, as principal debtor and not as surety that they will pay or cause to be paid to the Lender all amounts due by the Borrower under the Loan and will observe, keep and perform all of the terms and conditions set forth herein and in the security documents or required hereby or by the security documents to be observed, kept and performed by the Borrower pursuant to this Commitment or any of the security documents, and that all present and further indebtedness of the Borrower to the Guarantors shall be assigned to the Lender and postponed to the present and future indebtedness of the Borrower to the Lender and the Guarantors agree that they shall execute the security documents or any of theme in such form as may be required by the Lender and its solicitors, in order to fully document and effectuate the intent and meaning of this paragraph.
- 33. <u>COUNTERPARTS</u>: This Commitment may be executed in counterparts and all counterparts so executed will constitute one agreement binding on the parties effective on execution. Provided further and notwithstanding the foregoing, the failure of any one of the Borrower and/or the Guarantors to execute this Commitment shall not be pleaded as an estoppel or a defense to the execution of this Commitment by the others of the Borrower and/or Guarantors.
- 34. FACSIMILE TRANSMISSION / E-MAIL: The transmission of an executed copy of this Commitment by facsimile or e-mail shall be deemed to constitute execution and delivery of an original executed copy. The Lender shall be entitled to rely on any agreement, document, instrument, report or certificate provided by the Borrower and/or Guarantors by way of e-mail or facsimile as though it were an originally signed agreement, document, instrument, report or certificate. The Borrower and/or Guarantors acknowledge and agree that any communication from the Borrower and/or Guarantors to the Lender that is received by e-mail or facsimile is a reliable communication from the Borrower and/or Guarantors.
- 35. ELECTRONIC IMAGING: The Borrower and Guarantors acknowledge and agree that, at any time, the Lender may convert any paper records / documentation relating to the Loan that was delivered to the Lender (collectively the "Paper Record"), into electronic images (the "Electronic Image") as part of the Lender's normal business practices. The parties agree that each Electronic Image shall be considered as an authoritative copy of the Paper Record and shall be legally binding on the parties and admissible in any legal, administrative or other proceeding as conclusive evidence of the contents of such document in the same manner as the original Paper Record.
- 36. BORROWER & GUARANTORS IDENTIFICATION: The Borrower and Guarantors acknowledge and agree that FCC and the Lender will be complying with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and its regulations. Pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the "Act"), the Lender is required to ask for identification of the Borrower, the Guarantors and any third party involved in the transaction, and for information with respect to the source of funds used in connection with the Borrower's equity in the subject property. The Borrower and Guarantors hereby covenant and agree to provide, prior to the first advance under the Loan, such identification and information as may be reasonably required to ensure the Lender's compliance with the Act.
- 37. **ENFORCEMENT OF SECURITY:** The Borrower and Guarantors acknowledge and agree that all security received for the Loan must be enforceable in the province in which the mortgage is registered. The court in the province in which the mortgage is registered shall have exclusive jurisdiction to hear all disputes relating to the Loan and its security.
- 38. **PROFESSIONALS**: The Borrower shall select, appoint and retain the Project Monitor and any and all other professionals providing services in respect of the project. The terms of reference of the Project Monitor shall be prepared by the Lender. All reports and certificates of the Project Monitor and any other professionals shall be addressed to both the Borrower and

Borrower(s)	&	
Guarantor(s)) Initials:	

the Lender. The Borrower and Guarantors acknowledge that the Lender shall have no liability, responsibility or obligation to the Borrower and/or Guarantors respecting any services, certificates or reports relating to the mortgaged property provided by the Project Monitor or by any cost consultants, quantity surveyors, engineers, architects, planners or any other professionals, whether or not the person, firm or corporation providing such services, certificates or reports was retained by the Borrower or by the Lender.

39. CONSENT TO RELEASE OF INFORMATION: The Borrower shall execute and deliver whatever consents are required by the Lender and its solicitors concerning the release and disclosure of information by the Lender to third parties and by third parties to the Lender in accordance with provisions of the Personal Information Protection and Electronic Documentation (Act) Canada.

Borrower(s) & Guarantor(s) Initials:

This is Exhibit "D" referred to in the Affidavit of Stephanie Filosa

A-15

Commissioner for Taking Affidavits (or as may be)
KEVIN D. SHERKIN (LSO#: 27099B)

Superior Court of Justice

50 Eagle Street West, Newmarket, On

Court File Number/Numéro de dossier du greffe CV-23-00004031-0000

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

DATE: Applicant: PEAKHILL CAPITAL INC.

Counsel: Dominique Michaud - dmichaud@robapp.com

June 12, 2024 Respondent: 100093910 ONTARIO INC

Counsel: Derek Ketelaars- derek@sclawpartners.com

COUNTERTOP SOLUTIONS

Counsel: Derek Ketelaars- derek@sclawpartners.com

Receiver: KSV RESTRUCTURING INC.

Counsel: Richard Swan, Sean Zweig and Aiden Nelms - swanr@bennettjones.com

2557904 ONTARIO INC.

Counsel: Kevin Sherkin and Mitchell Lightowler - ksherkin@millerthomson.conm and

mlightowler@millerthomson.com

REN/TEX REALTY INC. AND RE/MAX PREMIER INC.

Counsel: Domenico Magisano - dmagisano@lerners.ca

20 REGINA JV LTD.

Counsel: Michael Myers – <u>myers@phmlaw.com</u>

ZAHERALI VISRAM (SECOND MORTGAGEE)

Counsel: George Benchetrit- george@chaitons.com

Date: June 12, 2024

This motion by the Receiver for an Approval and Vesting Oder and Distribution and Discharge Order was scheduled as a consent motion, requiring thirty minutes.

The debtor, 1000093910 Ontario Inc., and Ravi Aurora, Akash Aurora, and Nick Aurora (the guarantors), and Countertop Solutions Inc. and Grafco International Laminating Inc. (the tenants) bring an unconfirmed crossmotion. The Receiver opposes the hearing of the cross-motion. There was insufficient time for this matter.

Adjourned to be heard on Friday, June 14, 2024 at 12:30 p.m. by videoconference.

Mr. Swan, counsel for the Receiver, conferred with all parties, and prepared a list of List of Materials that will be referred to, "Schedule A", attached.

Justice S. E. Lavine

SCHEDULE "A"

List of Materials for the Consideration of Justice Sutherland

- Motion Record of the Receiver (returnable June 12, 2024) dated May 31, 2024
- Factum of the Receiver dated June 6, 2024
- Affidavit of Aiden Nelms sworn June 12, 2024
- Responding Motion Record and Cross-Motion Record of the Respondent (returnable June 12, 2024) dated June 10, 2024 (including Exhibit A (Unsealed)
- Factum of the Respondent dated June 20, 2024
- Supplementary Factum of the Respondent dated June 11, 2024
- Affidavit of Ravi Aurora sworn June 12, 2024
- Responding Motion Record of 2557904 Ontario Inc. (returnable June 12, 2024) dated June 11, 2024
- Factum of 2557904 Ontario Inc. dated June 11, 2024
- Responding Motion Record of 20 Regina JV Ltd. dated June 6, 2024
- The Factum of 20 Regina JV Ltd. dated June 10, 2024
- Affidavit of Johnson Ching Fung Yu sworn June 11, 2024
- Responding Motion Record of Zaherali Visram dated June 10, 2024
- The Affidavit of Haley Brittain sworn June 11, 2024

This is Exhibit "E" referred to in the Affidavit of Stephanie Filosa

X-15

Superior Court of Justice

50 Eagle Street West, Newmarket, On

Court File Number/Numéro de dossier du greffe CV-23-00004031-0000

Civil Endorsement Sheet/
Page d'inscription

DATE:

June 14, 2024

Applicant:

Peakhill Capital Inc.

Counsel:

Dominique Michaud - dmichaud@robapp.com

Motion on notice (virtual)

Respondents:

100093910 Ontario Inc/Countertop Solutions

Counsel: Derek Ketelaars

- derek@sclawpartners.com

Receiver: KSV Restructuring Inc.

Counsel: Richard Swan, Aiden Nelms - swanr@bennettjones.com

2557904 Ontario Inc.

Counsel: Kevin Sherkin - ksherkin@millerthomson.com

Mitchell Lightowler - mlightowler@millerthomson.com

Ren/Tex Reality Inc. and ReMax Premier Inc.

Counsel: Domenico Magisano - dmagisano@lerners.ca

Second Mortgagee Zaherali Visram

Counsel: Laura Cullerton - laurac@chaitons.com

- 1. The receiver has brought a motion for approval and vesting order for the sale of the property at issue per the Sale Agreement or Second Report, as applicable. The applicant/first mortgagee is in agreement with the Orders sought by the receiver.
- 2. The respondent/mortgagor, and personal guarantors bring a motion seeking two weeks to finalize financing to pay off the first mortgagee, satisfy the second mortgagee and pay any fees or costs associated with the sale.
- 3. The second mortgagee Zaherali Visram supports the request of the respondent/mortgagor. The second mortgagee indicates that if the sale proceeds, then it will not receive full payment of the amount owing but if the financing is achieved, then it will be fully compensated. For these reasons, it opposes the position of the receiver.
- 4. There is some urgency for all the parties to deal with these motions.

- 5. The receiver and applicant oppose any adjournment and argue that the respondent/mortgagor and the guarantors have had ample time to obtain financing and have delayed this matter. The Court should not entertain such a request.
- 6. Given the urgency, with reasons to follow shortly, I adjourn the motion of the receiver to June 28, 2024, at 9:30 a.m. for one hour in front of me by zoom.

The Honourable Justice P. Sutherland

Released: June 17, 2024

This is Exhibit "F" referred to in the Affidavit of Stephanie Filosa

A-B

CITATION: Peakhill Capital Inc. v. 1000093910 Ontario Inc., 2024 ONSC 3566

NEWMARKET COURT FILE NO.: CV-23-4031-00

DATE: 20240620

ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

BETWEEN:))
Peakhill Capital Inc.))) Dominque Michaud, for the Applicant)
	Applicant))
- and -))
1000093910 Ontario Inc.	Respondent	Derek Ketelaars, for the Respondent, the guarantors, Ravi Aurora, Akash Aurora and Nick Aurora and the tenants, Countertop Solutions and Grafco International Laminating Inc.
		Richard Swan and Aiden Neims, for the Receiver, KSV Restructuring Inc.
		Kevin Sherkin and Mitchell Lightowler, for the perspective purchaser, 2557904 Ontario Inc.
		Laura Culleton, for the second mortgagee, Zaherali Visram.
		Domenico Magisano, for Ren/Tex Realty and Re/Max Premier Inc.
) Michael Meyers, for 20 Regina JV Ltd.)
) HEARD: June 14, 2024 (virtually)

DECISION ON ADJOURNMENT

SUTHERLAND J.:

Introduction

- [1] There were two motions in front of me. The first motion is brought by the receiver, KVS Restructuring Inc. in its capacity as Court-appointed receiver and manager ("the Receiver"), without security over the respondent for approval and court order in accordance with a Second Agreement or Second Report dated May 31, 2024 on the sale of the assets of the respondent to the perspective purchaser, 2557904 Ontario Inc.
- [2] The second motion is a cross motion brought by the respondent, and Ravi Aurora and Akash Aurora and Nick Aurora (collectively, "the Guarantors") and Countertops Solutions Inc. and Grafco International Laminating Inc. (collectively, "the Tenants") for an adjournment of the motion brought by the Receiver to permit the respondent to obtain financing to satisfy the amount owing to the first mortgagee, the applicant, costs of the Receiver, any costs per the Second Agreement with the perspective purchaser, 2557904 Ontario Inc. and the second mortgagee, Zaherali Visram.
- [3] There is a litigation history of the following Orders:
 - (a) The receivership Order of Lavine J. dated September 13, 2023.
 - (b) Order of Lavine J. dated October 2, 2023.
 - (c) The bidding procedures and approval Order of Vallee J. dated December 20, 2023.
 - (d) The dismissal Order from the Court of Appeal dated April 2, 2024 of the Bidding procedures and approval Order.
 - (e) Order of Lavine J. dated June 12, 2024.
- [4] The applicant and perspective purchaser supports the motion brought by the Receiver.
- [5] The second mortgagee supports the second motion. I have been advised that subject to the motion of the Receiver and the second motion that the issue of the Tenants has been resolved.
- [6] I also have been advised that the issues concerning the accounting has also been resolved.
- [7] On June 17, 2024, I released an Endorsement that adjourned the motions to June 28, 2024, with reasons to follow. Below are those reasons.

Adjournment Analysis

[8] The moving parties on the second motion submit that the respondent has a commitment for financing that will satisfy the applicant, the Receiver's costs, and if necessary, any costs

- associated with the agreement of sale to the prospective purchaser. The respondent indicates that they require some limited time, two weeks, to finalize the financing.
- [9] The Guarantors and second mortgagee support the request for some time. The Guarantors submit that under the terms of the Agreement, there will be a short fall that the Guarantors may be responsible to pay. The second mortgagee, a secured creditor, submits that if the Agreement is approved, they will not be receiving 100 cents on the dollar. There will be a shortfall. But if the respondent is given time for the refinancing, the second mortgagee will be made whole. There is an allegation that the second mortgagee is related to the owners of the respondent and the Guarantors. This allegation is denied by the respondent and the Guarantors.
- [10] The Receiver and the applicant submit that the respondent has had ample time to obtain refinancing, if they were able to do so. Further, they submit that many of the conditions set out in the proposal for the refinancing cannot be met within two weeks. The refinancing will not materialize and to wait is wasting time for all and the first mortgagee is incurring further interest loss and costs. Moreover, the Receiver and applicant direct the Court to a decision which makes it clear that the whole process of the receivership will be compromised if the Court gives such an adjournment as requested by the moving parties on the second motion.
- [11] The Receiver and applicant have directed the Court to the recent decision of W.D. Black J. on *Vector Financial Services v. 33 Hawarden Crescent.*¹ The Receiver and applicant argue that the reasoning in *Vector* applies in this case. In *Vector*, W.D. Black J. reviewed case law that indicates the importance of the debtor's right of redemption. The debtor's right of redemption is an interest in the mortgaged land that should not be "lightly" put aside.² But this right in not absolute. The Court must balance the importance of integrity of the receivership and should not reject the recommendations of the receiver except in "exceptional circumstances." In denying the request for an adjournment, W.D. Black J. noted that the debtor did not attend before him "with a comprehensive and complete financing package to allow them to redeem."
- [12] Though I find *Vector* instructive, the circumstances here are significantly different. First, unlike in *Vector*, the second mortgagee, a secured creditor, does not support the position of the Receiver. The second mortgagee urged the Court to permit the adjournment to allow the debtor time to make the second mortgagee whole. The Receiver and applicant argue that the Court should discount this objection because the second mortgagee are related or at least familiar. There is no evidence that they are related and more importantly to this Court, the second mortgagee is a secured creditor like the applicant whose rights and position must be taken into consideration. Second, there is a plan put forth by the debtor with a lender. Third, the request is for a finite time, two weeks. It is not open ended as

¹ 2014 ONSC 1635.

² Ibid para. 69.

³ Ibid para. 67.

⁴ Ibid para. 82.

- was in *Vector*. Fourth, there is the issue of the Guarantors who will not be responsible for a shortfall if the financing of the debtor is finalized.
- [13] Looking at this factual matrix, I find it falls within that narrow exception to grant the short adjournment request to permit the debtor the opportunity to finalize the financing. I do acknowledge that the debtor did not attend "with cheque in hand." The consequences on the second mortgagee and the guarantors if a short adjournment is not granted would be significant and the debtors right of redemption must take paramount for this short period of time.

Disposition

[14] Per my Endorsement dated June 14, 2024, the motions are adjourned to June 28, 2024, at 9:30 a.m.

Justice P.W. Sutherland

Released: June 20, 2024

CITATION: Peakhill Capital Inc. v. 1000093910 Ontario Inc., 2024 ONSC 3566 NEWMARKET COURT FILE NO.: CV-23-4031-00

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Peakhill Capital Inc.

Applicant

- and -

1000093910 Ontario Inc.

Respondent

DECISION ON ADJOURNMENT

Justice P.W. Sutherland

Released: June 20, 2024

This is Exhibit "G" referred to in the Affidavit of Stephanie Filosa

X-15

Sweet, Kayla

From: Richard Swan < SwanR@bennettjones.com>

Sent: Friday, June 21, 2024 3:29 PM

To: Aiden Nelms; Ran He; Sean Zweig; ngoldstein@ksvadvisory.com; bluder@ksvadvisory.com;

dmichaud@robapp.com; jjamil@robbapp.com; bp@friedmans.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; insolvency.unit@ontario.ca; george@chaitons.com; hmanis@manislaw.ca; dmagisano@lerners.ca; louisr@concordelaw.ca; gary@sclawpartners.ca; aram@sclawpartners.ca; Sherkin, Kevin; Lightowler, Mitchell; vkolenc8965@rogers.com; Jason Squire; ravi@aurora-group.ca; Stephanie Song; akash@aurora-group.ca; Michael Myers; Perry Benipal; Amy Casella; Andy Di

Benedetto; Derek Ketelaars; Laura Culleton; tristar@sympatico.ca

Subject: [**EXT**] In the Matter of the Receivership of 1000093910 Ontario Inc. [Court File No.

CV-23-00004031-0000] - Notice of Examination of Ravi Aurora

Attachments: Notice of Examination of Ravi Aurora.pdf

TO: The Service List

Please find enclosed a notice of examination of Mr. Ravi Aurora, by videoconference, returnable on Tuesday June 25, 2024 at 10 am, which is hereby served on the Service List.

There is some prospect that this examination may take place on Monday June 24, if Mr. Aurora's counsel so advises. We will advise if there is a change in date and time from that set out in the Notice.

The videoconference details are as follows:

Confirmation # 633873

Title of Proceedings PEAKHILL CAPITAL INC. V. 1000093910 ONTARIO INC.

Date June 25th, 2024

Time 10:00 AM Location Virtual

Zoom Meeting

JOIN MEETING

Meeting ID 92421783614

Meeting URL https://networkcourt.zoom.us/j/92421783614?pwd=jQMfA

UnyHFHoG8ZrlfPjiGqCZPRyea.1

Password 686544

Join By Telephone

Dial (Canada): +1 438 809 7799, +1 587 328 1099, +1 647 374 4685, +1

647 558 0588, +1 778 907 2071, +1 780 666 0144, and +1

204 272 7920

Meeting ID 92421783614

1

Password 686544

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Court File No.:	CV-23-00004031-0000
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ONTARIO SUPERIOR COURT

BETWEEN:

June 12, 2024 and June 13, 2024.

PEAKHILL CAPITAL INC.

Applicant

- and -

1000093910 ONTARIO INC.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

NOTICE OF EXAMINATION

YOU ARE REQUIRED TO PRODUCE at the examination the following documents and things:

1. All documents and records, either physical or electronic, in your custody, possession or power that are in any way relevant to the matters that are within the scope of this proceeding or have any reference thereto.

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Lawyers for the Receiver, KSV

Restructuring

TO: SCALZI CAPLAN LLP

20 Caldari Road, Unit 2 Vaughan, Ontario L4K 4N8

Gary Caplan (gary@sclawpartners.ca)

Derek Ketelaars (derek@sclawpartners.ca)

Lawyers for 1000093910 Ontario Inc.

AND TO: THE SERVICE LIST

This is Exhibit "H" referred to in the Affidavit of Stephanie Filosa

X-15

Sweet, Kayla

From: Sherkin, Kevin

Sent: Thursday, June 27, 2024 9:36 AM

To: Richard Swan

Cc: Derek Ketelaars; dmichaud@robapp.com; Gary Caplan; George Benchetrit; Aiden Nelms; Sean Zweig;

Noah Goldstein - KSV Advisory Inc. (ngoldstein@ksvadvisory.com); laurac@chaitons.com; Lightowler,

Mitchell; dmagisano@lerners.ca; Carli, Michael

Subject: Re: [**EXT**] Peakhill

I agree this is important ... I can advise I would immediately appeal and seek a stay regarding any order should it be needed as well as seeking an expedited appeal given the case law I am relying upon Sent from my iPhone

On Jun 27, 2024, at 9:31 AM, Richard Swan < SwanR@bennettjones.com > wrote:

Derek,

We did not receive any responses to undertakings or advisements from you by 4 pm yesterday, as committed.

We require those responsive answers and documents <u>immediately</u>. Even if you get unconditional refinancing in place (which does appear to be the case at this time) we still require the responsive answers and documents as the Court will have to balance all facts and circumstances, and Mr. Sherkin has indicated that his client will oppose redemption in any event.

Richard B. Swan

Partner and Department Co-Head, Litigation, Bennett Jones LLP 3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4 T. 416 777 7479 | F. 416 863 1716

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vous semblent suspectes.

Providing services on behalf of a Professional Corporation **Partner**

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This is Exhibit "I" referred to in the Affidavit of Stephanie Filosa

A-15

Court File Number/Numéro de dossier du greffe CV-23-00004031-0000

Civil Endorsement Sheet/ Page d'inscription

DATE:

June 28, 2024

Peakhill Capital Inc. Applicant:

Dominique Michaud-dmichaud@robapp.com and Joey Jamil

Motion on notice (virtual)

Respondents:

Counsel:

Counsel:

100093910 Ontario Inc/Countertop Solutions

Derek Ketelaars - derek@sclawpartners.com

Receiver: KSV Restructuring Inc.

Counsel: Richard Swan, Aiden Nelms - swanr@bennettjones.com

2557904 Ontario Inc.

Counsel: **Kevin Sherkin** - ksherkin@millerthomson.com

Mitchell Lightowler - mlightowler@millerthomson.com

Ren/Tex Reality Inc. and ReMax Premier Inc.

Counsel: Domenico Magisano - dmagisano@lerners.ca

Financier-Firm Capital

Counsel: D.J. Miller

Part owner of respondent- 20 Regina JV Ltd

Counsel: Ran He

Second Mortgagee Zaherali Visram

- laurac@chaitons.com Counsel: Laura Cullerton

1. This attendance is further to my endorsements dated June 14 and 20, 2024.

2. The motion for approval and vesting order for the sale of the property at issue per the Sale Agreement or Second Report, as applicable is adjourned to Tuesday July 2, 2024 at 10:00 am for half a day by zoom.

3. Any further reply materials to be filed and uploaded onto Caselines by no later than 5:00 pm today and such reply material to be no more than 5 pages double spaced.

4. Further, any answers to any undertakings and under advisements on the cross examinations on Ravi Aurora dated June 25, 2024, to be served, filed and uploaded onto Caselines by 5:00 pm today.
The Honourable Justice P. Sutherland

This is Exhibit "J" referred to in the Affidavit of Stephanie Filosa

A-15

COURT FILE NO.: CV-23-4031-0000

SUPERIOR COURT OF JUSTICE – ONTARIO 50 Eagle St W, Newmarket, ON L3Y 6B1

RE: PEAKHILL CAPITAL INC, Applicant

AND:

100093910 ONTARIO INC, Respondent

BEFORE: Justice Sutherland

COUNSEL: JAMIL, Joey and MICHAUD, Dom, for the Applicant

Email: jjamil@robapp.com; dmichaud@robapp.com

CAPLAN, Gary and Ketelaars, Derek for the Respondent Email: gary@sclawpartners.ca; derek@sclawpartners.com

2557904 Ontario Inc.-purchaser Counsel: Sherkin, Kevin,

LIGHTOWLER, Mitchell

Email: mlightowler@millerthomson.com;

ksherkin@millerthomson.com

MILLER, D.J Counsel for Capital Corporation

Email: dimiller@tgf.ca

CULLENTON, Laura Counsel for second mortgagee:

Email: laurac@chaitons.com

Richard Swan Counsel for court appointed receiver-KSV

Restructuring Inc.

Email: swanr@bennettjones.com

Ran He Counsel for 20 Regina JV Ltd.

Email: rhe@thclawyers.ca

Domenico Magisano Counsel for Ren/Tex Realty and ReMax

Premier Inc.

Email: - dmagisano@lerners.ca

HEARD: July 2, 2024, by video conference

ENDORSEMENT

Butheld.

[1] Motion of the receiver, KSV Restructuring was heard. Decision reserved.

This is Exhibit "K" referred to in the Affidavit of Stephanie Filosa

A-15

Court File Number/Numéro de dossier du greffe CV-23-00004031-0000

Civil Endorsement Sheet/
Page d'inscription

DATE:

July 4, 2024

Applicant: Peakhill Capital Inc.

Counsel: Dominique Michaud - dmichaud@robapp.com

Motion on notice (virtual)

Respondents:

100093910 Ontario Inc/Countertop Solutions

Counsel: Derek Ketelaars - <u>derek@sclawpartners.com</u>

Receiver: KSV Restructuring Inc.

Counsel: Richard Swan, Aiden Nelms - swanr@bennettjones.com

2557904 Ontario Inc.

Counsel: Kevin Sherkin - ksherkin@millerthomson.com

Mitchell Lightowler - mlightowler@millerthomson.com

Ren/Tex Reality Inc. and ReMax Premier Inc.

Counsel: Domenico Magisano - dmagisano@lerners.ca

Second Mortgagee Zaherali Visram

Counsel: Laura Cullerton - laurac@chaitons.com

Financier-Firm Capital

Counsel: D.J. Miller

Part owner of respondent- 20 Regina JV Ltd

Counsel: Ran He

- 1. On July 2, 2024, I heard the motion brought by the Receiver for an approval and vesting order, among other relief, and motion by the respondent to permit it to redeem the first mortgage.
- 2. There is urgency with respect to the decision of this Court. Interest and expenses are being incurred and the parties require a decision on either approving the proposed sale or redeeming the first mortgage. I indicated that I would provide my disposition of the motions given the urgency with reasons to follow.
- 3. My disposition is that the respondent be permitted to redeem the first mortgage to pay fully the amount owing on the first mortgage, the costs and fees of the Receiver which on Tuesday July 2, 2024, the total amount was \$23,450,000 which includes the

sum of \$250,000 to be paid into either Court or held in trust for the benefit of the prospective purchaser 23557904 Ontario Inc. per the Sale Agreement or Second Report.

- 4. I was also advised that the parties have a draft Order that has been approved to deal with the redemption of the first mortgage. That Order, approved as to form and content by all parties, to be sent to me for my review and signature. The draft approved Order to be sent to my judicial assistant at meghan.billings@ontario.ca.
- 5. I anticipate releasing my reasons within the next few weeks.

The Honourable Justice P. Sutherland

1Suhl 1)

This is Exhibit "L" referred to in the Affidavit of Stephanie Filosa

X-15

Court of Appeal File No.: Court File No. CV-23-00004031-0000

COURT OF APPEAL FOR ONTARIO

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant

and

1000093910 ONTARIO INC.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED

NOTICE OF APPEAL

The Appellant, 2557904 Ontario Inc. ("255") appeals to the Court of Appeal from the Endorsement, Order and Reasons to follow of the Honourable Mr. Justice Sutherland ("Justice Sutherland" or "Motion Judge") dated July 4, 2024 made at Newmarket, whereby the learned Motion Judge granted 1000093910 Ontario Inc. (the "Debtor"), Ravi Aurora, Akash Aurora, and Nick Aurora (collectively, the "Guarantors") and Countertop Solutions Inc. and Grafco International Laminating Inc. (collectively, the "Tenants") (collectively, the "Moving Parties") an order allowing the Debtor to redeem Peakhill Capital Inc.'s mortgage (the "Order") after the sales process had already run its course.

The Appellant, 255, asks that the Order be set aside and that, in its place, an Order be granted as follows:

(a) an Order (the "Approval and Vesting Order"), among other things, approving the sale transaction (the "Transaction") contemplated by the Stalking Horse APS dated November 15, 2023 (as may be amended, the "Sale Agreement"), and vesting in 255 all of the Debtor's rights, title and interest in and to the property described in the Sale Agreement; and (ii) an order (the "Distribution and Discharge Order"), among other things:

- (i) authorizing KSV Restructuring Inc. (the "**Receiver**") to:
 - (1) first, pay the \$140,000 work fee (the "Work Fee") owing to Jones
 Lang LaSalle Real Estate Service, Inc. ("JLL") in accordance with
 the terms of the listing agreement (the "Listing Agreement") by
 and between JLL and the Receiver;
 - (2) second, make one or more distributions from the sale proceeds of the Sale Agreement (the "Sale Proceeds") to repay in full the amounts owing to Peakhill Capital Inc. ("Peakhill") in respect of the Debtor's obligations to it; and
 - (3) third, following the repayment of Peakhill in full, authorizing the Receiver to make one of more distributions from the Sale Proceeds to partially repay the amounts owing to Zaherali Visram in respect of the Debtor's obligations to him;
- (b) approving the Second Report of the Receiver dated May 31, 2024 (the "Second Report");
- (c) approving the fees and disbursements of the Receiver and its counsel, Bennett

 Jones LLP ("Bennett Jones"), including the \$150,000 fee accrual (the "Fee

 Accrual") (as defined below), as detailed in the fee affidavits (together, the "Fee

 Affidavits") appended to the Second Report;

- (d) discharging the Receiver upon the filing of a certificate with the Court certifying that all outstanding matters in these receivership proceedings (the "Receivership Proceedings") have been completed to the satisfaction of the Receiver (the "Discharge Certificate"); and
- (e) releasing and discharging the Receiver, upon the filing of the Discharge Certificate, from any and all liabilities that it now has or may hereafter have by any reason of, or in any way arising out of, its acts or omissions while acting as Receiver, save and except for its gross negligence or willful misconduct.
- (f) Such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

- (a) The learned Motion Judge ought to have dismissed the Debtor's late-served crossmotion on the basis that it was not filed in accordance with the timelines set out in the *Rules of Civil Procedure*;
- (b) The learned Motion Judge ought not to have used his discretion to allow the Moving Parties to exercise a right of redemption after a Court ordered sale process had commenced, a bid accepted, and a hearing date for a vesting order set;
- (c) The Learned Motion Judge erred in law in failing to consider, or properly consider, the impact of allowing late breaking requests to redeem on the integrity of an advanced Court Ordered Sale process;

- (d) The learned Motion Judge erred in law by preferring the interests of the Debtor, the Tenants, the Guarantors and the Second Mortgagee over 255 without sufficient reasons:
- (e) The learned Motion Judge erred in law by failing to apply, or consider, the principles laid out by this Court in <u>Rose-Isli Corp. v. Smith</u>, 2023 ONCA 548 regarding when a Court should exercise its discretion to allow a late redemption in the face of a complete sales process;
- (f) Had the Learned Motion Judge considered the principles set out in that case, he would have denied the Moving Parties right to redeem at such a late stage of the sale process;
- (g) If required or necessary, a stay of the Order appealed from pending the hearing of this appeal by this Honourable Court;
- (h) If required or necessary, leave to Appeal the Order; and
- (i) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (j) Rule 61.04 of the Rules of Civil Procedure;
- (k) Section 6(1)(b) of the Courts of Justice Act, R.S.O., c. C.43;
- (g) Sections 193(b), 193(c) and 195 of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3);

- (h) Rule 31 of the Bankruptcy and Insolvency General Rules (C.R.C., c. 368); and
- (i) Such further and other statutes/rules as counsel may advise and this Honourable Court may permit.

July 4, 2024

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hmanis@manislaw.ca Tel: 416-364-5289

Lawyers for the Applicant 1000093910 Ontario Inc.

RCP-E 61A (February 1, 2021)

PEAKHILL CAPITAL INC. et al. Applicants

Court of Appeal File No.: Court File No. CV-23-00004031-0000

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at NEWMARKET

NOTICE OF APPEAL

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Tel: 416-595-7938

Lawyers for 2557904 Ontario Inc.

Served by Email: Dominique Michaud:

dmichaud@robapp.com

Howard F. Manis: hmanis@manislaw.ca

RCP-F 4C (September 1, 2020)

Tab 3

Court File Number/Numéro de dossier du greffe CV-23-00004031-0000

Civil Endorsement Sheet/
Page d'inscription

DATE:

July 4, 2024

Applicant: Peakhill Capital Inc.

Dominique Michaud - dmichaud@robapp.com

Motion on notice (virtual)

Respondents:

Counsel:

100093910 Ontario Inc/Countertop Solutions

Counsel: Derek Ketelaars - <u>derek@sclawpartners.com</u>

Receiver: KSV Restructuring Inc.

Counsel: Richard Swan, Aiden Nelms - swanr@bennettjones.com

2557904 Ontario Inc.

Counsel: Kevin Sherkin - ksherkin@millerthomson.com

Mitchell Lightowler - mlightowler@millerthomson.com

Ren/Tex Reality Inc. and ReMax Premier Inc.

Counsel: Domenico Magisano - dmagisano@lerners.ca

Second Mortgagee Zaherali Visram

Counsel: Laura Cullerton - laurac@chaitons.com

Financier-Firm Capital

Counsel: D.J. Miller

Part owner of respondent- 20 Regina JV Ltd

Counsel: Ran He

- 1. On July 2, 2024, I heard the motion brought by the Receiver for an approval and vesting order, among other relief, and motion by the respondent to permit it to redeem the first mortgage.
- 2. There is urgency with respect to the decision of this Court. Interest and expenses are being incurred and the parties require a decision on either approving the proposed sale or redeeming the first mortgage. I indicated that I would provide my disposition of the motions given the urgency with reasons to follow.
- 3. My disposition is that the respondent be permitted to redeem the first mortgage to pay fully the amount owing on the first mortgage, the costs and fees of the Receiver which on Tuesday July 2, 2024, the total amount was \$23,450,000 which includes the

sum of \$250,000 to be paid into either Court or held in trust for the benefit of the prospective purchaser 23557904 Ontario Inc. per the Sale Agreement or Second Report.

- 4. I was also advised that the parties have a draft Order that has been approved to deal with the redemption of the first mortgage. That Order, approved as to form and content by all parties, to be sent to me for my review and signature. The draft approved Order to be sent to my judicial assistant at meghan.billings@ontario.ca.
- 5. I anticipate releasing my reasons within the next few weeks.

The Honourable Justice P. Sutherland

Buthely

Tab 4

Court File No.: CV-23-00004031-0000

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant

(Respondent on Motion)

and

1000093910 ONTARIO INC.

Respondent (Applicant on Motion)

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED.

RESPONDING MOTION RECORD AND CROSS-MOTION RECORD OF THE RESPONDENT (returnable June 12, 2024)

June 10, 2024

SCALZI CAPLAN LLP

20 Caldari Road, Unit #2 Vaughan, Ontario, | L4K 4N8

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Derek Ketelaars (67154R)

T: 437.242.4088

E: derek@sclawpartners.com

Lawyers for the Respondent (Applicant on the

Motion)

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The Receiver

AND TO: ROBINS APPLEBY LLP

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AND TO: FRIEDMANS LAW FIRM

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Corporate Lawyers for the Respondent

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Department of Justice Canada

Ontario Regional Office, Tax Law Section

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Diane Winters

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AND TO: HER MAJESTY IN RIGHT OF ONTARIO

REPRESENTED BY THE MINISTER OF

FINANCE - INSOLVENCY UNIT

Ontario Ministry of Finance - Legal Services

Branch

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Litigation Lawyers for 2557004 Ontario Inc.

AND TO: **VESNA KOLENC**

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Court File No.: CV-23-00004031-0000

ONTARIOSUPERIOR COURT OF JUSTICE

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant (Respondent on Motion)

and

1000093910 ONTARIO INC.

Respondent (Applicant on Motion)

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED.

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C.	Exhibit "C": E-mail from Sean Zwieg re amount owed under Receiver's Security	
D.	Exhibit "D": Information Statement from Peakhill and e-mail from Peakhill's lawyer	
E.	Exhibit "E": Copy of e-mail from Debtor's lawyer requesting statement	
F.	Exhibit "F": Redacted copy of GILC's offer to lease for its new premises.	
G.	Exhibit "G": CSI's lease for its new premises	
Н.	Exhibit "H": CSI's Corporate Profile Report	
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J.	Exhibit "J": GILC's Corporate Profile Report	
K.	Exhibit "K": GILC's current lease for the Property	
L.	Exhibit "L": List of GILC's Equipment	
M.	Exhibit "M": List of CSI's Equipment	
N.	Exhibit "N": Photos of Equipment	
0.	Exhibit "O": Correspondence with the real estate agents	
P.	Exhibit "P": Emails and text messages with the Stalking Horse Purchaser and its lawyer	

Court File No.: CV-23-00004031-0000

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant (Respondent on Motion)

and

1000093910 ONTARIO INC.

Respondent (Applicant on Motion)

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED.

RESPONDING MOTION RECORD AND CROSS MOTION OF THE RESPONDENT

The applicants, 1000093910 ONTARIO INC. ("1000 Ontario" or the "Debtor"); Ravi Aurora, Akash Aurora, and Nick Aurora (collectively, the "Guarantors"); and, Countertop Solutions Inc. and Grafco International Laminating Inc. (collectively, the "Tenants") will make a motion to a Judge on WEDNESDAY JUNE 12, 2024, at 10:00 A.M., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

	In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);
	In writing as an opposed motion under subrule 37.12.1 (4);
	In person;
	By telephone conference;
\boxtimes	By video conference.

at the following location: 50 Eagle Street West, Newmarket, ON L3Y 6B1.

THE MOTION IS FOR:

1. To the extent required, orders validating service and abridging the time for service of this Motion Record so that the within motion is properly returnable on the date that it is heard.

A. Matters pertaining to a refinance, redemption of the security and the discharge of the Receiver

- 2. An interim Order staying the Receivership and the Sales Process Order (as defined below) pending the completion of the "Refinance" (as hereinafter defined);
- 3. In the alternative, an interim Order staying the Sales Process Order until June 30, 2024, and without prejudice to 1000 Ontario bringing a further motion to extend the stay so that the Refinance can be completed;
- 4. An Order discharging KSV Restructuring Inc. ("Receiver") as Receiver of the property, assets, and undertakings of 1000 Ontario on completion of the Refinance and upon the Receiver filing a discharge certificate;
- 5. On completion of the Refinance, an Order directing the Land Registrar for the Land Titles
 Division of York to delete the Order of Lavine J. dated September 13, 2023, ("Appointment
 Order") from title of the Property (as hereinafter defined);
- 6. On completion of the Refinance, an order terminating the Stalking Horse APS (as defined below);
- 7. A Declaration that no Break Fee or amount under the Reimbursement Clause is payable to the Stalking Horse Purchaser under the terms of the Stalking Horse APS; and
- 8. Further, and/or in the alternative, an Order that the Debtor pay \$250,000 into Court to the credit of the within proceedings, representing the Break Fee and any amounts payable under the Reimbursement Clause, until further order of the Court.
- 9. Further an Order Granting the Tenants, Countertop Solutions Inc. and Grafco International Laminating Corp., relief from forfeiture in connection with a notice of termination delivered by Peakhill Capital Inc. on May 28, 2024, so as to allow these tenants sufficient time to remove their goods, chattels, equipment, and customers' property from the premises;

- 10. Further, that the Receiver's discharge motion be adjourned pending the performance of an Order that Peakhill Capital Inc. provide an accounting of monies due and owing under its security;
- 11. An order sealing the confidential exhibits attached to the Affidavit of Ravi Aurora sworn June 10, 2024, until the Refinance is completed;
- 12. 1000 Ontario's costs of this motion, if opposed; and
- 13. Such further relief as this Honourable Court deems just and the circumstances require.

THE GROUNDS FOR THE MOTION ARE:

Background

1. 1000 Ontario is the sole registered owner of the property municipally known as 20 Regina Road, Vaughan, Ontario, and which is more particularly described as follows ("**Property**"):

PIN	03221-0039 (LT)
Legal Description	PCL 3-1 SEC 65M2720; BLK 3PL
	65M2720 ; S/T LT576260,LT576262
	VAUGHAN

- 2. On or about April 29, 2022, Peakhill Capital Inc. ("Peakhill"), as mortgagee, registered a first charge/mortgage ("Peakhill Mortgage") against the Property with 1000 Ontario as mortgagor.
- 3. As additional security for the Mortgage, Ravi Aurora, Nick Aurora, and Akash Aurora, all executed a personal Guarantee dated April 14, 2022, ("Peakhill Guarantee") wherein they guaranteed payment as principal debtors of all amounts owing under the Peakhill Mortgage.
- 4. The Property is the only material asset of 1000 Ontario. It leases the Property to Countertop Solutions Inc. ("CSI") and Grafco International Laminating Corporation ("GILC). Both tenants are related corporations to 1000 Ontario.

- 5. At all material times, CSI has carried on business at the Property as a manufacturer and fabricator of stone countertops and other stone building components. Its manufacturing operations are located exclusively at the Property.
- 6. At all material times, GILC has carried on business at the Property as a plastic extrusion laminating company. Its manufacturing operations are located exclusively at the Property.
- 7. Both CSI and GILC operate multiple pieces of heavy machinery and store significant quantities of inventory at the Property. In the case of CSI, that inventory includes large, fragile slabs of granite.
- 8. Furthermore, CSI and GILC collectively employ over forty (40) people who work at the Property. Some of those employees have been working at the Property for over twenty (20) years.
- 9. As of the date hereof, both CSI and GILC continue to occupy their respective leased premises. On May 28, 2024, Peakhill, and not the Receiver, sent written notice to CSI and 1000 Ontario alleging to terminate the leases at the Property effective June 10, 2024.
- 10. GILC is licenced and approved by the United States Customs and Border Protection Agency, the Canadian Border Services Agency, and the Canada Revenue Agency to export its manufactured goods to the United States. GILC is required to maintain strict security controls governing who can access the Property, and it is subject to more stringent record keeping requirements in order to maintain these licenses and approvals.
- 11. On or about September 13, 2023, Peakhill obtained the Appointment Order which appointed the Receiver as receiver and manager over the property, assets and undertakings of 1000 Ontario.
- 12. In addition to appointing the Receiver, the Appointment Order includes the following:
 - a. Section 18 of the order creates a first priority charge over 1000 Ontario's assets ("Receiver's Charge") to secure the fees and costs of the Receiver; and
 - b. Section 21 of the Order creates a second priority charge ("Receiver's Borrowing Charge") (the Receiver's Charge and the Receiver's Borrowing Charge are

collectively the "Receiver's Security") to secure any amounts borrowed by the

Receiver to fund its activities.

13. On or about December 20, 2023, the Receiver obtained an order ("Sales Process Order")

which, inter alia, approved a sales process under which the Receiver could sell the Property.

14. The Sales Process Order also authorized the Receiver, nunc pro tunc, to enter into an

agreement of purchase and sale dated November 13, 2023, (the "Stalking Horse APS") to sell the

Property to 2557004 Ontario Inc. ("Stalking Horse Purchaser").

15. The material terms of the Stalking Horse APS are as follows:

a. Purchase Price: \$24,255,000.00;

b. Deposit: \$2,400,000.00; and

c. Closing date: Five business days following the receipt of an Approval and Vesting

Order.

16. The Stalking Horse APS includes a condition for the benefit of the Receiver allowing the

Receiver to terminate the agreement if the Court does not issue an Approval and Vesting Order.

If terminated in this manner, both the Receiver and the Stalking Horse Purchaser would be

released from their respective obligations under the agreement and the deposit would be

returned to the Stalking Horse Purchaser.

17. Section 14 of the Stalking Horse APS further states that the Receiver must pay the Stalking

Horse Purchaser a "break fee" of \$200,000, inclusive of HST, ("Break Fee") and reimburse the

Stalking Horse Purchaser for its costs incurred to participate in the bidding process up to a

maximum of \$50,000 ("Reimbursement Clause") where: i) the Receiver accepts another bid to

purchase the Property; ii) that other bid is approved by the Court; and, iii) that sale is completed.

18. The Receiver therefore is under no obligation to pay the Break Fee or to reimburse any

amounts under the Reimbursement Clause where the Stalking Horse APS was the successful but

the agreement was otherwise terminated.

19. 1000 Ontario therefore states that the Receiver would be under no obligation to pay the

Break Fee or to reimburse the Stalking Horse Purchaser under the Reimbursement Clause if this

Honourable Court were to grant 1000 Ontario's relief sought and terminate the Stalking Horse APS.

20. The deadline to submit bids for the Property was May 7, 2024. On or about May 8, 2024, the Receiver, through its counsel, advised the Applicant, through its counsel, that apart from the Stalking Horse APS, no bids to purchase the Property were received. As a result, the Receiver intended to complete the Stalking Horse APS.

A. New Financing and Discharge

- 21. 1000 Ontario has raised sufficient funds and is ready, willing and able to repay all relevant creditors and discharge the Receiver ("Refinance").
- 22. As of the date of this motion, the relevant creditors are as follows:
 - a. The Receiver, who is owed approximately \$525,000 under the Receiver's Security;
 - b. The current first mortgagee, Peakhill, which is owed \$21,963,175.06 as of May 27,2024; and
 - c. The second mortgagee, Zaherali Visram ("VISRAM"), who has a second mortgage ("Second Mortgage") registered against the Property securing the principal amount of \$8,000,000.
- 23. The funds required to discharge the Receiver will be derived from:
 - a new first mortgage loan to be granted by Firm Capital Corporation in the principal sum of about \$18,668,000,000 net of fees and deductions, which is conditional on the discharge of the receivership;
 - A further advance of \$3,500,000 by the second mortgagee, VISRAM, pursuant to a signed mortgage amending agreement, which is conditional on the discharge of the receivership; and
 - c. Cash to be advanced by the Guarantors in the sum of \$950,000.
- 24. The proposed new first mortgagee and VISRAM have each consented to the other's mortgage being registered in their respective priority.

- 25. Firm Capital Corporation is a well-known lender with sufficient assets to finance the new first mortgage.
- 26. VISRAM has provided, or will provide prior to the hearing of this motion, proof that the funds for his further advance have been deposited into his lawyer's trust account.
- 27. Funds available from the Refinance will be sufficient to repay or refinance all outstanding obligations to the Receiver, Peakhill, and VISRAM.
- 28. Should the relief sought by the Receiver be granted, the second mortgagee, VISRAM, will suffer a significant shortfall and the Guarantors will face exposure on their Guarantees. On the other hand, should the relief being sought by these moving parties be granted, the shortfall to be suffered by the second mortgagee and the exposure of the Guarantors will be eliminated.
- 29. The only party that may be adversely affected, if any, by the granting of the relief would be the disappointed Stalking Horse Purchaser, who assumed the risk that the Stalking Horse APS would not close.
- 30. The disappointed Stalking Horse Purchaser may take the position that it is entitled to its Break Fee, but these moving parties wish to preserve their right to challenge the entitlement to the Break Fee.
- 31. However, in order to obtain a discharge of the Receivership, 1000 Ontario is prepared pay an additional \$250,000 for these amounts into Court pending further order of this Court.
- 32. Once the Refinance is completed, this receivership will serve no purpose. As such, on payment of the proceeds received from the Refinance to the Receiver and the Disputed Amount into Court, the Receiver's appointment should come to an end and the Receiver should be discharged, subject to the Receiver completing such final administrative tasks as the Receiver may be required to do, such as issuing a discharge certificate.

B. Relief From Forfeiture Should the Relief Sought Not be Granted

33. On May 28, 2024, Peakhill purported to terminate the leases held by the Tenants, which termination was to be effective as of June 10, 2024, effectively giving the Tenants nine (9) business days to vacate the premises.

- 34. The leased premises contain large and bespoke equipment, inventory, and goods belonging to third parties. It is impossible for the Tenants to move these items in the time set by Peakhill.
- 35. The Tenants have already secured alternate premises but require additional time to move the aforesaid items.
- 36. These Tenants therefore seek relief from forfeiture pursuant to <u>Section 20</u> of the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7. In the absence of such relief, these Tenants will suffer irreparable harm and prejudice to their business operations.

C. Accounting

- 37. The Receiver's motion materials contain no particulars or evidence with respect to the sums due and owing to Peakhill under its security.
- 38. It is fair and equitable that the Debtor and Guarantors be provided with these particulars and have the opportunity to challenge those amounts, if necessary.
- 39. The Debtor requested a payout statement from Peakhill on May 16, 2024. Despite this request, Peakhill has only delivered a bald statement which does not accurately describe the amounts set out therein. 1000 Ontario is unable to assess the fees and charges set out on Peakhill's statement in the circumstances.

Prejudice - Other Grounds

- 40. 1000 Ontario has a right to redeem the mortgages and discharge the Receiver.
- 41. No person, including the Stalking Horse Purchaser, would suffer non-compensable prejudice if this motion is granted.
- 42. Specifically, 1000 Ontario states that the Stalking Horse Purchaser has already acknowledged that any prejudice it may suffer, if any, (which prejudice is again denied) from terminating the Stalking Horse APS can be compensated. It further defined the circumstances where that compensation should be paid and the appropriate quantum of that when it negotiated a \$200,000 Break Fee.

- 43. On the other hand, if this motion is dismissed and 1000 Ontario is prevented from exercising its right to redeem, its principals, the Tenants and their respective employees would all likely suffer significant and irreparable prejudice.
- 44. It would be in the interests of justice to permit 1000 Ontario to exercise its right to redeem and discharge the Receiver in these circumstances.
- 45. As of the date hereof, a date for an approval and vesting order motion has been booked but the Receiver has not served their motion materials.

THE FOLLOWING STATUTES AND RULES will be relied upon at the hearing of the motion:

- 46. Rules 1.04, 2.03, 3.02 and 41.06 of the *Rules of Civil Procedure*;
- 47. Section 20 of the Commercial Tenancies Act, as amended;
- 48. Sections 12 and 22 of the *Mortgages Act*, R.S.O. 1990, c. M.40 as amended
- 49. Subsection 137(2) of the Courts of Justice Act, R.S.O. 990, c. C.43 as amended; and
- 50. Such further grounds as counsel may submit and this Honourable Court permits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The affidavit of Ravi Aurora with Exhibits, to be sworn; and
- 2. Such further evidence as counsel may submit and this Honourable Court Permits.

June 10, 2024

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PEAKHILL CAPITAL INC
Applicant (Respondent on Motion)

-and-

1000093910 ONTARIO INC.
Respondent (Applicant on Motion)

Court File No. CV-23-00004031-0000

ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT NEWMARKET

NOTICE OF MOTION OF THE RESPONDENT (APPLICANT ON MOTION)

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Court File No.: CV-23-00004031-0000

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant (Respondent on Motion)

and

1000093910 ONTARIO INC.

Respondent (Applicant on Motion)

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED.

AFFIDAVIT OF RAVI AURORA (sworn on June 10, 2024)

I, Ravi Aurora, of the Regional Municipality of Peel, MAKE OATH AND SAY:

- 1. I am the President of the Respondent, 1000093910 Ontario Inc. ("1000 Ontario" or the "Debtor"), the President of the tenant, Countertop Solutions Inc. ("CSI"), and a duly authorized representative of the tenant, Grafco International Laminating Corp ("GILC"). In addition to the foregoing, I, together with my brothers Nick and Akash Aurora, are the personal Guarantors of the first and second mortgages. As a result of all of the foregoing, I have personal knowledge of the matters hereinafter deposed to, except where from the context it appears that I rely on the information of others, and in which I case I do verily believe such evidence to be true.
- 2. In this affidavit, I set out a response to the Receiver's Motion for the approval of the sale of the Stalking Horse APS (as defined below) and for the discharge of the Receiver. Of particular concern to me and my brothers is the fate of the two corporate tenants operating from the Property, and our personal exposure on guarantees of mortgage securities given to Peakhill Capital Inc. ("Peakhill") and the second mortgagee Zaherali Visram ("VISRAM").
- 3. In addition, I bring this cross-motion to "redeem" the receivership. I have been made aware of the case law, and I appreciate that given the late delivery of this cross-motion, I must

convince this Honourable Court why the proposed redemption should trump the process which the Court has already approved and ordered.

A. The Proposed Redemption

4. The Debtor is effectively a single asset real estate holding company. On about April 29, 2022, it purchased a 64,204 square foot warehouse located at 20 Regina Road, Vaughan, Ontario, ("**Property**") for \$24,1710,000. The Property is more particularly described as follows:

PIN	03221-0039 (LT)
Legal Description	PCL 3-1 SEC 65M2720; BLK 3 PL
	65M2720 ; S/T LT576260,LT576262
	VAUGHAN

- 5. As is clear from the Receiver's materials, 2557004 Ontario Inc. ("Stalking Horse Purchaser") which had originally agreed to purchase the Property for \$31,000,000 from the Debtor, was permitted to enter into a stalking horse purchase agreement ("Stalking Horse APS") with the Receiver. As there were no other bidders for the Property, the Receiver and purchaser now come before this Court to ask that the Stalking Horse APS be approved.
- 6. The approval of the Receiver's motion will result in an approximate \$7,000,000 deficiency under the Second Mortgage, and that, in turn, will expose my brothers and me on our personal guarantees.
- 7. From the date that the Court of Appeal dismissed our challenge of the Stalking Horse APS, my brothers and I have scrambled to find a lender who would provide sufficient financing to redeem the first and second mortgages and pay the Receiver's fees and disbursements. In addition, we have engaged in many discussions with the second mortgagee to convince him to refinance his mortgage and to provide the additional financing required to discharge the Receiver.
- 8. My brothers and I now come to this court with the following ("Refinance"):
 - a. A commitment for a new first mortgage from Firm Capital Corporation under which will be advanced approximately \$18,620,000, net of fees and costs.

Attached hereto as **Confidential Exhibit "A"** is a true copy of that commitment. Firm Capital has required the Debtor to keep its commitment letter confidential until the refinance is completed as it contains sensitive commercial information which could negatively affect the parties if made public and this motion is refused. As this Court can see, the commitment will be signed by the Debtor and proposed guarantors should the relief in this motion be granted.

- b. A Mortgage Amending Agreement from the second mortgagee VISRAM, a true copy of which is marked hereto as **Exhibit "B"**. As can be seen from this exhibit, VISRAM is prepared to lend an additional \$3,500,000 under his second mortgage, postpone to the proposed new first mortgage from Firm Capital, and extend the maturity date of the Second Mortgage to match the maturity date of Firm Capital's new mortgage; and
- c. \$950,000.00 in cash advanced by a related company to the Guarantors which funds are in trust with our lawyers and which can be made available, if necessary, to cover the balance required to discharge the Receiver.
- 9. By my arithmetic, the Debtor has about \$23,070,000 available to it from the Refinance compared to approximately \$22,775,000 which I estimate to be the amount of money necessary to pay Peakhill, the Receiver, and the Break Fee in the Stalking Horse APS. As such, I verily believe that the Debtor has raised sufficient funds and is ready, willing and able discharge the Receiver ("Refinance").
- 10. My estimate of the amount required to discharge the Receiver is calculated based on the following:
 - a. \$525,000 owing to the Receiver under the Receiver's Security;
 - b. \$21,963,175.06 owing to Peakhill under the First Mortgage as of May 27, 2024; and
 - c. \$250,000 for the Break Fee and any amounts owing under the Reimbursement Clause (as defined below).

- 11. Attached hereto as **Exhibit "C"** is a true copy of an email from Sean Zweig, the lawyer for the Receiver, confirming the amount owing under the Receiver's Security.
- 12. Attached hereto as **Exhibit "D"** is a true copy of an information statement from Peakhill showing the amount allegedly owing under its mortgage as of May 27, 2024, and the email from Peakhill's lawyer delivering the statement. Peakhill's counsel has subsequently advised that some of charges included on the statement are not properly described, though Peakhill maintains that the actual amounts included on the statement are correct.
- 13. This statement was delivered to the Debtor on May 29, 2024, and not on May 27, 2024, which is the date of the statement. Furthermore, the statement was delivered 11 days after the Debtor had originally requested it. Attached hereto as **Exhibit "E"** is a true copy of the email from the Debtor's lawyer Derek Ketelaars requesting same.
- 14. Unfortunately, the Debtor and Guarantors are not able to properly assess the amounts included in Peakhill's statement because, as advised by Peakhill's counsel, some, or many of the amounts are not correctly described.
- 15. Given the urgency however, the Debtor is prepared to pay the full amount set out on Peakhill's statement without prejudice to its rights to challenge the amounts claimed later once it receives a revised statement.
- 16. This proposed refinancing will no doubt be criticized for its late delivery. One might say that this refinancing ought to have been put in place long before today. The simple truth is that it is no easy matter for a debtor in receivership to arrange financing, never mind from a reputable and credible lender. More to the point, my brothers and I have only now convinced VISRAM to grant us the financing described above.
- 17. Why should this court, at this late stage grant this relief? The answer is this: if the Receiver's motion is granted, VISRAM will suffer a significant shortfall under his Second Mortgage and my brothers, and I will be exposed on our guarantee. On the other hand, under the proposed Refinance, the Receiver and Peakhill will be paid in full and VISRAM will be effectively refinanced.

- 18. I expect that the Stalking Horse Purchaser will oppose this motion because it was the successful bidder in the sales process ordered by this court. However, that purchaser knowingly took a risk that it might be outbid, and in that regard agreed to accept a \$200,000 break fee ("Break Fee") in the event the Receiver selected another bid.
- 19. Based on my reading of the Stalking Horse APS, a redemption in these circumstances does not trigger an obligation to pay the Break Fee. Nonetheless, my brothers and I are prepared to pay \$200,000 for the Break Fee plus \$50,000 for any amounts which might be payable under the Reimbursement Clause set out in section 14 of the Stalking Horse APS into court to allow for a judicial determination of the issue later.
- 20. In the peculiar circumstances of this case, I am of the view that between the expectations of a disappointed Stalking Horse Purchaser and the exposure to me and my family on the Guarantees, justice ought to tip the scale in our favour.
- 21. I acknowledge that there is no unfettered right to redeem, but that in the circumstances of this case, my brothers and I ought to be given the chance.

Relief from Forfeiture

- 22. Should the cross motion for the redemption be refused, the Tenants seek an extension of time to vacate their units. The Tenants have already obtained, or are in the process of obtaining, alternate premises and are in the process of moving out as quickly as possible. They simply require more time to vacate the Property. Attached hereto as **Exhibit "F"** is a redacted copy of an offer to lease delivered by GILC to lease space at a new building. I have redacted the offer to conceal any irrelevant confidential information.
- 23. Attached hereto as **Exhibit "G"** is a true copy of CSI's lease for its new premises. CSI entered into a lease for space at 20 Caldari Road, Vaughan, ON. That property is owned, in part, by my family, and the space became available on May 31, 2024.
- 24. If GILC's offer to lease is not accepted by the time it is ready to vacate the Property, it will sublease part of CSI's space at 20 Caldari and it will move in there.

- 25. The Tenants are non-arm's length corporations to the Debtor, owned and operated by me and various members of my immediate family. Attached hereto as **Exhibit "H"** is a true copy of the Profile Report for CSI. Attached hereto as **Exhibit "I"** is a true copy of CSI's current lease for the Property. Attached hereto as **Exhibit "J"** is a true copy of the Profile Report for GILC. Attached hereto as **Exhibit "K"** is a true copy of GILC's current lease for the Property.
- 26. CSI carries on business at a manufacturer and installer of stone countertops. GILC carries on business as an industrial laminating company which laminates vinyl onto extruded plastic parts provided by its customers. Both companies' manufacturing operations are located exclusively at the Property.
- 27. As of the date of this affidavit, the Tenants collectively employ over forty (40) people who work at the Property.
- 28. Both Tenants operate multiple pieces of heavy machinery. In the case of GILC, that machinery includes eight custom-built and proprietary laminating production lines. In the case of CSI, that machinery includes several large CNC routers used for cutting stone slabs. Attached hereto as **Exhibit "L"** is a list of GILC's equipment and machinery located at the Property. Attached hereto as **Exhibit "M"** is a list of CSI's equipment and machinery located at the Property. Attached hereto as **Exhibit "N"** are photos of the equipment.
- 29. These machines cannot just be picked up and moved. They all have their own power and plumbing supply. Some also have their own HVAC and natural gas supplies.
- 30. The Tenants have already retained millwrights, electricians, plumbers, HVAC technicians, riggers and movers to move the businesses. However, they have advised me that they still require until July 19, 2024, to move out.
- 31. Both tenants also hold hundreds of thousands of dollars worth of inventory belonging to their clients which must also be moved.
- 32. I acknowledge that the Tenants have not paid rent since the Receiver was appointed in September of 2023. However, I verily believe it would be just and reasonable to provide the Tenants with a short extension of their lease termination date.

- 33. In response to any allegation that the Tenants have delayed in vacating the Property, which is not admitted but rather expressly denied, the bid deadline under the Receiver's sales process order was May 7, 2024, and the notice to terminate was only delivered nine business days before the termination date set out in the notice.
- 34. Furthermore, the tenants' solicitor, Barry Polisuk, and I spent several weeks speaking with the Stalking Horse Purchaser and its lawyers to try and negotiate a continuation of their leases after the Stalking Horse APS closed. Those conversations were ongoing as recently as today, June 10, 2024. The Original Agreement of Purchase and Sale between the Debtor and the Stalking Horse purchaser (which was the subject matter of earlier proceedings) contained a provision that the Stalking Horse Purchaser lease back portions of the property to the Tenants. Attached hereto as **Exhibit "O"** are true copies of my text messages with the representative of the Stalking Horse Purchaser, Anthony Marcucci.
- 35. In anticipation of the possibility that the tenants may be evicted, I retained two commercial real estate brokerages to search for new space in about February, 2024. Those brokers have been searching for possible new locations, however it took them until very recently to find the new location for GILC. They have not been able to find a suitable location for CSI. Thankfully, one of the tenants at 20 Caldari Road vacated and CSI was able to take over that space. Attached hereto and marked as **Exhibit "P"** is a true copy of an email from the tenants' agent Spencer Mussett and a true copy of a letter from the tenants' agent Amrita Sohal outlining their work to date.

C. Adjournment of Discharge Order

- 36. I have reviewed the Receiver's motion materials, and I verily believe that it encloses no particulars or evidence setting out the balance due and owing to Peakhill under its mortgage.
- 37. As set out above, I verily believe that the Debtor and Guarantors ought to have the opportunity to challenge any amounts claimed by Peakhill as owing under their mortgage before any funds are disbursed. The Receiver therefore should not be entitled to an order distributing funds to Peakhill until it or Peakhill provides an accounting of the amounts they claim are owing under their security.

38.

I make this affidavit in support of the Debtor's response to the Receiver's motion and a

cross-motion to redeem and discharge the Receiver and for no other or improper purpose.				
Sworn remotely by the Ravi Aurora, of the Regional Municipality of Peel, before me at the Regional Municipality of Peel, on 06 / 10 / 2024 , in accordance with O.)))			
Reg. 431/20, Administering Oath or Declaration Remotely.)			
Affective of the second of the	Zak			
A COMMISSIONER ETC.) Ravi Aurora				
DEBEK KETELVVBC	1			

THIS IS **EXHIBIT "A"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024

CANG.

CONFIDENTIAL

THIS IS **EXHIBIT "B"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024

MORTGAGE RENEWAL AND AMENDING AGREEMENT

(20 Regina Road, Vaughan, ON)

THIS AGREEME	NT is made as of _ June 6,	, 2024 (the "Agreement"),
BETWEEN:		
	ZAHERALI VISRAM (the "Chargee" of the first part)	1
	- and -	
	1000093910 ONTARIO INC. (the "Chargor" of the second page	art)

- and -

RAVI AURORA, AKASH AURORA, NAKUL AURORA

(collectively and individually the "Guarantor" of the fourth part)

WHEREAS the Chargor gave a second Charge/Mortgage upon the lands municipally described as 20 Regina Road, Vaughan, Ontario (the "Property") in favour of the Chargee and registered in the Land Titles Division for York Region (Land Registry Office #65) as Instrument No. YR3582894 (the "Mortgage") on August 8, 2023, securing the Loan Agreement dated March 28th, 2022 ("Loan Agreement") and payment of the principal sum of \$4,000,000.00 with interest as therein set out upon the terms therein mentioned;

AND WHEREAS as additional security for the Loan Agreement and the Mortgage each Guarantor, among other things, executed a guarantee (the "Guarantee") guaranteeing the obligations of the Chargor to the Chargee;

AND WHEREAS the Mortgage was amended pursuant to a Security Amending Agreement dated September 15, 2023, which, among other things, amended the Loan Agreement and increased the principal sum secured by the Mortgage to \$8,000,000.00, and the Chargee registered notice of the amendment by registering a Notice (the "Notice") on title as Instrument No. YR3598469 on September 18, 2023;

AND WHEREAS the Chargor, Chargee, and Guarantor wish to further amend the Loan Agreement and the Mortgage on the terms set out below;

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

- 1. Unless otherwise defined herein, all capitalized words and expressions used in this Agreement shall have the same meaning as defined in the Loan Agreement and the Mortgage.
- 2. The Chargee shall lend to the Chargor the greater of three million dollars (\$3,000,000.00) or such amount as required to discharge KSV Restructuring Inc. as receiver and manager of the property, assets and undertakings of the Chargor up to three million five hundred thousand dollars (\$3,500,000.00) (the "Additional Advance"). The Additional Advance shall be added to the principal secured by the Charge and shall accrue interest at the interest rate and shall be subject to all terms and conditions set out in the Loan Agreement, the Mortgage, the Security Amending Agreement, and any other loan and security documents executed by the Chargor and the Guarantor in connection with the Loan Agreement and the Mortgage.
- 3. The terms of the Loan Agreement and the Mortgage are hereby amended and/or varied as follows:

Principal shall be amended from \$8,000,000.00 to \$11,500,000.00

Balance Due Date shall be amended to be the earlier of i) the same Balance Due Date as the new First Mortgage as defined below, or ii) June 30, 2024.

- 4. Except as otherwise expressly provided for in this Agreement, the terms of the said Loan Agreement, Mortgage, Security Amending Agreement, and the Notice shall remain unchanged and unaltered by this Agreement and the parties hereto confirm the terms and conditions contained in the said Loan Agreement, Mortgage, Security Amending Agreement, and the Notice.
- 5. The Guarantor acknowledges, agrees and consents to the Additional Advance and hereby irrevocably acknowledges and agrees that that the Additional Advance will be added to the principal balance secured by the Loan Agreement and the Mortgage. Without limiting the foregoing, the Guarantor specifically acknowledges that repayment of the Additional Advance shall form part of the obligations of the Chargor guaranteed by the Guarantor.

- 6. The Chargee's obligation to advance the Additional Advance to the Chargor shall be conditional upon (i) the Chargor first obtaining and registering a new first mortgage (the "First Mortgage") secured against title of the Property for a principal amount of no more than twenty million, two hundred and fifty thousand dollars (\$20,250,000,000.00), and interest rate of no more than the greater of 12.25% and TD Canada Trust Prime Rate plus 5.05%, and a term of no less than 1 year, under which the Chargor will receive net proceeds in the amount of \$19,000,000.00 (the "First Mortgage Advance"), (ii) the due execution of this Agreement and registration of Notice of same on title confirming the amended Mortgage as a due and valid second charge, and (iii) such other documents as the lawyer for the Chargee shall reasonably require.
- 7. The Additional Advance and the closure hereof must be completed by June 30, 2024, failing which this Agreement will automatically terminate and be void.
- 8. The obligations of the Chargor and Guarantors under any of the loan or security documents executed in connection with this transaction continue to be in full force and effect and shall continue unchanged and unaltered as a result of this Agreement.
- 9. Nothing herein contained shall create any merger or alter the rights of the Chargee as against any subsequent encumbrancer or other person interested in the said lands, nor affect the liability of any person not a party hereto who may be liable to pay the said mortgage money or the rights of any such person all of which rights are hereby reserved.
- 10. In construing this document, the words, "Chargor", "Guarantor" and "Chargee" and all personal pronouns shall be read as the number and gender of the party or parties referred to herein requires and all necessary grammatical changes, as the context requires, shall be deemed to be made.
- 11. This agreement shall enure to the benefit of and be binding upon the respective heirs, executors and assigns of the parties, and if more than one person, the obligations imposed hereby shall be joint and several.
- 12. This agreement may be executed in counterparts and exchanged by email (PDF), each copy of which shall be deemed to be an original, and such separate counterparties shall together constitute one and the same instrument. An electronic copy of any page of this Agreement showing signatures or initials as the case may be including Adobe, DocuSign or similar form of electronic or digital signature, shall be binding on the parties and shall have the same evidentiary effect and value as would the original page or pages.

Signatures on next page.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

	1000093910 ONTARIO INC. (Chargor)	
	Per: ### 15500 EITS	
Derek Ketelaa	Name: Ravi Aurora Title: President	
	I/We have authority to bind the Corporation.	
Witness		
Name:	ZAHERALI VISRAM (Chargee)	
GUARANTORS: Witness		
	The 1-M rate Care 6, 2004 18:50 EUT	
Name: Derek Ketelaa	RAVI AURORA	
Witness	(Guarantor)	
		
Name: Derek Ketelaa	AKASH AURORA	
Witness	(Guarantor)	
	Mello (Autrora (Jam 6, 2004 1823 E20)	
Name: Derek Ketelaa	NAKUL AURORA (Guarantor)	

(Guarantor)

	1000093910 ONTARIO INC. (Chargor)
	Per: Name: Ravi Aurora Title: President 1/We have authority to bind the Corporation.
Witness	Va
Name: ALNOOR WALJI	ZAHERALI VISRAM (Chargee)
GUARANTORS:	
Witness	
Name:	RAVI AURORA (Guarantor)
Witness	

Name:

NAKUL AURORA (Guarantor) THIS IS **EXHIBIT "C"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024



Derek Ketelaars <derek@sclawpartners.com>

1000093910 Ontario Inc.

Sean Zweig <ZweigS@bennettjones.com>
To: "derek@sclawpartners.com" <derek@sclawpartners.com>

Thu, May 9, 2024 at 7:41 AM

Derek,

Further to our call yesterday, I am confirming your advice that you will reach out directly to counsel for the mortgagees to the extent you want payout statements from them.

I can advise that the total fees and disbursements of the Receiver and its counsel (including taxes) through April 30 are approximately \$525k. Those fees will of course continue to accrue.

Sean Zweig

Partner*, Bennett Jones LLP
*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4 T. 416 777 6254 | F. 416 863 1716

BennettJones.com



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TO IN THE AFFIDAVIT OF RAVI AURORA
SWORN REMOTELY BEFORE ME ON

June 10, 2024



Derek Ketelaars <derek@sclawpartners.com>

Urgent Request for Discharge Statement - 20 Regina, Peakhill Capital Inc. v. 1000093910 Ontario Inc.

Dominique Michaud dmichaud@robapp.com

Wed, May 29, 2024 at 10:53 AM

To: Derek Ketelaars <derek@sclawpartners.com>

Cc: Gary Caplan <gary@sclawpartners.ca>, Carmine Scalzi <carmine@sclawpartners.com>

Please see attached. Please note that this is for information purposes only and does not include legals since our last invoice was paid in March. This amount also does not include the cost of the receivership (KSV, Bennett Jones, other receivership costs etc....)

Dom

Dominique Michaud

Partner



T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

From: Derek Ketelaars <derek@sclawpartners.com>

Sent: Tuesday, May 28, 2024 6:57 PM

To: Dominique Michaud dmichaud@robapp.com

Cc: Gary Caplan <gary@sclawpartners.ca>; Carmine Scalzi <carmine@sclawpartners.com>

Subject: Re: Urgent Request for Discharge Statement - 20 Regina, Peakhill Capital Inc. v. 1000093910 Ontario Inc.

CAUTION: External e-mail.

Without Prejudice

Dom



May 27, 2024

Re: Discharge of Charge

20 Regina Rd. Vaughan ON L4L 8L6

Closing Date: May 27, 2024

Per Diem = \$10,026.01

Principal	\$21,276,123.33
Lender's Discharge Fee	500.00
Statement Preparation Fee	350.00
Deferral Fee (May 1, 2023)	\$10,000.00
Deferral Fee (Jun 1, 2023)	\$10,000.00
Deferral Fee (Jul 1, 2023)	\$10,000.00
Deferral Fee (Aug 1, 2023)	\$10,000.00
Deferral Fee (Sep 1, 2023)	\$10,000.00
Deferral Fee (Oct 1, 2023)	\$10,000.00
Deferral Fee (Nov 1, 2023)	\$10,000.00
Deferral Fee (Dec 1, 2023)	\$10,000.00
Deferral Fee (Jan 1, 2024)	\$10,000.00
Deferral Fee (Feb 1, 2024)	\$10,000.00
Forbearance Fee 1 (Jul 1, 2023)	\$25,000.00
Legal Fees (Aug 1, 2023)	\$20,123.59
Legal Fees (Sep 1, 2023)	\$18,580.84
Legal Fees (Oct 1, 2023)	\$4,955.05
Forbearance Fee 2 (Sep 30, 2023)	\$200,000.00
Legal Fees (Mar 31, 2024)	\$16,977.79
NSF Fee (Mar 1, 2024)	\$10,000.00
NSF Fee (Apr 1, 2024)	\$10,000.00
NSF Fee (May 1, 2024)	\$10,000.00
Interest From May 1, 2024 - May 27, 2024	\$270,564.46
Total Loan	\$21,963,175.06

This statement is for information purposes only and cannot be used for discharge/payout.

THIS IS **EXHIBIT "E"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024



Derek Ketelaars <derek@sclawpartners.com>

Urgent Request for Discharge Statement - 20 Regina, Peakhill Capital Inc. v. 1000093910 Ontario Inc.

Derek Ketelaars <derek@sclawpartners.com>
To: Dominique Michaud <dmichaud@robapp.com>
Cc: Gary Caplan <gary@sclawpartners.ca>

Thu, May 16, 2024 at 4:58 PM

Hi Dom,

Hope this email finds you well. My clients have instructed me to bring a motion discharging the receiver. They have obtained a commitment for a new first mortgage from a credible lender and they have sufficient finances to close.

Please have your client provide me with a payout statement for discharge purposes as soon as possible. I expect to serve our notice of motion before the long weekend.

Feel free to call me if you would like to discuss further.

Thanks,

DEREK KETELAARS

Lawyer

SCALZI CAPLAN LLP

20 Caldari Road Unit #2 Vaughan, Ontario, L4K 4N8

D: 437-242-4088

derek@sclawpartners.com



Challenging the Status Quo

www.sclawpartners.com

I am excited to share that Bernard Gasee and I have now joined Scalzi Caplan LLP! Please note my new contact information for your records.

Confidentiality Notice:

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and privileged information legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed in error, please immediately alert the sender by replying to this email and then delete this message and any attachments. If you are not the intended recipient, please note that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

THIS IS **EXHIBIT "F"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024



Agreement to Lease Commercial - Long Form

Form 510 for use in the Province of Ontario

This	Agreement to Lease (Agreement) dated this ,	06	day of.,,,,	a	lune	******************	20.24
TEP	WANT: Grafco International		gal names of all Ten	ınts		******	
LAI	NDLORD: Macchia Investm		gai names of all Land	llords)		4 22 22 444444444444444444444444444444	
	Tenant hereby offers to lease from the Landlord I the purposes of this Agreement to Lease "Tenan:				pject to the condition	ons as set out i	n this Agreement,
1.	PREMISES: The "Premises" consisting of appr	oximately	Izdnatsì	(saci) meices)	more or less o	n the	floor of the
	"Building" known municipally as			. în the	C:	ity	
	ofVaughan	, Po	rovince of Ontorio,	as shown outlined	on the plan attache	d as Schedule	#
2.	USE: The Premises shall be used only for length	lnating fac	ility		.,		
3.	TERM OF LEASE: (a) The Lease shall be for a term of) months com	mencing on the	1	day of
	September ,2024	and terminating	on the,.	ay of			
	(b) Provided the Tenant is not at any time in defo	oult of any covene	ants within the Leos	—— e, the Tenant shall I	be entitled to renev	this Lease for	
	additional term(s) of	e negotioted. In , the fixed minim		dlord and Tenant	can not agree on	the tixed mini	
4,	RENTAL: Fixed minimum rent: The fixed minimum	num rent payabl	e by the Tenant for	each complete tw	velve-month period	during the lea	ose term shall be:
	From See Schd A to (inclusive)	, \$(per a	, being \$ nnum)	(per month)	., based upon \$	(per sq)	(fool/metre)
	From to	, \$(per a	being \$ nnum)	(per month)	., based upon \$	(per sq)	(fool/metre)
	From to	, \$(per a	being \$ nnum)	(per month)	., based upon \$	(per sq)	(fool/metre)
	From to	, \$(per a	being \$ nnum)	(per month)	., based upon \$	(per sq)	(fool/metre)
	Fromto			.,		-1 2-	· · · · · · · · · · · · · · · · · · ·
	plus HST, and other tax (other than income tox (Check one box only)	i) imposed on thi	e Londlord or the I	enant with respect	to teut bayable b	y ine lenoni, p	oayabie an;
	thelstday of each month com	mencing		August	1, 2024	*************	******************
	theday of the first month in	mmediately follo	wing completion o	f the Landlard's W	ork.		
T I	No. 1 and a second of the seco		tit i in	· fort t at		I	

The fixed minimum rent shall be adjusted if the actual measurements of the Leased Premises differ from the approximate area. The actual measurement shall be agreed upon and failing agreement, calculated by an Ontaria Land Surveyor/Architect using the current Building Owners And Managers Association standard form of measurement and shall be binding on both parties.

INITIALS OF TENANT(S):



INITIALS OF LANDLORD(S):



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5.	DEPOSIT AND PREPAID RENT: The Tenant delivers. (Herewith/Upon acceptance/as otherwise described in this Agreement)
	by negotiable cheque poyable to
	in the amount of
	Canadian dollars (\$) to be deposited and held in trust as security for the faithful performance by the Tenant of all terms, covenants and conditions at the Agreement and after the earlier of occupancy by the tenant or execution of the Lease to be applied by the Londlard
	against the
6.	SERVICES: (Check one box only) The Tenant shall pay the cost of hydro, gas, water, heating, oir-conditioning and for all other services and utilities as may be provided to the premises. The tenant shall arrange with the local authority for connection of gas, electricity and water in the name of the Tenant.
	The Landlord shall pay the cast of hydro, gas, water, heating, oir-conditioning and for all other services and utilities as may be provided to the premises.
7.	ADDITIONAL RENT AND CHARGES:
	Check this box if Additional Rent as described below to be paid by Tenant
	The Tenant shall additionally pay a proportionate share of all costs and expenses incurred by the Landlard in maintaining, operating, cleaning, insuring and repairing the property and, without limiting the generality of the foregoing, such costs and expenses shall include the costs of: (i) snow, garbage, and trash removal; (ii) landscaping and planters;
	 (ii) landscaping and planters; (iii) heating, ventilating and air-conditioning, and providing hat and cold water and other utilities and services to, and operating the common areas of the property, and maintaining and repairing the machinery and equipment for such utilities and services; (iv) the realty taxes, assessments, rates, charges and duties levied or assessed against the property (save any tax on the personal income of the Landlard);
	(v) insuring the property and such other insurance as the Landlord will effect against public liability, property damage, loss of rental income and other cosualities and risks.
8.	SCHEDULES: The Schedules attached hereta shall form an integral part of this Agreement to Lease and consist of: Schedule(s)
	<u>A</u>
9.	IRREVOCABILITY: This offer shall be irrevocable by
	of
10.	NOTICES: The Landlord hereby appoints the Listing Brokerage as agent for the Landlard for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Tenant's Brokerage) has entered into a representation agreement with the Tenant, the Tenant hereby appoints the Tenant's Brokerage agent for the purpose of giving and receiving notices pursuant to this Agreement. The Brokerage shall not be appointed or authorized to be agent for either the Tenant or the Landlard for the purpose of giving and receiving notices where the Brokerage represents both the Landlard and the Tenant (multiple representation) or where the Tenant or the Landlard is a self-represented party. Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a focsimile number or email address is provided herein, when transmitted electronically to that focsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.
	FAX No.: [For delivery of Documents to Landlord] FAX No.: [For delivery of Documents to Tenant]
	Email Address: Email Address: Email Address:
	INITIALS OF TENANT(S): INITIALS OF LANDLORD(S):
П	The trademarks REALTORS, REALTORS, MUSTIN, Multiple Listing Services and associated logos are owned or controlled by

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١١.	LANDLORD'S AND TENANT'S WORK: The Landlord agrees to complete the work described as the "Landlord's Work" in Schedule ""
	attached hereto. The Tenant agrees to complete any additional work necessary to prepare the Premises for the Tenant's use, described as "Tenant's
	Work" in Schedule "" attached hereto. The Tenont shall not proceed with ony work within or affecting the Premises without the Landlord's prior written approval, which approval shall not be unreasonably withheld.
	prior written approval, which approval shall have be unreasonably withheld.

- 12. **SIGNAGE:** The Tenant may, at its own expense, erect signage in a good and workmonlike manner, subject to municipal by-lows and government regulations and subject to the Landlord's written approval as to the design, colour, and content of any such signs, which approval shall not be unreasonably withheld, and to be located as follows:
- 13. INSURANCE: The Tenant agrees to insure the property and operations of the Tenant, including insurance for fire and such additional perils as are narmally insured against, liability insurance and any other insurance as may be reasonably required by the Landlord.
- 14. **EXECUTION OF LEASE:** The Lease shall be prepared by the Landlard at the Landlard's expense, in accordance with the terms and canditions of this Agreement. The Lease will be signed and executed by both parties hereta prior to the commencement of work on the premises by either party and prior to occupancy by the Tenant.
- 15. OCCUPANCY OR RENT TO ABATE: In the event the premises are not completed by the Landlord for occupancy by the Tenant on the date set out herein for commencement of the Term of the Lease, the rent under this agreement shall abote to the extent of such delay, and the Tenant hereby agrees to accept such abotement of rent in full settlement of all claims which the Tenant might otherwise make because the Premises were not ready for occupancy by the said date.
- 16. ASSIGNMENT: This Agreement to Lease shall not be assignable or otherwise transferable by the Tenant. The Tenant may not sublet or assign ar transfer its interest in the Lease contemplated herein without securing the written consent from the Landlard, which consent shall not be unreasonably withheld, provided however, if the consent is granted, the Tenant shall remain liable for all obligations under the Lease.

 If the Tenant is a corporation, the transfer of the majority of the issued shares in the capital stock, or any transfer, issuance or division of shares of the carporation sufficient to transfer control of the corporation shall be deemed for all purposes to be an assignment within the meaning of this Agreement and any Lease. This provision shall not apply to a corporation whose shares are listed and traded on any recognized public stock exchange in Canada or the United States.
- 17. PARKING: Unless otherwise stipulated, parking, if applicable, shall be in common and unreserved.

- 18. AGREEMENT IN WRITING: If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set partian hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between Landlard and Tenant. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.
- 19. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE: The parties acknowledge that any information provided by the broker is not legal, accounting, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 20. TIME LIMITS: Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or obridged by an agreement in writing signed by Londlord and Tenant or by their respective lowyers who may be specifically authorized in that regard.
- 21. ELECTRONIC SIGNATURES: The parties hereto consent and agree to the use of electronic signatures pursuant to the Electronic Commerce Act, 2000, 5.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
- 22. TIME AND DATE: Any reference to a time and date in this Agreement shall mean the time and date where the property is lacated.
- 23. BINDING AGREEMENT: This Agreement and the acceptance thereof shall constitute a binding agreement by the parties to enter into the Lease of the Premises and to abide by the terms and conditions herein contained.

INITIALS OF TENANT(5):

INITIALS OF LANDLORD(S):

5):

24. SUCCESSORS AND ASSIGNS: The heirs, execute	ars, administrators,	successors and assigns af the	undersigned are bound by the terms herein.
SIGNED, SEALED AND DELIVERED in the presence of:	IN WITNESS wh	ereof I have hereunto set my	hand and seal:
	DocuSigned by	۴	
	A CASAMON AS		6/6/2024
\$5-14-441********************************	X Car Po		
(Witness)	Terrorit/ANAPOTALES	159gning Officer)	(Seal) (Date)
(Witness)	(Tenant/Authorized	L Significan Officeral	(Seal) (Date)
1444111022)	(Telloniy Authorized	r algaring Officer)	(Sell) (Sele)
(Witness)	(Guarantor)	······	(Seal) (Dote)
We/I the Landlord hereby occept the above offer, and a may hereafter be applicable) may be deducted from the o			
	-114444415115511+544-11	· · · · · · · · · · · · · · · · · · ·	NINIDAGO
(Witness)	(Landlord/Authoriz	ed Signing Officer)	(Seol) (Date)
(Witness)	(Landlard/Authoriz	ed Signing Officer)	(Seal) (Date)
CONFIRMATION OF ACCEPTANCE: Notwithstanding	anything containe	d herein to the contrary. I can	firm this Agreement with all changes both typed
and written was finally occepted by all parties at	·		•
and trinoil true illiary occupied by an parties of	(a.m./p.m.)		
		(Signature of Landlord or	Tenant)
	NFORMATION C	N BROKERAGE(S)	,
	CAULAY NICOLI	, ,	416-777-2200 (Tel.No.)
	Solesperson/Broker//	Broker of Record Name)	··············
Co-op/Tenant Brokeroge	Limited Brok	eragė	416-494-0600 (Tel.No.)
	Salesperson/Broker/I	Broker of Recard Name)	
	ACKNOWI	EDGEMENT	
I acknowledge receipt of my signed capy of this accept Lease and I authorize the Brokerage to farward a copy to			ny signed copy of this occepted Agreement to okerage to forward a capy to my lawyer,
(Landlord) (Date		(Tenant)	Date
(Landlord) (Date	a)	(Tenant)	(Date)
Address for Service		Address far Service	······································
		***************************************	dominad- sammadaminadaminada
(Tel. No.) Landlord's Lawyer.	•••••	Tenant's Lawyer	(Tel, No.)
Address		, ,	
Email			
		LICOLOGICA CONTRACTOR	
(Tel. No.) (Fax. No.)	***********************	([el. No.)	(Fax, No.)
FOR OFFICE USE ONLY	COMMISSION TR	UST AGREEMENT	
To: Co-operating Brokerage shown on the foregoing Agreement In consideration for the Co-operating Brokerage procuring the fo the Transaction as contemplated in the MLS® Rules and Regulation Trust Agreement as defined in the MLS® Rules and shall be subject.	regaing Agreement to ons of my Real Estate B	oard shall be receivable and held	in trust. This agreement shall constitute a Commission
DATED as of the date and time of the acceptance of the foregoin	ng Agreement to Least	e. Acknowledged b	py:
(Authorized to bind the Listing Brokerage)		Authorized to bi	nd the Co-operating Brokerage)

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SCHEDULE A

To be read with and form a part of this Agreement to Lease:

Grafco International Laminating & Macchia Investments Ltd

1. BASIC RENT

The annual Basic Net Rent per square foot of Rentable Area of the Premises, payable in advance in equal consecutive pro-rated monthly installments on the first day of each month throughout the Lease Term (the "Basic Net Rent") will be:

2. ADDITIONAL RENT

Other than as contained herein the Lease shall be entirely net and carefree to the Landlord. The amounts paid as Additional Rent will include all realty taxes (including business taxes that are included in the realty taxes), reasonable costs of building insurance, fire sprinkler maintenance, snow removal, landscape maintenance, and maintenance other than the maintenance that is the responsibility of the Landlord as listed herein. The Tenant's portion of the items listed above is for 2024 ("TMI").

3. NET LEASE

The Lease shall be entirely net to the Landlord. In addition to the Basic Net Rent and Additional Rent outlined above, the Tenant agrees to pay for all other costs of occupancy including harmonized sales tax (H.S.T.), insurance on contents, and the Tenant's proportionate share of utilities including water, gas, hydro and heating.

4. **DEPOSIT**

FIXTURING PERIOD

Provided the lease has been executed, and the Tenant has provided proof of their insurance satisfactory to the Landlord, the Tenant will be given access to the Premises from July 1, 2024 until August 31, 2024 in order to prepare the Premises for the operations of its business, (the "Fixturing Period").



7. DOCUMENTATION

The Tenant agrees to enter into a Standard Lease containing all of the terms and conditions of this Agreement to Lease, which Lease shall be prepared by the Landlord at the Landlord's expense, and will contain all of the clauses normally found in a lease concerning property of this nature and shall be delivered to the Tenant within Five (5) business days from the waiver of the Landlord's and Tenant's conditions herein and which Lease shall be subject to the Tenant's reasonable modifications provided that such changes are approved by the Landlord, acting reasonably. The Lease shall be executed within Twenty (20) calendar days from delivery to the Tenant failing which the Landlord and Tenant shall have the right to terminate this agreement in their sole discretion. Only an executed Lease by both parties shall constitute a binding agreement.

8. ASSIGNMENT/SUBLEASE

The Tenant shall have the right, with the Landlord's consent, to sublease any portion of the premises or assign this lease due to a change in control of the parent company or to any other entity under its control and shall only be required to provide notice to the Landlord. The Tenant shall have the right to assign this lease or sublease, any portion of the premises to a third party by obtaining the consent of the Landlord, which shall not be unreasonably withheld, conditioned or delayed, subject to the third party having financial strength satisfactory to the Landlord.

9. <u>ALTERATIONS & IMPROVEMENTS</u>

The Tenant may make any necessary alterations and improvements to the Premises, at its own expense, subject to the Landlord written consent, and such consent shall not be unreasonably withheld. The Tenant may, however, make any necessary minor internal improvements to said premises, at his own expense, without the Landlord's consent and in compliance with all applicable governmental by-laws and codes governing the use of the Premises provided that they remove any of their improvements and restore the Premises to the condition as it was at the Commencement date, normal wear and tear excepted.

10. LANDLORD REPAIRS

The Landlord shall be responsible for any structural or latent defects to the premises and or facility for the term of the lease or any renewal thereof as well as any items covered under manufacturer's warranty.

11. SIGNAGE

The Tenant shall have the Landlord's permission to supply and install exterior sign identification; the design and location of which shall be subject to municipal by-laws and regulations and subject to the approval of the Landlord, said approval not to be unreasonably withheld or delayed.

12. LANDLORD'S WORK

The Landlord shall complete, at its own cost, and in a good and workmanlike manner and in accordance with all federal, provincial, municipal and other laws, by-laws, building codes, rules and regulations relating to the same, using first class materials, on or before the Commencement Date, the following work on the Leased Premises:

- a) Provide the space in a clean broom swept condition, free of any debris;
- b) Repaint lines for parking along the side of the building and rear

13. TENANT'S CONDITION

This Agreement to Lease shall be conditional for a period of Five (5) business days from the date of acceptance upon:

a) The Tenant receiving senior management approval

If the Tenant is unable to complete the preceding within the specified time period, then this Agreement to Lease shall be considered null and void and the deposit shall be returned to the Tenant in full. The Tenant shall notify the Landlord in writing within the specified time period, or this Agreement to Lease shall be null and void.

14. LANDLORD'S CONDITION

This Agreement to Lease shall be conditional for a period of Five (5) business days from the date of acceptance upon:

- a) The Landlord reviewing and being satisfied with the Tenant's covenant and use.
- b) The Landlord providing a detailed breakdown of the TMI

If the Landlord is unable to complete the preceding within the specified time period, then this Agreement to Lease shall be considered null and void and the deposit shall be returned to the Tenant in full. The Landlord shall notify the Tenant in writing within the specified time period, or this Agreement to Lease shall be null and void.



16. LEGAL ADVICE

The Parties to this Agreement acknowledge that CBRE Limited has recommended that they obtain advice from their Legal Counsel prior to signing this document. The Parties further acknowledge that no information provided by CBRE Limited is to be construed as expert legal or tax advice.

17. AGENCY

The Tenant and the Landlord acknowledge that CBRE Limited is acting on behalf of the Tenant and COLLIERS MACAULAY NICOLLS INC. is acting on behalf of the Landlord in this transaction.

18. EXCLUSIVITY

The Landlord acknowledges and agrees that the Tenant will be incurring substantial costs in negotiating the terms of the Lease and in undertaking its due diligence with respect to the Premises and, in consideration of the Tenant doing so, the Landlord agrees that it will not enter into, or continue, any negotiations or discussions with any third party with respect to the leasing of the Premises during the period from the date hereof to and including the date which is thirty (30) days from the date hereof. Notwithstanding anything in this Letter of Intent to the contrary.

19. CONFIDENTIALITY

The Landlord and Tenant mutually covenant that the terms and parties herein are confidential and are not be disclosed to anyone other than agents of the Tenant and Landlord without prior written consent of both parties.

Signatures to follow

Acknowledged & Agreed by:	
DocuSigned by: 2DD34287DA75482	6/6/2024
Ravi	Date:
(Tenant)	
	Date:
(Landlord)	

THIS IS **EXHIBIT "G"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024

LEASE AGREEMENT

THIS LEASE made as of the 1" day of Jone, 2024.

In pursuance of the Short form of Leases Act, R S.O. 1990, c. 5.11 and the provisions of the Commercial Tenancies Act, R.S.O. 1990, c. L.7.

AMONG:

20 CALDARI DEVELOPMENT INC.
(the "Landlord")

- and -

COUNTERTOP SOLUTIONS INC. (the "Tenant")

WITNESSES that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant, to be paid, observed and performed, the Landlord hereby leases and demises to the Tenant, to have and to hold during the term of this lease agreement (this "Lease"), approximately ten thousand (10,000) square feet in the aggregate (the "Leasable Area") of that portion of the Building known as Unit 1 (the "Premises"), located on the lands and premises municipally known as 20 Caldari Road, Vaughan, Ontario (the "Lands"), as shown outlined in green on Schedule "A" attached hereto.

- 1. Building. In this Lease, "Building" shall mean the building situate on the Lands.
- Semi-Gross Lease. Except as otherwise expressly set out in this Lease, the Tenant shall have no
 obligation to the Landlord with respect to payment of any charges and/or expenses arising from or
 relating to the Premises.
- Term. The Landlord hereby demises and leases unto the Tenant, and the Tenant hereby leases
 from the Landlord the Premises for and during a term of one (1) year, commencing on the 1x day
 of June 2024 (the "Commencement Date") and expiring on the 1x day of June, 2025 (the
 "Term").
- 4. Option to Ronow. Provided the Tenant has not been in default hereunder, the Tenant shall have the option to extend the Lease for one (1) period of one (1) year (the "Extended Torm") upon receipt by the Landlord of the Tenant's written notice to extend the Lease no less than one (1) month prior to the expiration of the Term, failing which this option to extend shall be rendered null and void. If the Tenant exercises its option to extend the Term as aforesaid, this Lease will be read as if the original Term was for a period of time commencing on the Commencement Date and ending on the last day of the Extended Term, and the Base Rent for the Extended Term shall be equal to the Base Rent payable by the Tenant to the Landlord during the Term plus One Dollar and Fifty (\$1.50) Cents per square foot. For clarity, upon the Tenant exercising its within rights to extend the Term, the (1) Tenant will not be entitled to any further extension and/or renewal of the Term (ii) Landlord will not be required to perform any additional Landlord's work and the Tenant will not be required to perform any additional Tenant's work and (iii) the Tenant will not be entitled to any fixturing period, leasehold improvement allowance, tenant inducement or rent free puriod.
- 5. Base Rent. The Tenant shall pay to the Landlord yearly and every year during the Term without any set-off, compensation, deduction or abatement whatsoever rent in Canadian Dollars for the Premises (the "Base Rent") commencing on the Commencement Date, the sum of Two Hundred & Seven Thousand Five Hundred (\$207,500) Dollars per annum payable in equal monthly installments paid by cheque on the first (1") day of each and every month in the amount of Seventeen Thousand Two Hundred & Ninety-One (\$17,291.67) Dollars and Sixty-Seven Cents plus any goods and services tax, barmonized sales tax, value-added tax or any similar tax applicable thereon (collectively referred to as "Applicable Taxes").

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6. Additional Rent.

- (a) In addition to Base Rent, the Tenant shall pay to the Landlord yearly and every year during the Term as Additional Rent (as hereinafter defined), the following:
 - (i) Utility Charge (as hereinafter defined); and
 - (ii) Depreciation or amortization of Capital Costs (as hereinafter defined) as having to be depreciated or amortized and all other capital costs incurred by the Landford in connection with the Lands (whether prior to or subsequent to the Commencement Date) and which the Landford determines should be depreciated or amortized in accordance with accepted practices in the commercial real estate industry. The Landford shall depreciate or amortize all such Capital Costs over the useful life of the items for which the Capital Costs were incurred or over such other period as the Landford, acting in accordance with accepted practices in the commercial real estate industry, may determine.
- (b) The Additional Rent to be paid by the Tenant under this Section shall be paid by cheque in monthly instalments in advance on the First (1") day of each and every month throughout the Term and/or the Extended Term, as applicable, in the amount of \$3,000 per month an amount to be reasonably fixed from time to time by the Landlord as an estimate of actual expenses. The Landlord shall deliver to the Tenant within sixty (60) days after the end of each calendar year during the Term, a statement detailing the fees, cost and disbursements comprising the Additional Rent payable by the Tenant (the "Annual Statement"). If the amount determined to be payable by the Tenant pursuant to the Annual Statement is less than the amounts paid, the Tenant agrees to pay such additional amounts due within thirty (30) days after the Tenant has received the Annual Statement. If the Tenant has paid in excess of the amounts due, the amount of any overpayment shall be paid to or credited to the account of the Tenant within thirty (30) days after the delivery of the Annual Statement.
- (c) For the purposes herein:
 - (i) "Additional Rent" shall mean the Tenant's Proportionate Share of the (A) Utility Charge (B) depreciation or amortization of Capital Costs and(C) any and all monies required to be paid by the Tenant to the Landlord or to any third party under or pursuant to the terms of this Lease, save and except for Base Rent and Applicable Taxes;
 - (ii) "Capital Costs" shall mean all costs incurred by the Landlord in making alterations, replacements or additions to the Building intended to reduce operating costs, improve the operation of the Building or maintain its operation as a first-class commercial building, including without limitation, any required (A) replacements of any of the equipment and systems serving the Premises and/or the Building and (B) capital repairs to all service and utilities lines serving the Premises and/or the Building and to all beating, ventilating and air-conditioning equipment that existed at the beginning of the Term;
 - (iii) "Proportionate Share" shall mean a fraction, the numerator of which is the Leasable Area and the denominator of which is the square footage of all rentable premises in the Building (whether rented or not), including the Premises, as determined by the Landlord as of the Commencement Date; and
 - (iv) "Utility Charge" shall mean all charges for and in connection with public utilities (including in-suite hydro, gas, electricity, and water) and similar services to the Premises.
- 7. Landlord's Work. The Landlord shall complete the work described in Schedule "R" attached hereto (the "Landlord's Work") on or prior to the Commencement Date, at its sole cost and expense. Subject to delays caused by Force Majeure (as hereinafter defined) and delays caused by the Tenant and/or any of its directors, officers, employees, servants, contractors, agents and those for whom the Tenant is responsible at law (collectively, the "Related Parties"), the Landlord shall

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use reasonable commercial efforts (without the need for overtime or weekend work) to complete the Landlord's Work as soon as reasonably possible following the execution of this Lease. If the Term has commenced and the Landlord's Work has not been completed, the Landlord may have such access to the Premises as it requires in order to complete the Landlord's Work and the Tenant shall not interfere with or delay the Landlord or its contractors from completing the Landlord's Work.

- S. Tenant's Work. Subject to the provisions of Section 17 hereof, the Tenant shall be permitted to occupy the Premises for the purposes of constructing its leasehold improvements in and to the Premises (the "Tenant's Work"), which shall include all work to be performed to construct the Premises and commence business operations thereon, save and except for the Landlord's Work from the Commencement Date.
- Rent Past Due. The Tenant shall pay to the Landbord, in addition to Base Rent and Additional Rent (collectively referred to as "Rent"), a service and administration charge in the amount of Four Hundred Fifty (\$450.00) Dollars plus Applicable Taxes for each and every cheque which the Tenant's bank or financial institution refuses to honour together with the Landbord's actual amount from time to time charged to it by its financial institution.
- 10. Automatic Debiting. The Tenant shall, if and when required by the Landlord, authorize and direct the Landlord to automatically debit any bank account designated by the Tenant for all or a portion of the Rent payments to be made by the Tenant to the Landlord hereunder, as the Tenant may notify the Landlord in writing. The Tenant shall ensure that any bank account so designated contains sufficient funds to make any Rent payments to be made by the Tenant to the Landlord under this Lease, failing which, the Tenant shall be deemed in default hereunder and the Landlord shall be entitled to pursue any and all of its remedies herein and/or at law as it may deem necessary at its option.
- 11. Deposit. Concurrently upon the execution of this Lease by all of the parties hereto, the Tenant shall submit to the Landlord, a negotiable cheque payable to the Landlord in the sum Thirty-Four Thousand Five Hundred & Eighty-Three (\$34,583.34) Dollars and Thirty-Four Cents as a deposit (the "Deposit"), which shall be held and credited, and exhausted, against Rent, or any other amount payable by the Tenant under this Lease and for the full and faithful performance by the Tenant of all its covenants and obligations hereunder. The Deposit shall be held without interest and credited towards the last two (2) months' payment of Rent exclusive of Applicable Taxes. In the event the Tenant is in default under the terms hereof, the Landlord shall be entitled to retain the Deposit paid hereunder on account of the Landford's liquidated dam**age**s and not as a penalty, provided that such retention shall be without prejudice to any other rig**ht**s which the Landlord may be entitled to hereunder, in equity or at law. If the Landlord uses all or part of the Deposit as provided above, the Tenant will, upon notification by the Landlord, pay to the Landlord the amount required to reimburse it for the amounts so applied. The Landlord will not be required to pay interest to the Tenant on any of the amounts paid to the Landlord or retained by it under this Section. The Landlord may deliver the Deposit to any purchaser of the Landlord's interest in the Building or any part thereof, whereupon the Landlord will immediately be discharged from any further liability with respect to the Deposit.
- Maintenance and Repair. The maintenance and repair of the Premises shall be governed as follows:
 - (a) the Tenant shall be responsible, at its expense, for the day-to-day maintenance and repair of the Premises, including, without limitation, all decorating and redecorating of the Premises, including the floor coverings and painting and maintenance of all interior walls, and shall make any and all other repairs due to the negligence or misuse of Premises by the Tenant; and
 - (b) save and except with respect to the Capital Costs, the Landlord shall be responsible for all remaining maintenance and repair obligations of the Premises
- 13. Use of Premises. The Tenant shall occupy the Premises throughout the Term and subject to compliance with all applicable federal, provincial and/or municipal laws, by-laws, regulations, statutes, rules and directives or orders issued by agencies having jurisdiction in connection with, or pertaining to or affecting the Premises (collectively, the "Applicable Laws"), the Premises shall be used solely as office space and any other uses ancillary thereto. The Tenant shall not use or

permit or suffer the use of the Premises or any part thereof for any other purpose whatsoever. Notwithstanding anything contained herein to the contrary, the Tegant and its Related Parties

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shall have the right to use, in common with all others entitled thereto, those parts within the Building designated by the Landlord for common use by the Landlord and the tenants of the Building, including, without limitation, the lobbies, haliways, common rooms, entrances, and driveways of the Building (save and except for any storage areas of the Landlord in the Building), together with the common lands appurtenant thereto (the "Common Areas"), provided that neither the Tenant nor the Related Parties shall obstruct any such Common Areas.

- 14. Operation of Business. The Tenant shall also observe and comply with all Applicable Laws pertaining to or affecting the Premises, the Tenant's use of the Premises or the conduct of any business in the Premises, or the making of any repairs, alterations, additions, changes, substitutions or improvements of or to the Premises, and the regulations of any insurance underwriters in respect of the insurance maintained by the Landford in respect of the Building; and carry out all reasonable modifications to the Premises and the Tenant's conduct of business in or use of the Premises which may be required by any such authorities. The Tenant shall be solely responsible for obtaining from all authorities having jurisdiction all necessary permis. Incenses and approvals as may be necessary to permit the Tenant to occupy the Premises and conduct its business thereon, as required by all Applicable Laws respecting the use, condition and occupation of the Premises, and all fixtures, equipment and contents thereof.
- 15. License to Park. The Tenant acknowledges and agrees that the parking area forming part of the Common Areas (the "Parking Area") is intended to be utilized in common by the Tenant and all of the other tenants and other occupants of the Building and their respective employees, customers and visitors. The Tenant covenants and agrees not utilize the Parking Area so as to interfere with the use thereof by such other persons. In addition to the non-exclusive right to utilize the Parking Area as contemplated in this Section, the Tenant shall have the further right to utilize a maximum of twenty (20) parking spaces within the Parking Area on an exclusive basis (the "Exclusive Parking Spaces"), which the Tenant shall police and monitor at its sole cost and expense. The Tenant hereby covenants and agrees that the Exclusive Parking Spaces shall only be used for the parking of automobiles, vans, motorcycles, and light trucks. The Landlord may elect, at any time during the Term and in its sole and unfettered discretion, to require the Tenant to enter into a separate parking license agreement in connection with the Exclusive Parking Spaces, in the form and substance satisfactory to the Landlord.
- Hazardous Substances. The Tenant covenants and agrees to utilize the Premises and operate its business in a manner so that no part of the Premises or surrounding lands are used to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, luzardous waste, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, PCB's or any other substances or materials that are declared or defined to be hazardous, toxic, contaminants or pollutants in or pursuant to any Applicable Law (each, a "Hazardous Substance"), except in strict compliance with all Applicable Laws, including, without limitation, environmental, land use and occupational and health and safety laws, regulations, requirements, permits, statutes, by-laws and regulations. The Tenant hereby covenants and agrees to indemnify and save harmless the Landlord and those for whom the Landlord is in law responsible from any and all losses, costs, claims, damages, liabilities, expenses or injuries (collectively, the "Claims") caused or contributed to by any Hazardous Substances directly attributable to the Tenant's use and/or occupancy of the Premises which are at any time located, stored or incorporated in any part of the Premises.
 - 17. Installations by the Tenant. Save and except as otherwise provided herein, the Tenant shall not make any alterations, additions or improvements or install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings without first obtaining the Landford's written approval and consent, which consent may be arbitrarily withheld. The Tenant shall present to the Landlord plans and specifications in form, content and such detail as the Landlord may reasonably require for such work at the time approval is sought. The Tenant covenants that any work that may be done in respect of the Premises by or on behalf of the Tenant shall be done in such a manner as not to conflict or interfere with work, if any, being done or about to be done by the Landlord in or about the Building, shall be affixed, creeted or installed in a good and workmanlike and expeditious manner using first-class materials by a contractor approved in writing by the Landford, and except as otherwise provided in this Lease, the Tenant shall obtain all requisite permits, licences and inspections in respect of any such work done by or on the Tenant's behalf. Notwithstanding anything herein contained, the Tenant shall not make any afterations, additions or improvements that are of a structural nature or that would lessen the value of the Premises or the Building or

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would interfere with the usage of the Common Areas. All alterations, decorations, additions and improvements made by the Tenant or made by the Landlord on the Tenant's behalf by agreement under this Lease shall remain the property of the Tenant throughout the Term and may be removed by the Tenant during the Term as it may determine in its sole and unfettered discretion. Upon expiration of this Lease, the Tenant shall not be required to remove any such alterations, decorations, additions and improvements or restore the Premises to its existing condition as of the Commencement Date Notwithstanding the foregoing, in the event the Tenant removes any such alterations, decorations, additions and improvements upon expiration of the Term, the Tenant shall be responsible for repairing any damage caused by such removal, as the Landlord shall determine in its sole and unfettered discretion.

- Maintenance and Repair by the Tenant. Except as otherwise provided herein, the Tenant at its own expense shall repair, maintain and keep the Premises and every part thereof in a clean and sanitary condition and macrordance with all Applicable Laws, reasonable wear and teat excepted, provided however that the obligation of the Tenant hereunder shall not extend to any maintenance in excess of that required by Applicable Laws relating to the activities being undertaken at the Premises or due to damage by fire, lightning, tempest or other perils against which the Landlord is or ought to have been insured under the terms of the Lease, and/or any costs due to any default of the Landlord hereunder and/or any act caused by the gross negligence and/or willful misconduct of the Landlord.
- Termination of Lease and Overholding. Forthwith upon the expiration of the Term and/or the Extended Term, as applicable, the Tenant shall vacate and deliver up possession of the Premises in a neat and tidy state in accordance with the Tenant's obligation under this Lease. The Tenant shall remove its chaitels and trade fixtures and surrender the Premises to the Landlord in the same condition the Premises were in upon delivery of possession of same, reasonable wear and tear excepted. At the option of the Landlord and in accordance with Section 17 hereof, the Tenant may be required to remove any leasehold improvements installed within the Premises by the Tenant at its sole cost and expense and repair any damage necessitated thereby. In the event that the Tenant fails to so remove its chaltels, trade fixtures and (if applicable) the leasehold improvements within the Premises as contemplated above within seven (7) days following written notice by the Landlord to the Tenant after the Tenant has vacated the Premises, the Landlord shall have the right, as it may determine in its sole and unfettered discretion, to appropriate, sell, remove, -destroy-and/or otherwise-dispose of such-items without notice to the Tenant: in such event, the Landlord shall be under no obligation to compensate the Tenant and/or account to the Tenant in respect thereto, and the Tenant shall pay to the Landlord on demand all costs incurred by the Landlord in connection therewith, together with an administration fee of lifteen (15%) percent of such costs (the "Administration Charge"). The Tenant's obligations to observe at perform this covernant shall survive the expiration or earlier termination of this Lease. At the same time the Tenant shall surrender to the Landlord at the place then fixed for the payment of Rent, all keys and other devices which provide access to the Premises. If the Tenant shall continue to occupy the Premises following the expiration or earlier termination of this Lease without the consent of the Landlord and without any further written agreement, the Tenant shall be a monthly tenant at one bundred and fifty (150%) percent of the Kent and otherwise on the terms and conditions herein set forth, except as to the length of tenancy.
- Tenant's Covenants. The Tenant hereby covenants and agrees with the Landlord, its successors and assigns as follows:
 - (a) the Tenant shall pay before delinquency all business and other taxes and charges imposed by any lawful authority against the Tenant or any sub-tenant, licensee or occupant of the Premises which if not paid would constitute either a lien on either the Premises and/or the Building or a liability of the Landlord;
 - the Tenant shall be solely responsible for payment of all telephone and/or internet charges incurred during the Term;
 - (c) the Tenant shall not commit or permit any waste or damage to the Premises or any manner of use causing annovance to other tenants and/or residents of the Building;
 - (d) the Tenant shall, during the Term and/or the Extended Term, as applicable,, at its sole expense, perform such cleaning, maintenance, repairs and replacements as a prudent owner of similar premises would do, and as are required in order to keep the Premises in

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		first-class appearance and condition, and in accordance with all Applicable Laws and the Landlord's requirements;	
	(e)	the Teaant shall not store or place anything in the Common Areas, including, without limitation (i) any outdoor Common Areas and/or (ii) the Exclusive Parking Spaces;	
	{f}	upon not less than forty-eight (48) hours prior written notice to the Tenant (other than in the case of emergency in which event no notice is required), the Landlord may enter the Premises in order to inspect the state of repair and condition thereof, and the Tenant shall are form to a society of the landlord's	
. <u></u>		perform any required maintenance, repairs or replacements according to the Landlord's notice in writing forthwith upon receipt of same. The Tenant agrees to provide the Landlord with keys to the Premises, as well as all access, security and alarm codes, to the extent applicable;	
	(g)	the Tenant shall give immediate notice in writing to the Landlord of any accident, defect or damage in any part of the Premises or the Building which comes to the attention of the Tenant, notwithstanding the fact that the Landlord may have no obligation in respect of same;	
	(h)	if the Tenant is in default under this Section, the Landlord may enter the Premises and perform any necessary cleaning, maintenance, repairs and replacements and, in this regard, the Tenant hereby appoints the Landlord as its agent and agrees that the Landlord may charge its costs for all such cleaning, maintenance, repairs and replacements to the Tenant together with the Administration Charge;	
	(i)	if the Building or any part thereof, or any equipment, machinery, systems or facilities	
·		contained therein require repair or replacement or becomes damaged or destroyed through any act or omission of the Tenant or its Related Parties, the Landlord's actual cost of the resulting repairs or replacement together with the Administration Charge shall be paid by the Tenant;	
	.00	the Tenant shall ensure that no lien under the Construction Act, R.S.O. 1990, c. C.30, as amended from time to time, or other lien or charge is registered or filed against the (i)	
	,	Building or-any-part of it and/or (ii). Tenant's interest-in the Premises or-any-of-the-leasehold improvements in the Premises, by any person claiming by, through, under or against the Tenant or its contractors or subcontractors. If such a lien or charge or notice thereof is registered or filed and the Tenant fails to discharge it within the then current Term after written notice from the Landlord, the Landlord may discharge it by paying the amount claimed to be due into court or directly to the claimant and the Tenant will pay to the Landlord on demand all costs (including legal fees) incurred by the Landlord in connection therewith, together with the Administration Charge;	
	(k)	the Tenant may not assign or sub-let the whole or any part of the Premises without the prior written consent of the Landlord, which consent may be arbitrarily withheld. In the event said consent is given by the Landlord, the Tenant shall not be relieved from performing any of the terms, covenants and conditions of this Lease as they pertain to the portion of the Premises so assigned and/or subleased;	
	(1)	the Tenant shall not advertise or allow the Premises to be advertised as being available for lease without the approval by the Landlord of the form and content of such advertisement which shall not mention any financial terms:	
	(m)	if all or a substantial portion of the property of the Tenant on the Premises is seized or taken in execution or attachment by a creditor of the Tenant or if the Tenant makes an assignment for the benefit of creditors or if a receiver-manager is appointed to control the conduct of the business on or from the Premises or if the Tenant becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or if an order is made for the winding-up of the Tenant the next ensuing three (3) months' Rent immediately will become due and payable as accelerated Rent and the Landford may reenter and take possession of the Premises as if the Tenant were holding over and this Lease shall forthwich be terminated upon written notice by the Landford to this effect. Accelerated Rent will be recoverable by the Landford in the same manner as the Rent hereby reserved;	

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(n)

- the Tenant shall indemnify and save the Landford harmless from and against: (i) all Claims in connection with any Claims arising from or out of any occurrence in, upon or at the Premises or any part of the Building, to the extent occasioned wholly or in part of by any act or omission of the Tenant or its Related Parties, and the costs (including legal costs) incurred by the Landford in connection with any action pertaining thereto; and (ii) any damage suffered by the Landford by reason of the breach by the Tenant of any of its obligations hereunder and the costs (including legal costs) incurred by the Landford in connection with any action pertaining thereto. In case the Landford shall, without fault on its part, be made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect and hold the Landford harmless and shall pay all costs, expenses and solicitors' fees on a substantial indemnity basis incurred or paid by the Landford in connection with such litigation;
- notwithstanding any present or future Applicable Laws, none of the goods or chattels of the Tenant at any time during the continuance of the Term shall be exempt from fevy by distress for arrears of Rent, and that upon any claim being made for such exemption by the Tenant or on distress being made by the Landlord, this covenant and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying of distress upon any such goods as are named exempted by such present or future. Act but for this covenant and agreement. The Tenant further agrees that distress of all or any goods or chattels of the Tenant may be effected by written notice posted in or on the Premises, whether or not the Landlord locks or otherwise secures such goods or chattels. From the Tenant on the Premises or eisewhere. If the Landlord effects distress by written notice or any other means, the Tenant agrees not to remove or permit to be removed any distrained goods or chattels and not-to interfere with the exercise of any right of distress;
- (p) the Tenant shall not do or permit anywhere on the Building anything which is prohibited by any insurance policy of the Landlord on the Building;
- (q) the Tenant shall observe and shall cause its Related Parties to observe the Rules and Regulations (as hereinafter defined). Nothing herein shall be construed to impose upon the Landlord any obligation to enforce such Rules and Regulations; and
- (r) in the event the Building is sold, transferred, and/or or refinanced, the Tenant agrees to sign the Landlord's form of estoppel certificate as may be required within ten (10) business days following the Landlord's request to the Tenant in connection therewith.
- 21. Landsord's Covenants. The Landlord hereby covenants and agrees with the Tenant as follows:
 - (a) the Tenant shall have quiet enjoyment of the Premises;
 - (b) the Tenant shall have access to the Premises twenty-four (24) hours per day during the Term and/or the Extended Term, as applicable, subject, however, to unforeseen emergencies which require such access to be restricted or denied;
 - the Landlord shall pay before delinquency all taxes, including without limitation realty taxes, assessments and rates relating to the Building;
 - (d) the Landlord shall operate and manage the Building and shall maintain and repair the Building and its systems as would a prudent owner of a similar building; and
 - (e) the Landford shall provide the Premises with heat as required for the comfortable use and occupancy of the Premises during normal business hours as the Landford may determine from time to time, excluding statutory holidays.
- Tenast's Insurance. The Tenant shall, throughout the Term of this Lease, at its sole cost and expense, take oot and keep in full force and effect, the following insurance:
 - (a) all-risks insurance (including flood and earthquake) upon all property owned by the Tenant or for which the Tenant or for which the Tenant is legally hable, or which is installed by or on behalf of the Tenant, and which is located on the Lands including, but not limited to, fittings, installations, alterations, additions, trade fixtures and anything in the nature of a leasehold improvement as well as the Tenant's stock-in-trade, fittinture,

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- equipment and other personal property, for not less than one hundred (100%) percent of the full replacement cost thereof and standard extended coverage;
- (b) comprehensive general liability insurance including personal injury liability, tenant legal liability, contractual liability, non-owned automobile hability, employer's liability and owners and contractors employers liability and owners and contractors protective insurance coverage with respect to the Premises and the Tenant's use of the Common Areas and facilities, coverage to include the activities and operations conducted by the Tenant and any other persons on the Premises, and by the Tenant and any other person performing work on behalf of the Tenant and those for whom the Tenant is in law responsible on any other part of the Building. Such policy or policies shall (i) be written on a comprehensive basis with inclusive limits of not less than Five Million (\$5,000,000) Dollars for bodily injury to any one or more persons, or property damage, or such higher limits as the Landlord may reasonably require from time to time; and (ii) contain a severability of interest clause and cross-liability clause; and
- (c) any other form of insurance as the Landlord may reasonably require from time to time, including without limitation plate glass insurance, upon not less than three (3) business days written notice to the Tenant, in form, in amounts and for insurance risks against which a prudent tenant would insure.
- 23. Insurance Policies. All policies required to be written on behalf of the Tenant pursuant to Section 22 hereof shall contain a waiver of any subrogation rights which the Landlord's insurers may have against the Tenant and against those for whom the Tenant is in law responsible, whether any such damage is caused by the act, omission or negligence of the Tenant or of those for whom the Tenant is in law responsible. Upon prior written request, the Tenant shall furnish to the Landlord certificates of insurance duly executed by the Tenant's insurers evidencing the required insurance. All such policies will contain an undertaking by the insurers to notify the Landlord in writing by registered mail at least thirty (30) days before any material change, cancellation or termination to same. The Tenant agrees that if the Tenant fails to take out or keep in force any such insurance referred to in Section 22 hereof, or should any such insurance not be approved by either the Landlord and should the Tenant not rectify the situation immediately after written notice by the Landlord to the Tenant, the Landlord has the right without assuming any obligation in connection therewith to effect such insurance at the sole cost of the Tenant and all outlays by the Landlord together with the Administration Charge shall be immediately paid by the Tenant to the Landlord without prejudice to any other rights and remedies of the Landlord under this Lease.
 - 24. No. Abatement of Rent, Except as otherwise provided herein, there shall be no abatement from or reduction of the Rent due hereunder, nor shall the Tenant be entitled to any Claim against the Landford during the Term and/or the Extended Term, as applicable, caused by or on account of fire, water, sprinkler systems, partial or temporary failure or stoppage of electrical power, heat, light, steam or plumbing service in or to the Premises or the Building.
- 25. Limitation of Landlord's Liability. The Tenant agrees that Landlord shall not be liable or responsible in any way for any Claim relating to the Premises or any property owned by or being the responsibility of the Tenant or its Related Parties, no matter how the same shall be caused except where caused by the gross negligence of the Landlord. Without limiting the generality of the foregoing, in no event shall the Landlord be liable for any damage to such property caused by steam, water, rain or snow which may leak into, issue or flow from any part of the Building or from the water, steam or drainage pipes or plumbing works of the Building or from any other place, or for any damage caused by or attributable to the condition or arrangement of any electrical or other wiring or for any damage caused by anything done or omitted to be done by any tenant of the Building.
- 26. Signs. Except as other provided herein and subject to the provisions of Section 17 hereof, the Tenant shall not post, paint, exhibit or affix any signs, notices or advertisements whatsoever on any part of the outside or inside of the Building whatsoever without the consent in writing of the Landlord, which consent may not be unreasonably withheld or delayed. Any signage and/or identification so installed shall be in strict compliance with all Applicable Laws and shall be subject to the Landlord's prior written approval as to the size, design, location and specifications of any such signs.
- 27. Exhibiting Premises. Upon not less than forty-right (48) hours written notice to the Tenant, the

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Landlord may exhibit the Premises to prospective purchasers, prospective mortgagees and, during the last one (1) months of the Term to prospective tenants. The Landlord may place upon the Premises the usual notices "To Let" or "For Sale" which notices the Tenant shall permit to remain where placed without molesiation.

- 28. Transfer by Landlord. If the Landlord transfers or disposes of all or any part of the Building or the Landlord's interest under this Lease, then to the extent that the transferee or disposed agrees with the Landlord to assume its obligations under this Lease, the Landlord will be released from them and shall thereupon no longer be liable.
- Default and Re-entry. If the Tenant shall fail to make any payment of Rent as and when same is 29. due to be paid herounder and such default shall continue for a period of five (5) consecutive days after written notice is given by the Landlord to the Tenant or if the Tenant fails to observe or perform any of its other obligations hereunder after notice-specifying the default and a minimumperiod of five (5) days to cure has been given, then and in any of such cases the then current month's Rent, together with the Rent for the three (3) months next ensuing shall immediately become due and payable, and at the option of the Landlord, the Term shall become forfeited and void, and the Landford may without notice forthwith re-enter upon the Premises or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or Applicable Law to the contrary notwithstanding, provided, however, that such forfeiture shall be wholly without prejudice to the right of the Landlord to recover arrears of Rent or damages for any antecedent default by the Tenant of its covenants, obligations or agreements under this Lease or any term or condition of this Lease and provided further that notwithstanding any such forfeiture the Landford may subsequently recover from the Tenant damages for loss of Rent suffered by reason of this Lease having been prematurely determined.

Re-letting of Premises. Should the Landlord elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Premises, and relet the Premises or any part thereof as agent for the Tenant for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Landlord in its sole discretion may deem advisable; upon each reletting alt rentals received by the Landford from such reletting shall be applied; first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the Landlord; second, to the repayment of any costs and expenses of such reletting, including brokerage fees and solicitors' fees and of costs of such alterations and repairs; third, to the payment of Rent due and unpaid hereunder, and the residue, if any, shall be held by the Landlord and applied in payment of future Rent as the same may become due and payable hereunder. If such Rent received from such reletting during any month be less than that to be paid during that month by the Tenant hereunder, the Tenant shall pay any such deficiency to the Landlord, Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to the Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, the Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Should the Landford at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, and including the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent reserved in this Lease for the remainder of the Term hercof over the then reasonable rental value of the Premises for the remainder of the Term hereof, all of which amounts shall be immediately due and payable from the Tenant to the Landlord. In determining the Rent which would be payable by the Tenant hereunder, subsequent to default, the annual Rent for each year of the unexpired Term shall be the sum of the annual Rent otherwise payable by the Tenant during each year of such period.

31. Legat Expenses. In case suit shall be brought for recovery of possession of the Premises, for the recovery of Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of the Tenant to be kept or performed and a breach shall be established, the Tenant shall pay to the Landlord all expenses incurred therefor, including all selections' fees on a substantial indemnity basis.

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- 32. Right of Landlord to Remedy. If the Tenant shall fail to perform any of its coverants or obligations under or in respect of this Leose, the Landlord may from time to time at its discretion, perform or cause to be performed any of such coverants or obligations, or any part thereof, and for such purpose may do such things upon or in respect of the Premises or any part thereof as the Landlord may consider requisite or necessary, acting reasonably, including, the making of any payments due or alleged to be due by the Tenant to third parties, and the Tenant shall pay on demand the Landlord's costs on account thereof, all without prejudice to the Landlord's rights and remedies for such default by the Tenant. All expenses incurred and expenditures made by or on behalf of the Landlord under this Section, together with the Administration Charge, shall be forthwith paid by the Tenant to the Landlord on demand.
 - Remedies to Subsist. No waiver of any of the Tenant's obligations under this Lease or of any of the Landford's rights in respect of any default by the Tenant hereunder shall be deemed to have natured as a result of any condoming, overlooking or delay by the Landford in respect of any default by the Tenant or by any other act or omission of the Landford including, without limitation, the acceptance of any Rent less than the full amount thereof or the acceptance of any Kent after the occurrence of any default by the Tenant. All rights and remedies of the Landford under this Lease and at law shall be cumulative and not alternative, and the exercise by the Landford of any of its rights pursuant to this Lease or at law shall at all times be without prejudice to any other rights of the Landford, whether or not they are expressly reserved. The Tenant's obligations under this Lease shall survive the expiry or earlier termination of this Lease and shall remain in full force and effect until fully complied with.
- 34. Prior Interests. This Lease is subject and subordinate to all mortgages or deeds of trust and all renewals, modifications, replacements and extensions thereof which may not or at any time hereafter affect the Premises. The Tenant shall at any time on notice from the Landlord attorn to and become a terrant of a mortgaged or trustee under any such mortgage or deed of trust upon the same terms and conditions as this Lease and shall execute forthwith upon request by the Landlord any instrument of postponement or attornment or other instruments from time to time requested to give full effect to this requirement.
- 35. Notice. All notices or other documents required or which may be given under this Lease shall be in writing, duly-signed by the party-giving such notice and personally delivered or transmitted by mail-or electronic transmission addressed as follows:

Landlord: 20 Caldari Development Inc.

2-20 Caldari Road,

Concord, Ontario L4K 4N8

Attention: Ravi Aurora
ravi@aurora_group.com

Copy to:

Jay Khanna

jay.khanna@st-damase.com

Copy to:

Fagler Rubinoff LLP

Attention: Charles W. Skipper

eskipper@foglers.com

Tenanti

the Promises

1-20 Caldari Road

Attention: Email:

Countertop Solutions Inc.

Any notice or document so given shall be deemed to have been received on the date of delivery, if delivered, on the faird (3rd) business day following the date of mailing, if sent by mail, and on the same business day if transmitted electronically and sent prior to 5:00 P.M. (Eastern Daylight Time) In the event of slowdown or interruption of the postal system by labour strife, such notice shall be sent by electronic transmission. Any party may from time to time by notice given as provided above change its address for the service of notices.

36. Approval in Writing. Wherever the Landlord's consent is required to be given hereunder or wherever the Landlord must approve any act or performance by the Tenant, such consent or approval, as the case may be, shall be given in writing by the Landlord before same shall be deemed to be effective, and any such consent or approval from the Landlord must be signed by both Nick Aurora and Jay Khanna, to be effective. For greater clarity, a Notice of Default in the payment of rent under paragraph 29 may be given by either Nick Aurora or Jay Khanna, on behalf of the Landlord.

- 37. Limitation on amendments. No change, alteration, amendment, extension or option to tenew this lease, or any of the obligations hereunder, will be effective or enforceable unless it is executed by both Nakul Autora and Jay Khanna, on behalf of the Landford.
- 38. Interpretation. All of the provisions of this Lease are to be construed as covenants and agreements. If any provision of this Lease is illegal or unenforceable it shall be considered separate and severable from the remaining provisions of this Lease, which shall remain in force and be binding as though the said provision had never been included. The headings and marginal sub headings of Articles, Sections and other subdivisions are for convenience of reference and are not intended to limit, enlarge or otherwise affect their meanings. All references herein to Articles, Sections and other subdivisions are to those in this Lease.

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- Governing Law. This Lease shall be governed by and construed in accordance with the Applicable Laws of the Province of Ontario and the Applicable Laws of Canada applicable therein.
- 40. Entire Agreement. This Lease together with Schedules"A", "B" and "C"attached heretoset forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant governing the Premises and there are no covenants, promises; agreements, conditions or understandings, either oral or written, between them other than are herein set forth.
- 41. Time of the Essence. Time shall in all respects be of the essence hereof.
- 42. Enurement This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 43. No Partnership. The Landlord does not, in any way or for any purpose, become a partner of the Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with the Tenant.
- 44. Force Majeure. In the event that any of the parties hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labour troubles, inability to procure materials, failure of power, restrictive Applicable Laws, riots, insorrection, war, public health emergencies, communicable disease outbreaks, epidemics, pendemics or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Provided that notwithstanding the foregoing and/or anything contained herein to the contrary, the Tenant's coverant to pay Rent to the Landlord hereunder shall not be excused during any such event of force majeure aforesaid.
- 45. **Brokerage** Commissions. The Landlord and the Tenant have not entered into any **agreement** which would entitle any party to any valid claim for a broker's commission, finder's fee or **any** like payment pertaining to this Lease transaction.

46. Intentional deleted

- Indemnifiers. In consideration of the Landlord granting this Lease to the Tenant and the sum of Two (\$2,00) Dollars now paid by the Landlord to each Indemnifier, the receipt and sufficiency whereof is hereby acknowledged by each Indemnifier, the Indemnifiers do hereby covenant with the Landlord, jointly and severally, as principal obligees and not as sureties, that each of them shall pay or cause to be paid to the Landlord or other proper payee thereof all Rent and other charges due under the Lease, and shall observe and perform all covenants and agreements herein and/or therein contained to be observed and performed by the Tenant. The Indomnifiers hereby acknowledge and agree that the Landlord may at any time and from time to time extend the time for payments hereunder, or waive any default under this Lease, as applicable, or refrain from enforcement hereof, or release any party hereto, or amend any term or condition hereof, or otherwise deal with this Lease, the Tenant or the Indemnifiers hereof in any manner whatsoever without notice to or the consent of the Indemnifiers, and the Indemnifiers shall remain fully hable under this Lease. The Indemnifiers further acknowledge and agree that all monies received by either of them on behalf of the Tenant shall be received in trust for the Landlord to the extent of any amount owing by the Tenant to the Landlord and are hereby assigned by the Indemnifiers to the Landlord. The Indemnifiers hereby further acknowledge and agree that in the event of default becounder by the Tenant, all indebtedness thereafter incurred by the Tenant to the Indemnifiers shall be assigned to the Landlord and postponed to any present or future indebtedness of the Tenant to the Landford until such default has been cured.
- 48. Compliance with Rules and Regulations. The Tenant and its Related Parties shall be bound by and observe the rules and regulations attached hereto in Schedule "C" (collectively, the "Rules and Regulations"). Notice in writing shall be given to the Tenant of all Rules and Regulations and amendments and supplements thereto and same shall be deemed to be incorporated into and form part of this lease. The Rules and Regulations will be adopted and promulgated by the Landford acting reasonably and in such manner as would a prudent landford of a similar building. The Landford reserves the right from time to time to amend or supplement the Rules and Regulations applicable to the Premises or the Building as in the Landford's judgment, acting

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reasonably, are from time to time needed for the safety, care, cleanliness and more efficient operation of the Building and for the preservation of good order therein. The Landlord shall use its best fords to enforce the Rules and Regulations but the Landlord shall not be responsible to the Tenant for the non-observance or violation of any of the Rules and Regulations or of the terms, coverants or conditions of any other lease of premises in the Building and is under no obligation to enforce any such Rules and Regulations or terms, coverants or conditions. Such Rules and Regulations shall not modify or after the nature of this Lease.

No Registration. Neither the Tenant, nor anyone on the Tenant's behalf, shall be entitled to file or register this Lease or any notice or caution indicating an interest in the Lands and the Landlord shall not be obliged to deliver this Lease in registrable form. In the event that the Lease or any notice or caution thereof as aforesaid becomes registered against title to the Lands, the Landlord shall have

the right and is hereby irrevocably appointed by the Tenant as its agent to prepare, execute and register such documentation as is required to discharge and withdraw any such registration.

50. Counterpart. This Lease may be signed in counterparts, each of which shall be deemed to be an original, but both such separate counterparts shall together constitute one and the same instrument. The parties further acknowledge that this Lease may be transmitted by electronic transmission and that if signed by each party hereto, such transmission will constitute a legally binding agreement.

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Schedule "B" Landlord's Work

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Schedule "C"

Rules and Regulations

The Tenant shall observe the following Rules and Regulations (as amended, modified or supplemented from time to time by the Landford as provided for in the Lease attached hereto):

- The sidewalks, entrances, stairways and corridors of the Building and/or any other Common Area shall not be obstructed or used by the Tenant and/or its Related Parties.
- The floors, skylights and windows that reflect or admit light into passageways or into any place in the Building shall not be covered or obstructed by the Teriant, and no awnings shall be put over any window.
- 3. The toilets, sinks, drains, washrooms and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or Hazardous Substance shall be thrown therein, and any damage resulting to them from misuse shall be borne by the Tenant by whom or by whose employees, agents, servants, contractors, invitees or anyone for whom the Tenant is in law responsible the damage was caused.
- 4. The Tenant shall not perform any acts or carry on any activity which may damage the Premises or the Common Areas or be a nuisance to any other tenant, as the Landlord may so determine, in its sole and unfettered discretion.
- No animals or birds shall be kept in the Building or kept on the Premises, without the prior written consent of the Landlord, in its sole and unfettered discretion.
- 6. The Tenant shall not further mark, drill into, bore or cut or in any way damage or deface the walls, ceilings or floors of the Premises except as exists at the commencement of the Lease. No wires, pipes or conduits shall be installed in the Premises without prior written approval of the Landlord. No broadfoom or carpeting shall be affixed to the Premises by means of a non-soluble adhesive or similar products.
- 7. No one shall use the Premises for sleeping apartments or residential purposes, for the storage or personal effects or articles other than those required for business purposes, or for any illegal purpose. The Tenant shall not use any Common Areas or other outside areas of the Building for the storage of goods or other matter of any kind.
- 8. The Tenant shall not use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, public address systems, sound amplifiers, radio, broadcast or television apparatus within the Building which is in any manner audible or viable outside of the Premises.
- 9. The Tenant must observe strict care not to allow windows to remain open so as to admit rain or snow, or so as to interfere with the heating of the Building. The Tenant, when closing the Premises, shall close all windows and lock all doors.
- 10. The Tenant shall not without the express written consent of the Landlord, place any additional locks upon any doors of the Premises and shall not permit any duplicate keys to be made therefor; but shall use only additional keys obtained from the Landlord, at the expense of the Tenant, and shall surrender to the Landlord on the termination of the Lease all keys of the Premises.
- No bicycles or other vehicles shall be brought within the Premises or upon the Landlord's property, including any lane or courtyard, unless otherwise agreed in writing between the Tenant and the Landlord.
- 12. Nothing shall be placed on the outside of windows or projections of the Premises. No air-conditioning equipment shall be placed at the windows of the Premises without the consent in writing of the Landlord.
- The Landlord reserves the right to restrict the use of the Building outside of regular business hours, as it may determine from time to time.

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Canvassing, soliciting and peddling in the Building is prohibited. 15. The Tenant shall first obtain in writing the consent of the Landlord to any alteration or modification to the electrical system in the Premises and all such alterations and modifications shall be completed at the Tenant's expense by an electrical contractor acceptable to the Landlord. The Tenant shall first obtain in writing the consent of the Landlord to the placement by the Tenant of any 16. garbage containers or receptacles outside the Premises or the Building. 17. The Tenant shall not install or erect on or about the Premises any additional television antennae, $communications \ towers, satellite\ dishes\ or\ other\ such apparatus\ without\ the\ consent\ of\ the\ Landlord.$ The Tenant shall cause its agents, servants, contractors, invitees, employees or anyone for whom the Tenant is in law responsible to park only in those areas of the Building so designated by the Landford in accordance with and subject to the conditions set out in the Lease. The Tenant shall supply the automobile licence plate numbers of its employees to the Landlord upon request. The Landlord reserves the right to remove any automobile which is infringing the Rules and Regulations, at the Tenant's sole cost and expense.

THIS IS **EXHIBIT "H"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024

Cappe Contraction of the Contrac

A Commissioner, etc.



Ministry of Public and Business Service Delivery

Profile Report

COUNTERTOP SOLUTIONS INC. as of June 07, 2024

Act
Type
Name
Ontario Corporation Number (OCN)
Governing Jurisdiction
Status
Date of Incorporation
Registered or Head Office Address

Business Corporations Act
Ontario Business Corporation
COUNTERTOP SOLUTIONS INC.
2316830
Canada - Ontario
Active
February 13, 2012
8820 Jane Street, Vaughan, Ontario, L4K 2M9, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanula W

Director/Registrar

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name Address for Service Resident Canadian Date Began RAVI AURORA

61 Beckenridge Drive, Markham, Ontario, L3S 2V3, Canada

Yes

February 13, 2012

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanula W

Director/Registrar

Active Officer(s)

Name Position Address for Service

Date Began

Name Position

Address for Service

Date Began

RAVI AURORA President

61 Beckenridge Drive, Markham, Ontario, L3S 2V3, Canada

February 13, 2012

RAVI AURORA Treasurer

61 Beckenridge Drive, Markham, Ontario, L3S 2V3, Canada

February 13, 2012

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W

Director/Registrar

Corporate Name History

Name Effective Date COUNTERTOP SOLUTIONS INC. February 13, 2012

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintariella W

Director/Registrar

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintariella W.

Director/Registrar

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W.

Director/Registrar

Document List

Filing Name Effective Date

Annual Return - 2014 September 24, 2017

PAF: RAVI AURORA - DIRECTOR

Annual Return - 2013 September 24, 2017

PAF: RAVI AURORA - DIRECTOR

Annual Return - 2012 August 14, 2016

PAF: RAVI AURORA - DIRECTOR

CIA - Notice of Change August 07, 2015

PAF: PHIL THOMPSON - OTHER

BCA - Articles of Incorporation February 13, 2012

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W.

Director/Registrar

THIS IS **EXHIBIT "I"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024

A Commissioner, etc.

MULTI-TENANT LEASE

THIS AGREEMENT is made as of the _____ day of April , 2022.

AMONG:

1000093910 ONTARIO INC. (the "Landlord")

- and -

COUNTERTOP SOLUTIONS INC.

(the "Tenant")

The parties covenant and agree as follows:

BASIC PROVISIONS

The following are certain basic terms and provisions of this Lease (the "Basic Provisions"), which Basic Provisions form part of this Lease and are in certain instances referred to in subsequent sections of this Lease. Any conflict or inconsistency between the Basic Provisions and the other provisions of this Lease shall be resolved in favour of such other provisions.

Address of the

20 Regina Road, Vaughan, Ontario L4L 8L6

Lands:

Location of the

Unit 2 of the building situate on the Lands

Premises:

Rentable Area of

Approximately 25,000 square feet

the Premises

10 years, expiring on April 30, 2032 (the "Expiry Date"), subject to extension in accordance with paragraph 3 on Schedule "H"

Commencement

Date:

Term:

May 1st, 2022

Period	Rent per Square Foot	Rent per Month	Rent per Annum
May 1st, 2022 up to and including April 30th, 2032	\$16.50	\$34,375.00	\$412,500.00
	May 1st, 2022 up to and	May 1st, 2022 up to and \$16.50	Foot Month May 1st, 2022 up to and \$16.50 \$34.375.00

Deposit: \$98,875.00 The Landlord shall use the Deposit in accordance with Section 4.6 hereof.

Permitted Uses: The Premises may only be used as an overflow storage warehouse, or for any other

lawful use subject to the Landlord's prior written approval, which approval shall not

be unreasonably withheld.

Right to Renew

Term:

The Tenant may renew this Lease for one (1) additional Terms of Five (5) year in

accordance with the provisions of Paragraph 3 on Schedule "H".

ARTICLE 1.00 INTERPRETATION

1.1 Defined Terms

In this Lease, unless there is something in the subject matter or context inconsistent therewith, the following words and terms, which may be used in the singular or the plural, have the respective meanings given them as follows:

- (a) "Act" means the Commercial Tenancies Act (Ontario);
- (b) "Additional Costs" means the costs described in section 2.6(b);

- (c) "Additional Rent" means all sums of money or charges required to be paid by the Tenant under this Lease in addition to Minimum Rent whether or not designated "Additional Rent" and whether payable to the Landlord or to third parties;
- (d) "Additional Work" means the work described in section 2.6(c);
- (e) "Additional Work Costs" means the costs described in section 2.6(c)(ii);
- (f) "Alterations" means any repairs, replacements, alterations, decorations or improvements to any part of the Premises, including any Tenant's Work;
- (g) "Authorities" means all federal, provincial, municipal and other governmental authorities (including suppliers of public utilities), departments, boards and agencies having or claiming jurisdiction;
- (h) "Basic Provisions" means those provisions of this Lease set out under the heading "Basic Provisions" and which precede Article 1.00;
- (i) "Building" means the building located on the Lands, together with all fixtures (excluding tenant's trade fixtures), improvements, heating, ventilation, air conditioning, electrical, mechanical, sprinkler and plumbing systems and facilities located in, on or serving such building, and all alterations, additions and replacements thereto;
- (j) "Business Day" means any day which is not a Saturday, Sunday or a statutory holiday observed in the Province of Ontario;
- (k) "Business Taxes" means all taxes, rates, duties, fees and assessments and other charges of every nature and kind that may be levied, rated, charged or assessed against or in respect of:
 - (i) all improvements, equipment and facilities of the Tenant on or in the Premises or any part or parts thereof; and
 - (ii) any and every business carried on or in the Premises or in respect of the use or occupancy thereof by the Tenant or any Transferee,

by any lawful Authority, and any and all taxes which may in future be levied in lieu of any of the foregoing, whether foreseen or unforeseen;

- (l) "Capital Tax" means an amount imputed by the Landlord to the Building in respect of taxes, rates, duties and assessments presently or hereafter levied, rated, charged or assessed from time to time upon the Landlord and payable by the Landlord (or by any corporation on behalf of the Landlord) on account of its or their capital. Capital Tax shall be imputed based on the amount allocated by the Landlord, acting reasonably, to the Building. Capital Tax also means the amount of any capital or place of business tax levied by any government or other applicable taxing authority against the Landlord with respect to the Building whether known as Capital Tax or by any other name;
- (m) "Carbon Tax" means the aggregate of all taxes, rates, duties, levies, fees, charges and assessments whatsoever, imposed, assessed, levied, confirmed, rated or charged against or in respect of the associated Greenhouse Gas emissions from the consumption in or at the Building of electricity, or of natural gas, propane or any other fossil fuel used to produce energy (such as heat, light or electricity) for the Building or any part of it or levied in lieu thereof, and levied against the Landlord or the Building by any Authority;
- (n) "Claims" means claims, losses, damages (direct, indirect, consequential or otherwise), suits, judgments, causes of action, legal proceedings, executions, demands, penalties or other sanctions of every nature and kind whatsoever, whether accrued, actual, contingent or otherwise and any and all costs arising in connection therewith, including all legal expenses (including all such legal expenses in connection with any and all appeals);
- (o) "Commencement Date" means the date described as such in the Basic Provisions;
- (p) "Common Areas" means:
 - (i) those areas, facilities, utilities, improvements, equipment and installations (in this definition collectively called the "Facilities") in the Building which, from time to time, are not designated or intended by the Landlord to be leased to the tenants of the Building;

- (ii) those Facilities designated by the Landlord, from time to time, as forming part of the Common Areas;
- (iii) those Facilities which serve or are for the benefit of the Building, whether or not located within, adjacent to or near the Building, and which are designated from time to time by the Landlord as part of the Common Areas; and
- (iv) those Facilities which are provided or designated by the Landlord for the use or benefit of the tenants in the Building, their employees, customers and other invitees in common with others entitled to the use or benefit of same in the manner and for the purposes permitted by this Lease and for the time so permitted by the Landlord.

Without limiting the generality of the foregoing, the Common Areas shall include the roof, exterior walls, exterior and interior structural elements, bearing walls, signage, public areas, corridors, stairways, public washrooms, utility rooms, storage rooms, janitor rooms, mechanical, electrical, plumbing and other installations, equipment, systems or services and all structures containing same (including the heating, ventilating and air conditioning system) and security, fire, life and safety systems in the Building and all exterior parking areas, landscaped areas, gravelled areas, passageways, private access roads and routes, pedestrian routes and sidewalks generally serving the Building. The Landlord may designate, amend and re-designate the Common Areas from time to time:

- (q) "Deposit" means the amount, if any, set out opposite the heading "Deposit" in the Basic Provisions;
- (r) "Environmental Laws" means all Laws regulating, relating to or imposing liability or a standard of conduct concerning the natural or human environment (including air, land, surface water, groundwater, waste, real and personal property, moveable and immoveable property, sustainability, building operations, recycling or resource consumption), public or occupational health and safety and the manufacture, importation, handling, use, reuse, recycling, transportation, storage, disposal, clean-up, elimination and treatment of a substance, hazardous or otherwise;
- (s) "Event of Default" means any of the following events:
 - (i) the Tenant fails to pay any Rent when due under this Lease and such failure continues for 5 days following written demand for the payment thereof being made by the Landlord on the Tenant. If, however, the Landlord provides such written notice twice in any 12 month period, it shall not be required to give any further written notices for the 12 month period following the date that the Landlord gives such second notice. If the Tenant fails to observe or perform any of the Tenant's Covenants (other than the payment of Rent) and:
 - (A) fails to remedy such breach within 15 days (or such shorter period as may be provided in this Lease) following the Tenant's receipt of written notice from the Landlord respecting such breach (in this paragraph (b), the "Rectification Period"); or
 - (B) if such breach cannot be reasonably remedied within the Rectification Period, the Tenant fails to commence to remedy such breach within the Rectification Period or thereafter fails to proceed diligently to remedy such breach;
 - (ii) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors (including electing to terminate or disclaim this Lease in connection with a proposal made by the Tenant under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangements Act* (Canada) or any other statute allowing the Tenant to terminate or disclaim this Lease);
 - (iii) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property;
 - (iv) any steps are taken or any actions or proceedings are instituted by the Tenant or by any other party including without limitation any court or Authority having jurisdiction for the dissolution, winding up or liquidation of the Tenant or its assets;
 - (v) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in conjunction with a Transfer done in accordance with the terms of this Lease;

- (vi) this Lease or any of the Tenant's assets are taken under a writ of execution which is not set aside within 10 days following the date of its issuance;
- (vii) the Tenant effects a Transfer other than in accordance with the terms of this Lease;
- (viii) the Premises become vacant or unoccupied for a period of 10 consecutive days or more without the consent of the Landlord or the Tenant abandons or attempts to abandon the Premises or disposes of its goods so that there would not after such disposal be sufficient goods of the Tenant on the Premises subject to distress to satisfy Rent for at least 3 months;
- (ix) the occurrence of an event that the Landlord may treat as an Event of Default in accordance with section 4.6(c), 12.1(g) or 12.2(b);
- (x) the Tenant advises the Landlord that it does not intend to continue operating its business in the Premises; or
- (xi) an Event of Default, regardless as to how minor in nature or effect, as defined in this paragraph occurs with respect to any lease or agreement under which the Tenant occupies other premises, if any, pursuant to a lease or other agreement with the Landlord.

For clarity, the Landlord is not required to give the Tenant any notice in respect of the events described in paragraphs (iii) to (xii) of this definition, an Event of Default arising immediately upon the occurrence of such an event;

- (t) "Expert" means any architect, engineer, land surveyor, chartered accountant or other professional consultant, in any case, appointed by the Landlord and, in the reasonable opinion of the Landlord, qualified to perform the specific function for which such Person was appointed;
- (u) "Expiry Date" means the date described as such in the Basic Provisions;
- (v) "Fiscal Period" has the meaning given it in section 5.2(a);
- (w) "Force Majeure" has the meaning given that term in section 20.2;
- (x) "Greenhouse Gases" means any or all of carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), Sulphur Hexafluoride (SF6), Perfluoromethane (CF4), Perfluoroethane (C2F6), Hydrofluorocarbons (HFCs), any substance designated as a greenhouse gas by applicable Laws and other substances commonly known as greenhouse gases;
- (y) "Hazardous Substance" means:
 - any solid, liquid, gaseous or radioactive substance (including radiation) which, when it (i) enters into a building, exists in a building or is present in the water supplied to a building, or when it is released into the environment from a building or any part thereof or is entrained from one building to another building, or into the water or the natural environment, is likely to cause, at any time, material harm or degradation to any other property or any part thereof, or to the natural environmental or material risk to human health, and includes, without limitation, any flammables, explosives, radioactive materials, asbestos, lead paint, polychlorinated biphenyls, fungal contaminants (including and by way of example, stachybotrys chartarum and other moulds), mercury and its and furans, chlordane, chlorofluorocarbons, compounds, dioxans chlorofluorocarbons, volatile organic compounds, urea formaldehyde foam insulation, radon gas, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic or noxious substances or related materials, petroleum and petroleum products;
 - (ii) any substance declared to be hazardous or toxic under any Environmental Laws or that does not meet any prescribed standard or criteria made under any present or future Environmental Laws; and
 - (iii) any substance, sound, vibration, ray, heat, radiation or odour of which the use, presence in the environment or release into the environment is prohibited, regulated, controlled or licenced under Environmental Laws;
- (z) "HST" means the goods and services tax imposed under the *Excise Tax Act* (Canada), and all other goods and services taxes, business transfer taxes, value-added or transaction taxes, sales taxes,

harmonized sales taxes, multi-stage sales taxes, use or consumption taxes or any other taxes on the Landlord with respect to the Rent and any other amounts payable by the Tenant to the Landlord under this Lease which may at any time be imposed by an Authority on or in respect of rental or real property, whether characterized as a goods and services tax, sales tax, value-added tax or otherwise;

- (aa) "HVAC Equipment" means the heating, ventilating, air conditioning and humidity control equipment servicing the Premises;
- (bb) "Injury" means, without limitation, bodily injury, personal injury, personal discomfort, mental anguish, shock, sickness, disease, death, false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, invasion of privacy, wrongful entry or eviction and discrimination, or any of them, as the case may be;
- (cc) "Insured Damage" means that part of any damage occurring to the Premises for which the entire cost of the repair (less any deductible) is actually recovered by the Landlord under insurance policies required to be carried by the Landlord pursuant to sections 12.3(a)(i) and 12.3(a)(ii), or which would have been recovered had the Landlord taken out such insurance. For clarity, no damage occurring to the any portion of the Premises to be insured by the Tenant pursuant to its obligations in this Lease (including the leasehold improvements) shall be considered Insured Damage;
- (dd) "Landlord's Covenants" means all of the terms, covenants and conditions of this Lease on the part of the Landlord to be observed and performed;
- (ee) "Landlord's Employees" means the Landlord's property manager (if any) and the Landlord's and the Landlord's property manager's respective directors, officers, employees, contractors, servants, agents and those for whom each of the Landlord and the Landlord's property manager, respectively, is responsible at law;
- (ff) "Landlord's Work" means the work required to be performed by the Landlord as set out in Schedule "C";
- (gg) "Lands" means the lands described in Schedule "A" and which have the municipal address set out in the Basic Provisions;
- (hh) "Laws" means all laws, statutes, ordinances, regulations, by-laws, directions, orders, rules, requirements, building codes of every nature and kind, directions and guidelines of all Authorities;
- (ii) "Lease" means this document and the Schedules attached to it as originally signed and delivered or as amended from time to time;
- "Leasehold Improvements" means all items in or serving the Premises and considered at common (jj) law as being a leasehold improvement, including all fixtures, improvements, installations and Alterations from time to time made, erected or installed (whether prior to or following the execution of this Lease) by or on behalf of the Landlord, the Tenant or any previous tenant or occupant of the Premises in, on or which serve the Premises, whether or not easily disconnected or movable and includes all the following, whether or not any of the same are in fact the Tenant's trade fixtures: doors, partitions and hardware; internal walls; windows; cabling of every nature and kind; coolers, freezers, lockers; mechanical, electrical and utility installations designed solely to serve the Premises; carpeting, drapes, other floor and window coverings and drapery hardware; heating, ventilating, air conditioning and humidity control equipment; lighting fixtures; built in furniture and furnishings; counters in any way connected to the Premises or to any utility services located therein; and, all items which cannot be removed without damage to the Premises. Leasehold Improvements do not, however, include the Tenant's trade fixtures (except as otherwise noted above in this definition), free standing furniture and equipment not in any way connected to the Premises or to any utility systems located therein (other than by merely plugging same into the electrical system serving the Premises);
- (kk) "Lien Act" means the Construction Act (Ontario);
- (ll) "Minimum Rent" means the annual rent payable by the Tenant under section 4.1;
- (mm) "Mortgage" means any mortgage, charge or security instrument (including a deed of trust and mortgage securing bonds and all indentures supplemental thereto) which may now or hereafter affect the Lands;

- (nn) "Mortgagee" means the mortgagee, chargee, secured party or trustee for bond-holders, as the case may be, named in a Mortgage;
- (oo) "Operating Costs" means the costs described in section 5.1;
- (pp) "Permitted Uses" means the uses which may be made of the Premises as set out opposite the heading "Permitted Uses" in the Basic Provisions;
- (qq) "**Person**" means an individual, a corporation, a limited partnership, a general partnership, a trust, a joint stock company, a joint venture, an association, a syndicate, a bank, a trust company, an Authority and any other legal or business entity;
- (rr) "Premises" means the premises demised by the Landlord to the Tenant for the Tenant's exclusive possession as described in section 2.1;
- (ss) "Prime Rate" means the rate of interest per annum established and quoted from time to time by such Canadian Chartered Bank designated from time to time by the Landlord as its reference rate of interest for the determination of interest rates that it charges customers of varying degrees of credit-worthiness for Canadian dollar loans made by it in Toronto, Ontario;
- (tt) **"Proportionate Share"** means a fraction, the numerator of which is the Rentable Area of the Premises and the denominator of which is the Rentable Area of the Building;
- (uu) "Real Property Taxes" means:
 - (i) all real property taxes, including local improvement rates, levies, commercial concentration levies, rates, duties and assessments whether general or special, ordinary or extraordinary, foreseen or unforeseen, which may be levied or assessed by any lawful taxing Authority against the Lands or any part thereof and any taxes or other amounts which are imposed instead of, or in addition to, any of the foregoing (whether of the foregoing character or not or whether in existence at the date that this Lease was executed);
 - (ii) all costs and expenses incurred by or on behalf of the Landlord for consulting, appraisal, legal and other professional fees and expenses to the extent they are incurred in an attempt to minimize or reduce the amounts described in paragraph (a); and
 - (iii) any and all penalties, late payment or interest charges imposed by any relevant taxing Authority as a result of the Tenant's late payment of any of the amounts described in paragraph (a) or any instalments thereof, as the case may be;
- (vv) "Renewal Term" has the meaning given that term in paragraph 3 on Schedule "H";
- (ww) "Rent" means all Minimum Rent and Additional Rent payable by the Tenant pursuant to this Lease;
- (xx) "Rentable Area of the Building" means the total area in square feet of all premises in the Building set aside for leasing by the Landlord from time to time, including the Premises, measured in the same manner as the Rentable Area of the Premises. The certificate of the Landlord's Expert as to the Rentable Area of the Building will be conclusive and binding on the Landlord and the Tenant;
- (yy) "Rentable Area" has the meaning given it by such BOMA/SIOR guidelines that the Landlord chooses to use from time to time and includes such gross up for common areas in the Building as contemplated by such guidelines;
- "Schedules" means the schedules attached to this Lease and which are more particularly described in section 1.2;
- (aaa) "**Tenant's Covenants**" means all of the terms, covenants and conditions of this Lease on the part of the Tenant to be observed and performed;
- (bbb) "**Tenant's Employees**" means the Tenant's directors, officers, employees, servants, contractors, agents and those for whom the Tenant is responsible at law;
- (ccc) "**Tenant's Work**" means the work, if any, to be performed by the Tenant as set out in Schedule "D":
- (ddd) "Term" means the term of this Lease as set out in section 3.1 and any Renewal Term;

(eee) "Transfer" means any of:

- (i) an assignment of this Lease by the Tenant in whole or in part;
- (ii) any arrangement, written or oral, whether by sublease, licence or otherwise, whereby rights to use space within the Premises are granted to any Person (other than the Tenant) from time to time, which rights of occupancy are derived through or under the interest of the Tenant under this Lease; and
- (iii) a mortgage or other encumbrance of this Lease or of all or any part of the Premises, or any interest therein; and
- (fff) "**Transferee**" means the assignee, subtenant, licensee or other Person allowed by the Tenant to use the Premises and named in a Transfer.

Certain terms which have been defined within specific sections of this Lease for use solely within those sections, or the Article within which such section is located, are not referred to above.

1.2 Schedules

The Schedules to this Lease are as follows:

Schedule "A" Legal Description of the Lands Schedule "B" Diagram of the Building Schedule "C" Landlord's Work Schedule "D" Tenant's Work Schedule "E" Rules and Regulations Schedule "F" Insurance Certificate Schedule "G" Authorization Schedule "H" Special Provisions

The Schedules are incorporated into and form an integral part of this Lease.

1.3 Agreement to Act Reasonably

Whenever a party (the "Deciding Party") is making a determination (including a determination of whether or not to provide its consent or approval where the Deciding Party's consent or approval is required and whether or not reference is made to the Deciding Party making such determination in its sole discretion, or words of similar intent), designation, calculation, estimate, conversion or allocation under this Lease (collectively, a "Decision"), the Deciding Party shall (unless this Lease specifically provides to the contrary) act reasonably and shall not unreasonably delay its decision on whether or not to give its consent. If the Deciding Party decides that it will not provide its consent or approval when requested to do so, it shall provide the party requesting such consent or approval (the "Requesting Party") with the reasons for its refusal at the same time as it advises the Requesting Party that it refuses to provide its consent or approval. Even though specific sections of this Lease may specifically require a party to act reasonably or not act unreasonably (or words of similar intent) in making a Decision, the absence of such a specific requirement in other sections of this Lease requiring a party to make a Decision will not negate the provisions of this section or be interpreted as though the provisions of this section do not apply to the making of such Decision.

1.4 Approval in Writing

Wherever the Landlord's consent is required to be given under this Lease or wherever the Landlord must approve any act or performance by the Tenant, such consent or approval, as the case may be, will not be effective unless it is in writing.

1.5 <u>Delegation of Authority</u>

The Landlord's property manager, and such other persons as may be authorized by the Landlord from time to time, may act on behalf of the Landlord in connection with any matter contemplated by this Lease, including the giving of notices to the Tenant.

1.6 <u>Interpretation</u>

In this Lease:

- (a) each obligation or agreement of a party expressed in this Lease, even though not expressed as a covenant, is for all purposes considered to be a covenant;
- (b) the phrase or term:
 - (i) "however caused" includes the negligence of the Landlord and the Landlord's Employees but not gross negligence; and
 - (ii) "including" means "including, without limitation," and the term "including" will not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;
- (c) words importing the singular include the plural and vice-versa, words importing gender include both genders and words importing persons include corporations and vice-versa;
- (d) any reference to an Article, section or Schedule is deemed to be refer to the applicable Article, section or Schedule contained in or attached to this Lease and to no other agreement or document unless specific reference is made to such other agreement or document;
- (e) any reference to a statute includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations;
- (f) the division of it into Articles and sections and the insertion of headings and any table of contents is for convenience of reference only and are not to be taken into account in interpreting this Lease or any part of it; and
- (g) any provisions that are shown as having been struck out or intentionally deleted are deemed not to exist and are not to be taken into account in interpreting this Lease or any part of it.

ARTICLE 2.00 PREMISES

2.1 <u>Premises</u>

The Landlord hereby demises and leases the Premises to the Tenant and the Tenant hereby leases the Premises from the Landlord on the terms and conditions contained in this Lease. The Premises comprise the unit in the Building described in the Basic Provisions and as shown outlined in bold on Schedule "B".

2.2 <u>Use of Common Areas</u>

The use and occupation by the Tenant of the Premises includes the non-exclusive right of the Tenant and Persons having business with the Tenant, in common with the Landlord, its other tenants, subtenants and all others entitled or permitted by the Landlord to the use of such parts of the Common Areas as may be designated from time to time as being available for general use by tenants and other occupants of the Building and customers and visitors thereto for such limited purposes as may be permitted by the Landlord, from time to time. Except as so permitted by the Landlord, the Tenant has no right to use the Common Areas for any other purposes.

2.3 <u>Examination and Acceptance</u>

The Tenant has examined the Premises and accepts the Premises on an "as is" basis, subject only to completion by the Landlord of the Landlord's Work. Upon the Landlord's Work being completed, the Tenant will be deemed to have accepted the Landlord's Work unless the Tenant delivers a deficiency notice to the Landlord (which must contain reasonable particulars of the deficiencies alleged by the Tenant) within 5 Business Days following the date that the Landlord advises the Tenant that the Landlord's Work has been completed. If a dispute arises over the deficiencies alleged by the Tenant, the decision of the Landlord's architect shall be determinative of the issue. The Landlord hereby further covenants and agrees that the HVAC Equipment shall be in good working order as of the Commencement Date, as determined by the Landlord, acting reasonably.

2.4 <u>Measurement of Areas</u>

For the purpose of determining the Rent payable hereunder, the Rentable Area of the Premises is deemed to be the amount set out in the Basic Provisions.

2.5 <u>Tenant's Work</u>

Upon being given possession of the Premises (whether exclusive or not), the Tenant shall, at its own expense, diligently carry out and complete the Tenant's Work. The Tenant will carry out the Tenant's Work in such manner as will not interfere unreasonably with the performance by the Landlord of the Landlord's Work and otherwise in accordance with the provisions of this Lease, including the provisions of section 9.4 and Schedule "D".

2.6 Landlord's Work

- (a) The Landlord shall, at its expense, perform the Landlord's Work in a good and workmanlike manner. Subject to delays caused by Force Majeure and delays caused by the Tenant or the Tenant's Employees, the Landlord shall use reasonable commercial efforts (without the need for overtime or weekend work) to complete the Landlord's Work as soon as reasonably possible following the execution of this Lease. If the Term has commenced and the Landlord's Work has not been completed, the Landlord may have such access to the Premises as it requires in order to complete the Landlord's Work and:
 - (i) if both the Tenant and the Landlord require access to the same area of the Premises, the Landlord will have the first right to such area for the purpose of carrying out the Landlord's Work;
 - (ii) the Tenant shall not interfere with or delay the Landlord or its contractors from completing the Landlord's Work;
 - (iii) the Tenant will be under the direction and supervision of the Landlord and its contractors and shall comply with all requirements and directions of the Landlord and its contractors; and
 - (iv) the Landlord shall not be responsible for the costs of any work to the Premises except for the costs of the Landlord's Work.
- (b) If:
 - (i) the Tenant's use, or intended use, of the Premises requires changes to the Landlord's Work in order for the Landlord's Work to comply with applicable Laws or the requirements of any insurer of any part of the Building; or
 - (ii) the Tenant requires any changes to the Landlord's Work (and the Tenant's signature on the change order, or other documentation evidencing the changes, shall be conclusive evidence of the Tenant's agreement to the making of such changes),

then the Tenant shall be responsible for the cost of such changes to the extent that such changes result in an increase in the cost of the Landlord's Work (the "Additional Costs"). The Tenant shall pay the Additional Costs within 15 days following the date that the Landlord provides the Tenant with an invoice for the Additional Costs.

- (c) If the Tenant requires the Landlord to carry out any work in or to the Premises in addition to the Landlord's Work (the "Additional Work"), and the Landlord agrees to carry out the Additional Work, then the Tenant's signature on the documentation evidencing the nature of the Additional Work will be conclusive evidence of the Tenant's agreement to:
 - (i) the Landlord performing the Additional Work; and
 - (ii) pay for the cost of the Additional Work (the "Additional Work Costs").

The Tenant shall pay the Additional Work Costs shall within 15 days following the date that the Landlord provides the Tenant with an invoice for the Additional Work Costs.

- (d) If any changes are made to the Additional Work, then the Tenant's signature on the change order, or other documentation evidencing the changes, shall be conclusive evidence of the Tenant's agreement to:
 - (i) the making such changes, which shall be deemed to form part of the Additional Work; and
 - (ii) pay for the cost of such changes, all of which shall be deemed to form part of the Additional Work.

The Tenant shall pay such additional costs within 15 days following the date that the Landlord provides the Tenant with an invoice for such costs.

ARTICLE 3.00 TERM

3.1 Term

- (a) The Term is the period of time set out in the Basic Provisions as constituting the Term.
- (b) The Term commences on the Commencement Date and ends on the Expiry Date, both dates inclusive, unless the Term is otherwise terminated or renewed as provided for in this Lease. Provided that notwithstanding the foregoing and/or anything contained herein to the contrary, in the event of a delay or failure by the Landlord to complete the Landlord's Work (save and except with respect to any such delays and/or failures caused by the Tenant), the Commencement Date and the Expiry Date shall be extended by a period of time equivalent to the period of such delay aforesaid.

3.2 Surrender

The Tenant shall, on the last day of the Term, or upon the sooner termination of the Term, peaceably and quietly surrender and deliver vacant possession of the Premises to the Landlord in the condition and state of repair that they were required to be maintained during the Term and shall otherwise comply with its obligations in section 15.1. If the Tenant fails to comply with the foregoing or with its obligations under section Error! Reference source not found, the Tenant shall, at the option of the Landlord, be deemed to be an overholding monthly tenant for so long as it may reasonably take to complete the required repairs, removal, restoration or clean-up (the "Overholding Period"). During the Overholding Period, the Tenant shall pay the Rent required by section Error! Reference source not found. to be paid by an overholding tenant who is overholding without the consent of the Landlord (the "Overholding Rent"), notwithstanding the fact that the Tenant may have vacated the Premises. For clarity, nothing in this section entitles the Tenant to terminate such monthly tenancy or remain in possession of the Premises as it is the parties intent that the deemed monthly tenancy contemplated by this section only results in an obligation on the part of the Tenant to pay the Overholding Rent during the Overhold Period with the Tenant having no other rights or interest in or to the Premises.

3.3 Occupancy

Notwithstanding the commencement of the Term, the Tenant may not have access to the Premises until it has provided the Landlord with the following:

- (a) a duly executed copy of this Lease executed by the Tenant;
- (b) the insurance certificate required by section 12.1(f) and the Landlord has approved such certificate;
- (c) the post-dated cheques or documentation required by section 4.9;
- (d) evidence that the utilities for the Premises which are separately metered have been transferred into the name of the Tenant;
- (e) if there is any Tenant's Work to be performed by the Tenant:
 - (i) the Landlord has approved the Tenant's plans and specifications for the Tenant's Work;
 - (ii) the Tenant has obtained all building permits required in order to perform the Tenant's Work; and
 - (iii) a copy of the occupancy permit for the Premises (if such a permit is required by applicable Laws in order to occupy and carry on business in the Premises.

3.4 Overholding

Upon the expiration of this Lease by the passage of time and the Tenant remaining in possession of the Premises:

- (a) there will be no implied renewal or extension of this Lease;
- (b) if the Landlord consents in writing to the Tenant remaining in possession, the Tenant will be deemed, notwithstanding any statutory provision or legal assumption to the contrary, to be

occupying the Premises as a monthly tenant, which monthly tenancy may be terminated by either party on 30 days written notice to the other, which 30 day period need not end on the last day of a calendar month;

- (c) if the Landlord does not consent in writing to the Tenant remaining in possession, the Tenant will be deemed, notwithstanding any statutory provision or legal assumption to the contrary, to be occupying the Premises as a tenant at the will of the Landlord, which tenancy may be terminated at any time by the Landlord without the necessity of any notice to the Tenant; and
- (d) the Tenant shall occupy the Premises on the same terms and conditions as are contained in this Lease (including the obligation to pay Additional Rent), save and except that:
 - (i) the Term and the nature of the tenancy are as set out in section 3.4(b) or 3.4(c), as the case may be;
 - (ii) the Minimum Rent payable by the Tenant is to be paid monthly at a rate equal to twice the amount of monthly Rent which it was responsible for paying to the Landlord during the last 12 months of the Term. Unless the Landlord has otherwise agreed in writing, such Minimum Rent will be payable by the Tenant regardless of whether or not the Landlord fails to request such Minimum Rent and/or accepts the monthly Minimum Rent which the Tenant was paying during the last 12 months of the Term; and
 - (iii) the Tenant will not have the benefit of any renewal or extension rights, rights of first refusal, options to purchase, rights granting the Tenant exclusive rights to carry on certain business activities in the Building, or any other personal rights contained in this Lease.
- (e) The Tenant is estopped and forever barred from claiming any right to occupy the Premises on terms other than as set out in this section and the Landlord may plead this section in any court proceedings. If section 3.4(c) is applicable, the Tenant shall indemnify and save harmless the Landlord from all Claims incurred by the Landlord as a result of the Tenant remaining in possession of all or any part of the Premises following the expiry of the Term. Nothing in this section may be interpreted as permitting or giving the Tenant an option to stay in possession of the Premises following the expiry of the Term and the Tenant shall surrender the Premises to the Landlord on the Expiry Date.

ARTICLE 4.00 RENT

4.1 <u>Minimum Rent</u>

- (a) The Tenant shall pay, unless otherwise expressly provided in this Lease, yearly and every year during the Term to the Landlord without notice or demand and without abatement, deduction or set-off for any reason the Minimum Rent described in the Basic Provisions.
- (b) The annual Minimum Rent is based upon an annual rate per square foot of the Rentable Area of the Premises as set out in the Basic Provisions.
- (c) The Minimum Rent is to be paid in advance, in equal monthly instalments on the first day of each and every month during the Term.
- (d) If the Basic Provisions include a provision stating that the Tenant is entitled to a Rent Free Period, then, regardless of any other provision of this Lease, the Tenant is not required to pay the Rent that such provision states is not payable by the Tenant during such Rent Free Period.

4.2 <u>Accrual and Adjustments of Rent</u>

Rent is considered as accruing from day to day under this Lease from the Commencement Date. If, for any reason, it becomes necessary to calculate Rent for an irregular period of less than 1 year or less than 1 calendar month, then an appropriate apportionment and adjustment will be made on a per diem basis based upon a period of 365 days.

4.3 Additional Rent Treated as Minimum Rent

Additional Rent is recoverable as Minimum Rent and the Landlord has all of the same rights and remedies in the case of the Tenant's failure to pay Additional Rent as it has in the case of the Tenant's failure to pay Minimum Rent.

4.4 <u>Currency and Place of Payment</u>

All Rent is payable in lawful money of Canada and is to be paid to the Landlord at 2 – 20 Caldari Rd, Concord, Ontario, L4K 4N8 until such time as the Tenant is otherwise notified in writing by the Landlord.

4.5 Rental Arrears

- (a) If the Tenant fails to pay when due any amount of Rent required to be paid pursuant to this Lease:
 - (i) such Rent bears interest at a rate per annum equal to the Prime Rate plus 5%, calculated and compounded monthly; and
 - (ii) the Tenant shall pay to the Landlord on demand, an administration fee equal to \$250.

Such amounts only become payable upon demand but accrue from the respective due dates of the relevant payments, whether demanded or not, to the date of payment.

(b) If any cheque given by the Tenant to the Landlord in payment of Rent is refused payment by the Tenant's bank for any reason, the Tenant shall immediately replace such cheque with cash or a certified cheque or bank draft and, in addition, shall pay, as Additional Rent, the sum of \$100 (plus HST) as a service charge to the Landlord immediately upon demand being made by the Landlord.

4.6 Deposit

- (a) The Landlord acknowledges that shall hold the Deposit in trust as security for the Tenant's performance of the terms, covenants and conditions hereunder.
- (b) The Landlord shall apply the Deposit against the first and last months' Rent payable by the Tenant to the Landlord hereunder.
- (c) The Landlord may also use the Deposit to secure the fulfilment of all of the Tenant's Covenants (including the payment of all amounts payable by the Tenant under this Lease) and all damages and losses which the Landlord may suffer or incur as a result of this Lease being terminated by the Landlord or disclaimed in any bankruptcy or insolvency proceedings relating to the Tenant or any assignee of the Tenant, including all amounts which would have been payable under this Lease but for such termination or disclaimer. Without limiting the generality of the foregoing, the Deposit shall secure and may, at the Landlord's option, be applied on account of any one or more of the following:
 - (i) unpaid Rent, including any amount which would have become payable under this Lease to the date of the expiry of this Lease had this Lease not been terminated or disclaimed in any bankruptcy or insolvency proceedings;
 - (ii) the prompt and complete performance of all of the Tenant's Covenants in addition to the payment of Rent;
 - (iii) the indemnification of the Landlord for any losses, costs or damages incurred by the Landlord arising out of any failure by the Tenant to observe and perform any of the Tenant's Covenants;
 - (iv) the performance of any obligation which the Tenant would have been obligated to perform to the date of the expiry of this Lease had this Lease not been terminated or disclaimed in any bankruptcy or insolvency proceedings; and
 - (v) the losses or damages suffered by the Landlord as a result of the termination of this Lease or the disclaimer of this Lease in any bankruptcy or insolvency proceedings.
- (d) If the Landlord uses all or part of the Deposit (except in accordance with section 4.6(b)), the Tenant shall, within 3 Business Days following written demand being made by the Landlord, pay to the Landlord the amount required to reimburse it for the amount so applied by way of certified cheque or bank draft, failing which an Event of Default will be deemed to have occurred.
- (e) Upon the Deposit, or any amount paid to the Landlord pursuant to section 4.6(d), being paid to the Landlord, the Landlord will hold and use the Deposit in accordance with this section, the Tenant will have no further interest in the Deposit and the Landlord will not be considered to be holding any portion of the Deposit in trust for the benefit of the Tenant and is not required to pay any interest to the Tenant on any part of the Deposit. The Landlord shall, within 90 days following the

expiration of this Lease, pay to the Tenant an amount equal to the unused portion of the Deposit then being held by the Landlord.

- (f) If the Landlord sells the Lands or otherwise assigns this Lease, the Landlord will be discharged from any liability to the Tenant with respect to the Deposit and the purchaser or assignee, as the case may be, will be deemed to have received the unused portion of the Deposit being held by the Landlord at the time of such sale or assignment.
- (g) The provisions of this section are deemed to be a separate agreement distinct and independent of this Lease and which will survive the termination of this Lease or the disclaimer of this Lease in any bankruptcy or insolvency proceedings. Accordingly, the provisions of this section will continue in full force and effect and will not be waived, released, discharged, impaired or affected by reason of the termination of this Lease by the Landlord or the disclaimer of this Lease in any bankruptcy or insolvency proceedings.
- (h) For greater clarity, the provisions of this section will survive the expiry or earlier termination of this Lease.

4.7 <u>Net Lease</u>

Except as otherwise stated in this Lease:

- (a) this Lease is a completely carefree and absolutely net lease to the Landlord;
- (b) the Landlord is not responsible during the Term for any costs, charges, taxes (except the Landlord's income taxes), expenses or outlays of any nature whatsoever arising from or relating to the Premises or the Building, or the use and occupancy of them, or their contents or the business carried on in them; and
- (c) the Tenant shall pay all charges, impositions, costs, expenses and outlays of every nature and kind relating to the Premises and its Proportionate Share of all charges, impositions, costs, expenses and outlays of every nature and kind relating to the Building.

4.8 <u>Landlord's Option</u>

- (a) The Landlord may, at its option, estimate from time to time any Additional Rent and such estimated amount is payable in monthly instalments in advance on the days upon which Minimum Rent is payable hereunder, with annual adjustments in the manner set out in section 5.2. Notices to the Tenant of such estimated amount need not include particulars of any such amounts. The Landlord may at its option, apply any sums received from or due to the Tenant against any amounts due and payable hereunder in such manner as the Landlord sees fit.
- (b) The Landlord estimates, but does not guarantee, that the Tenant's Proportionate Share of Operating Costs and Real Property Taxes will be \$4.50 per square foot of the Rentable Area of the Premises per annum for the calendar year 2022. For clarity, such estimate has no bearing on, and is not to be taken into account in determining, the actual amount of the Operating Costs and Real Property Taxes actually payable by the Tenant pursuant to the other provisions of this Lease and in no way limits the amounts payable by the Tenant pursuant to the other terms of this Lease.

4.9 Payments

- (a) The Tenant shall deliver to the Landlord prior to the Commencement Date and at least 15 days prior to each anniversary of the Commencement Date, a series of monthly post-dated cheques for the next 12 months of the Term (or such shorter period if there are less than 12 months remaining in the Term), for the aggregate of the monthly payments of Minimum Rent and any payments of Additional Rent estimated by the Landlord in advance. Alternatively, if required by the Landlord, the Tenant shall sign and deliver such documentation that the Landlord requires, from time to time, in order for either, as determined by the Landlord:
 - (i) the monthly instalments of Rent payable by the Tenant to the Landlord pursuant to this Lease to be automatically electronically transmitted on the applicable due date under this Lease to such bank account as may be designated by the Landlord, from time to time, by way of electronic funds transfer; or
 - (ii) the Landlord (or the Landlord's property manager) to be able to automatically debit the Tenant's bank account on a monthly basis on the relevant due date under this Lease in

amounts equal to the monthly instalments of Rent payable by the Tenant to the Landlord pursuant to this Lease.

(b) The Tenant shall sign and return all such documentation to the Landlord within 10 days following the Landlord's written request.

4.10 Rent to be Paid without Set-Off

Except to the extent specifically permitted by the terms of this Lease, the Tenant shall pay all Rent without set-off, abatement, or deduction for any reason or cause whatsoever, including by reason of section 35 of the Act, the benefits of which are expressly waived by the Tenant.

ARTICLE 5.00 OPERATING COSTS

- 5.1 <u>Tenant to Bear Proportionate Share of Operating Costs</u>
- (a) During the Term the Tenant shall pay to the Landlord as Additional Rent its Proportionate Share of all costs and expenses incurred by or on behalf of the Landlord and amounts paid by or on behalf of the Landlord with respect to and for the complete operation, administration, repair (including repairs and replacements of a capital nature) and maintenance, enhancement, alteration, addition to or improvement of the Building in keeping with maintaining the standard of a first-class commercial building (the "Operating Costs"). The Landlord shall determine the Operating Costs in accordance with generally accepted accounting practices used in the commercial real estate industry and without duplication. Operating Costs include:
 - (i) the cost of all insurance maintained by the Landlord in respect of the Lands or its operation and the cost of any deductible amounts payable by the Landlord in respect of any insured risk or claim;
 - (ii) maintenance, repair and janitorial services for the Building and the Lands, including fire sprinkler maintenance, snow removal, landscape maintenance, window cleaning, garbage and waste collection and disposal and the cost of operating and maintaining any merchandise holding and receiving areas and truck docks;
 - (iii) lighting, electricity, public and private utilities, loudspeakers, public address and musical broadcasting systems, all fire equipment and the cost of electricity of any signs considered by the Landlord to be a part of the Common Areas;
 - (iv) periodic redecoration, renovation, reconstruction and improvements to the Common Areas:
 - (v) policing, security, supervision and traffic control;
 - (vi) amounts and fees paid to, or reasonably attributable to the remuneration of, all Persons (whether on or off-site and whether employed by Landlord or a management company) involved in the ownership, administration, operation, management, maintenance, repair, replacement, security, supervision, landscaping or cleaning of the Building, including reasonable fringe benefits and other employment costs. If any such Persons provide similar or other services to other properties owned or operated by the Landlord, then the Landlord shall make a reasonable allocation of such Persons' remuneration between the Building and such other properties owned or operated by the Landlord and the Landlord will only include in Operating Costs the amount of such remuneration attributed by the Landlord to the Building;
 - (vii) the cost to the Landlord of the rental of any equipment, furniture, installations, systems and signs and the cost of building supplies used by the Landlord in the operation, maintenance and servicing of the Building;
 - (viii) heating, air-conditioning and ventilation of the Building and the Common Areas and all water, fuel, hydro and other utilities consumed in the Building and Common Areas, including costs, charges and imposts related to such utilities, to the extent such costs, charges and imposts are not recovered from tenants;
 - (ix) the costs:

- (A) of repairing, operating and maintaining the Building and equipment serving the Building and of all replacements and modifications to the Building or such equipment, including those made by the Landlord in order to comply with Laws affecting the Building;
- (B) incurred by the Landlord in installing energy conservation equipment or systems, security systems, life safety systems and all other systems which may be installed on the Lands for the general benefit of the tenants in the Building;
- (C) incurred by the Landlord in making alterations, replacements or additions to the Building intended to reduce operating costs, improve the operation of the Building or maintain its operation as a first-class commercial building, including without limitation, the costs of repair and replacement of the roof membrane and the HVAC Equipment; and
- (D) incurred to replace machinery or equipment which by its nature requires periodic replacement,
 - all to the extent that such costs are fully chargeable in the Landlord's fiscal year in which they are incurred in accordance with generally accepted accounting practices in the commercial real estate industry.
- (x) depreciation or amortization of those capital costs described in section 5.1(a)(ix)(C) as having to be depreciated or amortized and all other capital costs incurred by the Landlord in connection with the Lands (whether prior to or subsequent to the Commencement Date) and which the Landlord determines should be depreciated or amortized in accordance with accepted practices in the commercial real estate industry (otherwise such capital costs may be included in Operating Costs in the Fiscal Period in which they are incurred). The Landlord shall depreciate or amortize the costs to be depreciated or amortized in accordance with the foregoing over the useful life of the items for which the costs were incurred or over such other period as the Landlord, acting in accordance with accepted practices in the commercial real estate industry, may determine. The Landlord shall include in the Operating Costs for each Fiscal Period, the amount of the amortized costs attributable to such Fiscal Period;
- (xi) interest calculated at 3% above the Prime Rate upon the undepreciated or unamortized balance of the costs referred to in section 5.1(a)(x);
- (xii) auditing, accounting, legal and other professional and consulting fees and disbursements incurred by the Landlord in the operation of the Lands;
- (xiii) all Business Taxes, if any, from time to time payable by the Landlord in respect of its operations in the Lands, but excluding income tax of the Landlord;
- (xiv) all Capital Tax;
- (xv) all Carbon Taxes;
- (xvi) the HST payable by the Landlord on the purchase of goods and services included in Operating Costs (excluding any such HST which will be available to the Landlord when claimed as a credit or a refund in determining the Landlord's net tax liability on account of HST, but only to the extent that such HST is included in Operating Costs);
- (xvii) office expenses, supplies, furnishings and the fair rental value of space (having regard to rentals prevailing from time to time for similar space) in the Building, if any, occupied by the Landlord or the Landlord's property manager for the on-site management, supervision or administration of the Building. If such space is used by the Landlord to provide management, supervisory or administrative services to buildings or Buildings in addition to the Building, then the Landlord will allocate such costs between the Building and such other buildings or Buildings on a fair and equitable basis;
- (xviii) office expenses, supplies, furnishings and the fair rental value of space (having regard to rentals prevailing from time to time for similar space), if any, occupied by the Landlord or the Landlord's property manager for management, supervisory or administrative purposes related to the Lands, and costs and expenses attributable to off-site computer, accounting and other support services to the extent provided for the operation,

management and administration of the Lands. If such space is used by the Landlord to provide management, supervisory or administrative services to buildings or developments in addition to the Lands, then the Landlord will allocate such costs between the Lands and such other buildings or developments on a fair and equitable basis;

- (xix) costs of complying with the provisions of any development, site plan or other agreement with the local or regional municipality and/or with any utility or provider of services to the Lands (excluding costs of compliance arising from or in connection with any breach by the Landlord of any of the owner's obligations under any such agreement), including, without limitation, the Landlord's costs in connection with the issuance of or maintenance of any letters of credit or other security required to be issued to such local or regional municipality, utility or service provider pursuant to the terms of any such agreement in respect of the Lands;
- (xx) the cost of conducting environmental audits of the Lands and the cost of any investigating, testing, monitoring, removing, enclosing, encapsulating or abating any Hazardous Substance which is in or about the Lands or any part thereof or which has entered the environment from the Lands, if the Landlord is required to do so by any applicable Laws or Authorities or if, in the Landlord's opinion, it is harmful or hazardous to any Person or to the Lands or any part thereof or to the environment;
- (xxi) the costs of providing additional parking or other common areas for the benefit of the Lands, whether such costs be land rent, taxes or other types of costs;
- (xxii) an administrative and supervisory fee equal to 15% percent of Operating Costs (other than this administrative and supervisory fee and the Real Property Taxes applicable to the Lands).
- (b) The Landlord shall exclude or deduct (if originally included) from the Operating Costs, as the case may be:
 - (i) all amounts which would otherwise be included in Operating Costs but which are recovered by the Landlord from tenants in the Building as a result of any act, omission, default or negligence of such tenants;
 - (ii) such of the Operating Costs as are recovered from insurance proceeds, to the extent such recovery represents reimbursements for costs previously included in Operating Costs;
 - (iii) any ground rentals, and any principal, interest or other carrying charges or mortgage payments or other financing costs in respect of the Lands;
 - (iv) any and all costs of structural repairs attributable to inherent structural defects in the Building (being inherent defects that did not comply with design criteria that existed at the time the Building was designed and built);
 - (v) any income taxes, corporation taxes or other taxes personal to the Landlord (other than Capital Taxes), or penalties relating to the late payment by the Landlord of any taxes, whether personal to the Landlord or not;
 - (vi) the amount of any leasing commissions, tenant inducements, legal fees or tenant allowances incurred by the Landlord in connection with leasing any part of the Building;
 - (vii) legal and other professional fees incurred in connection with the leasing of space in the Building or in enforcing leases of tenants in the Building;
 - (viii) all goods and services tax payable by the Landlord on the purchase of goods and services included in Operating Costs to the extent that the Landlord may claim same as a credit or refund in determining its net tax liability on account of goods and services tax;
 - (ix) any costs incurred in connection with the gross negligent acts of the Landlord, or a Person for whom the Landlord is solely responsible at Law; and
 - (x) costs that the Landlord has a right to recover under a contract to which the Tenant is not a party.

- (c) Operating Costs may be attributed by the Landlord in its sole discretion to the various components of the Building in accordance with reasonable and current practices and on the basis consistent with the nature of the particular costs being attributed, and the costs so attributed may be allocated to the tenants of such components accordingly.
- (d) If the Building is less than 100% occupied or operational during any period, the Landlord may adjust those Operating Costs which vary with the use and occupancy of rentable premises in the Building to what they would have been, in the Landlord's reasonable estimation, if the Building had been 100% occupied or operational for such period so that such Operating Costs are fairly allocated to the tenants actually obtaining the benefit of the services associated with such Operating Costs. Nothing in this section permits the Landlord to recover more than 100% of any cost or expense comprising Operating Costs.

5.2 <u>Payment of Tenant's Proportionate Share</u>

- (a) The Operating Costs may be estimated, or re-estimated from time to time, by the Landlord for each of the Landlord's fiscal periods (currently being a calendar year, but which may be changed, from time to time, by the Landlord) (a "Fiscal Period") and the Tenant shall pay to the Landlord as Additional Rent, such estimated payments in equal monthly instalments in advance during such period on the first day of the month. Despite the foregoing, as soon as bills for all or any portion of the said amounts are received, the Landlord may bill the Tenant for its relevant share of the said amounts (less all amounts previously paid by the Tenant on the basis of the Landlord's estimate which have not already been so applied) and the Tenant shall pay the Landlord such amount as Additional Rent within 15 days after receiving an invoice from the Landlord for same.
- (b) Within 180 days following the end of each Fiscal Period for which such estimated payments have been made, the Landlord shall deliver to the Tenant a statement certified to be true, correct and complete by an officer of the Landlord (the "Statement") containing:
 - (i) reasonable particulars of the actual Operating Costs and the Real Property Taxes for such period;
 - (ii) the Tenant's Proportionate Share of the Operating Costs;
 - (iii) a statement of the Real Property Taxes payable by the Tenant to the Landlord pursuant to section 6.2; and
 - (iv) the amount of the Utilities, if any, allocated by the Landlord to the Tenant.
- (c) The Landlord shall use reasonable efforts to deliver the Statement to the Tenant within 180 days following the end of each Fiscal Period, but its failure to do so shall not preclude the Landlord from subsequently delivering the Statement and from making any necessary adjustments. After the delivery of a Statement, the Landlord may subsequently render supplemental statements if it subsequently discovers errors or omissions in the amounts previously charged to the Tenant or if there are any changes to the Real Property Taxes and the parties shall make the appropriate adjustment in the same manner as set out in section 5.2(d).
- (d) If the Statement shows that the Tenant has paid:
 - more than the amount actually payable by it (the difference being called the "Excess"), (i) then, provided the Tenant is not in default of any of the Tenant's Covenants, the Excess will be applied by the Landlord against the next succeeding instalments of the Operating Costs and Real Property Taxes payable by the Tenant. If there is any Excess for the last year of the Term, the Excess will be refunded by the Landlord to the Tenant at the same time as the Landlord delivers the Statement for the last year of the Term, provided the Tenant is not in default of any of the Tenant's Covenants. If the Tenant is in default of any of the Tenant's Covenants, then the Landlord shall hold the Excess until such time as the default is rectified. If the default is a rental default, the Landlord may apply the Excess against the Rent in arrears. If the default is not a rental default, the Landlord may apply the Excess against the costs incurred by the Landlord if the Landlord elects to rectify the default, in whole or in part. Upon the default being rectified, the Landlord will either apply the Excess against the next succeeding instalments of the Operating Costs and Real Property payable to the Landlord or refund any remaining amount of the Excess to the Tenant; or

- (ii) less than the amount actually payable by it (the difference being called the "Deficiency"), the Tenant shall pay the Deficiency within 30 days following the date it receives the Statement from the Landlord.
- (e) The Tenant has 30 days from the date it receives a Statement (the "Objection Period") to (but only if the Tenant is not in default of any of the Tenant's Covenants):
 - (i) request, in writing, reasonable backup information directly relating to the information contained in such Statement to facilitate the Tenant's review and verification of those costs which the Tenant has reasonable grounds for believing have been overstated or include costs that may not be included in Operating Costs pursuant to the terms of this Lease. The purpose of this section is not to give the Tenant the right to review or see copies of every invoice relating to the Operating Costs. Upon receiving such a request, the Landlord shall either (as determined by the Landlord):
 - (A) provide to the Tenant copies of such backup information (and the Tenant shall pay for the costs incurred by the Landlord in having such copies made within 20 days following receipt of an invoice from the Landlord for such costs); or
 - (B) permit an employee of the Tenant who is acceptable to the Landlord, or the Tenant's independent chartered accountant, to inspect such backup information at the Landlord's or its property manager's offices. Such inspection is to occur during the Landlord's normal business hours and for no more than 2 Business Days. The Landlord may have a representative present to oversee such review. The Tenant and its representative may not photocopy any of the Landlord's records. The Tenant shall provide the Landlord with a copy of the report prepared by its representative regarding the results of such review and inspection within 3 Business Days of the Tenant receiving such report.

In either case, the Tenant shall keep all information provided or made available to the Tenant confidential, but the Tenant may reveal such information to its professional advisers, provided that they agree in writing to keep such information confidential. Such information may, however, be disclosed in any litigation proceedings between the parties; and

(ii) deliver to the Landlord written notice (an "Objection Notice") setting out in detail any objections it may have to the Statement and the reasons therefor.

The Tenant shall not retain or utilize the services of any Person whose fees are based on a contingency basis (including fees based on a percentage of the savings in Operating Costs and Real Property Taxes obtained as a result of any review of same) to assist the Tenant in reviewing and verifying the Operating Costs and Real Property Taxes charged by the Landlord, and the Landlord may refuse to deal with any such Person. If the Tenant:

- (iii) fails to deliver an Objection Notice to the Landlord within the Objection Period, the Tenant will be deemed to have accepted such Statement and such Statement will be conclusive and binding on the Tenant; or
- (iv) delivers an Objection Notice to the Landlord within the Objection Period, then the Tenant will be deemed to have accepted such Statement except for the matters set out in the Objection Notice and if the Landlord:
 - (A) is in agreement with the matters contained in the Objection Notice, the appropriate adjustments shall be made between the parties within 30 days following the date that the Landlord receives the Objection Notice; or
 - (B) is not in agreement with the Objection Notice, and the parties are unable to resolve the matter through consultation within 45 days following the date that the Landlord receives the Objection Notice, then the Tenant may, within 90 days following the expiry of such 45 day period, commence an action against Landlord with respect to the objections raised by the Tenant in the Objection Notice, failing which the Tenant will be deemed to have accepted such Statement and it will be conclusive and binding upon the Tenant.

5.3 <u>Reallocation of Operating Costs</u>

If the Landlord, acting reasonably, determines that there should be a disproportionate allocation of Operating Costs among the tenants of the Building, then the Landlord may make such disproportionate allocation and it will be binding on the Tenant.

ARTICLE 6.00 TAXES

6.1 <u>Business Taxes of Tenant</u>

- (a) The Tenant shall, on or before their due date, pay to the relevant Authorities all Business Taxes.
- (b) If the Tenant or any Person occupying the Premises, or any part thereof, elects to have the Premises or any part thereof assessed for separate school taxes, the Tenant shall pay to the Landlord as soon as the amount of the separate school taxes is ascertained, any amount by which the separate school taxes exceed the amount which would have been payable for school taxes had such election not been made as aforesaid, and any loss, costs, charges and expenses suffered by the Landlord may be collected by the Landlord as Additional Rent.
- (c) The Tenant shall, upon request of the Landlord from time to time, deliver to the Landlord for inspection, receipts for payment of all Business Taxes and will furnish such other information in connection therewith as the Landlord may reasonably require.

6.2 <u>Real Property Taxes</u>

- (a) The Tenant shall pay, as Additional Rent:
 - (i) all Real Property Taxes levied, rated, charged or assessed from time to time, respectively, against the Premises or any part thereof, on the basis of a separate real property tax bill and separate real property assessment notices rendered by any lawful taxing Authority; and
 - (ii) the Tenant's Proportionate Share of all Real Property Taxes levied, rated, charged or assessed from time to time, respectively, against the Common Areas, or any part thereof, on the basis of a separate real property tax bill and separate real property assessment notices rendered by any lawful taxing Authority.
- (b) If there are no such separate tax bills and assessment notices for the Premises and the Common Areas, but there are available to the Landlord working papers and calculations made by the taxing Authorities from which such separate assessments may, in the Landlord's opinion, be determined, then the Landlord may elect to make such separate assessments based on such working papers and calculations in which case such determinations made by the Landlord will be deemed to be separate tax bills and assessments for the purpose of this section 6.2.
- (c) If there are not actual or deemed separate real property tax bills and separate real property assessment notices for the Premises and the Common Areas, then the Tenant shall pay, as Additional Rent, its Proportionate Share of all Real Property Taxes levied, rated, charged or assessed from time to time against the Lands. In such case, if:
 - (i) there are not actual or deemed separate real property tax bills and separate real property assessment notices for the Premises and the Common Areas;
 - (ii) less than 100% of the Rentable Area in the Building has been leased by the Landlord to third parties and is vacant during any period; and
 - (iii) the Landlord is able to obtain a reduction in the Real Property Taxes for the Lands due to such vacancies as described in section 6.2(c)(ii) (and the decision to seek such a reduction shall be determined by the Landlord in its sole discretion),

then, for the purposes of this section 6.2(c), the Real Property Taxes on the Lands will be deemed to be the amount that they would have been if 100% of the Rentable Area in the Building had been fully leased to third parties.

(d) The Tenant shall pay the Real Property Taxes payable by it pursuant to section 6.2(a) or 6.2(c) either to, as determined by the Landlord in writing from time to time:

- (i) the Landlord. In such case, the Tenant shall pay such Real Property Taxes according to estimates or revised estimates made by the Landlord from time to time in respect of each Fiscal Period. The Tenant shall make such payments in advance on the first day of each month in monthly amounts and for such periods as determined by the Landlord. Until such time as the Landlord advises otherwise, the Real Property Taxes are payable in 12 equal monthly instalments, commencing on January 1 in each year and ending on December 31 in each year, subject to section 4.2.
- (ii) the relevant taxing Authorities. In such case, the Tenant shall:
 - (A) pay such Real Property Taxes to the relevant taxing Authorities at the times required by such taxing Authorities; and
 - (B) promptly deliver to the Landlord receipts evidencing the payment of all such Real Property Taxes and furnish such other information in connection therewith as the Landlord requests from time to time within 15 days following the Tenant's receipt of such request.
- (e) Until such time as the Landlord advises the Tenant in writing to the contrary, the Tenant shall pay the Real Property Taxes to the Landlord in accordance with section 6.2(d)(i).
- (f) The Tenant shall provide the Landlord, within 10 days after receipt by the Tenant, a copy of any separate tax bills and assessment notices for the Premises or any part thereof.
- (g) If the assessments and tax bills for the Real Property Taxes applicable to the Lands involve lands and/or buildings that do not form part of the Lands, then the Landlord will have its realty tax Experts allocate the Real Property Taxes between the Lands and such other lands and the amount allocated to the Lands will be conclusive and binding upon the Tenant and be deemed to be the amount assessed against the Lands. For clarity, the Real Property Taxes may not be allocated in a manner that permits the Landlord to recover more than 100% of the Real Property Taxes.

6.3 <u>Alternate Methods of Taxation</u>

If, during the Term, the method of taxation is altered so that the whole or any part of the Real Property Taxes now levied, rated, assessed or imposed on real estate and improvements are levied, assessed, rated or imposed wholly or partially as a capital levy or on the rents received or otherwise, or if any tax, assessment, levy, imposition or charge, in lieu thereof is imposed upon the Landlord, then all such taxes, assessments, levies, impositions and charges will be included within the Tenant's obligation to pay its Proportionate Share of Real Property Taxes as set out in section 6.2.

6.4 <u>Pro-Rata Adjustment</u>

If any taxation year during the Term of this Lease is less than 12 calendar months, the Tenant's Proportionate Share of Real Property Taxes will be subject to a per diem pro-rata adjustment in the manner contemplated by section 4.2.

- 6.5 <u>Deferrals and Appeals of Real Property Taxes</u>
- (a) The Landlord may defer payment of Real Property Taxes, or defer compliance with any statute, law, by-law, regulation or ordinance in connection with the levying of any such Real Property Taxes, in each case, to the fullest extent permitted by law, so long as it diligently prosecutes any contest, appeal or assessment on which such tax is based. The Tenant shall co-operate with the Landlord in respect of any such contest, appeal or assessment and shall provide the Landlord with all relevant information, documents and consents required by the Landlord.
- (b) The Tenant may appeal or contest any separate assessment of the Real Property Taxes for the Premises, in each case, to the fullest extent permitted by law, so long as it shall diligently prosecute any contest, appeal or assessment on which such tax is based, provided that it first obtains the Landlord's written consent. If the Tenant obtains the Landlord's written consent, the Tenant will deliver to the Landlord whatever security for the payment of Real Property Taxes the Landlord considers advisable and will keep the Landlord informed of its progress from time to time and upon the request of the Landlord. The Tenant may not, however, appeal the Real Property Taxes for (i) the Common Areas, if separately assessed; or (ii) the Building if there is a single assessment for the Building.

6.6 <u>HST</u>

The Tenant shall pay to the Landlord all HST payable on the Rent (including accelerated Rent), which payment shall be made at the same time as the Rent to which the HST relates is to be paid in accordance with the terms of this Lease. Regardless of any other provision of this Lease to the contrary, the amounts payable by the Tenant under this section shall be deemed not to be Rent, but the Landlord shall have all of the same remedies for and rights of recovery for such amounts as it has for the recovery of Rent under this Lease, including the right to distrain against the Tenant's property.

ARTICLE 7.00 UTILITIES

7.1 <u>Utility Rates</u>

(a) Throughout the Term, the Tenant shall pay, as Additional Rent, all rates and charges (the "Charges") for electric charges, air-conditioning, ventilation, water, gas, light, heat, power, telephone, television and other public utilities and services supplied to or used on or in connection with the Premises or in connection with the business or occupation of the Tenant (the "Utilities") and indemnify and keep indemnified the Landlord and the Premises from and against any and all Claims in respect thereof.

(b) The Tenant shall:

- (i) cause the account for each of the separately metered Utilities to be registered in the name of the Tenant throughout the Term by no later than the earlier of the Commencement Date and the date that the Tenant takes possession (exclusive or non-exclusive) of the Premises; and
- (ii) pay all such Utilities to the relevant utility supplier by the relevant due date.
- (c) Notwithstanding any other provision of this Lease, the Tenant shall commence paying the Charges for all Utilities consumed upon the Premises commencing on the earlier of the Commencement Date and the date that possession of the Premises (which need not be exclusive) is given to the Tenant.

7.2 <u>Heating, Ventilating and Air Conditioning</u>

- (a) Throughout the Term, the Tenant shall operate the HVAC Equipment in such manner as to maintain reasonable conditions of temperature, air circulation and humidity within the Premises as determined by the Landlord, acting reasonably. The Tenant shall comply with all reasonable rules and regulations as the Landlord may make from time to time respecting the operation and maintenance of the HVAC Equipment.
- (b) Without limiting the provisions of section 9.1, the Tenant shall, throughout the Term and at its sole cost, maintain, repair, replace when necessary and regulate the HVAC Equipment so as to maintain same in good operating condition as would a careful and prudent owner. The Tenant shall take out and maintain a service contract(s) for the HVAC Equipment with a Person (approved by the Landlord) experienced in servicing such equipment, which contract(s) shall provide for regular inspections and the making of any necessary repairs in accordance with the accepted standards of the industry. The Tenant shall provide the Landlord with a copy of such contract and with copies of all periodic inspection reports made pursuant to such contract(s), as well as copies of all renewals of such contract(s) or new contract(s), within 30 days of the Tenant receiving or entering into same.
- (c) If the Landlord determines that the Tenant will not comply with its obligations in section 7.2(b) to the Landlord's satisfaction, then the Landlord may elect, on written notice to the Tenant, to maintain and repair the HVAC Equipment (or to retain a service company to do so) in which case the Landlord or its duly authorized agents shall be entitled to enter upon the Premises for the purpose of maintaining and repairing the HVAC Equipment. The Tenant shall be responsible for all costs and expenses incurred by the Landlord in maintaining or repairing the HVAC Equipment, or causing such service company to maintain, repair and replace the HVAC Equipment, from time to time, together with an administrative fee in the amount of 15% of the said costs and expenses. Such costs shall be paid by the Tenant to the Landlord within 15 days of receiving an invoice from the Landlord in respect of such costs.
- (d) If the Premises are served by HVAC Equipment which serves more than one premises in the Building, then:

- (i) the Tenant shall not be required to maintain, repair or replace the HVAC Equipment;
- (ii) the Landlord shall maintain, repair and replace the HVAC Equipment (or cause it to be maintained, repaired and replaced) and the Tenant shall be responsible for paying its share of the costs of maintaining, repairing and replacing the HVAC Equipment. The Landlord and its contractors shall be entitled to enter upon the Premises for the purpose of maintaining, repairing and replacing the HVAC Equipment. Such costs shall be allocated by the Landlord on an equitable basis among the tenants (including the Tenant) served by the HVAC Equipment, and the Tenant shall pay its share of such costs (as so determined by the Landlord), plus an administrative fee of 15% of its share of such costs, to the Landlord within 15 days of receiving an invoice from the Landlord.

7.3 <u>Meters</u>

The Tenant shall pay the cost of installing and maintaining any meters installed at the request of the Landlord or the Tenant to measure the usage of Utilities in the Premises. No meter may be installed in the Premises by the Tenant without the Landlord's consent.

ARTICLE 8.00 CONTROL OF THE BUILDING

8.1 <u>Control of the Building</u>

- (a) The Building is at all times subject to the exclusive control and management of the Landlord. The Landlord shall operate and maintain the Building in such manner as the Landlord, in its sole discretion, determines from time to time. Without limiting the generality of the foregoing, the Landlord may:
 - (i) construct, maintain and operate lighting facilities and heating, ventilating, and airconditioning systems;
 - (ii) police and supervise the Building;
 - (iii) close all or any portion of the Common Areas to such extent as may, in the opinion of the Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any Person or the public therein;
 - (iv) grant, modify and terminate easements or other agreements pertaining to the use and maintenance of all or any part or parts of the Common Areas;
 - (v) obstruct or close off all or any part or parts of the Building for the purpose of maintenance or repair, or for any other reason deemed necessary by the Landlord;
 - (vi) employ all personnel including supervisory personnel and managers necessary for the operation, maintenance and control of the Building;
 - (vii) make any changes or additions to the pipes, conduits, utilities and other services in the Premises which service the Premises or other premises in the Building;
 - (viii) designate and specify the kind of container to be used for garbage and refuse and the manner and the times and places at which same shall be placed for collection;
 - (ix) from time to time, change the area, level, location, arrangement and use of the Common Areas;
 - (x) construct other buildings, structures or improvements on or to the Building and/or make alterations thereof or additions thereto, or subtractions therefrom or re-arrangements thereof and/or enclose any open portion of the Building, and/or create any outdoor or indoor malls or any combination thereof, and/or build additional storeys on the Building;
 - (xi) re-locate or re-arrange the Common Areas from those existing at the Commencement Date;
 - (xii) designate the areas and entrances and the times in, through and at which loading and unloading of goods shall be done;

- (xiii) control, supervise and regulate the delivery or shipping of merchandise, supplies and fixtures to and from the Premises in such manner as in the sole judgment of the Landlord is necessary for the proper operation of the Building; and
- (xiv) do and perform such other acts in and to the Building which the Landlord determines, from time to time, to be advisable with a view towards the improvement of the convenience and use thereof by the tenants, their officers, agents, employees and customers, and those entitled, from time to time, to the use thereof.

In exercising any of its foregoing rights, the Landlord may enter upon the Premises to make such changes to same as the Landlord in its sole discretion deems necessary in connection with any changes to the Building.

- (b) In exercising its rights in this section, the Landlord shall:
 - (i) make any such changes as expeditiously as reasonably possible; and
 - (ii) use reasonable commercial efforts to minimize interference with the Tenant's business operations in the Premises,

and the Tenant will not be entitled to any abatement in Rent or compensation for any inconvenience, nuisance or discomfort occasioned thereby and nothing herein contained is deemed or construed to impose upon the Landlord any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the Premises, or any part thereof, except as otherwise provided in this Lease. Any entry by the Landlord upon the Premises in accordance with the provisions of this section is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease and will not affect the Tenant's obligation to observe and perform the Tenant's Covenants.

8.2 Parking

(a) The Tenant acknowledges and agrees that the parking area forming part of the Common Areas (the "Parking Area") is intended to be utilized in common by the Tenant and all of the other tenants and other occupants of the Building and their respective employees, customers and visitors. The Tenant covenants and agrees not utilize the Parking Area so as to interfere with the use thereof by such other Persons.

ARTICLE 9.00 MAINTENANCE AND REPAIRS

9.1 <u>Tenant's and Landlord's Repairs</u>

- (a) If the Building or any part of it becomes damaged or destroyed through the negligence, carelessness or misuse by the Tenant, the Tenant's Employees or anyone permitted by it to be in the Building, or through it or them in any way stopping up or injuring the heating apparatus, water pipes, drainage pipes, or other equipment or part of the Building, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant who shall pay the same to the Landlord as Additional Rent upon demand.
- (b) Subject to sections 9.1(c), 9.4 and 17.1, the Tenant shall, at all times during the Term, at its sole cost and expense, keep and maintain the Premises in good order, condition and repair (which includes periodic painting of any office area within the Premises and preventative maintenance of the whole of the Premises, all as determined by the Landlord, acting reasonably) as would a prudent owner. The Tenant shall promptly make all needed maintenance, repairs and replacements to the Premises (including all glass and windows in the interior and exterior walls and doors of the Premises and all signs, partitions, doors in the interior and exterior walls of the Premises, fixtures (including lighting, wiring, plumbing fixtures), Building standard equipment and all mechanical, electrical and plumbing systems serving the Premises) with due diligence and dispatch.
- (c) The Tenant's obligations in section 9.1(b) do not extend to:
 - (i) repairs and maintenance necessitated by reasonable wear and tear to the Premises which would not be repaired by a careful and prudent owner of a first class building of the same type as the Building; and
 - (ii) repairs to be made by the Landlord pursuant to section 9.1(d).

- (d) Subject to section 17.1 and any other provision of this Lease dealing with the Landlord's obligation to effect repairs, the Landlord shall at all times throughout the Term:
 - (i) maintain, repair, and replace at such times as determined by the Landlord (but only if necessary in order to allow the Tenant to conduct its business operations in the Premises):
 - (A) the structural components of the Building (namely, the foundations, exterior weather walls, subfloor, roof deck, bearing walls and structural columns and beams of the Building);
 - (B) maintain and repair the roof membrane of the Building;
 - (C) the Common Areas, including the driveways and parking areas on the Lands;
 - (ii) repair Insured Damage; and
 - (iii) replace the roof membrane of the Building upon the Landlord determining, based on the advice of its Expert, that the roof membrane has come to the end of its useful life.

The timing and all aspects of the carrying out of such repairs, replacements and maintenance shall be within the sole discretion of the Landlord. The costs of such maintenance, repairs and replacements shall be included in Operating Costs in accordance with section 5.1 (subject to the exclusions contemplated by section 5.1(b)), unless same are necessitated as a result of the negligence, omission or wilful acts of the Tenant or the Tenant's Employees, in which case (except in the case of Insured Damage) the Tenant shall be responsible for the full cost of the maintenance, repairs and replacements (together with the Landlord's administrative fee of 15% of such costs) (collectively, the "Repair Costs"). If required by the Landlord, the Tenant shall provide a deposit to the Landlord equal to the Landlord's estimate of the Repair Costs (the "Repair Deposit") and the Landlord shall be under no obligation to undertake the repairs until such time as it receives the Repair Deposit. If the Repair Costs are to be paid by the Tenant, then upon completion of the repairs the Landlord will provide the Tenant with an invoice for the Repair Costs and:

- (i) to the extent that the Repair Costs exceed the Repair Deposit actually received by the Landlord (if any), the Tenant shall pay such excess to the Landlord within 20 days following the date that the Tenant receives such invoice; or
- (ii) to the extent that the Repair Costs are less than the Repair Deposit actually received by the Landlord (if any), the Landlord shall pay the deficiency to the Tenant within 20 days following the date that the Tenant receives such invoice.
- (e) Except as expressly set out in this Lease, the Landlord is not responsible for making any repairs or replacements in and to the Premises of any nature or kind whatsoever.

9.2 Repair on Notice

- (a) The Tenant shall commence to make those repairs and replacements that are its responsibility under this Lease upon 15 days' notice in writing from the Landlord (or such shorter period as may be required by the Landlord, acting reasonably) but the Landlord's failure to give notice shall not relieve the Tenant from its obligation to repair.
- (b) If the Landlord determines that the Tenant's business operations are being conducted in a manner that is causing damage to the Premises, then the Landlord may require the Tenant to make such installations in the Premises as the Landlord considers appropriate to help prevent or minimize the damage being caused to the Premises as a result of the Tenant's business operations, in which case the Tenant shall make such installations within 30 days following receipt of written notice from the Landlord.
- (c) If, after receiving a notice contemplated by section 9.2(a) or 9.2(b), the Tenant refuses or neglects to perform the repairs or installations set out in such notice, the Landlord may make such repairs without liability to the Tenant for any loss of or damage that may occur to anything in the Premises or to the Tenant's business by reason thereof. The Tenant shall pay to the Landlord, as Additional Rent, the Landlord's costs for making any such repairs or installations, plus an administrative fee equal to 15% of such costs (collectively, the "Repair & Installation Costs"), within 15 days following receipt of an invoice from the Landlord for the Repair & Installation Costs. If required by the Landlord, the Tenant shall provide, as Additional Rent, a deposit to the Landlord equal to the Landlord's estimate of the Repair & Installation Costs within 3 Business Days following written demand being made for same and the Landlord shall deduct the amount of any such deposit

received from the Tenant against the final Repair & Installation Costs that the Landlord invoices the Tenant.

9.3 Landlord's Right to Enter

- (a) The Landlord and the Landlord's Employees may, at all reasonable times and upon at least 24 hours prior notice (except in the case of an emergency, real or apprehended), enter the Premises for the purpose of:
 - (i) viewing the state of repair and maintenance of the Premises. The Tenant shall comply with all requirements of the Landlord with respect to the care, maintenance and repair thereof, provided that they are not inconsistent with Tenant's obligations contained in section 9.1;
 - (ii) making such repairs and replacements as are the Landlord's obligations under this Lease;
 - (iii) making such repairs and replacements as are the Tenant's obligations pursuant to the terms of this Lease and which the Tenant is in default of making after the expiry of the 15 day notice period referred to in section 9.2;
 - (iv) making changes and additions to the pipes, conduits, wiring and ducts in the Premises where necessary to serve other premises in the Building; and/or
 - (v) for any other purpose necessary to enable the Landlord acting reasonably to perform the Landlord's Covenants or to exercise its rights under this Lease.
- (b) The Landlord may bring onto the Premises all materials required in order for it to exercise its rights in this section 9.3.
- (c) In order to effect any maintenance, repairs, replacements, alterations or improvements which are the Landlord's obligation under this Lease, or which the Landlord is entitled to carry out pursuant to this Lease, the Landlord may, without any liability whatsoever and without thereby constituting an interference with the Tenant's rights under this Lease or a breach by the Landlord of this Lease, and without thereby entitling the Tenant to any rights in respect thereof, temporarily suspend or modify the provision of Utilities to the Premises.
- (d) In exercising its rights in this section, the Landlord:
 - (i) shall do so as expeditiously as reasonably possible;
 - (ii) shall endeavour to minimize the interference with the Tenant's business operations in the Premises;
 - (iii) shall, in the case of the exercise of its rights under section 9.3(c) (other than in the case of an emergency, real or apprehended), give the Tenant at least 2 Business Days prior written notice and endeavour to coordinate the timing of any suspension of Utilities with the Tenant; and
 - (iv) may require the Tenant to move its personal property and trade fixtures from the area to which the Landlord requires access to another part of the Premises, in which case the Tenant shall do so, failing which the Landlord may do so.
- (e) The Tenant is not entitled to any abatement in Rent as a result of the Landlord exercising its rights in this section 9.3. The Landlord is not liable for any damage caused to any property located in the Premises as a result of the Landlord exercising its rights in this section 9.3.
- (f) If the Tenant is not present to open and permit an entry into the Premises, the Landlord or the Landlord's Employees may, using reasonable force, exercise the Landlord's rights in section 9.3(a) to enter the Premises without rendering the Landlord or the Landlord's Employees liable therefor, and without affecting or releasing the Tenant from the observance and performance of any of the Tenant's Covenants.
- (g) Nothing in this section imposes upon the Landlord any obligation, responsibility or liability for the care, maintenance or repair of the Premises, except as specifically provided in this Lease.

9.4 <u>Alterations or Improvements</u>

- (a) The Tenant may not commence nor make any Alterations (which, for the purposes of this section 9.4, includes the Tenant's trade fixtures) to any part of the Premises without the Landlord's prior written consent.
- (b) If any proposed Alterations:
 - (i) affect the structure or roof of the Premises or the building in which the Premises are located;
 - (ii) affect any part of the Premises which may be under warranty to the Landlord;
 - (iii) affect any of the electrical, plumbing, mechanical, heating, ventilating or air-conditioning systems or other base Building systems thereof, or otherwise require compatibility with the Landlord's systems;
 - (iv) are to be installed outside of the Premises;
 - (v) are installed within the Premises but are part of the Common Areas; or
 - (vi) affect the Common Areas, the exterior doors of the Premises or the perimeter walls of the Premises including the windows or glass portions thereof,

then the Landlord may require such Alterations to be performed by the Landlord or its contractors (provided that such work is done at competitive rates), but at the Tenant's sole cost and expense. The Tenant shall pay all such costs and expenses, including the cost of all Experts retained by the Landlord (plus a sum equal to 15% of all such costs representing the Landlord's overhead and administrative costs), within 15 days of receiving an invoice from the Landlord.

- (c) No Alterations by or on behalf of the Tenant shall be permitted which may weaken or endanger the structure or adversely affect the condition or operation of the Premises or the Building or diminish the value thereof, or restrict or reduce the Landlord's coverage for municipal zoning purposes.
- (d) Prior to commencing any Alterations, the Tenant shall submit to the Landlord:
 - details of the proposed Alterations, including, where appropriate (as determined by the Landlord) in light of the nature of the Alterations, 2 sets of working drawings, plans and specifications (which are to include, where appropriate (as determined by the Landlord) in light of the nature of the Alterations, architectural, structural, electrical, mechanical, plumbing, and telecommunication plans) prepared by qualified architects or engineers;
 - (ii) such indemnification against liens, costs, damages and expenses as the Landlord may reasonably require; and
 - (iii) evidence satisfactory to the Landlord that the Tenant has obtained all necessary consents, permits, licences and inspections from all Authorities having jurisdiction.
- (e) All Alterations by the Tenant shall be:
 - (i) at the sole cost of the Tenant;
 - (ii) performed by competent workmen who are approved by the Landlord and its contractors and who are fully covered by the Workplace Safety and Insurance Board of Ontario;
 - (iii) performed in a good and workmanlike manner in accordance with the approved drawings and specifications, all applicable Laws and the very best standards of practice;
 - (iv) subject to the reasonable supervision and direction of the Landlord;
 - (v) completed as expeditiously as possible with first class new materials;
 - (vi) done in a manner that does not disturb any of the other tenants of the Building; and
 - (vii) done in accordance with any design criteria manual which the Landlord has for the Building.

- (f) The Landlord may require that any cutting, coring, drilling and other elements of any Alterations that could disturb any of the other tenants of the Building be done during the hours of 6 p.m. to 7:00 a.m. and scheduled at least 48 hours in advance with the Landlord.
- (g) The Tenant or its contractors shall carry builder's all risks insurance in an amount not less than \$5,000,000 and which names the Landlord as an additional insured, but only in respect of occurrences arising out of the acts of the insured. The Tenant may not commence any Alterations until it has provided the Landlord with a certificate of insurance, signed by the relevant insurer (or authorized agent of such insurer), evidencing that such insurance has been taken out and is in place and the Landlord has approved such certificate.
- (h) The Tenant is responsible for all costs incurred by the Landlord (including fees of architects, engineers and designers) incurred in dealing with Tenant's request for Landlord's consent to any Alterations, whether or not such consent is granted, and in inspecting and supervising any such Alterations, together with a management fee in the amount of 5% of the costs of the Alterations. Such costs and management fee shall be paid by the Tenant to the Landlord within 15 days following the Tenant's receipt of an invoice for such costs and management fee.
- (i) Any Alterations made by the Tenant without the prior written consent of the Landlord or which are not in accordance with the drawings and specifications approved by the Landlord shall, if requested by the Landlord, be promptly removed by the Tenant at its expense and the Premises restored to their previous condition.
- (j) Upon completion of any Alterations, the Tenant shall provide to the Landlord as-built drawings for the Premises and shall secure all applicable statutory declarations and certificates of inspection, approval and occupancy and provide evidence of same to the Landlord.
- (k) The Tenant and the Tenant's Employees may not go on to the roof of the Building or make any opening in the roof of the Premises in connection with the performance of any Alterations or for any other reason whatsoever, except in order to carry out such maintenance, repairs and replacements to the equipment on the roof which are the Tenant's responsibility for maintaining, repairing or replacing pursuant to the terms of this Lease.
- (l) The opinion in writing of the Landlord's Expert shall be binding on both the Landlord and Tenant respecting all matters of dispute regarding the Alterations, including the state of completion and whether or not the Alterations are completed in a good and workmanlike manner and in accordance with Tenant's plans and specifications for the Alterations and with the provisions of this section.
- Notwithstanding any consents granted by the Landlord to any proposed Alterations, such consents (m) relate only to the general acceptability of the proposed Alterations and that by giving such consents, the Landlord shall not be deemed to have any direct or indirect interest, responsibility or liability with respect to such Alterations or the design, installation or maintenance of same or for the payment of same, all of which shall be the sole responsibility of the Tenant. Without limiting the generality of the foregoing, and notwithstanding any notices which the Landlord may receive from the Tenant's contractors or subcontractors, the Landlord shall not be liable, and no lien or other encumbrance shall attach to the Landlord's interest in the Building, pursuant to the Lien Act or any other Laws, in respect of materials supplied or work done by Tenant or on behalf of Tenant (including if done by or on the direction of the Landlord pursuant to its rights in this section) or related to any Alterations, and Tenant shall so notify or cause to be notified all its contractors and subcontractors. The Tenant shall indemnify and save harmless the Landlord from any Claims suffered or incurred by the Landlord which arise out of the performance of the Alterations. The Tenant acknowledges and agrees that the provision of any materials, work or services performed by the Landlord at Tenant's expense in respect of any Alterations or pursuant to any provision of this Lease shall be deemed to be provided by the Landlord on the Tenant's behalf as the Tenant's contractor.

9.5 <u>Occupational Health and Safety</u>

(a) The Tenant shall ensure that a comprehensive and rigorous health and safety program to protect workers in the Premises is implemented to ensure that no accidents or injuries occur in connection with the performance of any Alterations. The Tenant will indemnify the Landlord in respect of all Claims relating to fines or other offenses under all occupational health and safety and any similar legislation that might be brought, or imposed against or suffered by the Landlord or any of the

Landlord's Employees in connection with the performance of any Alterations. Without limiting the foregoing, the Tenant shall:

- (i) ensure that all obligations imposed by applicable Laws on "constructors" or other Persons completing or co-ordinating any Alterations are diligently and properly completed;
- (ii) co-operate with the Landlord in having any Alterations designated as a separate project so that the Landlord does not incur any obligations as a constructor or obligations similar to those of a constructor at law or by regulation imposed in connection with the performance of any Alterations;
- (iii) comply with all directions that the Landlord may give to the Tenant in connection with the performance of any Alterations having regard to construction health and safety requirements; and
- (iv) provide to the Landlord whatever rights of access, inspection, and whatever information, documents and other matters the Landlord requires in order to ensure that the Tenant's obligations under this section are complied with by the Tenant.

9.6 Notify Landlord

The Tenant shall give immediate notice in writing to the Landlord of any damage caused to the Premises, the HVAC Equipment, the Common Areas or the Building upon such damage becoming known to the Tenant. If the Landlord is responsible for repairing any such damage and the Tenant fails to give notice of such damage to the Landlord in accordance with its preceding obligation, the Tenant shall be liable for such of the costs incurred by the Landlord in repairing such damage as can be shown to be directly attributable to such failure on the part of the Tenant (including additional costs incurred by the Landlord in repairing such damage and which would not have been incurred had the Tenant given notice of such damage to the Landlord in accordance with its obligations in this section).

9.7 <u>Maintenance and Garbage</u>

The Tenant:

- (a) shall keep, operate and maintain the Premises as would a reasonably prudent owner in possession having regard to the nature of the business operations being carried on therein;
- (b) is responsible for the removal and disposal of its garbage from the Premises, at its sole cost and expense. If the Landlord provides or designates a service for picking up garbage, the Tenant shall use same at the Tenant's expense;
- (c) may only have and use a garbage container in the exterior Common Areas if permitted by applicable Laws and if approved by the Landlord in writing (such approval to include the location and size of such outside garbage container); and
- (d) shall not burn any trash or garbage of any kind in or about the Premises or the Building.

9.8 Loading and Unloading

The Tenant shall ensure that all deliveries or movement of heavy articles to and from the Premises shall be made only by doorways or corridors designated by the Landlord for such purpose.

9.9 Glass

The Tenant shall pay the cost of replacement with equal quality and size of any glass broken on the Premises including outside windows and doors of the perimeter of the Premises (including perimeter of the windows in the exterior walls) during the continuance of this Lease.

9.10 Pest Extermination

The Tenant shall engage at the Tenant's cost such pest extermination contractor as the Landlord may direct and at such intervals as the Landlord may require.

9.11 <u>Tenant Not to Overload</u>

(a) The Tenant shall not:

- (i) bring upon the Premises or any part thereof, any machinery, equipment, article or thing that by reason of its weight, size or use, might in the opinion of the Landlord damage the Premises;
- (ii) overload the floors of the Premises;
- (iii) overload any of the utility, electrical, mechanical or structural systems in or servicing the Premises; or
- (iv) place anything on or suspend anything from the roof structure or the building structure without first obtaining the Landlord's prior written consent, which consent may be unreasonably and arbitrarily withheld.
- (b) If any damage is caused to the Premises by any machinery, equipment, object or thing or by the overloading of the floors of the Building, or by any act, neglect, or misuse on the part of the Tenant, the Tenant shall promptly repair the Premises, or at the option of the Landlord, pay the Landlord on demand the cost of making good the Premises together with an amount equal to 15% of such costs for overhead.

9.12 <u>Protrusions from the Premises</u>

The Tenant covenants and agrees that it shall not allow any protrusions from the Premises for any reason whatsoever in order to protect the aesthetics of the Building. If, however, should any such protrusion exist (excluding any protrusions existing prior to the date the Tenant was given possession of the Premises or which are installed by the Landlord), the Tenant shall, if requested by the Landlord, remove such protrusion within 10 days following the Landlord's request, failing which the Landlord may do so, in which case the Tenant will pay the costs incurred by the Landlord in removing such protrusion, together with an administrative fee equal to 15% of such costs, within 30 days following the Tenant's receipt of an invoice for such costs.

9.13 <u>Protection of Equipment</u>

The Tenant shall protect from damage all of the heating and air-conditioning apparatus, water, gas and drain pipes, water closets, sinks and accessories thereof in or about the Premises and keep same free from all obstructions that might prevent their free working and give to the Landlord prompt written notice of any accident to or defects in same or any of their accessories. Any damage resulting from misuse or failure to protect same shall be the sole responsibility of the Tenant. The Tenant specifically undertakes to install and maintain at its sole cost and expense, fire extinguishers and such other fire protection equipment as is deemed reasonably necessary or desirable by the Landlord, any Authority or insurance body.

ARTICLE 10.00 USE OF PREMISES

10.1 <u>Use of Premises</u>

The Premises may only be used for the Permitted Uses and may not be used, in whole or in part, for any other business or purpose.

10.2 <u>Conduct of Business</u>

- (a) In the conduct of the Tenant's business, the Tenant shall:
 - (i) not perform any acts or carry on any practices which may damage the Building or be a nuisance or menace to the Landlord or to other Persons;
 - (ii) not do, nor suffer or permit to be done, any act in or about the Building which hinders or interrupts the flow of traffic to, in and from the Building, or any part of it, and not do, nor suffer or permit anything to be done which will in any way obstruct the free movement of persons doing business in the Building with any tenant or occupant of the Building;
 - (iii) not commit or suffer or permit to be committed any waste upon the Premises;
 - (iv) not sell, or permit the sale of, counterfeit goods;
 - (v) not engage in acts or activities (including the sale of goods or services) which may infringe the intellectual property rights of third parties;

- (vi) not place or erect anything on the roof or exterior walls of the Building without first obtaining the Landlord's written consent, failing which the Landlord may remove the item(s) without any prior notice to the Tenant and at the cost of the Tenant, plus an administrative fee equal to 15% of such costs, same to be paid by the Tenant within 30 days following receipt of an invoice from the Landlord;
- (vii) not store or place anything in the Common Areas, including, without limitation (i) any outdoor Common Areas and/or (ii) the Exclusive Parking Spaces;
- (viii) not cause, permit or suffer any odours, vapours, steam, water, vibrations or other undesirable effects to emanate from the Premises or any equipment or installation therein;
- not use any travelling or flashing lights, or displays, or any signs, television or other audiovisual or mechanical devices, in a manner so that they can be seen outside of the Premises and not use any loudspeakers, sound system, television, phonographs, radio or other audio-visual or mechanical devices in a manner so that they can be heard outside of the Premises, without in each case obtaining the prior written consent of the Landlord. If the Tenant uses any such equipment without receiving the prior written consent of Landlord or in a manner inconsistent with the terms of the Landlord's consent, the Landlord may, without liability on its part, remove such equipment without notice at any time, in which case the Tenant shall: (A) reimburse the Landlord for the costs incurred by the Landlord in removing such equipment, plus an administration fee of 15% of such costs, within 30 days following the Tenant's receipt of an invoice from the Landlord; and (B) repair all damage to the Premises caused by the installation and removal of such equipment;
- (x) carry out all modifications, alterations of or to the Premises and the Tenant's conduct of business in or its use of the Premises which are required in order for the Tenant to comply with its obligations in section 10.3 or which are required by any Authority;
- (xi) obtain and provide evidence to the Landlord from time to time on demand being made by the Landlord that the Tenant has obtained all necessary approvals, licenses and consents from all Authorities having jurisdiction for the operation of its business on and from the Premises and that such approvals, licenses and consents are in full force and effect; and
- (xii) if required by the Landlord or any Authority, the Tenant shall properly contain within the Premises and dispose of its garbage in accordance with practices acceptable to the Landlord or any Authority, as the case may be.

10.3 Observance of Laws

- (a) The Tenant shall, at its sole cost and expense, and subject to the other provisions of this Lease, promptly:
 - (i) observe and comply with all Laws now or hereafter in force which pertain to or affect the Premises, the Tenant's use of the Premises or the conduct of any business in the Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Premises; and
 - (ii) observe and comply with all police, fire and sanitary regulations imposed by any Authority or made by fire insurance underwriters.

10.4 Rules and Regulations

The Tenant and the Tenant's Employees are bound by, and shall observe the rules and regulations attached as Schedule "E" and such further and other rules and regulations that may be made by the Landlord after the date of this Lease relating to the Building, or any part of its, and which the Landlord informs the Tenant of in writing. The Landlord may, from time to time, amend the rules and regulations or adopt and promulgate additional rules and regulations applicable to the Building, including rules and regulations for the operation, use and maintenance of the Common Areas, which rules and regulations may differentiate between different types of businesses in the Building. All such rules and regulations are deemed to be incorporated into and form part of this Lease, but if there is a conflict between such rules and regulations and any other provision of this Lease, such other provision of this Lease prevails. The Landlord is not responsible to the Tenant for the non-observance or violation of any of the rules and regulations by other tenants of the Building or other Person and is under no obligation to enforce any such provisions.

10.5 <u>Energy Conservation</u>

The Tenant shall cooperate with the Landlord regarding any programs and procedures undertaken by the Landlord, either voluntarily or by reason of legal, regulatory or insurance requirements, for environmental improvement, pollution control, waste recycling, energy conservation and similar matters.

10.6 <u>Exhibiting Premises</u>

The Landlord and the Landlord's Employees may, at all reasonable times and on twenty four (24) hour's prior notice, enter upon the Premises in order to exhibit them to such Persons as the Landlord may determine.

10.7 By-Laws

The Tenant shall not make any application or representation to or for any Authority which would have the effect of, in any way, amending or varying the provisions of any Laws affecting the Premises (including the zoning affecting the Premises), without first obtaining the written consent and authorization of the Landlord

ARTICLE 11.00 ENVIRONMENTAL MATTERS

11.1 Environmental Laws and Policies

Without limiting the provisions of section 10.3, the Tenant shall, at its sole cost, comply with all Environmental Laws (including obtaining any required permits, licenses or similar authorizations) and all environmental terms, conditions and policies which may be established by the Landlord from time to time in respect of the use, treatment, handling, clean up and disposal of Hazardous Substances. The Tenant shall not permit any Person to engage in any activity on the Premises that may reasonably be anticipated to lead to a violation of any Environmental Laws or the imposition or assertion of liability or responsibility under any Environmental Laws on such Person, the Tenant or the Landlord.

11.2 <u>Use of Hazardous Substances</u>

- (a) The Tenant shall not bring or allow to be present in the Common Areas any Hazardous Substances.
- (b) The Tenant shall not bring or allow to be present in the Premises any Hazardous Substances. The Tenant shall provide the Landlord with a written statement describing:
 - (i) the procedures used by the Tenant to contain and handle Hazardous Substances; and
 - (ii) the procedures used by the Tenant to contain and deal with spills of Hazardous Substances,

within 20 days following the Landlord's request for such a statement.

- (c) The Tenant shall properly contain and handle all Hazardous Substances within the Premises and dispose of same in accordance with all applicable Environmental Laws.
- (d) Except as permitted by section 11.2(b), the Premises may not be used for the sale, transport, transfer, production, storage, manufacture, processing, packaging of or other dealing with any Hazardous Substance except if, and so long as, approved by the Landlord in writing and whenever any such approval is given, such sale, transport, transfer, production, storage, manufacture, processing, packaging thereof, or other dealing therewith, shall be only in accordance with the written directions of, and conditions imposed by, the Landlord.
- (e) The Tenant shall immediately notify the Landlord of the existence of any Hazardous Substances on the Lands of which it becomes aware.
- (f) The Tenant shall not use any Hazardous Substances in a manner which may cause or contribute to an adverse environmental effect upon the Premises, the Lands, any other lands or to the environment.
- (g) Upon the expiry of the Term, or at such other times as may be required by any lawful Authority, the Tenant shall:
 - (i) remove from:

(A) the Premises:

- (I) all Hazardous Substances which were placed, brought or allowed onto the Premises during the Term; and
- (II) anything contaminated by such Hazardous Substances and which the Landlord designates as being the Tenant's property in accordance with section 11.3(c); and

(B) the Common Areas:

- (I) all Hazardous Substances which were placed, brought or allowed onto the Common Areas during the Term by the Tenant, the Tenant's Employees or any Transferee; and
- (II) anything contaminated by such Hazardous Substances and which the Landlord designates as being the Tenant's property in accordance with section 11.3(c);

and carry out all remediation work necessitated as a result of such removal, all at the Tenant's sole cost and expense. If such removal is prohibited by any Environmental Laws, the Tenant shall take whatever action is required to ensure compliance with any Environmental Laws;

- (ii) remove any underground or above-ground storage tanks, pipes and other equipment associated with the tanks (including, but not limited to, any product which is in and has escaped from such tanks) installed at the Premises by or on behalf of, or used by the Tenant; and
- (iii) make good any damage caused to the Premises or the Building by the work described in sections 11.2(g)(i) and 11.2(g)(ii) at its sole cost and expense.

11.3 <u>Tenant's Responsibility</u>

- (a) The Tenant is solely responsible and liable for any clean-up and remediation required by the Landlord or any Authority having jurisdiction of any Hazardous Substances which the Tenant, the Tenant's Employees, any Transferee or any Person having business with the Tenant or any Transferee at the Premises caused or allowed to be released onto or into the air, the Premises, the Common Areas, other lands and/or the groundwater or surface waters under or on the Lands or any other lands. Upon the occurrence of any such release, the Tenant shall immediately give written notice to the Landlord and take all steps necessary to remedy the situation giving rise to such release.
- (b) If any clean-up or remediation is required in accordance with section 11.3(a), the Tenant shall, at its sole cost, prepare all necessary studies, plans and proposals and submit them to the Landlord for approval, provide all bonds and other security required by any lawful Authorities and carry out the work required. In carrying out such work, the Tenant shall keep the Landlord fully informed of the progress of the work. The Landlord may, in its sole discretion, elect to carry out all such work, or any part of it, and, if the Landlord does so, the Tenant shall pay for all costs in connection therewith, together with an administrative fee equal to 15% of such costs, within 15 days of written demand being made by the Landlord.
- (c) All Hazardous Substances brought or allowed onto the Lands during the Term by the Tenant, the Tenant's Employees, any Transferee or any Person having business with the Tenant or any Transferee at the Premises will, despite any other provision of this Lease to the contrary and any expiry, termination or disclaimer of this Lease, be and remain the property and sole responsibility of the Tenant regardless of the degree or manner of affixation of such Hazardous Substances to the Premises or the Lands. In addition, and at the option of the Landlord, anything contaminated by such Hazardous Substance shall become the property of the Tenant.
- (d) If the Tenant is required by any applicable Environmental Laws to maintain environmental and operating documents and records, including permits and licenses (collectively, "Environmental Records"), the Tenant shall maintain all requisite Environmental Records in accordance with all applicable Environmental Laws. The Landlord may inspect all Environmental Records at any time during Term on 24 hours' prior written notice, but no prior notice shall be required in the case of an emergency, real or apprehended.

- (e) The Tenant shall promptly notify the Landlord in writing of:
 - (i) any notice by any Authority alleging a possible violation of or with respect to any Environmental Laws in connection with operations or activities in the Premises;
 - (ii) any charges laid by any Authority alleging a violation by the Tenant, the Tenant's Employees or a Transferee of any Environmental Laws in connection with operations or activities in the Premises;
 - (iii) any orders made against the Tenant pursuant to any Environmental Laws in connection with its operations or activities in the Premises; and
 - (iv) any notices received by the Tenant from any Person concerning any release or alleged release of any Hazardous Substances from the Premises.
- (f) The Tenant shall provide to the Landlord a copy of any environmental site assessment of the Premises conducted by or for the Tenant at any time during the Term within 10 days of the Tenant receiving same.

11.4 Landlord's Audit Right

- (a) The Landlord may at any time:
 - (i) require the Tenant to cause an environmental audit of the Premises to be carried out; and
 - (ii) on twenty four (24) hour's prior notice enter the Premises for the purpose of causing an environmental audit of the Premises and/or the Common Areas to be carried out, and in connection with such audit, the Landlord may:
 - (A) conduct tests and environmental assessments or appraisals;
 - (B) remove samples from the Premises;
 - (C) examine and make copies of any relevant documents or records relating to the Premises; and
 - (D) interview the Tenant's Employees.
- (b) The scope and breadth of any such environmental audit will be determined by the Landlord in its sole discretion. The Landlord is responsible for the cost of any such audit except:
 - (i) if such audit reveals contamination of the Lands, or any part of it (including the Premises) caused by the Tenant, the Tenant's Employees, the Tenant's invitees or any Transferee; or
 - (ii) in the case of any audit done during the last year of the Term,

in which case the Tenant shall pay such costs to the Landlord within 30 days following receipt of an invoice from the Landlord on account of such costs.

- (c) If any audit reveals any breach by the Tenant of the Tenant's Covenants contained in this Lease, the Tenant shall immediately take such steps as are necessary so as to rectify such breach.
- (d) Unless instructed to do so by the Landlord pursuant to section 11.4(a)(i), the Tenant may not carry out, or cause to be carried out, any environmental audit of the Premises.
- (e) If the Tenant fails to comply with any of its obligations under this section, the Landlord may, in its sole discretion and at the expense of the Tenant, perform the necessary work to carry out such obligations and draw upon the bond, if any, to pay for the costs of such work. Upon the Landlord rendering an invoice to the Tenant on account of such work, the Tenant shall pay same to the Landlord within 20 days following receipt of such invoice from the Landlord.

11.5 <u>Survival of Obligations</u>

(a) For clarity, the obligations of the Tenant under this Article relating to Hazardous Substances shall survive the expiry, repudiation or earlier termination of this Lease. To the extent that the performance of such obligation requires access to or entry upon the Premises or the Lands, or any part thereof, following such expiry, repudiation or earlier termination:

- (i) the Tenant may have such entry and access only at such times and upon such terms and conditions as the Landlord may from time to time specify; and/or
- (ii) the Landlord may undertake the performance of any necessary work in order to complete such obligations of the Tenant, but having commenced such work, the Landlord shall have no obligation to the Tenant to complete such work and may require the Tenant to do so. All costs incurred by the Landlord in undertaking such work, together with an administrative fee of 15%, shall be paid by the Tenant to the Landlord within 20 days following delivery to the Tenant of an invoice for such work.

ARTICLE 12.00 INSURANCE AND INDEMNIFICATION

12.1 <u>Tenant's Insurance</u>

- (a) The Tenant shall, at its sole cost and expense, take out and keep in full force and effect throughout the Term and any period when it is in possession of the Premises, the following insurance:
 - (i) "all-risks" insurance (including flood and earthquake) upon property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or installed by or on behalf of the Tenant (including stock-in-trade, furniture, fittings, installations, signs (wherever located in the Building), alterations, additions, partitions and fixtures) and anything in the nature of a Leasehold Improvement in the Premises (regardless of when or who installed same), all of the foregoing in an amount not less than the full replacement cost thereof without deduction for depreciation. Such policy must contain a contingent liability from enforcement of building by-laws endorsement, a stated amount clause and an inflation protection endorsement. If there is a dispute as to the amount of full replacement cost of Leasehold Improvements, the decision of the Landlord or its Mortgagee shall be conclusive. The Landlord and every Mortgagee must be included on such insurance policies as additional insureds, but only in respect of the Leasehold Improvements. Such insurance policies may contain reasonable deductibles in amounts acceptable to the Landlord, acting reasonably;
 - (ii) commercial general liability insurance on an occurrence basis against claims for personal injury, bodily injury, contractual liability, "all-risks" tenants' legal liability for the full replacement cost of the Premises (without deduction for depreciation), non-owned automobile liability, employer's liability and owners' and contractors' protective insurance coverage with respect to the Premises and the Common Areas. The coverage under such insurance is to include the use, activities and operations in the Premises by the Tenant and the Tenant's Employees and the use, activities and operations in any other part of the Building by the Tenant and the Tenant's Employees. Such policies must be written on a comprehensive basis with limits of not less than \$5,000,000 for any one occurrence, or such higher limits as the Landlord or its Mortgagee may reasonably require from time to time. The Landlord, the Landlord's property manager (if any) and the Mortgagee must be included on such insurance policies as additional insureds;
 - (iii) business interruption insurance in an amount which will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils insured against in section 12.1(a)(i) and other perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or the Building as a result of such perils and which shall: (A) include a provision for the payment of Rent; (B) include a contingent business interruption endorsement; and (C) be in a profits form of coverage with an indemnity period of not less than 12 months;
 - (iv) broad form comprehensive boiler and machinery insurance on a blanket repair and replacement cost basis with limits for each accident in an amount at least equal to the replacement cost (without depreciation) of all Leasehold Improvements and of all boilers, pressure vessels, heating, ventilating and air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant (other than equipment owned by the Landlord) or by others (other than the Landlord) on behalf of the Tenant in the Premises or that relates to or serves the Premises, subject to an agreed amount clause. The Landlord and every Mortgagee must be included on such insurance policies as additional insureds, but only in respect of the Leasehold Improvements. The Tenant is only required to carry such insurance if it has in the Premises equipment that would be covered by such insurance;

- (v) standard owners' form automobile liability insurance providing third party liability insurance with \$5,000,000 inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or leased by or on behalf of the Tenant;
- (vi) exterior glass insurance, including without limitation, plate glass insurance; and
- (vii) any other form or forms of insurance as the Tenant or the Landlord or the Mortgagee may reasonably require from time to time in amounts and for insurance risks against which a prudent tenant would protect itself.
- (b) The Tenant is responsible for the payment of all:
 - (i) insurance premiums for the insurance policies required by this section; and
 - (ii) deductibles payable under the insurance policies required by this section.
- (c) All policies required by this section must:
 - (i) be with insurers qualified to sell insurance in the Province in which the Premises are located and who have an A.M. Best rating of A- or equivalent;
 - (ii) contain an endorsement requiring the insurers under such policies to notify the Landlord in writing at least 30 days prior to any cancellation thereof;
 - (iii) contain a waiver in favour of the required additional insureds pursuant to this Lease of any breach of warranty clause such that the insurance policies in question shall not be invalidated in respect of the interests of such additional insureds by reason of a breach by the Tenant of any warranty contained in such policies; and
 - (iv) contain a clause stating that the Tenant's insurance policy will be considered as primary insurance and will not call into contribution any other insurance that may be available to the Landlord.
- (d) All public liability insurance required by this section must contain a cross liability clause and a severability of interest clause.
- (e) All property, boiler and machinery and business interruption insurance required by this section must contain a waiver of any rights of subrogation which the insurers of the Tenant may have against the Landlord and the Landlord's Employees whether the damage is caused by the act, omission or negligence of the Landlord or the Landlord's Employees. All property and boiler and machinery insurance required by this section must:
 - (i) contain a dispute loss agreement clause, unless such insurance is with the same insurer, in which case such clause is not required;
 - (ii) contain the Mortgagee's standard form of mortgage clause; and
 - (iii) name the Landlord as the first loss payee in respect of the Leasehold Improvements in the Premises
- (f) Prior to the Commencement Date, and within 10 days following the Landlord's written request from time to time, the Tenant shall furnish to the Landlord a certificate of insurance in the form attached as Schedule "F" signed by the Tenant's insurers or the authorized representative of the insurer. In no event may the Tenant have possession of the Premises until such time as such certificate is received and approved by the Landlord. The Tenant shall provide written evidence of the continuation of such policies not less than 10 days prior to their respective expiry dates. No review, approval or acceptance of any insurance policy or certificate by the Landlord will in any way alter the Landlord's rights under this Lease or the Tenant's obligations under this section 12.1.
- (g) If:
 - (i) the Tenant fails to take out or maintain any of the insurance required by this section; or
 - (ii) any of the insurance required by this section is not approved by the Landlord and the Tenant fails to rectify the situation within 48 hours after written notice by the Landlord that it does not approve of such insurance,

then the Landlord may:

- (iii) treat such failure as an Event of Default; or
- (iv) take out such of the insurance required by this section as the Landlord elects to take out. In such event, the Tenant shall reimburse the Landlord for all costs incurred by the Landlord in taking out the insurance the Landlord elects to take out, plus an administrative fee equal to 15% of such amount, immediately upon receipt of an invoice from the Landlord.
- (h) Regardless of any other provision of this Lease to the contrary, the Tenant hereby releases and waives any and all Claims against the Landlord and the Landlord's Employees with respect to occurrences to be insured against by the Tenant in accordance with its obligations under this Lease and whether any such Claims arise as a result of the negligence or otherwise of the Landlord or the Landlord's Employees.
- (i) In case of loss or damage under the Tenant's insurance, the proceeds of insurance for the Leasehold Improvements in the Premises are hereby assigned and made payable to the Landlord as first loss payee. If the Tenant is not in default of its obligations under this Lease, the Landlord shall, upon the Tenant's written request, release such proceeds to the Tenant in progress payments at stages determined by a certificate of the Landlord's Expert stating that repairs to each such stage have been satisfactorily completed free of liens by the Tenant. If the Tenant is in default of its obligations under this Lease, the Landlord may retain such proceeds without liability to the Tenant for interest or otherwise until the default has been, in the opinion of the Landlord, remedied. If the Tenant fails to make such repairs, the Landlord may perform the repairs and apply the proceeds to the cost thereof. If this Lease is terminated upon the happening of any damage or any destruction as provided for in Article 17.00 or for any other reason, all such proceeds of insurance shall be retained by the Landlord for the Landlord's own use.

12.2 Adverse Impact on Insurance

- (a) If any of the Landlord's insurance premiums are increased by reason of anything done or omitted or permitted to be done by the Tenant or by anyone permitted by the Tenant to be upon the Premises, the Tenant shall pay the full amount of such increase to the Landlord within 15 days after receipt of an invoice for such additional premiums. In determining the Tenant's responsibility for any increased insurance costs, a statement issued by the organization, company or insurer establishing the insurance premiums or rates for the relevant insurance policies stating the reasons for such increase will be conclusive evidence in determining the Tenant's responsibility for same.
- (b) If any insurance on any part of the Building is cancelled or threatened to be cancelled by the insurer by reason of the use or occupation of the Premises or any part thereof by the Tenant or by any Transferee or by anyone permitted by the Tenant to be upon the Premises and the Tenant fails to remedy the condition giving rise to the cancellation or threatened cancellation within 48 hours after receipt of written notice from the Landlord requiring the Tenant to so remedy such condition, then an Event of Default will be deemed to have occurred.

12.3 <u>Landlord's Insurance</u>

- (a) The Landlord shall take out and maintain the insurance specified in sections 12.3(a)(i), 12.3(a)(ii), 12.3(a)(iii) and 12.3(a)(iv) throughout the Term and may take out the insurance contemplated by section 12.3(a)(v) at such times as the Landlord may determine:
 - (i) "all-risks" property insurance on the Building and all property owned by the Landlord relative to the Building for an amount not less than replacement cost thereof from time to time (including foundations), against loss or damage by perils from time to time embraced by or defined in a standard all-risk insurance policy (including fire, explosion, impact by air craft or vehicles, lightning, riot, vandalism, malicious acts, smoke, leakage from defective equipment, wind storm, hail, collapse, back-up of sewer, flood and earthquake);
 - (ii) boiler, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus and machinery insurance on the equipment contained in the Building which is owned by the Landlord and on a broad form blanket cover repair and replacement basis;
 - (iii) "all-risk" rent and rental value insurance insuring loss of gross rental value attributable to the perils insured against by the Landlord (including loss of rent and other amounts receivable from tenants in the Building (assuming full occupancy of the Building),

- including the Rent payable under this Lease) for an indemnity period of not less than 12 months;
- (iv) commercial general liability insurance on an occurrence basis with respect to the Landlord's operations in the Building, such coverage to include the Landlord's Employees and its contractors, subcontractors and agents while working on behalf of the Landlord. Such policy shall contain a limit of not less than \$2,000,000 per occurrence and in the aggregate; and
- (v) any other form or forms of insurance as the Landlord or its Mortgagee may reasonably require from time to time for insurance risks and in amounts against which a prudent landlord would protect itself.
- (b) All such insurance policies may contain such deductibles as would be carried by a prudent owner of a similar development.
- (c) Despite the Landlord's covenants in section 12.3(a) and the Tenant's contributions towards the cost of the Landlord's insurance:
 - (i) no insurable interest is conferred upon the Tenant under any policies of insurance carried by the Landlord;
 - (ii) the Tenant is not entitled to share in or receive the benefit of any portion of any insurance proceeds received by the Landlord; and
 - (iii) the Tenant is not relieved of any liability arising from or contributed to by its negligence or wilful acts or omissions.
- (d) The Landlord is not accountable to the Tenant regarding the use of any insurance proceeds arising from any claim and the Landlord is not obliged on account of such contributions to apply such proceeds to the repair or restoration of that which was insured, unless otherwise provided in this Lease. If the Tenant wishes to receive indemnity by way of insurance for any property, work or thing whatever, the Tenant shall insure same for its own account and may not look to the Landlord for reimbursement or recovery in the event of loss or damage from any cause, whether or not the Landlord has insured same and recovered therefor.

12.4 <u>Limitation of the Landlord's Liability</u>

- (a) The Landlord (when not found acting in gross negligence) is not liable or responsible in any way to the Tenant or to any other Person for and the Tenant hereby releases the Landlord in respect of:
 - (i) any Injury arising from or out of any occurrence on, in or relating to the Building or any loss or damage to property (including loss of use thereof) of the Tenant or any other Person located in, on or around the Building however caused;
 - (ii) without limiting the generality of the provisions of section 12.4(i), any Injury to the Tenant or any other Person or loss or damage to property resulting from: strikes; lockouts; war; riots; insurrection; acts of God; fire; smoke; explosions; falling or defective plaster, ceiling tiles, fixtures or signs; broken glass; steam; fumes; vapours; odours; dust; dirt; cinders; grease; acid; oil; any noxious, offensive or excessive liquids, solids or gases; any Hazardous Substance; debris; vibration; radiation; air or noise pollution; theft; vandalism; breakage; vermin; electricity; electrical or other wiring, computer or electronic equipment or systems malfunction or stoppage; water; rain; floods; flooding; freezing; earthquake, tornado or hurricane; wind; snow; sleet; hail; frost; ice; excessive heat or cold; sewage; sewer backup; toilet overflow; leaks or discharges from any part of the Building, or from any pipes, sprinklers, appliances, equipment, electrical or other wiring, plumbing fixtures, roof, windows, skylights, doors, trap doors or subsurface of any floor or ceiling of any part of the Building or from the street or any other place, or by dampness or climatic conditions or from any other cause whatsoever;
 - (iii) any Injury, loss or damage caused by other tenants or any Person in the Building or by occupants of adjacent property thereto, or by the public, or by construction or renovation, or by any private, public or quasi-public work, or by interruption, cessation or failure of any public or other utility service or any other cause whatsoever;

- (iv) any Injury to the Tenant or any other Person or any loss or damage suffered to the Premises or the contents thereof by reason of the Landlord or its representatives entering the Premises to undertake any work therein, or to exercise any of the Landlord's rights or remedies hereunder, or to fulfil any of the Landlord's obligations hereunder, or in the case of emergency;
- (v) all Claims of every nature and kind (including damages for personal discomfort or illness) resulting from or contributed to by any interruption or cessation of or failure in the supply of any Utilities or heating, ventilating, air-conditioning and humidity control; or
- (vi) any Injury, loss or damage insured against or required to be insured against by the Tenant pursuant to this Lease.
- (b) All property kept or stored on the Premises is at the risk of the Tenant and the Tenant shall hold the Landlord harmless from and against Claims arising out of damages to same, including any subrogation claims by the Tenant's insurers or by third parties.

12.5 <u>Indemnification of Landlord</u>

- (a) The Tenant shall indemnify the Landlord and save it harmless from and against any and all Claims in connection with:
 - (i) any Injury referred to in section 12.4 or any loss or damage to property referred to in section 12.4, except to the extent caused by the negligence of the Landlord or the Landlord's Employees;
 - (ii) all Claims of the Tenant and Persons permitted by it to be on the Premises by reason of the suspension, non-operation, or failure for any period of time of any Utilities, heating, ventilating, air-conditioning or humidity control;
 - (iii) the failure of the Tenant to observe and perform any of the Tenant's Covenants;
 - (iv) the occupancy or use by the Tenant of the Premises, including the conduct and operation by the Tenant of its business on the Premises;
 - (v) any Hazardous Substance being brought into, produced or maintained in, or discharged from, the Premises during the Term, unless brought in by the Landlord or the Landlord's Employees;
 - (vi) any occurrence in or around the Common Areas caused, in whole or in part, by the act, failures, omissions or negligence of the Tenant or the Tenant's Employees; and
 - (vii) any occurrence on the Premises however caused, unless caused by the negligence of the Landlord or the Landlord's Employees.
- (b) If the Landlord, without actual fault on its part, is made a party to any litigation commenced by or against the Tenant, the Tenant shall protect and hold the Landlord harmless and shall pay all costs and expenses (including all legal expenses) incurred or paid by the Landlord in connection therewith.

12.6 <u>Employees</u>

- (a) Every indemnity, exclusion or release of liability by the Tenant in this Lease and every waiver of subrogation contained in any of the Tenant's insurance policies extend to and benefit the Landlord, the Landlord's Mortgagee, any management company employed by the Landlord to manage the Building and all of their respective servants, agents, directors, officers, employees and those for whom the Landlord is in law responsible (collectively, the "Landlord Beneficiaries"). The Landlord is the agent or trustee of the Landlord Beneficiaries solely to the extent necessary for the Landlord Beneficiaries to take the benefit of this section, but the Landlord is under no obligation to take any steps or actions on behalf of the Landlord Beneficiaries to enable them to obtain the benefits of this section unless it chooses to do so in its sole and absolute discretion.
- (b) Every indemnity, exclusion or release of liability by the Landlord in this Lease and every waiver of subrogation contained in any of the Landlord's insurance policies extend to and benefit the Tenant and the Tenant's Employees. The Tenant is the agent or trustee of the Tenant's Employees solely to the extent necessary for the Tenant's Employees to take the benefit of this section, but the Tenant

is under no obligation whatsoever to take any steps or actions on behalf of the Tenant's Employees to enable them to obtain the benefits of this section unless it chooses to do so in its sole and absolute discretion.

ARTICLE 13.00 ASSIGNING AND SUBLETTING

13.1 Consent Required

The Tenant may not effect a Transfer without the prior written consent of the Landlord in each instance, which consent will not be unreasonably or arbitrarily withheld and the decision as to whether or not such consent will be given will not be unreasonably delayed. The consent by the Landlord to any Transfer to a Transferee, if granted, will not constitute a waiver of the necessity for such consent to any subsequent Transfer. This prohibition against a Transfer includes a prohibition against any Transfer by operation of law. No Transfer will occur by reason of a failure by the Landlord to reply to a request by the Tenant for consent to a Transfer.

13.2 <u>Factors for Consent</u>

Notwithstanding the fact that the Landlord may not unreasonably or arbitrarily withhold its consent to a Transfer, the Landlord will be considered to be reasonably withholding its consent if its reason or reasons for doing so is or are based upon all or any of the following factors:

- (i) any factor which a court of law would consider to be reasonable;
- (ii) the Tenant is in default of any of the Tenant's Covenants;
- (iii) there is an outstanding Event of Default;
- (iv) the Transferee not having, in the Landlord's opinion, a satisfactory financial covenant or business history;
- (v) the failure of the Transferee to provide such guarantees or other security as may be required by the Landlord to guarantee or secure the Transferee's obligations pursuant to any document evidencing the Transfer and its obligations under this Lease;
- (vi) the Transferee, its principals or any partnership or corporation in which the Transferee or its principals was a member or a shareholder at the time (other than a public corporation described in section 13.4) having become bankrupt or insolvent or having defaulted (other than by a minor technical default which shall be determined by the Landlord acting reasonably) under the terms of any lease for commercial, office or shopping centre premises whether leased from the Landlord or other Persons;
- (vii) a Mortgagee, whose consent is required to the proposed Transfer, refuses to give its consent to the Transfer; or
- (viii) the giving of such consent would cause the Landlord to be in breach of restrictive or exclusive use clauses granted by the Landlord to third parties.

13.3 <u>Transfers</u>

- (a) If the Tenant intends to effect a Transfer, in whole or in part, the Tenant shall provide the Landlord with prior written notice of its intention to effect a Transfer, which written notice shall set out the name of the proposed Transferee and its principals and be accompanied by:
 - (i) such information regarding the proposed Transferee as the Landlord may reasonably require in order to determine whether or not to consent to the proposed Transfer, including information concerning the principals of the Transferee, a detailed breakdown of the proposed Transferee's, and its principals', prior business experience, complete credit, financial and business information regarding the proposed Transferee and its principals and an original copy of all documents and agreements relating to the proposed Transfer; and
 - (ii) the Landlord's then current non-refundable administrative fee (not exceeding \$1,000.00) for considering the Tenant's request for consent. Such fee excludes any legal fees and disbursements which the Landlord may incur in connection with a request for its consent.

- (b) The Landlord is not required to consider any request for its consent until such time as it has received all of the preceding information and monies. The Landlord will, within 20 days after having received such written notice and all such necessary information and monies, notify the Tenant in writing either that it consents (subject to the Tenant complying with all of the provisions of this section 13.3 on its part to be complied with) or does not consent to the Transfer.
- (c) If there is a Transfer of this Lease, the Landlord may collect the Transferee the rent payable by it under the agreement giving effect to the Transfer and apply the net amount collected to the Rent, but no acceptance by the Landlord of any payments by a Transferee shall be deemed a waiver of the obligation to obtain the Landlord's consent to a Transfer, or the acceptance of the Transferee as tenant, or a release of the Tenant from the further performance by the Tenant of the Tenant's Covenants.
- (d) Any document evidencing an assignment shall be prepared by the Landlord or its solicitors. Any document evidencing the Landlord's consent to a Transfer shall be prepared by the Landlord or its solicitors.
- (e) All legal costs incurred by the Landlord with respect to a request by the Tenant for the Landlord's consent to a proposed Transfer shall be paid by the Tenant to the Landlord upon demand, and, in any event, prior to the Landlord giving its consent. For clarity, such costs shall be paid by the Tenant whether or not the Landlord consents to the proposed Transfer. The Tenant shall provide to the Landlord such deposit on account of the Landlord's legal cost as the Landlord or its solicitors may require prior to the Landlord instructing its solicitors to deal with the proposed Transfer.
- (f) Every Transfer is conditional upon the Tenant and the Transferee executing an agreement with the Landlord providing for the following:
 - (i) the Transferee's agreement to be bound by all of the Tenant's Covenants as if such Transferee had originally executed this Lease as tenant;
 - (ii) if the Transferee is not an assignee, the Transferee's agreement that, at the Landlord's option, all of the Transferee's right, title and interest in and to the Premises absolutely terminates upon the surrender, release, disclaimer or merger of this Lease, despite the provisions of sections 17, 21 or 39(2) of the Act;
 - (iii) the Transferee's agreement to waive any right it, or any person on its behalf, may have to disclaim, repudiate or terminate this Lease pursuant to any bankruptcy, insolvency, winding-up or other creditors' proceeding, including the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada), and to agree that in the event of any such proceeding the Landlord will comprise a separate class for voting purposes; and
 - (iv) amending this Lease to increase the Minimum Rent specified in the Basic Provisions to equal the fair market rental value. If this Lease has been renewed, then for the purpose of the foregoing calculation, the Commencement Date will be deemed to be the first day of such Renewal Term.
- (g) In the event of any such Transfer, the Tenant shall not be permitted to receive, either directly or indirectly, rent (excluding rent on account of Additional Rent) which is greater than the Minimum Rent payable hereunder to the Landlord.
- (h) All amounts payable by the Tenant pursuant to this Lease up to the effective date of the Transfer, including all amounts required to be paid by the Tenant pursuant to this section 13.3, shall be paid in full to the Landlord prior to the Landlord executing the document affecting the Transfer and evidencing its consent thereto, and until such time as the said amounts are paid in full, the Landlord shall be under no obligation to give its consent to the Transfer or execute the document effecting the Transfer and evidencing its consent thereto. Where any such amounts cannot be finally determined at that time, the Tenant shall deposit with the Landlord an amount reasonably estimated by the Landlord to cover such undetermined amounts, such amount to be held by the Landlord without any liability for interest thereon until the estimated amounts become finally determined by the Landlord, at which time the appropriate adjustments shall be made.
- (i) Notwithstanding the effective date of any permitted Transfer as between the Tenant and the Transferee, all Rent for the month in which such effective date occurs shall be paid in advance by the Tenant so that the Landlord shall not be required to accept partial payments of Rent for such month from either the Tenant or any Transferee.

- (j) If this Lease is disclaimed or terminated by any trustee in bankruptcy of any Transferee or by the Transferee in accordance with its rights under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors Arrangement Act* (Canada), the Tenant shall not be released from its obligations under this Lease, as amended by the document affecting the Transfer, and the Tenant shall, from the date of such disclaimer or termination, continuously, actively and diligently carry on business in the Premises pursuant to the terms of this Lease for the balance of the Term. The Tenant's obligations under this section shall survive any such disclaimer or termination.
- (k) The Landlord has no liability for any losses, damages (direct, indirect, consequential, economic or otherwise), costs or expenses incurred by the Tenant as a result of the Landlord unreasonably withholding its consent to any Transfer. The Tenant's only remedy in connection with the Landlord unreasonably withholding its consent to a proposed Transfer is to bring an application to the courts (after giving the Landlord the prescribed notice under the Rules of Civil Procedure) for a declaration that such Transfer should be allowed.
- (l) Notwithstanding any Transfer permitted or consented to by the Landlord, the Tenant will not be released from its obligation to observe and perform the Tenant's Covenants and the Tenant and the Transferee will be jointly and severally liable for the observance and performance of the Tenant's Covenants.

13.4 <u>Corporate Ownership</u>

- (a) If the Tenant is a corporation or if the Landlord consented to a Transfer of this Lease to a corporation, any transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription, from time to time of all or any part of the corporate shares of the Tenant or of any direct or indirect parent corporation of the Tenant which results in any change in the present effective voting control of the Tenant by the Person holding such voting control at the date of execution of this Lease (or at the date a Transfer of this Lease to a corporation is permitted) shall, for the purposes of this Article 13.00, be deemed a Transfer and the provisions of sections 13.1, 13.2 and 13.3 will apply (with such changes in points of detail as are necessary) to the fullest extent possible even though there will not be a Transferee.
- (b) If the Tenant does not acquire the prior written consent of the Landlord as required by section 13.1 to a Transfer of the type described in section 13.4(a), then without limiting any of the Landlord's rights and remedies against the Tenant, the Landlord may, but is not obligated to, terminate this Lease upon 5 days' written notice to the Tenant given up to 60 days after the date the Landlord becomes aware of such Transfer. The Tenant shall make available to the Landlord, or its lawful representatives, all corporate books and records of the Tenant for inspection at all reasonable times, in order to ascertain whether there has been any change in control.
- (c) The preceding provisions of this section 13.4 do not apply:
 - (i) to the Tenant if at the time of a Transfer contemplated by section 13.4(a):
 - (A) the Tenant is a public corporation whose shares are traded and listed on any recognized stock exchange in Canada or in the United States; or
 - (B) the Tenant is a private corporation but is controlled by a public corporation defined as aforesaid; or
 - (ii) to a change of control arising from a transfer of shares among the shareholders of the Tenant in existence on the date of this Lease.

13.5 <u>No Advertising of the Premises</u>

The Tenant shall not print, publish, post, display or broadcast any notice or advertisement to the effect that the Premises are for lease or for sale or otherwise advertise the proposed sale or lease of the whole or any part of the Premises and shall not permit any broker or other party to do any of the foregoing, unless the complete text and format of any such notice, advertisement or offer is first approved in writing by the Landlord acting reasonably. Without in any way restricting or limiting the Landlord's right to refuse any text or format on other grounds, no text proposed by the Tenant shall contain any reference to the rental rate of the Premises.

13.6 Sale or Assignment by Landlord

If the Landlord sells or leases the Lands, or any part of it, or if the Landlord assigns this Lease, or any interest in it, then to the extent that such purchaser, tenant or assignee assumes the Landlord's Covenants, the Landlord will, and without further agreement, be freed and relieved of all liability with respect to the Landlord's Covenants.

ARTICLE 14.00 CONSTRUCTION AND OTHER LIENS

14.1 <u>Discharge of Liens</u>

- (a) The Tenant shall pay all of its contractors and suppliers and do all things necessary so as to minimize the possibility of a lien attaching to the Lands, but if any such lien is registered on title to the Lands, the Tenant shall discharge it within 10 days following the date that the Landlord gives written notice to the Tenant demanding it be discharged (the "Discharge Period"). The Tenant may, however, contest the validity of any such lien, but in doing so it must, prior to the expiry of the Discharge Period:
 - (i) obtain an order of a court of competent jurisdiction discharging the lien from the title to the Lands by paying into Court such monies as may be required in order to obtain such an order; and
 - (ii) discharge such lien from title to the Lands.
- (b) If the Tenant fails to discharge any such lien prior to the expiry of the Discharge Period, then, in addition to any other right or remedy of the Landlord, the Landlord may discharge such lien by paying the amount claimed to be due into Court and the Tenant shall reimburse the Landlord for the amount paid by the Landlord into court and for all costs and expenses (including legal expenses) incurred by the Landlord in securing such discharge within 10 days following the Tenant's receipt of an invoice from the Landlord.

ARTICLE 15.00 FIXTURES AND SIGNS

15.1 Removal and Restoration by Tenant

- (a) All Alterations made to the Premises by the Tenant, or made by the Landlord on the Tenant's behalf, whether before or after the Commencement Date (including all electrical, computer and telephone cabling), shall become the property of the Landlord immediately upon their installation in the Premises and without compensation to the Tenant. The Tenant shall not remove from the Premises any plumbing, heating, ventilation, air-conditioning or lighting equipment, wiring (including computer and telecommunication wiring and cabling) or electric panels and services, other building services, Alterations or Leasehold Improvements, but the Tenant:
 - (i) shall remove its trade fixtures at the end of the Term, but if the Tenant is in default of any of the Tenant's Covenants, it may only remove its trade fixtures if the Landlord consents to the Tenant removing them;
 - (ii) may remove its trade fixtures during the Term in the usual and normal course of its business and with the prior written consent of the Landlord, if such trade fixtures have become excess for the Tenant's purposes or the Tenant is substituting new and similar trade fixtures, provided the Tenant is not in default hereunder;
 - (iii) shall, at the end of the Term, remove from the Premises all of its (whether owned or leased) equipment, inventory, furniture and other personal property not affixed to the Premises;
 - (iv) shall, at the end of the Term, remove from the Building all exterior and interior signs (other than Building standard signage erected by the Landlord) which the Tenant caused to be erected; and
 - (v) shall, at the end of the Term, carry out the removals and work required by section 11.2(g),

all such items being removed being called a "Removable Item" or "Removable Items". The Tenant shall, in the case of every removal of a Removable Item, either during or at the end of the Term, make good any damage caused to the Premises or the Building by the installation and removal of

any Removable Item, all at the Tenant's sole cost and expense. The Tenant shall also, if required by the Landlord (either before or after the expiration of the Term), restore the Premises to the condition in which they existed prior to the installation of the Removable Items, reasonable wear and tear of the type described in section 9.1(c) excepted, including the restoration of such standard fixtures as may have been installed by the Landlord and which were removed or altered by the Tenant in connection with the installation of the Removable Items.

- (b) If the Tenant does not remove the Removable Items which it is required to remove pursuant to section 15.1(a) at the expiration or earlier termination of the Term, the Removable Items remaining on the Premises beyond the end of the Term (or such part of them as the Landlord may designate) shall be deemed abandoned and, to the extent not otherwise the property of the Landlord, become the property of the Landlord and the Landlord may use them, retain them, destroy them, sell them (on such terms as the Landlord may determine, which need not be reasonable) or otherwise deal with them in such manner as the Landlord determines in its sole and absolute discretion, all without any obligation, compensation or duty to account to the Tenant. For clarity, if the Landlord sells any Removable Items in accordance with the foregoing, the Landlord shall be entitled to retain all proceeds received from such sale for its own account and without any duty to account to the Tenant. The Landlord may also remove such of the Removable Items as the Landlord may designate and store them at the Tenant's risk and expense. The Tenant shall indemnify and save harmless the Landlord:
 - (i) for the costs of removing the Removable Items from the Premises and for the repair and restoration of the Premises caused by the removal of the Removable Items; and
 - (ii) from all Claims made by third parties against the Landlord in connection with the Landlord dealing with the Removable Items in accordance with the terms of this section.
- (c) Despite the foregoing, in no event will any Hazardous Substances be deemed to become the Landlord's property (unless the Landlord was responsible for any Hazardous Substances being located on the Premises) but they will otherwise be considered Removable Items.

15.2 <u>Tenant's Signs</u>

The Tenant may not paint, affix or display any sign, fixture, advertisement, notice, lettering or decoration on any part of the Lands or the exterior part of the Building or in any part of the Premises which is visible from the exterior of the Premises without the prior written consent of the Landlord as regards the size, content, location and manner of affixation of such signs, such consent not to be unreasonably or arbitrarily withheld or delayed. All signs installed by the Tenant must comply with all applicable Laws. The Landlord may institute a sign policy for tenants of the Building from time to time and same are incorporated as an integral part of this Lease. The Landlord may erect all of the Tenant's signs in or on the Building and the cost of the signs and their installations, on going maintenance, hydro (if applicable), removal and restoration shall be paid by the Tenant as Additional Rent on demand together with 15% of the cost of such expenses.

15.3 Landlord's Sign

The Landlord may at any time during the:

- (i) last 6 months of the Term, place upon the exterior of the Premises or on the Lands a sign stating that the Premises are "For Lease"; and
- (ii) Term, place upon the exterior of the Building or on the Lands, a sign stating the Building is "For Sale".

Such signs shall be of reasonable dimensions and shall be reasonably placed so as not to interfere with the Tenant's business, and the Tenant shall not remove such signs, or permit same to be removed.

ARTICLE 16.00 STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

16.1 <u>Status Statement</u>

The Tenant shall, at the request, from time to time, of the Landlord, execute and deliver to the Landlord a statement in writing, in the form supplied by the Landlord and addressed to the Person(s) required by the

Landlord, certifying that this Lease is unmodified and in full force and effect (or if modified, stating the modification and that this Lease is in full force and effect as modified); the Commencement Date; the amount of Rent then being paid under this Lease; the dates to which Rent has been paid; whether or not there is any existing default on the part of the Landlord of which the Tenant is aware; and any other particulars regarding this Lease, the Premises, the Building or the Lands as the Landlord may require. The Tenant shall execute and return such statement to the Landlord within 10 days following the date that the request for such statement was made, failing which the Landlord may sign such statement on behalf of the Tenant, in which case the Tenant may not dispute the validity or accuracy of the matters contained in such statement.

16.2 Attornment

If proceedings are brought for the foreclosure of, or if there is exercise of the power of sale under any Mortgage of the Lands, the Tenant shall attorn to the Mortgagee or the purchaser upon any such foreclosure or sale and recognize such Mortgagee or the purchaser as the landlord under this Lease. The Tenant shall execute, within 15 days following the Landlord's written request, such instruments or certificates to carry out the intent of this section 16.2 as shall be requested by the Landlord, or such Mortgagee or purchaser.

16.3 <u>Lease Subordination</u>

- (a) This Lease and all of the Tenant's rights under this Lease are subject and subordinate to all Mortgages registered on title to the Lands on the date when the parties execute this Lease (and to all advances made or subsequently made upon the security thereof and all renewals, modifications and extensions thereof). If required by the Landlord or any future Mortgagee, this Lease will be deemed to be subject and subordinate to all future Mortgages registered on title to the Lands after the date the parties execute this Lease (and to all advances made or hereafter to be made upon the security thereof and all renewals, modifications and extensions thereof). The Tenant agrees to execute, within 15 days following the written request of the Landlord or a Mortgagee, an agreement or instrument confirming such subordination.
- (b) Despite section 16.3(a), the Tenant is not required to subordinate this Lease to any future Mortgage unless the Mortgagee thereunder provides the Tenant with a non-disturbance agreement on the Mortgagee's standard form, provided such form provides that notwithstanding the exercise by the Mortgagee of its rights under the Mortgage, the Mortgagee agrees not to disturb the Tenant's occupation of the Premises as long as the Tenant is not in default under this Lease.

16.4 <u>Non-Disturbance Agreement</u>

Provided that the Tenant is not in breach of the Tenant's Covenants hereunder beyond any applicable cure period, the Landlord, upon written request of the Tenant shall, using reasonable commercial efforts, request from each of its Mortgagees a non-disturbance agreement in favour of the Tenant. Such non-disturbance agreement shall be on the Mortgagee's standard form and will, among other things, provide that if the Mortgagee enforces its security, the Tenant will be entitled to remain in possession of the Premises in accordance with the terms of this Lease provided that no Event of Default occurs. If the Tenant wishes to make changes to a Mortgagee's standard form of non-disturbance agreement, the Tenant shall negotiate such changes directly with the Mortgagee. All costs incurred by the Landlord in connection with attempting to obtain such non-disturbance agreements, including all legal costs and any amounts charged by the Mortgagee, shall be paid for by the Tenant on demand being made by the Landlord. For clarity, all such costs shall be paid by the Tenant regardless of whether or not the Landlord obtains the said non-disturbance agreements. The Tenant shall provide to the Landlord such deposit on account of such costs as the Landlord may reasonably require prior to the Landlord attempting to obtain such non-disturbance agreements.

16.5 <u>Power of Attorney</u>

The Tenant hereby irrevocably constitutes the Landlord the agent or attorney of the Tenant for the purpose of executing the documents contemplated by sections 16.1, 16.2 and 16.3 and for making application at any time and from time to time to register postponements of this Lease in favour of Mortgages in order to give effect to the provisions of section 16.2 and section 16.3. The Landlord shall only exercise such power of attorney if the Tenant fails to execute and return to the Landlord the document requested within 15 days after the Landlord requests the Tenant in writing to sign same. The Tenant may not dispute the validity or effectiveness of any document signed by the Landlord in accordance with this section 16.5 and this section may be pleaded by the Landlord as a complete estoppel against any Claims brought by the Tenant seeking to dispute or challenge the validity or effective of any document signed by the Landlord in accordance with this section.

16.6 <u>Financial and Other Information</u>

- (a) The Tenant shall, within 10 days following the Landlord's written request, provide the Landlord with:
 - (i) copies of such of the Tenant's financial statements as the Landlord may require. Despite the foregoing, the Landlord may only request such financial information if it is required by an actual or potential Mortgagee or purchaser of the Premises, and then only if such Persons covenant to keep such information confidential (subject to their being entitled to disclose it to their professional advisors, who shall be instructed to keep such information confidential); and
 - (ii) a certificate (certified to be true and correct by a senior officer of the Tenant or by a knowledgeable partner where the Tenant is a partnership) which shall:
 - (A) in the case where the Tenant is a corporation, name every direct and indirect shareholder of the Tenant; or
 - (B) in the case where the Tenant is a partnership, name every direct and indirect partner of the Tenant,

but if the Tenant, or a direct or indirect shareholder of the Tenant, is a public corporation, such certificate does not have to disclose the names of the shareholders of such public corporation.

ARTICLE 17.00 DAMAGE, DESTRUCTION AND EXPROPRIATION

17.1 <u>Destruction</u>

- (a) If at any time during the Term the Building is damaged or destroyed by fire, lightning or tempest or by other casualty (the date of such damage or destruction being called the "Damage Date"), then the following provisions apply:
 - (i) if:
 - (A) the damage or destruction renders 30% percent or more of the Rentable Area of the Building wholly unfit for occupancy or it is impossible or unsafe to use and occupy it;
 - (B) in the opinion of the Expert the Building is damaged or destroyed to such a material extent or the damage or destruction is of such a nature that the Building must be or should be totally or partially demolished, whether or not the Premises are damaged or destroyed and whether the Premises are to be reconstructed in whole or in part or not;
 - (C) the damage or destruction is caused by an uninsured peril (being a peril not covered under the insurance to be maintained by the Landlord pursuant to this Lease); or
 - (D) if any Mortgagee exercises its rights under its Mortgage to apply all or part of the insurance proceeds received, or receivable, by the Landlord on account of such damage or destruction so that there would not be sufficient, or if for any other reason there are insufficient, insurance proceeds to pay for the estimated cost (as estimated by the Landlord) of the Landlord's Reconstruction (as defined below),

then the Landlord may at its option terminate this Lease by giving to the Tenant notice in writing of such termination within 60 days following the Damage Date, in which event this Lease and the Term hereby demised will cease and be at an end as of the Damage Date and the Rent will be apportioned and paid in full to the Damage Date;

(ii) if the damage or destruction is such that the Premises, in the opinion of the Landlord, cannot be repaired with reasonable diligence within 240 days from the Damage Date (the "Repair Period"), then the Landlord or the Tenant may terminate this Lease by giving to the other notice in writing of such termination within 60 days following the Damage Date, in which event this Lease and the Term hereby demised will cease and be at an end as at

the Damage Date and the Rent will be apportioned and paid in full to the Damage Date. If neither the Landlord nor the Tenant terminates this Lease, then the Landlord will do the Landlord's Reconstruction and if the Premises has been rendered wholly unfit for occupancy or if it is impossible or unsafe to use and occupy it, the Minimum Rent (but not the Additional Rent) will abate (to the extent of insurance recoveries received by the Landlord) from the Damage Date until the earlier of:

- (A) 30 days following the date on which the Landlord has completed the Landlord's Reconstruction; and
- (B) the date that the Tenant recommences its business operations in the Premises,

the "Abatement Period". The term "Landlord's Reconstruction" in this Article 17.00 means the reconstruction or repair of those items (other than Leasehold Improvements) insured under the insurance carried by the Landlord pursuant to sections 12.3(a)(i) and 12.3(a)(ii), but excluding any items to be covered under the insurance to be maintained by the Tenant pursuant to section 12.1;

- (iii) if the damage or destruction is such that the Premises, in the opinion of the Landlord, can be repaired with reasonable diligence within the Repair Period, then the Landlord will do the Landlord's Reconstruction and, if the Premises has been rendered wholly unfit for occupancy or if it is impossible or unsafe to use and occupy it, the Minimum Rent (but not the Additional Rent) will abate (to the extent of insurance recoveries received by the Landlord) throughout the Abatement Period;
- (iv) if this Lease is not terminated in accordance with the preceding provisions of this section 17.1 and the damage or destruction is such that a portion of the Premises is capable of being partially used for the purposes for which it is hereby demised, then:
 - (A) notwithstanding the preceding provisions of this section 17.1, the Minimum Rent (but not the Additional Rent) will only abate proportionately (to the extent of insurance recoveries received by the Landlord) to the part of the Premises rendered untenantable throughout the Abatement Period, but only if the length of time to complete the necessary repairs will take more than 30 days; and
 - (B) the Landlord shall do the Landlord's Reconstruction;
- (v) if this Lease is not terminated in accordance with the preceding provisions of this section 17.1, then the Tenant may not commence carrying out the repairs and replacements which are the Tenant's obligations in this Lease (the "Tenant's Reconstruction") until such time as the Landlord advises the Tenant in writing that the Landlord's Reconstruction, if any, has progressed to the point that the Tenant may commence the Tenant's Reconstruction without interfering with the completion of the Landlord's Reconstruction. Upon being so advised by the Landlord or if there is no Landlord's Reconstruction to be performed, the Tenant shall thereafter proceed to carry out and complete the Tenant's Reconstruction as soon as reasonably possible;
- (vi) if the Landlord elects to repair, reconstruct or rebuild the Building in accordance with the provisions of this Article 17.00, the Landlord may use plans and specifications and working drawings in connection therewith which are different from those used in the original construction of the Building; and
- (vii) the decision of the Landlord's Expert as to the time in which the Building and/or the Premises can or cannot be repaired, the state of tenantability of the Premises and/or the Building and as to the date on which the Landlord's Reconstruction is completed, shall be final and binding on the parties. The Landlord shall use reasonable efforts to cause its Expert to advise the Landlord and the Tenant of the length of time it will take to repair the damage to the Building and/or the Premises as soon as possible following the Damage Date.

17.2 <u>Expropriation</u>

If the Premises or the Building is expropriated, then each party has the right to recover from the expropriating Authority, but not from the other, such compensation as may be separately available to each party from the expropriating Authority by reason of such expropriation or taking. Neither party shall take

any steps or actions which would compromise the other party's claim against the expropriating Authority. No party shall assert any Claims against the other arising out of such expropriation or taking.

ARTICLE 18.00 LANDLORD'S COVENANTS

18.1 Quiet Enjoyment

If the Tenant observes and performs the Tenant's Covenants, then the Tenant may peaceably possess and enjoy the Premises for the Term without any hindrance, interruption or disturbance from the Landlord or any other Person lawfully claiming by, from or under the Landlord.

18.2 <u>Landlord's Warranty</u>

The Landlord warrants that, as of the Commencement Date, the Building and all its systems relating thereto comply with all applicable Laws.

18.3 Landlord's Additional Covenants

- (a) Throughout the Term, the Landlord covenants and agrees to:
 - (i) maintain, repair, replace, operate and insure the Building as would a prudent owner of a similar building in proximity to the Lands, including without limitation, maintain, repair and replace the foundation, HVAC Equipment, roof membrane, roof structure, structural walls and all other structural elements of the Building including the Premises, and parking areas and driveways; and
 - (ii) ensure that access to the Building and Premises is available at all times in accordance with the terms and conditions herein.

ARTICLE 19.00 DEFAULT

19.1 <u>Default</u>

- (a) On the occurrence of an Event of Default:
 - (i) the Landlord may re-enter the Premises and expel all Persons and remove all property from the Premises. Such property may be removed and sold or disposed of by the Landlord in such manner as the Landlord in its sole and absolute discretion deems advisable or it may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby including any such loss or damage caused by the negligence of the Landlord or its servants and agents. If the Landlord sells such property, the Landlord may retain all proceeds received from such sale for its own account, but the Landlord will apply such proceeds against the damages suffered by the Landlord as a result of such re-entry; and
 - (ii) the full amount of the current month's Rent together with the next 3 months' Rent becomes immediately due and payable as accelerated Rent.
- (b) If the Landlord elects to re-enter the Premises or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, the Landlord may either:
 - (i) terminate this Lease. The Landlord may effect such termination by written notice to Tenant (a "Termination Notice"), it being understood and agreed to by the Tenant that actual possession of the Premises shall not be required to effect a termination of this Lease and that the delivery of a Termination Notice to the Tenant alone shall be sufficient. Such Termination Notice may, in the Landlord's sole discretion, permit the Tenant to remain on the Premises as a tenant at will, which tenancy at will may be terminated at any time by either party without any prior notice. The Tenant agrees that, if Landlord serves a Termination Notice which, among other things, permits Tenant to remain in possession of the Premises as a tenant at will, this Lease will thereupon be terminated and the Tenant shall be a tenant at will and that the Landlord may re-enter the Premises at any time thereafter without further notice; or

- (ii) as agent for the Tenant and without terminating this Lease, make any alterations and repairs which the Landlord, in its sole and absolute discretion, deems necessary in order to re-let the Premises, or any part thereof, as agent for the Tenant for such term or terms (which may be for a term extending beyond the Term) and at such rent and upon such other terms, covenants and conditions as the Landlord in its sole and absolute discretion considers advisable. Upon each such re-letting all rent received by the Landlord will be applied as follows:
 - (A) first to the payment of any indebtedness other than Rent due hereunder;
 - (B) second, to the payment of any costs and expenses of re-letting, including brokerage fees and solicitors' fees and the costs of all alterations and repairs to the Premises which the Landlord, in its sole and absolute discretion, deems necessary in order to re-let the Premises;
 - (C) third, to the payment of Rent due and unpaid hereunder; and
 - (D) the residue, if any, will be held by the Landlord and applied in payment of future Rent as same becomes due and payable hereunder.

If the rent received from such re-letting during any month is less than that payable by the Tenant under the terms of this Lease, the Tenant will pay any such deficiency in advance on the first day of each month. If the Landlord has other premises available in the Building for lease, the Landlord shall be under no obligation whatsoever to first re-let, or attempt to re-let, the Premises ahead of such other available premises and the Landlord shall be entitled to lease all such other available premises prior to re-letting the Premises, and in so leasing such other available premises, the Landlord will not be in breach of any obligation on its part, if any, to mitigate its losses upon re-entering or taking possession of the Premises. The Landlord shall in no way be responsible or liable for any failure to re-let the Premises or any part thereof, or for any failure to collect any Rent due upon any such reletting. Notwithstanding any re-entry or re-letting without termination of this Lease, the Landlord may at any time thereafter elect to terminate this Lease for the previous breach.

- (c) No re-entry or taking possession of the Premises by the Landlord will be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to the Tenant.
- (d) If the Landlord terminates this Lease, in addition to any other remedies it may have, the Landlord may recover from the Tenant all damages it incurs by reason of the Tenant's breach, including the cost of recovering the Premises, brokerage fees and solicitors' fees, the cost of all tenant inducements, alterations and repairs to the Premises which the Landlord, in its sole and absolute discretion, deems necessary in order to re-let the Premises and the worth at the time of such termination of the excess, if any, of the amount of Rent required to be paid pursuant to this Lease for the remainder of the Term (had this Lease not been terminated) over the then rental value of the Premises, as determined by the Landlord, for the remainder of the Term (had this Lease not been terminated), all of which amounts shall be immediately due and payable by the Tenant to the Landlord. Upon any termination of this Lease, the Landlord shall be entitled to retain all of the monetary deposits provided by the Tenant as liquidated damages on account of the minimum amount of damages which the parties agree the Landlord will suffer as a result of such termination, all without the necessity for any legal proceedings and without prejudice to the Landlord's right to claim and recover such additional damages as the Landlord may suffer or incur. In no circumstances whatsoever shall the Landlord be required to return the said deposits or any part thereof to the Tenant.

19.2 <u>Legal Expenses</u>

If the Landlord seeks the assistance of legal counsel to recover possession of the Premises, re-let the Premises, recover Rent, or because of the breach of any of the other Tenant's Covenants, or to advise the Landlord on any of the foregoing matters, the Tenant shall pay to the Landlord all legal expenses incurred by the Landlord on demand.

19.3 Rights Cumulative

The rights and remedies given to the Landlord in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by the Landlord will be deemed to be in exclusion of any other rights or remedies provided in this Lease or by law or in equity.

19.4 <u>Acceptance of Rent - Non-Waiver</u>

No receipt of monies by the Landlord from the Tenant after the cancellation or termination of this Lease in any lawful manner will reinstate, continue or extend the Term, or affect any notice previously given to the Tenant or operate as a waiver of the right of the Landlord to enforce the payment of Rent then due or thereafter falling due, or operate as a waiver of the right of the Landlord to recover possession of the Premises by proper suit, action, proceedings or other remedy. After the service of any notice to terminate or cancel this Lease and the expiration of any time therein specified or after the commencement of any suit, action, proceeding or other remedy, or after a final order or judgment for possession of the Premises, the Landlord may demand, receive and collect any monies due, or thereafter falling due without in any manner affecting such notice, suit, action, proceeding, order or judgment. Any and all such monies so collected will be deemed payments on account of the use and occupation of the Premises or at the election of the Landlord on account of the Tenant's liability hereunder.

19.5 <u>No Waiver</u>

No condoning or waiver by either the Landlord or Tenant of any default or breach by the other at any time or times in respect of any of the Landlord's Covenants or the Tenant's Covenants, respectively, to be performed or observed by the other will be deemed or construed to operate as a waiver of the Landlord's or Tenant's rights or remedies under this Lease or at law, as the case may be, in respect of any continuing or subsequent default or breach nor so as to defeat or affect in any way the rights or remedies of the Landlord or Tenant under this Lease or at law, as the case may be, in respect of any such continuing or subsequent default or breach. In particular, no act by the Landlord (including the subsequent acceptance of Rent by the Landlord) will be deemed to be a waiver of any preceding breach by the Tenant of any of the Tenant's Covenants or constitute a waiver of any of the Landlord's rights or remedies (including its right to terminate this Lease) in respect of such preceding breach by the Tenant regardless of the Landlord's knowledge of such preceding breach at the time of such act by the Landlord. Unless expressly waived in writing, the failure of the Landlord or the Tenant to insist in any one or more cases upon the strict performance of any of the Landlord's Covenants or the Tenant's Covenants, respectively, to be performed or observed by the other will not be deemed or construed to operate as a waiver for the future strict performance or observance of such Landlord's Covenants or Tenant's Covenants, as the case may be.

19.6 <u>Accord and Satisfaction</u>

No payment by the Tenant or receipt by the Landlord of a lesser amount than any instalment or payment of Rent due under this Lease will be deemed to be other than on account of the amount due. No endorsement or statement on any cheque or any letter accompanying any cheque or payment of Rent will be deemed an acknowledgement of full payment or an accord and satisfaction, and the Landlord may accept and cash such cheque or payment without prejudice to the Landlord's rights to recover the balance of such instalment or payment or pursue any other remedy provided in this Lease or at law (including its right to terminate this Lease). The Landlord may, at its option, apply or allocate any sums received from or due to the Tenant against any amounts, monies or charges due and payable under this Lease in such manner as the Landlord sees fit.

19.7 <u>Distress</u>

- (a) The Tenant hereby waives and renounces the benefit of any present or future Laws, statutory or otherwise, taking away or limiting or purporting to take away or limit the Landlord's right of distress and the Tenant hereby agrees with the Landlord that, notwithstanding any such Laws, all goods, chattels and inventory (collectively, the "Goods") from time to time on the Premises shall be subject to distress for Rent and the fulfilment of all of the Tenant's obligations under this Lease in the same manner as if such laws had not been made. Upon the Landlord effecting a distress, this provision may be pleaded as an estoppel against any Claims which the Tenant, or any Person claiming through the Tenant, may bring against the Landlord in respect of any distress levied by the Landlord.
- (b) In addition to any other rights of the Landlord to distrain, the Landlord shall have the right to distrain on all of the Goods on the Premises, including all heavy or connected machinery and equipment. The Landlord may without notice to the Tenant exercise any right of distress on the Premises and for such purpose the Tenant agrees that the Landlord may enter the Premises by any means which the Landlord in its sole and absolute discretion deems necessary, including, without limiting the generality of the foregoing, by using any keys in the Landlord's possession to unlock any locks preventing access to the Premises or by the use of such force as the Landlord in its sole and absolute discretion deems necessary, including the breaking of any lock, door or window or other point of entry into the Premises. The Landlord shall have the right to lock the Premises,

change any locks on the Premises and by any means exclude the Tenant from all or any parts of the Premises and the Landlord shall not thereby be terminating this Lease in the absence of an express written notice terminating this Lease. The Tenant hereby consents to being excluded by the Landlord from all or any parts of the Premises for the purpose of the Landlord exercising its right of distress and acknowledges and agrees that such exclusion shall not constitute a termination of this Lease in the absence of an express written notice from the Landlord terminating this Lease. The Landlord may exercise any right of distress at any time during the day or night and on any day of the week whether or not the Premises are occupied by any Person at the time.

- (c) The Tenant agrees that a distress of all of the Goods may be effected by written notice posted in or on the Premises, whether or not the Landlord locks or otherwise secures such Goods from the Tenant on the Premises or elsewhere. If the Landlord effects a distress by written notice or by any other means, the Tenant agrees not to use, remove or permit to be used or removed any distrained Goods and not to interfere with the Landlord's exercise of its right of distress.
- (d) The Tenant agrees that the Landlord's exercise of any right of distress as permitted hereby or at law shall not:
 - (i) constitute a trespass or breach of any express or implied term of this Lease or render the Landlord subject to any legal proceeding; or
 - (ii) render the Landlord liable or responsible in any way to the Tenant or any other Person for any act, fault, default, negligence, breach or omission of the Landlord or its bailiffs, agents, servants, employees or any other Persons, or for any occurrence or for any cause whatsoever, including any Injury to the Tenant or others or for any loss or damage to any property of the Tenant or others.
- (e) In addition to others entitled to do so, the Landlord and its agents and employees shall have the right without notice to the Tenant to purchase any Goods on the Premises distrained by the Landlord, provided that the price paid is not less than the lowest of the 2 valuations to be obtained by the Landlord as of the distress.
- (f) If there remains arrears of Rent following the completion of a distress, the Landlord may levy a further distress on the remaining Goods on the Premises.
- (g) The Tenant shall sign and deliver to the Landlord an undated Authorization in the form attached as Schedule "F" contemporaneously with its execution of this Lease, and at such other times as the Landlord may require in writing, in which case the Tenant will sign and return such undated Authorization within 10 days following the Landlord's written request. The Tenant hereby (i) authorizes the Landlord to insert such date in the Authorization as the Landlord determines from time to time; and (ii) acknowledges and agrees that the Landlord may provide such Authorization to the relevant taxing Authorities in order to obtain information from such taxing Authorities as to the amount of taxes (including penalties and interest) owing by the Tenant to such taxing Authority. The Landlord shall only be entitled to use such Authorization if there are outstanding arrears of Rent and then only to obtain information on such taxes (including penalties and interest) owing by the Tenant and for which the Landlord may become liable for paying (in whole or in part) in connection with the process of distraining upon any of the Goods.
- (h) The rights given to the Landlord pursuant to this section are in addition to, and not in replacement of, its common law right to distrain upon the Goods and this section shall in no way derogate from or in any way impair the Landlord's common law right to distrain upon the Goods.

19.8 <u>Restriction on Right</u>

The Tenant hereby waives any right it, or any person on its behalf, may have to disclaim, repudiate, terminate or compromise this Lease pursuant to any bankruptcy, insolvency, winding-up or other creditors proceeding, including the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) ("Insolvency Proceedings") and agrees that in the event of any Insolvency Proceedings, the Landlord will comprise a separate class for voting purposes.

19.9 Right to Perform

If the Tenant fails to comply with any of the Tenant's Covenants (the "Unperformed Covenants") and such failure continues after the Landlord has given the Tenant prior written notice of such failure and the cure period set out in such notice has expired, then the Landlord may, at its option, and without waiving or releasing the Tenant from the strict performance of the Tenant's Covenants, perform such of the

Unperformed Covenants as the Landlord considers desirable in such manner and to such extent as the Landlord considers desirable and in doing so may pay any necessary and incidental costs and expenses. All amounts paid by the Landlord in exercising its rights in this section, plus an administrative fee equal to 15% of the amounts so paid by the Landlord, together with interest thereon at the rate provided for in section 4.5 calculated from the date of the making of the payment by the Landlord, shall be deemed Additional Rent and shall be paid by the Tenant within 5 days of demand being made on the Tenant for the payment of same.

19.10 Repayment by the Tenant

- (a) If during the original Term:
 - (i) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors (including electing to terminate or disclaim this Lease in connection with a proposal made by the Tenant under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangements Act* (Canada) or any other statute allowing the Tenant to terminate or disclaim this Lease); or
 - (ii) this Lease is terminated for any reason,

then the Tenant shall pay to the Landlord:

- (iii) the Rent which the Tenant was not required to pay during the Rent free period described in the Basic Provisions; and
- (iv) the unearned portion of:
 - (A) all real estate commissions and legal fees paid by the Landlord in connection with the negotiation of and entering into of this Lease,

(the "Costs"). Such unearned portion shall be determined in accordance with the following formula: Costs $x R \div T$, where:

- (B) "R" means the number of days remaining in the Term as of the date of the termination or disclaimer; and
- (C) "T" means the total number of days in the Term (including any Renewal Term),

within 10 days following the date of such termination or disclaimer, the amount payable being deemed to be Rent in arrears immediately prior to the date of such termination or disclaimer.

ARTICLE 20.00 GENERAL

20.1 <u>Lease Entire Agreement</u>

This Lease constitutes the entire agreement between the parties pertaining to the subject matter of this Lease and supersedes all prior agreements, offers to lease, understandings, negotiations and discussions, whether oral or written, of the parties. This Lease may not be modified or amended except pursuant to an agreement in writing executed by the Landlord and the Tenant. There are no representations, warranties, covenants, inducements, conditions or other agreements, whether oral or written, express or implied, forming part of or in any way affecting or relating to this Lease, the Building, the Premises, the business which may be carried on in the Premises or the sales which may be expected from such business, except as expressly set out in this Lease. Without limiting the generality of the foregoing, the Tenant specifically acknowledges and agrees that the Landlord has not made any representations or warranties to the Tenant regarding whether the Tenant's intended use of the Premises is permitted by the applicable zoning, the Tenant having independently satisfied itself with respect to this matter prior to signing this Lease. All representations, warranties, covenants, inducements, conditions and other agreements made by either party or their representatives which are relied upon by the other party are contained in this Lease and each party disclaims reliance on any other representations, warranties, covenants, inducements, conditions or agreements.

20.2 <u>Impossibility of Performance</u>

- (a) In this Lease, "Force Majeure" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this Lease (other than an obligation to pay money) and includes:
 - (i) being unable to obtain the material, goods, equipment, service, utility or labour required to enable it to perform such obligation;
 - (ii) not being able to obtain any required permission or authority;
 - (iii) strikes, lockouts, walkouts, labour troubles, blockades or industrial disturbances;
 - (iv) power failures, fluctuations or non-availability;
 - (v) restrictive Laws or the orders or directions of any Authority (unless given as a result of a party's failure to comply with any Laws);
 - (vi) riots, insurrections, war, warlike operations, sabotage, terrorism, invasion or rebellion;
 - (vii) abnormal weather conditions or abnormal subsurface conditions; and
 - (viii) acts of God,

but excludes changes in Laws and events or circumstances that results in a party not having sufficient funds to comply with an obligation to pay money.

- (b) If a party (the "Non-performing Party") is prevented by an act of Force Majeure from performing any one or more of its obligations under this Lease (the "Affected Obligations"), the Non-performing Party will be excused from performing the Affected Obligations for the period during which the event of Force Majeure is ongoing (the "Force Majeure Period"), provided that the Non-performing Party's inability to perform those obligations is not due to its failure to take reasonable measures to protect itself against the event or circumstance giving rise to the event of Force Majeure. The Non-performing Party must perform the Affected Obligations within a period of time following the end of the relevant Force Majeure Period that is equivalent to the period of delay caused by any such Force Majeure.
- (c) Upon the occurrence of an event of Force Majeure, the Non-performing Party shall:
 - (i) promptly notify the other party of the occurrence of such event of Force Majeure, its effect on the performance of the Affected Obligations and how long it expects such event to last (but its failure to do so will not deprive the Non-performing Party of the benefit of this section);
 - (ii) update such information upon there occurring a change in such information;
 - (iii) promptly advise the other party of the expiry of the Force Majeure Period; and
 - (iv) use reasonable efforts to limit damages to the other party as a result of the delay in the performance of the Affected Obligations.
- (d) For clarity, the financial impecuniosity of a party does not entitle such party to the benefit of this section and the provisions of this section do not operate to excuse the Tenant from its obligation to pay Rent when due.
- (e) Provided that notwithstanding the foregoing and/or anything contained herein to the contrary, the parties hereto hereby acknowledge and agree that if the Commencement Date is delayed as a result of a Force Majeure, the Expiry Date shall be extended by a period equal to the Force Majeure Period accordingly.

20.3 <u>Notice</u>

- (a) Any notice or other communication required or permitted to be given by this Lease shall be in writing and shall be effectively given if:
 - (i) delivered by hand;
 - (ii) sent by prepaid courier service; or

(iii) sent by email,

in the case of notice to:

the Landlord at:

20 Caldari Rd. Unit # 2 Concord, Ontario L4K 4N8

Attention: Ravi Aurora

Email: Ravi@Aurora-Group.ca

the Tenant at: the Premises

or at such other address as the party to whom such notice or other communication is to be given advises the party giving same in the manner provided in this section, but notice by the Landlord to the Tenant will be sufficiently given if sent to the Premises notwithstanding any other address which the Tenant may give to the Landlord. Any notice or other communication delivered by hand or by prepaid courier service will be deemed to have been given and received on the day it is so delivered at such address, unless such day is not a Business Day in which case it will be deemed to have been given and received on the next following Business Day. Any notice or other communication sent by email will be deemed to have been given and received on the day it is sent provided that such day is a Business Day and it is sent before 5:00 p.m. on such day, failing which it will be deemed to have been given and received on the first Business Day after it is sent. Regardless of the foregoing, if there is a mail stoppage or labour dispute or threatened labour dispute which has affected or could affect normal mail delivery by Canada Post. If two or more Persons are named as Tenant, any notice or other communication given to any one of them in accordance with this section will be deemed to have been given to all of them.

20.4 Registration

- (a) The Tenant may not register this Lease or permit anyone acting on the Tenant's behalf to register it. The Tenant may, however, register a notice of lease (the "Notice") which only discloses the Premises, the Term, the Commencement Date, the renewal or extension rights, if any, and the parties to this Lease. In no event shall the Notice disclose the financial terms of this Lease (including the Rent) nor exhibit this Lease or any part of it. The Notice shall be subject to the approval of the Landlord's solicitors, at the Tenant's expense, such approval to be obtained prior to the Notice being registered on title to the Lands. The Tenant shall, at its sole cost and expense, discharge any Notice which it registers on title to the Lands within 20 days following the expiration or earlier termination of this Lease. If the Tenant fails to discharge any such Notice within the time period set out above, the Landlord (or its lawyers) may do so and the Tenant:
 - (i) consents to the Landlord and the Landlord's lawyers signing such documentation as may be required to discharge the Notice (and, in the case of the Landlord's lawyers, making all legal statements which are required to be made in order to obtain such discharge);
 - (ii) releases all Claims which it may have against the Landlord and the Landlord's lawyers for discharging the Notice in accordance with the provisions of this section; and
 - (iii) shall reimburse the Landlord for all costs incurred by the Landlord in discharging the Notice within 30 days following the Tenant's receipt of an invoice from the Landlord.

20.5 <u>Applicable Law</u>

This Lease is to be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario and is to be treated in all respects as an Ontario contract. Each of the parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

20.6 Tenant

If the Tenant consists of more than one Person, they are jointly and severally liable for the observance and performance of the Tenant's Covenants. If the Tenant is a partnership (the "Tenant Partnership") each Person who is, on the date this Lease is signed, a member of the Tenant Partnership and each Person who subsequently becomes a member of the Tenant Partnership (or any successor of it), are and will be jointly and severally liable for the observance and performance of the Tenant's Covenants and such liability will continue after such Person ceases to be a member of the Tenant Partnership (or any successor of it).

20.7 Partial Invalidity

If for any reason whatsoever any term, covenant or condition of this Lease, or the application thereof to any Person, firm or corporation or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (i) is deemed to be independent of the remainder of this Lease and to be severable and divisible therefrom, and its validity, unenforceability or illegality does not affect, impair or invalidate the remainder of this Lease or any part thereof; and
- (ii) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person and circumstance other than those as to which it has been held or rendered invalid, unenforceable or illegal.

20.8 <u>Compliance with the Planning Act</u>

It is an express condition of this Lease that the provisions of section 50 of the *Planning Act* (Ontario), as amended or replaced from time to time, be complied with if applicable in law. Until any necessary consent to this Lease is obtained, the Term (including any extensions or renewals thereof) and the Tenant's rights and entitlement granted by this Lease shall be deemed not to exceed a period of 21 years less a day from the Commencement Date. The Tenant shall apply diligently to prosecute such application for such consent promptly following the execution of this Lease by both the Landlord and the Tenant, and the Tenant shall be responsible for all costs, expenses, taxes and levies imposed, charged or levied as a result of such application and in order to obtain such consent. The Tenant shall at all times keep the Landlord informed of its progress in obtaining such consent and the Landlord shall cooperate with the Tenant in regard to such application, but at the sole expense of the Tenant. Notwithstanding the foregoing, the Landlord reserves the right at any time, at the Tenant's expense, to apply for such consent in lieu of the Tenant and the Tenant's application is hereby expressly made subject to any application which the Landlord intends to make.

20.9 <u>Survival of Obligations</u>

- (a) If the Tenant is in default of any of the Tenant's Covenants at the time this Lease expires or is terminated:
 - (i) the Tenant shall remain fully liable for the performance of such Tenant's Covenants; and
 - (ii) all of the Landlord's rights and remedies in respect of such failure shall remain in full force and effect.

all of which will be deemed to have survived such expiration or termination of this Lease.

- (b) The Landlord will not be released from its obligations under sections 4.6 and 5.2 following the expiration or earlier termination of this Lease.
- (c) Regardless of the expiry or earlier termination of this Lease:
 - (i) every indemnity, exclusion or release of liability and waiver of subrogation contained in this Lease or in any of the Tenant's insurance policies; and
 - (ii) those provisions of this Lease which are intended to have effect beyond the end of the Term,

will survive the expiration or termination of this Lease and continue in full force and effect.

20.10 No Option

The Tenant acknowledges and agrees that: (a) the provision of this Lease (whether in blank form, with the particulars inserted or with negotiated amendments included) by the Landlord to the Tenant for examination by the Tenant; (b) any negotiations between the Landlord and the Tenant regarding this Lease; or (c) the submission of this Lease duly signed by the Tenant (whether or not accompanied by any deposits or rent payments) to the Landlord, shall not give the Tenant any right, interest or option in or to the Premises. The Tenant will only acquire a right and interest in the Premises, and this Lease will only become effective as a lease, upon the execution of this Lease by both the Landlord and the Tenant and the delivery of a fully executed copy of this Lease by the Landlord to the Tenant. Upon the Tenant signing and providing this Lease to the Landlord, the Tenant will be deemed to have made an offer to lease the Premises on the

terms contained in such Lease which offer will be irrevocable for a period of 30 days following the date that the Landlord receives such signed copy of this Lease.

20.11 <u>Time</u>

Time is of the essence of this Lease and every part of it, except as may be expressly provided to the contrary in this Lease, and no extension or variation of this Lease will operate as a waiver of this provision. When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Lease, unless this Lease provides to the contrary, the date which is the reference date in calculating such period will be excluded.

20.12 <u>Interest in Lands</u>

The Tenant will look solely to the interest of the Landlord in the Building for the collection or satisfaction of any money or judgment which the Tenant may recover against the Landlord and the Tenant will not look for the collection or satisfaction of any such money or judgment from any of the other assets of the Landlord or of any person who is at any time a partner, joint venturer or co-tenant with the Landlord in the Building.

20.13 No Adverse Presumption

This Lease has been negotiated and approved by the parties and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of the authorship of any of the provisions of this Lease.

20.14 Binding Effect

This Lease enures to the benefit of and is binding on the parties and their respective heirs, executors, administrators, successors and permitted assigns. For clarity, no rights will enure to the benefit of any Transferee unless the Transfer to such Transferee has been done in accordance with the terms of Article 13.00.

20.16 Paramountcy

This Lease has been entered into in accordance with the terms and conditions of the offer to lease entered into by the Tenant and the Landlord, accepted by the Landlord as of November 13, 2020 (the "Offer"). In the event of a conflict or inconsistency between the terms and conditions of this Lease and the terms and conditions of the Offer, the Landlord shall determine, in its sole and unfettered discretion, which shall prevail. The Tenant acknowledges and agrees that any provisions contained herein which are not dealt with in the Offer or which expand and elaborate on provisions in the Offer shall be deemed not to be an inconsistency or in conflict with the provisions of the Offer.

20.17 <u>Counterparts and Execution</u>

This Lease may be executed by the parties in separate counterparts all of which, when taken together, will constitute a single agreement among the parties. Execution of this Lease by a party may be evidenced by electronic transmission of such party's signature, or by a photocopy of a party's signature, each of which will constitute the original signature of such party to this Lease. Any party who evidences its signature of this Lease by electronic transmission shall, promptly following a request by any other party, provide an originally executed counterpart of this Lease, but its failure to do so will not invalidate this Lease.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Lease.

Per:	
Name:	
Title:	
Per:	
Name:	
Title:	
I/We a	uthority to bind the Corporation.
COUN	TERTOP SOLUTIONS INC.
	TERTOP SOLUTIONS INC.
Per:	
Per: Name: Title:	
Per: Name: Title:	

I/We authority to bind the Corporation.

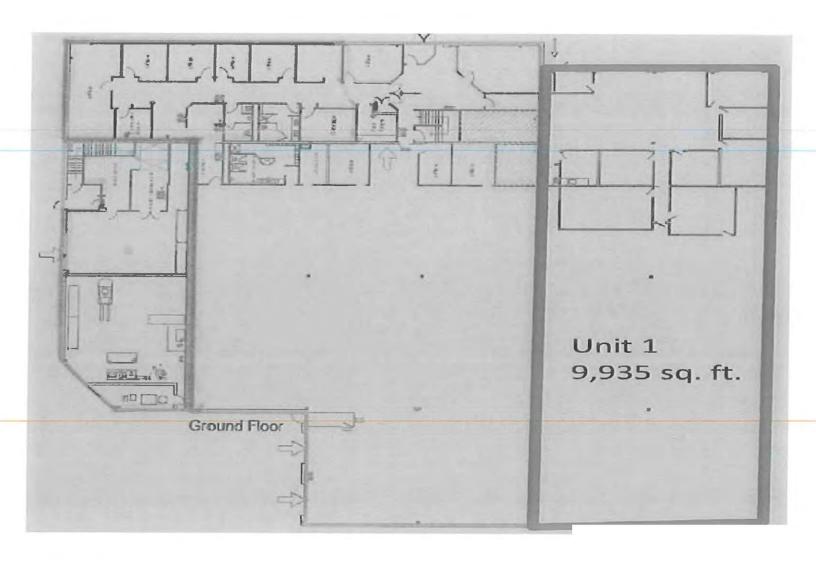
1000093910 ONTARIO INC. INC.

SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS

- 58 -SCHEDULE "B"

DIAGRAM OF THE BUILDING



SCHEDULE "C"

LANDLORD'S WORK

The Landlord shall complete the following work to the Property at its sole cost in good workmanlike order (the "Landlord's Work"):

(a) deliver the Premises in a clean, broom swept condition, free of any debris.

SCHEDULE "D"

TENANT'S WORK

The Tenant's Work consists of such work as the Tenant requires to be made to or in the Premises in order for the Tenant to be able to carry on its business operations in the Premises. The Tenant shall have the right to install its fixtures and equipment reasonably necessary for its operations in accordance with and subject to the provisions of the Lease, including without limitation, Article 9 thereof.

SCHEDULE "E"

RULES AND REGULATIONS

The Common Areas shall not be obstructed by the Tenant or occupants of the Building, or used by them for any other purpose than for ingress to and egress from the Premises, nor shall they sweep any dust, rubbish or other substance from the Premises into the Common Areas. Nothing shall be thrown by the Tenant or those for whom the Tenant is at law responsible, out of the windows or doors of the Building. The Landlord may, but in no event shall be obligated to, remove at the expense of the Tenant any such obstruction without notice or obligation to the Tenant at the sole cost and expense of the Tenant.

The Landlord shall have the right to control and operate the Building and the Common Areas in such manner as it deems best for the benefit of the tenants generally. The Landlord reserves the right to restrict or prohibit canvassing, soliciting or peddling in the Building.

The toilets, urinals, sinks and other water apparatus shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein. Any damage resulting by misuse shall be borne by the Tenant.

No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in any Common Areas without the prior written consent of the Landlord.

The Tenant shall not make or commit any improper noises in the Building, or interfere in any way with other tenants.

No birds or animals shall be kept in or about the Premises, nor shall radios, recordings or the like or other musical instruments be played in the Building so as to annoy other tenants, occupants or the Landlord.

No space in the Building shall be used for lodging, sleeping, or any immoral or illegal purposes.

If the Tenant desires telegraphic or telephonic connections, the Landlord will direct the electricians as to where and how the wires are to be introduced, and without such directions no boring or cutting for wires will be permitted. No pipes or wires or conduits will be permitted which have not been ordered or authorized in writing by the Landlord, and no outside radio or television aerials shall be allowed in the Building without authorization in writing by the Landlord. The Tenant shall not mark, drill into, bore or cut in any way damaging the walls, ceilings or floors of the Premises without the Landlord's prior written approval. No broadloom or carpeting shall be affixed to the Premises by means of a non-soluble adhesive or similar product.

No additional locks or bolts of any kind shall be placed upon any of the doors or windows by the Tenant, nor shall any changes whatsoever be made to existing locks or the mechanisms thereof except by the Landlord, at its option. The Tenant shall not permit any duplicate keys to be made, since additional keys as are reasonably required shall be supplied by the Landlord when requested by the Tenant in writing and such keys shall be paid for by the Tenant, and upon termination of the Tenant's Lease, the Tenant shall surrender to the Landlord all keys of the Premises and other part or parts of the Building.

Furniture and effects shall not be taken into or removed from the Premises except at such times and in such manner as may be previously consented to and approved by the Landlord. No heavy furniture shall be moved over floors so as to mark them.

All glass and trimmings in, upon or about the doors and windows of the Premises shall be kept whole, and whenever any part thereof shall become broken, the same shall be immediately replaced or repaired under the direction and to the satisfaction of the Landlord and the cost thereof shall be paid for by the Tenant.

Nothing shall be placed on the outside of window sills or projections of the Building.

The Tenant shall give the Landlord prompt notice of any accident to or any defect in the plumbing, heating, air-conditioning, mechanical or electrical apparatus or any other part of the Building.

The Tenant shall not permit any cooking in the Premises without the written consent of the Landlord.

The Tenant shall not hinder or prevent window cleaners from cleaning the windows of the Premises during normal business hours.

The Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such controls as in the judgment of the Landlord are necessary for the proper operation of the Premises and or the Building.

The Tenant shall have the right to place its own waste disposal bins onsite, at its own cost, subject to compliance with all Laws and the Rules and Regulations of this Schedule "E". All garbage and refuse shall not be burned in or about the Premises.

The Landlord shall have the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be helpful for the safety, care, cleanliness and appearance of the Premises and the Building, and for the preservation of good order therein, and the same shall be kept and observed by the Tenant and those for whom the Tenant is at law responsible.

SCHEDULE "F"

INSURANCE CERTIFICATE

TO:	1000093910 ONTARIO INC. (the "Landlord")						
RE:	(the "L	COUNTERTOP SOLUTIONS INC.(the "Insured") - Lease made as of the day of April, 2022 (the "Lease") between the Landlord and the Insured for Premises known as 20 Regina Road, Vaughan, Ontario (the "Premises")					
	ndersigne er"), that	ed hereby certifies, on behalf of and as agent for (the :					
	(i)	the undersigned and the Insurer have received and reviewed the Lease;					
(ii) the Insured has taken out the insurance required by section 12.1 of the Lease and the insurance complies with the requirements of section 12.1 of the Lease;							
	(iii)	nothing in the insurance policies issued to the Insured in connection Insured's obligations under the Lease prohibits Insured from giving the releases in favour of the Landlord contained in the Lease and such releases will not invalidate or entitle the Insurer to deny coverage under such insurance policies; and					
	(iv)	the Landlord may rely upon this Certificate as being binding on the undersigned and the Insurer.					
Insurar unders electro	nce Certi igned au nically tr surance	d certifies that it has the express right and authority to bind the Insurer to the terms of this ficate and confirms that the Landlord may rely upon this Certificate as being binding on the and the insurer. Execution of this Insurance Certificate may be evidenced by way of ansmitted signed copy of this Insurance Certificate and any such signature on such copy of Certificate will be deemed to constitute an originally signed copy of this Insurance					
Dated .							
	[Name of insurance broker],						
as ager	nt for	[Name of Insurance Company]					
Per:							

SCHEDULE "G"

AUTHORIZATION

TO: Whom It May Concern

RE: COUNTERTOP SOLUTIONS INC.

This is your good and sufficient authorization to advise 1000093910 Ontario Inc. (and its successors and assigns), and its property manager and lawyers, (both orally and in writing) whether or not there are any taxes (including any penalties and interest) owing by the undersigned to you and, if there are any taxes (including any penalties and interest) owing, the amount of same. You may rely upon a signed photocopy or an electronically transmitted copy of this Authorization as if it were an original copy of same.

Dated	the	day	of April	, 2022.

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Per:	 	
Name:		
Title:		
Per:	 	
Name:		

I/We have authority to bind the Corporation.

SCHEDULE "H"

SPECIAL PROVISIONS

1. <u>Interpretation</u>

- (a) In this Schedule "H", all references to:
 - (i) a section is deemed to refer to the applicable section of this Lease to which this Schedule "H" is attached; and
 - (ii) a paragraph is deemed to refer to the applicable paragraph of this Schedule "H".

2. <u>Required Conditions</u>

- (a) In this Schedule "H", the term "Required Conditions" means:
 - (i) the Tenant has not been in default of the Tenant's Covenants during the Term;
 - (ii) the Tenant is in possession of and is conducting its business in the whole of the Premises;
 - (iii) the Tenant is not insolvent or bankrupt, and has not made any assignment for the benefit of creditors and has not, becoming bankrupt or insolvent, taken the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors;
 - (iv) no petition in bankruptcy has been filed against Tenant and no receiving order has been made against Tenant and no proceedings have been commenced respecting the winding up or termination of the existence of Tenant;
 - (v) no receiver or other person has taken possession or effective control of the assets or business of Tenant or a substantial portion thereof pursuant to any security or other agreement or by any other means whatsoever, and there are no outstanding writs of execution against the Tenant; and
 - $\mbox{(vi)} \qquad \mbox{the Tenant has not assigned this Lease.}$

3. <u>Right to Renew the Term</u>

- (a) The Tenant may renew the Term for one (1) additional periods of five (5) year (the "Renewal Term") if:
 - (i) the Required Conditions have been met; and
 - (ii) it advises the Landlord in writing that it wishes to renew the Term not less than six (6) months prior to the expiration of the original Term or the then current Renewal Term, as the case may be, failing which this right to renew will be rendered null and void.
- (b) If the Tenant exercises its right to renew the Term in accordance with the foregoing, this Lease will be read as if the original term of this Lease was for a period of time commencing on the Commencement Date and ending on the last day of the relevant Renewal Term, and:
 - (i) the Minimum Rent for the relevant Renewal Term shall be determined by mutual agreement by the Landlord and the Tenant. If the Minimum Rent for the applicable Renewal Term has not been mutually agreed upon by the parties at least three (3) months prior to the commencement of such Renewal Term, the Minimum Rent for such Renewal Term will be determined by arbitration by a single arbitrator chosen by the parties, but if they cannot agree upon the arbitrator within five (5) days after the written request for arbitration by either party to the other, either party may apply to a judge for the appointment of an arbitrator in accordance with the provisions of the *Arbitration Act*, 1991 (Ontario). The provisions of the *Arbitration Act*, 1991 will govern the arbitration and the decision of the arbitrator will be final and binding upon the parties. Either or both of the parties shall instruct the arbitrator to render its decision no later than fifteen (15) days prior to the commencement of the applicable Renewal Term.
 - (ii) for clarity, upon the Tenant exercising its within rights to renew the Term;
 - (A) the Tenant will not be entitled to further renew the Term;

- (B) the Landlord will not be required to perform any Landlord's work and the Tenant will not be required to perform the Tenant's Work; and
- (C) the Tenant will not again be entitled to any fixturing period, leasehold improvement allowance, tenant inducement or rent free period.
- (c) The exercise of the within rights to renew are solely within the control of the Tenant and nothing contained in this Lease, including this Schedule, obligates or requires the Landlord to remind the Tenant to exercise the within rights to renew.

THIS IS **EXHIBIT "J"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024

A Commissioner, etc.



Ministry of Public and Business Service Delivery

Profile Report

GRAFCO INTERNATIONAL LAMINATING CORP. as of June 07, 2024

Act
Type
Name
Ontario Corporation Number (OCN)
Governing Jurisdiction
Status
Date of Amalgamation
Registered or Head Office Address

Business Corporations Act
Ontario Business Corporation
GRAFCO INTERNATIONAL LAMINATING CORP.
1961073
Canada - Ontario
Active
August 24, 2016
20 Caldari Road, Unit 2, Vaughan, Ontario, L4K 4N8, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors

Maximum Number of Directors

Name Address for Service Resident Canadian Date Began SATISH C. AURORA

20 Caldari Road, Unit 2, Vaughan, Ontario, L4K 4N8, Canada

No

10

March 11, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act fillings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Officer(s)

Name Position Address for Service Date Began SATISH C. AURORA President 20 Caldari Road, Unit 2, Vaughan, Ontario, L4K 4N8, Canada March 11, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act fillings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Corporate Name History

Name **Effective Date** GRAFCO INTERNATIONAL LAMINATING CORP. August 24, 2016

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W

Director/Registrar
This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act fillings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Amalgamating Corporations

Corporation Name
Ontario Corporation Number

Corporation Name Ontario Corporation Number 937573 ONTARIO INC.

937573

GRAFCO INTERNATIONAL LAMINATING CORP.

935208

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act fillings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W

Director/Registrar
This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act fillings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act fillings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Document List

Filing Name Effective Date

CIA - Notice of Change March 17, 2022

PAF: Satish C. AURORA

BCA - Articles of Amalgamation August 24, 2016

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintarilla W

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act fillings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

THIS IS **EXHIBIT "K"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024

Coffee To the Contract of the

A Commissioner, etc.

MULTI-TENANT LEASE

THIS AGREEMENT is made as of the _____ day of April , 2022.

AMONG:

1000093910 ONTARIO INC. (the "Landlord")

- and -

GRAFCO INTERNATIONAL LAMINATING CORP.

(the "Tenant")

The parties covenant and agree as follows:

BASIC PROVISIONS

The following are certain basic terms and provisions of this Lease (the "Basic Provisions"), which Basic Provisions form part of this Lease and are in certain instances referred to in subsequent sections of this Lease. Any conflict or inconsistency between the Basic Provisions and the other provisions of this Lease shall be resolved in favour of such other provisions.

Address of the

20 Regina Road, Vaughan, Ontario L4L 8L6

Lands

Location of the

Premises:

Unit 1 of the building situate on the Lands

Rentable Area of the Premises

Approximately 29,000 square feet

5 years, expiring on April 30, 2027 (the "Expiry Date"), subject to extension in Term:

accordance with paragraph 3 on Schedule "H"

Commencement

Date:

May 1st, 2022

Minimum Rent:	Period	Rent per Square Foot	Rent per Month	Rent per Annum		
	May 1st, 2022 up to and \$16.50 ncluding April 30th, 2025		\$39,875.00	\$478,500.00		
	May 1st, 2025 up to and including April 30th, 2027	\$16.75	\$40,479.17	\$485,750.00		
Deposit:	\$102,104.17. The Landlord shall use the Deposit in accordance with Section 4.6 hereof.					
Permitted Uses:	The Premises may only be used as an overflow storage warehouse, or for any other lawful use subject to the Landlord's prior written approval, which approval shall not be unreasonably withheld.					

accordance with the provisions of Paragraph 3 on Schedule "H".

The Tenant may renew this Lease for two (2) additional Terms of one (1) year in

ARTICLE 1.00 **INTERPRETATION**

Defined Terms 1.1

Right to Renew

Term:

In this Lease, unless there is something in the subject matter or context inconsistent therewith, the following words and terms, which may be used in the singular or the plural, have the respective meanings given them as follows:

- (a) "Act" means the Commercial Tenancies Act (Ontario);
- "Additional Costs" means the costs described in section 2.6(b); (b)

- (c) "Additional Rent" means all sums of money or charges required to be paid by the Tenant under this Lease in addition to Minimum Rent whether or not designated "Additional Rent" and whether payable to the Landlord or to third parties;
- (d) "Additional Work" means the work described in section 2.6(c);
- (e) "Additional Work Costs" means the costs described in section 2.6(c)(ii);
- (f) "Alterations" means any repairs, replacements, alterations, decorations or improvements to any part of the Premises, including any Tenant's Work;
- (g) "Authorities" means all federal, provincial, municipal and other governmental authorities (including suppliers of public utilities), departments, boards and agencies having or claiming jurisdiction;
- (h) "Basic Provisions" means those provisions of this Lease set out under the heading "Basic Provisions" and which precede Article 1.00;
- (i) "Building" means the building located on the Lands, together with all fixtures (excluding tenant's trade fixtures), improvements, heating, ventilation, air conditioning, electrical, mechanical, sprinkler and plumbing systems and facilities located in, on or serving such building, and all alterations, additions and replacements thereto;
- (j) "Business Day" means any day which is not a Saturday, Sunday or a statutory holiday observed in the Province of Ontario;
- (k) "Business Taxes" means all taxes, rates, duties, fees and assessments and other charges of every nature and kind that may be levied, rated, charged or assessed against or in respect of:
 - (i) all improvements, equipment and facilities of the Tenant on or in the Premises or any part or parts thereof; and
 - (ii) any and every business carried on or in the Premises or in respect of the use or occupancy thereof by the Tenant or any Transferee,

by any lawful Authority, and any and all taxes which may in future be levied in lieu of any of the foregoing, whether foreseen or unforeseen;

- (l) "Capital Tax" means an amount imputed by the Landlord to the Building in respect of taxes, rates, duties and assessments presently or hereafter levied, rated, charged or assessed from time to time upon the Landlord and payable by the Landlord (or by any corporation on behalf of the Landlord) on account of its or their capital. Capital Tax shall be imputed based on the amount allocated by the Landlord, acting reasonably, to the Building. Capital Tax also means the amount of any capital or place of business tax levied by any government or other applicable taxing authority against the Landlord with respect to the Building whether known as Capital Tax or by any other name;
- (m) "Carbon Tax" means the aggregate of all taxes, rates, duties, levies, fees, charges and assessments whatsoever, imposed, assessed, levied, confirmed, rated or charged against or in respect of the associated Greenhouse Gas emissions from the consumption in or at the Building of electricity, or of natural gas, propane or any other fossil fuel used to produce energy (such as heat, light or electricity) for the Building or any part of it or levied in lieu thereof, and levied against the Landlord or the Building by any Authority;
- (n) "Claims" means claims, losses, damages (direct, indirect, consequential or otherwise), suits, judgments, causes of action, legal proceedings, executions, demands, penalties or other sanctions of every nature and kind whatsoever, whether accrued, actual, contingent or otherwise and any and all costs arising in connection therewith, including all legal expenses (including all such legal expenses in connection with any and all appeals);
- (o) "Commencement Date" means the date described as such in the Basic Provisions;
- (p) "Common Areas" means:
 - (i) those areas, facilities, utilities, improvements, equipment and installations (in this definition collectively called the "Facilities") in the Building which, from time to time, are not designated or intended by the Landlord to be leased to the tenants of the Building;

- (ii) those Facilities designated by the Landlord, from time to time, as forming part of the Common Areas;
- (iii) those Facilities which serve or are for the benefit of the Building, whether or not located within, adjacent to or near the Building, and which are designated from time to time by the Landlord as part of the Common Areas; and
- (iv) those Facilities which are provided or designated by the Landlord for the use or benefit of the tenants in the Building, their employees, customers and other invitees in common with others entitled to the use or benefit of same in the manner and for the purposes permitted by this Lease and for the time so permitted by the Landlord.

Without limiting the generality of the foregoing, the Common Areas shall include the roof, exterior walls, exterior and interior structural elements, bearing walls, signage, public areas, corridors, stairways, public washrooms, utility rooms, storage rooms, janitor rooms, mechanical, electrical, plumbing and other installations, equipment, systems or services and all structures containing same (including the heating, ventilating and air conditioning system) and security, fire, life and safety systems in the Building and all exterior parking areas, landscaped areas, gravelled areas, passageways, private access roads and routes, pedestrian routes and sidewalks generally serving the Building. The Landlord may designate, amend and re-designate the Common Areas from time to time;

- (q) "Deposit" means the amount, if any, set out opposite the heading "Deposit" in the Basic Provisions;
- (r) "Environmental Laws" means all Laws regulating, relating to or imposing liability or a standard of conduct concerning the natural or human environment (including air, land, surface water, groundwater, waste, real and personal property, moveable and immoveable property, sustainability, building operations, recycling or resource consumption), public or occupational health and safety and the manufacture, importation, handling, use, reuse, recycling, transportation, storage, disposal, clean-up, elimination and treatment of a substance, hazardous or otherwise;
- (s) "Event of Default" means any of the following events:
 - (i) the Tenant fails to pay any Rent when due under this Lease and such failure continues for 5 days following written demand for the payment thereof being made by the Landlord on the Tenant. If, however, the Landlord provides such written notice twice in any 12 month period, it shall not be required to give any further written notices for the 12 month period following the date that the Landlord gives such second notice. If the Tenant fails to observe or perform any of the Tenant's Covenants (other than the payment of Rent) and:
 - (A) fails to remedy such breach within 15 days (or such shorter period as may be provided in this Lease) following the Tenant's receipt of written notice from the Landlord respecting such breach (in this paragraph (b), the "Rectification Period"); or
 - (B) if such breach cannot be reasonably remedied within the Rectification Period, the Tenant fails to commence to remedy such breach within the Rectification Period or thereafter fails to proceed diligently to remedy such breach;
 - (ii) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors (including electing to terminate or disclaim this Lease in connection with a proposal made by the Tenant under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangements Act* (Canada) or any other statute allowing the Tenant to terminate or disclaim this Lease);
 - (iii) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property;
 - (iv) any steps are taken or any actions or proceedings are instituted by the Tenant or by any other party including without limitation any court or Authority having jurisdiction for the dissolution, winding up or liquidation of the Tenant or its assets;
 - (v) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in conjunction with a Transfer done in accordance with the terms of this Lease;

- (vi) this Lease or any of the Tenant's assets are taken under a writ of execution which is not set aside within 10 days following the date of its issuance;
- (vii) the Tenant effects a Transfer other than in accordance with the terms of this Lease;
- (viii) the Premises become vacant or unoccupied for a period of 10 consecutive days or more without the consent of the Landlord or the Tenant abandons or attempts to abandon the Premises or disposes of its goods so that there would not after such disposal be sufficient goods of the Tenant on the Premises subject to distress to satisfy Rent for at least 3 months;
- (ix) the occurrence of an event that the Landlord may treat as an Event of Default in accordance with section 4.6(c), 12.1(g) or 12.2(b);
- (x) the Tenant advises the Landlord that it does not intend to continue operating its business in the Premises; or
- (xi) an Event of Default, regardless as to how minor in nature or effect, as defined in this paragraph occurs with respect to any lease or agreement under which the Tenant occupies other premises, if any, pursuant to a lease or other agreement with the Landlord.

For clarity, the Landlord is not required to give the Tenant any notice in respect of the events described in paragraphs (iii) to (xii) of this definition, an Event of Default arising immediately upon the occurrence of such an event;

- (t) "Expert" means any architect, engineer, land surveyor, chartered accountant or other professional consultant, in any case, appointed by the Landlord and, in the reasonable opinion of the Landlord, qualified to perform the specific function for which such Person was appointed;
- (u) "Expiry Date" means the date described as such in the Basic Provisions;
- (v) "Fiscal Period" has the meaning given it in section 5.2(a);
- (w) "Force Majeure" has the meaning given that term in section 20.2;
- (x) "Greenhouse Gases" means any or all of carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), Sulphur Hexafluoride (SF6), Perfluoromethane (CF4), Perfluoroethane (C2F6), Hydrofluorocarbons (HFCs), any substance designated as a greenhouse gas by applicable Laws and other substances commonly known as greenhouse gases;
- (y) "Hazardous Substance" means:
 - (i) any solid, liquid, gaseous or radioactive substance (including radiation) which, when it enters into a building, exists in a building or is present in the water supplied to a building, or when it is released into the environment from a building or any part thereof or is entrained from one building to another building, or into the water or the natural environment, is likely to cause, at any time, material harm or degradation to any other property or any part thereof, or to the natural environmental or material risk to human health, and includes, without limitation, any flammables, explosives, radioactive materials, asbestos, lead paint, polychlorinated biphenyls, fungal contaminants (including and by way of example, stachybotrys chartarum and other moulds), mercury and its dioxans and furans, chlordane, chlorofluorocarbons, hydrochlorofluorocarbons, volatile organic compounds, urea formaldehyde foam insulation, radon gas, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic or noxious substances or related materials, petroleum and petroleum products;
 - (ii) any substance declared to be hazardous or toxic under any Environmental Laws or that does not meet any prescribed standard or criteria made under any present or future Environmental Laws; and
 - (iii) any substance, sound, vibration, ray, heat, radiation or odour of which the use, presence in the environment or release into the environment is prohibited, regulated, controlled or licenced under Environmental Laws;
- (z) "HST" means the goods and services tax imposed under the *Excise Tax Act* (Canada), and all other goods and services taxes, business transfer taxes, value-added or transaction taxes, sales taxes,

harmonized sales taxes, multi-stage sales taxes, use or consumption taxes or any other taxes on the Landlord with respect to the Rent and any other amounts payable by the Tenant to the Landlord under this Lease which may at any time be imposed by an Authority on or in respect of rental or real property, whether characterized as a goods and services tax, sales tax, value-added tax or otherwise;

- (aa) "HVAC Equipment" means the heating, ventilating, air conditioning and humidity control equipment servicing the Premises;
- (bb) "Injury" means, without limitation, bodily injury, personal injury, personal discomfort, mental anguish, shock, sickness, disease, death, false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, invasion of privacy, wrongful entry or eviction and discrimination, or any of them, as the case may be;
- (cc) "Insured Damage" means that part of any damage occurring to the Premises for which the entire cost of the repair (less any deductible) is actually recovered by the Landlord under insurance policies required to be carried by the Landlord pursuant to sections 12.3(a)(i) and 12.3(a)(ii), or which would have been recovered had the Landlord taken out such insurance. For clarity, no damage occurring to the any portion of the Premises to be insured by the Tenant pursuant to its obligations in this Lease (including the leasehold improvements) shall be considered Insured Damage;
- (dd) "Landlord's Covenants" means all of the terms, covenants and conditions of this Lease on the part of the Landlord to be observed and performed;
- (ee) "Landlord's Employees" means the Landlord's property manager (if any) and the Landlord's and the Landlord's property manager's respective directors, officers, employees, contractors, servants, agents and those for whom each of the Landlord and the Landlord's property manager, respectively, is responsible at law;
- (ff) "Landlord's Work" means the work required to be performed by the Landlord as set out in Schedule "C";
- (gg) "Lands" means the lands described in Schedule "A" and which have the municipal address set out in the Basic Provisions;
- (hh) "Laws" means all laws, statutes, ordinances, regulations, by-laws, directions, orders, rules, requirements, building codes of every nature and kind, directions and guidelines of all Authorities;
- (ii) "Lease" means this document and the Schedules attached to it as originally signed and delivered or as amended from time to time;
- "Leasehold Improvements" means all items in or serving the Premises and considered at common (jj) law as being a leasehold improvement, including all fixtures, improvements, installations and Alterations from time to time made, erected or installed (whether prior to or following the execution of this Lease) by or on behalf of the Landlord, the Tenant or any previous tenant or occupant of the Premises in, on or which serve the Premises, whether or not easily disconnected or movable and includes all the following, whether or not any of the same are in fact the Tenant's trade fixtures: doors, partitions and hardware; internal walls; windows; cabling of every nature and kind; coolers, freezers, lockers; mechanical, electrical and utility installations designed solely to serve the Premises; carpeting, drapes, other floor and window coverings and drapery hardware; heating, ventilating, air conditioning and humidity control equipment; lighting fixtures; built in furniture and furnishings; counters in any way connected to the Premises or to any utility services located therein; and, all items which cannot be removed without damage to the Premises. Leasehold Improvements do not, however, include the Tenant's trade fixtures (except as otherwise noted above in this definition), free standing furniture and equipment not in any way connected to the Premises or to any utility systems located therein (other than by merely plugging same into the electrical system serving the Premises);
- (kk) "Lien Act" means the Construction Act (Ontario);
- (ll) "Minimum Rent" means the annual rent payable by the Tenant under section 4.1;
- (mm) "Mortgage" means any mortgage, charge or security instrument (including a deed of trust and mortgage securing bonds and all indentures supplemental thereto) which may now or hereafter affect the Lands;

- (nn) "Mortgagee" means the mortgagee, chargee, secured party or trustee for bond-holders, as the case may be, named in a Mortgage;
- (oo) "Operating Costs" means the costs described in section 5.1;
- (pp) "Permitted Uses" means the uses which may be made of the Premises as set out opposite the heading "Permitted Uses" in the Basic Provisions;
- (qq) "Person" means an individual, a corporation, a limited partnership, a general partnership, a trust, a joint stock company, a joint venture, an association, a syndicate, a bank, a trust company, an Authority and any other legal or business entity;
- (rr) "Premises" means the premises demised by the Landlord to the Tenant for the Tenant's exclusive possession as described in section 2.1;
- (ss) "Prime Rate" means the rate of interest per annum established and quoted from time to time by such Canadian Chartered Bank designated from time to time by the Landlord as its reference rate of interest for the determination of interest rates that it charges customers of varying degrees of credit-worthiness for Canadian dollar loans made by it in Toronto, Ontario;
- (tt) **"Proportionate Share"** means a fraction, the numerator of which is the Rentable Area of the Premises and the denominator of which is the Rentable Area of the Building;
- (uu) "Real Property Taxes" means:
 - (i) all real property taxes, including local improvement rates, levies, commercial concentration levies, rates, duties and assessments whether general or special, ordinary or extraordinary, foreseen or unforeseen, which may be levied or assessed by any lawful taxing Authority against the Lands or any part thereof and any taxes or other amounts which are imposed instead of, or in addition to, any of the foregoing (whether of the foregoing character or not or whether in existence at the date that this Lease was executed);
 - (ii) all costs and expenses incurred by or on behalf of the Landlord for consulting, appraisal, legal and other professional fees and expenses to the extent they are incurred in an attempt to minimize or reduce the amounts described in paragraph (a); and
 - (iii) any and all penalties, late payment or interest charges imposed by any relevant taxing Authority as a result of the Tenant's late payment of any of the amounts described in paragraph (a) or any instalments thereof, as the case may be;
- (vv) "Renewal Term" has the meaning given that term in paragraph 3 on Schedule "H";
- (ww) "Rent" means all Minimum Rent and Additional Rent payable by the Tenant pursuant to this Lease:
- (xx) "Rentable Area of the Building" means the total area in square feet of all premises in the Building set aside for leasing by the Landlord from time to time, including the Premises, measured in the same manner as the Rentable Area of the Premises. The certificate of the Landlord's Expert as to the Rentable Area of the Building will be conclusive and binding on the Landlord and the Tenant;
- (yy) "Rentable Area" has the meaning given it by such BOMA/SIOR guidelines that the Landlord chooses to use from time to time and includes such gross up for common areas in the Building as contemplated by such guidelines;
- (zz) "Schedules" means the schedules attached to this Lease and which are more particularly described in section 1.2;
- (aaa) "**Tenant's Covenants**" means all of the terms, covenants and conditions of this Lease on the part of the Tenant to be observed and performed;
- (bbb) "**Tenant's Employees**" means the Tenant's directors, officers, employees, servants, contractors, agents and those for whom the Tenant is responsible at law;
- (ccc) "Tenant's Work" means the work, if any, to be performed by the Tenant as set out in Schedule "D":
- (ddd) "Term" means the term of this Lease as set out in section 3.1 and any Renewal Term;

(eee) "Transfer" means any of:

- (i) an assignment of this Lease by the Tenant in whole or in part;
- (ii) any arrangement, written or oral, whether by sublease, licence or otherwise, whereby rights to use space within the Premises are granted to any Person (other than the Tenant) from time to time, which rights of occupancy are derived through or under the interest of the Tenant under this Lease; and
- (iii) a mortgage or other encumbrance of this Lease or of all or any part of the Premises, or any interest therein; and
- (fff) "**Transferee**" means the assignee, subtenant, licensee or other Person allowed by the Tenant to use the Premises and named in a Transfer.

Certain terms which have been defined within specific sections of this Lease for use solely within those sections, or the Article within which such section is located, are not referred to above.

1.2 Schedules

The Schedules to this Lease are as follows:

Schedule "A" Legal Description of the Lands Schedule "B" Diagram of the Building Schedule "C" Landlord's Work Schedule "D" Tenant's Work Rules and Regulations Schedule "E" Schedule "F" Insurance Certificate Schedule "G" Authorization Schedule "H" Special Provisions

The Schedules are incorporated into and form an integral part of this Lease.

1.3 Agreement to Act Reasonably

Whenever a party (the "Deciding Party") is making a determination (including a determination of whether or not to provide its consent or approval where the Deciding Party's consent or approval is required and whether or not reference is made to the Deciding Party making such determination in its sole discretion, or words of similar intent), designation, calculation, estimate, conversion or allocation under this Lease (collectively, a "Decision"), the Deciding Party shall (unless this Lease specifically provides to the contrary) act reasonably and shall not unreasonably delay its decision on whether or not to give its consent. If the Deciding Party decides that it will not provide its consent or approval when requested to do so, it shall provide the party requesting such consent or approval (the "Requesting Party") with the reasons for its refusal at the same time as it advises the Requesting Party that it refuses to provide its consent or approval. Even though specific sections of this Lease may specifically require a party to act reasonably or not act unreasonably (or words of similar intent) in making a Decision, the absence of such a specific requirement in other sections of this Lease requiring a party to make a Decision will not negate the provisions of this section or be interpreted as though the provisions of this section do not apply to the making of such Decision.

1.4 Approval in Writing

Wherever the Landlord's consent is required to be given under this Lease or wherever the Landlord must approve any act or performance by the Tenant, such consent or approval, as the case may be, will not be effective unless it is in writing.

1.5 <u>Delegation of Authority</u>

The Landlord's property manager, and such other persons as may be authorized by the Landlord from time to time, may act on behalf of the Landlord in connection with any matter contemplated by this Lease, including the giving of notices to the Tenant.

1.6 <u>Interpretation</u>

In this Lease:

- (a) each obligation or agreement of a party expressed in this Lease, even though not expressed as a covenant, is for all purposes considered to be a covenant;
- (b) the phrase or term:
 - (i) "however caused" includes the negligence of the Landlord and the Landlord's Employees but not gross negligence; and
 - (ii) "including" means "including, without limitation," and the term "including" will not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;
- (c) words importing the singular include the plural and vice-versa, words importing gender include both genders and words importing persons include corporations and vice-versa;
- (d) any reference to an Article, section or Schedule is deemed to be refer to the applicable Article, section or Schedule contained in or attached to this Lease and to no other agreement or document unless specific reference is made to such other agreement or document;
- (e) any reference to a statute includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations;
- (f) the division of it into Articles and sections and the insertion of headings and any table of contents is for convenience of reference only and are not to be taken into account in interpreting this Lease or any part of it; and
- (g) any provisions that are shown as having been struck out or intentionally deleted are deemed not to exist and are not to be taken into account in interpreting this Lease or any part of it.

ARTICLE 2.00 PREMISES

2.1 <u>Premises</u>

The Landlord hereby demises and leases the Premises to the Tenant and the Tenant hereby leases the Premises from the Landlord on the terms and conditions contained in this Lease. The Premises comprise the unit in the Building described in the Basic Provisions and as shown outlined in bold on Schedule "B".

2.2 <u>Use of Common Areas</u>

The use and occupation by the Tenant of the Premises includes the non-exclusive right of the Tenant and Persons having business with the Tenant, in common with the Landlord, its other tenants, subtenants and all others entitled or permitted by the Landlord to the use of such parts of the Common Areas as may be designated from time to time as being available for general use by tenants and other occupants of the Building and customers and visitors thereto for such limited purposes as may be permitted by the Landlord, from time to time. Except as so permitted by the Landlord, the Tenant has no right to use the Common Areas for any other purposes.

2.3 <u>Examination and Acceptance</u>

The Tenant has examined the Premises and accepts the Premises on an "as is" basis, subject only to completion by the Landlord of the Landlord's Work. Upon the Landlord's Work being completed, the Tenant will be deemed to have accepted the Landlord's Work unless the Tenant delivers a deficiency notice to the Landlord (which must contain reasonable particulars of the deficiencies alleged by the Tenant) within 5 Business Days following the date that the Landlord advises the Tenant that the Landlord's Work has been completed. If a dispute arises over the deficiencies alleged by the Tenant, the decision of the Landlord's architect shall be determinative of the issue. The Landlord hereby further covenants and agrees that the HVAC Equipment shall be in good working order as of the Commencement Date, as determined by the Landlord, acting reasonably.

2.4 <u>Measurement of Areas</u>

For the purpose of determining the Rent payable hereunder, the Rentable Area of the Premises is deemed to be the amount set out in the Basic Provisions.

2.5 <u>Tenant's Work</u>

Upon being given possession of the Premises (whether exclusive or not), the Tenant shall, at its own expense, diligently carry out and complete the Tenant's Work. The Tenant will carry out the Tenant's Work in such manner as will not interfere unreasonably with the performance by the Landlord of the Landlord's Work and otherwise in accordance with the provisions of this Lease, including the provisions of section 9.4 and Schedule "D".

2.6 <u>Landlord's Work</u>

- (a) The Landlord shall, at its expense, perform the Landlord's Work in a good and workmanlike manner. Subject to delays caused by Force Majeure and delays caused by the Tenant or the Tenant's Employees, the Landlord shall use reasonable commercial efforts (without the need for overtime or weekend work) to complete the Landlord's Work as soon as reasonably possible following the execution of this Lease. If the Term has commenced and the Landlord's Work has not been completed, the Landlord may have such access to the Premises as it requires in order to complete the Landlord's Work and:
 - (i) if both the Tenant and the Landlord require access to the same area of the Premises, the Landlord will have the first right to such area for the purpose of carrying out the Landlord's Work;
 - (ii) the Tenant shall not interfere with or delay the Landlord or its contractors from completing the Landlord's Work;
 - (iii) the Tenant will be under the direction and supervision of the Landlord and its contractors and shall comply with all requirements and directions of the Landlord and its contractors; and
 - (iv) the Landlord shall not be responsible for the costs of any work to the Premises except for the costs of the Landlord's Work.
- (b) If:
 - (i) the Tenant's use, or intended use, of the Premises requires changes to the Landlord's Work in order for the Landlord's Work to comply with applicable Laws or the requirements of any insurer of any part of the Building; or
 - (ii) the Tenant requires any changes to the Landlord's Work (and the Tenant's signature on the change order, or other documentation evidencing the changes, shall be conclusive evidence of the Tenant's agreement to the making of such changes),

then the Tenant shall be responsible for the cost of such changes to the extent that such changes result in an increase in the cost of the Landlord's Work (the "Additional Costs"). The Tenant shall pay the Additional Costs within 15 days following the date that the Landlord provides the Tenant with an invoice for the Additional Costs.

- (c) If the Tenant requires the Landlord to carry out any work in or to the Premises in addition to the Landlord's Work (the "Additional Work"), and the Landlord agrees to carry out the Additional Work, then the Tenant's signature on the documentation evidencing the nature of the Additional Work will be conclusive evidence of the Tenant's agreement to:
 - (i) the Landlord performing the Additional Work; and
 - (ii) pay for the cost of the Additional Work (the "Additional Work Costs").

The Tenant shall pay the Additional Work Costs shall within 15 days following the date that the Landlord provides the Tenant with an invoice for the Additional Work Costs.

- (d) If any changes are made to the Additional Work, then the Tenant's signature on the change order, or other documentation evidencing the changes, shall be conclusive evidence of the Tenant's agreement to:
 - (i) the making such changes, which shall be deemed to form part of the Additional Work; and
 - (ii) pay for the cost of such changes, all of which shall be deemed to form part of the Additional Work

The Tenant shall pay such additional costs within 15 days following the date that the Landlord provides the Tenant with an invoice for such costs.

ARTICLE 3.00 TERM

3.1 <u>Term</u>

- (a) The Term is the period of time set out in the Basic Provisions as constituting the Term.
- (b) The Term commences on the Commencement Date and ends on the Expiry Date, both dates inclusive, unless the Term is otherwise terminated or renewed as provided for in this Lease. Provided that notwithstanding the foregoing and/or anything contained herein to the contrary, in the event of a delay or failure by the Landlord to complete the Landlord's Work (save and except with respect to any such delays and/or failures caused by the Tenant), the Commencement Date and the Expiry Date shall be extended by a period of time equivalent to the period of such delay aforesaid.

3.2 <u>Surrender</u>

The Tenant shall, on the last day of the Term, or upon the sooner termination of the Term, peaceably and quietly surrender and deliver vacant possession of the Premises to the Landlord in the condition and state of repair that they were required to be maintained during the Term and shall otherwise comply with its obligations in section 15.1. If the Tenant fails to comply with the foregoing or with its obligations under section Error! Reference source not found, the Tenant shall, at the option of the Landlord, be deemed to be an overholding monthly tenant for so long as it may reasonably take to complete the required repairs, removal, restoration or clean-up (the "Overholding Period"). During the Overholding Period, the Tenant shall pay the Rent required by section Error! Reference source not found. to be paid by an overholding tenant who is overholding without the consent of the Landlord (the "Overholding Rent"), notwithstanding the fact that the Tenant may have vacated the Premises. For clarity, nothing in this section entitles the Tenant to terminate such monthly tenancy or remain in possession of the Premises as it is the parties intent that the deemed monthly tenancy contemplated by this section only results in an obligation on the part of the Tenant to pay the Overholding Rent during the Overhold Period with the Tenant having no other rights or interest in or to the Premises.

3.3 Occupancy

Notwithstanding the commencement of the Term, the Tenant may not have access to the Premises until it has provided the Landlord with the following:

- (a) a duly executed copy of this Lease executed by the Tenant;
- (b) the insurance certificate required by section 12.1(f) and the Landlord has approved such certificate;
- (c) the post-dated cheques or documentation required by section 4.9;
- (d) evidence that the utilities for the Premises which are separately metered have been transferred into the name of the Tenant;
- (e) if there is any Tenant's Work to be performed by the Tenant:
 - (i) the Landlord has approved the Tenant's plans and specifications for the Tenant's Work;
 - (ii) the Tenant has obtained all building permits required in order to perform the Tenant's Work; and
 - (iii) a copy of the occupancy permit for the Premises (if such a permit is required by applicable Laws in order to occupy and carry on business in the Premises.

3.4 Overholding

Upon the expiration of this Lease by the passage of time and the Tenant remaining in possession of the Premises:

- (a) there will be no implied renewal or extension of this Lease;
- (b) if the Landlord consents in writing to the Tenant remaining in possession, the Tenant will be deemed, notwithstanding any statutory provision or legal assumption to the contrary, to be

occupying the Premises as a monthly tenant, which monthly tenancy may be terminated by either party on 30 days written notice to the other, which 30 day period need not end on the last day of a calendar month;

- (c) if the Landlord does not consent in writing to the Tenant remaining in possession, the Tenant will be deemed, notwithstanding any statutory provision or legal assumption to the contrary, to be occupying the Premises as a tenant at the will of the Landlord, which tenancy may be terminated at any time by the Landlord without the necessity of any notice to the Tenant; and
- (d) the Tenant shall occupy the Premises on the same terms and conditions as are contained in this Lease (including the obligation to pay Additional Rent), save and except that:
 - (i) the Term and the nature of the tenancy are as set out in section 3.4(b) or 3.4(c), as the case may be;
 - (ii) the Minimum Rent payable by the Tenant is to be paid monthly at a rate equal to twice the amount of monthly Rent which it was responsible for paying to the Landlord during the last 12 months of the Term. Unless the Landlord has otherwise agreed in writing, such Minimum Rent will be payable by the Tenant regardless of whether or not the Landlord fails to request such Minimum Rent and/or accepts the monthly Minimum Rent which the Tenant was paying during the last 12 months of the Term; and
 - (iii) the Tenant will not have the benefit of any renewal or extension rights, rights of first refusal, options to purchase, rights granting the Tenant exclusive rights to carry on certain business activities in the Building, or any other personal rights contained in this Lease.
- (e) The Tenant is estopped and forever barred from claiming any right to occupy the Premises on terms other than as set out in this section and the Landlord may plead this section in any court proceedings. If section 3.4(c) is applicable, the Tenant shall indemnify and save harmless the Landlord from all Claims incurred by the Landlord as a result of the Tenant remaining in possession of all or any part of the Premises following the expiry of the Term. Nothing in this section may be interpreted as permitting or giving the Tenant an option to stay in possession of the Premises following the expiry of the Term and the Tenant shall surrender the Premises to the Landlord on the Expiry Date.

ARTICLE 4.00 RENT

4.1 <u>Minimum Rent</u>

- (a) The Tenant shall pay, unless otherwise expressly provided in this Lease, yearly and every year during the Term to the Landlord without notice or demand and without abatement, deduction or set-off for any reason the Minimum Rent described in the Basic Provisions.
- (b) The annual Minimum Rent is based upon an annual rate per square foot of the Rentable Area of the Premises as set out in the Basic Provisions.
- (c) The Minimum Rent is to be paid in advance, in equal monthly instalments on the first day of each and every month during the Term.
- (d) If the Basic Provisions include a provision stating that the Tenant is entitled to a Rent Free Period, then, regardless of any other provision of this Lease, the Tenant is not required to pay the Rent that such provision states is not payable by the Tenant during such Rent Free Period.

4.2 <u>Accrual and Adjustments of Rent</u>

Rent is considered as accruing from day to day under this Lease from the Commencement Date. If, for any reason, it becomes necessary to calculate Rent for an irregular period of less than 1 year or less than 1 calendar month, then an appropriate apportionment and adjustment will be made on a per diem basis based upon a period of 365 days.

4.3 Additional Rent Treated as Minimum Rent

Additional Rent is recoverable as Minimum Rent and the Landlord has all of the same rights and remedies in the case of the Tenant's failure to pay Additional Rent as it has in the case of the Tenant's failure to pay Minimum Rent.

4.4 <u>Currency and Place of Payment</u>

All Rent is payable in lawful money of Canada and is to be paid to the Landlord at 2-20 Caldari Rd, Concord, Ontario, L4K 4N8 until such time as the Tenant is otherwise notified in writing by the Landlord.

4.5 <u>Rental Arrears</u>

- (a) If the Tenant fails to pay when due any amount of Rent required to be paid pursuant to this Lease:
 - (i) such Rent bears interest at a rate per annum equal to the Prime Rate plus 5%, calculated and compounded monthly; and
 - (ii) the Tenant shall pay to the Landlord on demand, an administration fee equal to \$250.

Such amounts only become payable upon demand but accrue from the respective due dates of the relevant payments, whether demanded or not, to the date of payment.

(b) If any cheque given by the Tenant to the Landlord in payment of Rent is refused payment by the Tenant's bank for any reason, the Tenant shall immediately replace such cheque with cash or a certified cheque or bank draft and, in addition, shall pay, as Additional Rent, the sum of \$100 (plus HST) as a service charge to the Landlord immediately upon demand being made by the Landlord.

4.6 Deposit

- (a) The Landlord acknowledges that shall hold the Deposit in trust as security for the Tenant's performance of the terms, covenants and conditions hereunder.
- (b) The Landlord shall apply the Deposit against the first and last months' Rent payable by the Tenant to the Landlord hereunder.
- (c) The Landlord may also use the Deposit to secure the fulfilment of all of the Tenant's Covenants (including the payment of all amounts payable by the Tenant under this Lease) and all damages and losses which the Landlord may suffer or incur as a result of this Lease being terminated by the Landlord or disclaimed in any bankruptcy or insolvency proceedings relating to the Tenant or any assignee of the Tenant, including all amounts which would have been payable under this Lease but for such termination or disclaimer. Without limiting the generality of the foregoing, the Deposit shall secure and may, at the Landlord's option, be applied on account of any one or more of the following:
 - (i) unpaid Rent, including any amount which would have become payable under this Lease to the date of the expiry of this Lease had this Lease not been terminated or disclaimed in any bankruptcy or insolvency proceedings;
 - (ii) the prompt and complete performance of all of the Tenant's Covenants in addition to the payment of Rent;
 - (iii) the indemnification of the Landlord for any losses, costs or damages incurred by the Landlord arising out of any failure by the Tenant to observe and perform any of the Tenant's Covenants;
 - (iv) the performance of any obligation which the Tenant would have been obligated to perform to the date of the expiry of this Lease had this Lease not been terminated or disclaimed in any bankruptcy or insolvency proceedings; and
 - (v) the losses or damages suffered by the Landlord as a result of the termination of this Lease or the disclaimer of this Lease in any bankruptcy or insolvency proceedings.
- (d) If the Landlord uses all or part of the Deposit (except in accordance with section 4.6(b)), the Tenant shall, within 3 Business Days following written demand being made by the Landlord, pay to the Landlord the amount required to reimburse it for the amount so applied by way of certified cheque or bank draft, failing which an Event of Default will be deemed to have occurred.
- (e) Upon the Deposit, or any amount paid to the Landlord pursuant to section 4.6(d), being paid to the Landlord, the Landlord will hold and use the Deposit in accordance with this section, the Tenant will have no further interest in the Deposit and the Landlord will not be considered to be holding any portion of the Deposit in trust for the benefit of the Tenant and is not required to pay any interest to the Tenant on any part of the Deposit. The Landlord shall, within 90 days following the

expiration of this Lease, pay to the Tenant an amount equal to the unused portion of the Deposit then being held by the Landlord.

- (f) If the Landlord sells the Lands or otherwise assigns this Lease, the Landlord will be discharged from any liability to the Tenant with respect to the Deposit and the purchaser or assignee, as the case may be, will be deemed to have received the unused portion of the Deposit being held by the Landlord at the time of such sale or assignment.
- (g) The provisions of this section are deemed to be a separate agreement distinct and independent of this Lease and which will survive the termination of this Lease or the disclaimer of this Lease in any bankruptcy or insolvency proceedings. Accordingly, the provisions of this section will continue in full force and effect and will not be waived, released, discharged, impaired or affected by reason of the termination of this Lease by the Landlord or the disclaimer of this Lease in any bankruptcy or insolvency proceedings.
- (h) For greater clarity, the provisions of this section will survive the expiry or earlier termination of this Lease.

4.7 Net Lease

Except as otherwise stated in this Lease:

- (a) this Lease is a completely carefree and absolutely net lease to the Landlord;
- (b) the Landlord is not responsible during the Term for any costs, charges, taxes (except the Landlord's income taxes), expenses or outlays of any nature whatsoever arising from or relating to the Premises or the Building, or the use and occupancy of them, or their contents or the business carried on in them; and
- (c) the Tenant shall pay all charges, impositions, costs, expenses and outlays of every nature and kind relating to the Premises and its Proportionate Share of all charges, impositions, costs, expenses and outlays of every nature and kind relating to the Building.

4.8 <u>Landlord's Option</u>

- (a) The Landlord may, at its option, estimate from time to time any Additional Rent and such estimated amount is payable in monthly instalments in advance on the days upon which Minimum Rent is payable hereunder, with annual adjustments in the manner set out in section 5.2. Notices to the Tenant of such estimated amount need not include particulars of any such amounts. The Landlord may at its option, apply any sums received from or due to the Tenant against any amounts due and payable hereunder in such manner as the Landlord sees fit.
- (b) The Landlord estimates, but does not guarantee, that the Tenant's Proportionate Share of Operating Costs and Real Property Taxes will be \$4.50 per square foot of the Rentable Area of the Premises per annum for the calendar year 2022. For clarity, such estimate has no bearing on, and is not to be taken into account in determining, the actual amount of the Operating Costs and Real Property Taxes actually payable by the Tenant pursuant to the other provisions of this Lease and in no way limits the amounts payable by the Tenant pursuant to the other terms of this Lease.

4.9 Payments

- (a) The Tenant shall deliver to the Landlord prior to the Commencement Date and at least 15 days prior to each anniversary of the Commencement Date, a series of monthly post-dated cheques for the next 12 months of the Term (or such shorter period if there are less than 12 months remaining in the Term), for the aggregate of the monthly payments of Minimum Rent and any payments of Additional Rent estimated by the Landlord in advance. Alternatively, if required by the Landlord, the Tenant shall sign and deliver such documentation that the Landlord requires, from time to time, in order for either, as determined by the Landlord:
 - (i) the monthly instalments of Rent payable by the Tenant to the Landlord pursuant to this Lease to be automatically electronically transmitted on the applicable due date under this Lease to such bank account as may be designated by the Landlord, from time to time, by way of electronic funds transfer; or
 - (ii) the Landlord (or the Landlord's property manager) to be able to automatically debit the Tenant's bank account on a monthly basis on the relevant due date under this Lease in

amounts equal to the monthly instalments of Rent payable by the Tenant to the Landlord pursuant to this Lease.

(b) The Tenant shall sign and return all such documentation to the Landlord within 10 days following the Landlord's written request.

4.10 Rent to be Paid without Set-Off

Except to the extent specifically permitted by the terms of this Lease, the Tenant shall pay all Rent without set-off, abatement, or deduction for any reason or cause whatsoever, including by reason of section 35 of the Act, the benefits of which are expressly waived by the Tenant.

ARTICLE 5.00 OPERATING COSTS

- 5.1 Tenant to Bear Proportionate Share of Operating Costs
- (a) During the Term the Tenant shall pay to the Landlord as Additional Rent its Proportionate Share of all costs and expenses incurred by or on behalf of the Landlord and amounts paid by or on behalf of the Landlord with respect to and for the complete operation, administration, repair (including repairs and replacements of a capital nature) and maintenance, enhancement, alteration, addition to or improvement of the Building in keeping with maintaining the standard of a first-class commercial building (the "Operating Costs"). The Landlord shall determine the Operating Costs in accordance with generally accepted accounting practices used in the commercial real estate industry and without duplication. Operating Costs include:
 - (i) the cost of all insurance maintained by the Landlord in respect of the Lands or its operation and the cost of any deductible amounts payable by the Landlord in respect of any insured risk or claim;
 - (ii) maintenance, repair and janitorial services for the Building and the Lands, including fire sprinkler maintenance, snow removal, landscape maintenance, window cleaning, garbage and waste collection and disposal and the cost of operating and maintaining any merchandise holding and receiving areas and truck docks;
 - (iii) lighting, electricity, public and private utilities, loudspeakers, public address and musical broadcasting systems, all fire equipment and the cost of electricity of any signs considered by the Landlord to be a part of the Common Areas;
 - (iv) periodic redecoration, renovation, reconstruction and improvements to the Common Areas;
 - (v) policing, security, supervision and traffic control;
 - (vi) amounts and fees paid to, or reasonably attributable to the remuneration of, all Persons (whether on or off-site and whether employed by Landlord or a management company) involved in the ownership, administration, operation, management, maintenance, repair, replacement, security, supervision, landscaping or cleaning of the Building, including reasonable fringe benefits and other employment costs. If any such Persons provide similar or other services to other properties owned or operated by the Landlord, then the Landlord shall make a reasonable allocation of such Persons' remuneration between the Building and such other properties owned or operated by the Landlord and the Landlord will only include in Operating Costs the amount of such remuneration attributed by the Landlord to the Building;
 - (vii) the cost to the Landlord of the rental of any equipment, furniture, installations, systems and signs and the cost of building supplies used by the Landlord in the operation, maintenance and servicing of the Building;
 - (viii) heating, air-conditioning and ventilation of the Building and the Common Areas and all water, fuel, hydro and other utilities consumed in the Building and Common Areas, including costs, charges and imposts related to such utilities, to the extent such costs, charges and imposts are not recovered from tenants;
 - (ix) the costs:

- (A) of repairing, operating and maintaining the Building and equipment serving the Building and of all replacements and modifications to the Building or such equipment, including those made by the Landlord in order to comply with Laws affecting the Building;
- (B) incurred by the Landlord in installing energy conservation equipment or systems, security systems, life safety systems and all other systems which may be installed on the Lands for the general benefit of the tenants in the Building;
- (C) incurred by the Landlord in making alterations, replacements or additions to the Building intended to reduce operating costs, improve the operation of the Building or maintain its operation as a first-class commercial building, including without limitation, the costs of repair and replacement of the roof membrane and the HVAC Equipment; and
- (D) incurred to replace machinery or equipment which by its nature requires periodic replacement,
 - all to the extent that such costs are fully chargeable in the Landlord's fiscal year in which they are incurred in accordance with generally accepted accounting practices in the commercial real estate industry.
- (x) depreciation or amortization of those capital costs described in section 5.1(a)(ix)(C) as having to be depreciated or amortized and all other capital costs incurred by the Landlord in connection with the Lands (whether prior to or subsequent to the Commencement Date) and which the Landlord determines should be depreciated or amortized in accordance with accepted practices in the commercial real estate industry (otherwise such capital costs may be included in Operating Costs in the Fiscal Period in which they are incurred). The Landlord shall depreciate or amortize the costs to be depreciated or amortized in accordance with the foregoing over the useful life of the items for which the costs were incurred or over such other period as the Landlord, acting in accordance with accepted practices in the commercial real estate industry, may determine. The Landlord shall include in the Operating Costs for each Fiscal Period, the amount of the amortized costs attributable to such Fiscal Period;
- (xi) interest calculated at 3% above the Prime Rate upon the undepreciated or unamortized balance of the costs referred to in section 5.1(a)(x);
- (xii) auditing, accounting, legal and other professional and consulting fees and disbursements incurred by the Landlord in the operation of the Lands;
- (xiii) all Business Taxes, if any, from time to time payable by the Landlord in respect of its operations in the Lands, but excluding income tax of the Landlord;
- (xiv) all Capital Tax;
- (xv) all Carbon Taxes;
- (xvi) the HST payable by the Landlord on the purchase of goods and services included in Operating Costs (excluding any such HST which will be available to the Landlord when claimed as a credit or a refund in determining the Landlord's net tax liability on account of HST, but only to the extent that such HST is included in Operating Costs);
- (xvii) office expenses, supplies, furnishings and the fair rental value of space (having regard to rentals prevailing from time to time for similar space) in the Building, if any, occupied by the Landlord or the Landlord's property manager for the on-site management, supervision or administration of the Building. If such space is used by the Landlord to provide management, supervisory or administrative services to buildings or Buildings in addition to the Building, then the Landlord will allocate such costs between the Building and such other buildings or Buildings on a fair and equitable basis;
- (xviii) office expenses, supplies, furnishings and the fair rental value of space (having regard to rentals prevailing from time to time for similar space), if any, occupied by the Landlord or the Landlord's property manager for management, supervisory or administrative purposes related to the Lands, and costs and expenses attributable to off-site computer, accounting and other support services to the extent provided for the operation,

management and administration of the Lands. If such space is used by the Landlord to provide management, supervisory or administrative services to buildings or developments in addition to the Lands, then the Landlord will allocate such costs between the Lands and such other buildings or developments on a fair and equitable basis;

- (xix) costs of complying with the provisions of any development, site plan or other agreement with the local or regional municipality and/or with any utility or provider of services to the Lands (excluding costs of compliance arising from or in connection with any breach by the Landlord of any of the owner's obligations under any such agreement), including, without limitation, the Landlord's costs in connection with the issuance of or maintenance of any letters of credit or other security required to be issued to such local or regional municipality, utility or service provider pursuant to the terms of any such agreement in respect of the Lands;
- (xx) the cost of conducting environmental audits of the Lands and the cost of any investigating, testing, monitoring, removing, enclosing, encapsulating or abating any Hazardous Substance which is in or about the Lands or any part thereof or which has entered the environment from the Lands, if the Landlord is required to do so by any applicable Laws or Authorities or if, in the Landlord's opinion, it is harmful or hazardous to any Person or to the Lands or any part thereof or to the environment;
- (xxi) the costs of providing additional parking or other common areas for the benefit of the Lands, whether such costs be land rent, taxes or other types of costs;
- (xxii) an administrative and supervisory fee equal to 15% percent of Operating Costs (other than this administrative and supervisory fee and the Real Property Taxes applicable to the Lands).
- (b) The Landlord shall exclude or deduct (if originally included) from the Operating Costs, as the case may be:
 - (i) all amounts which would otherwise be included in Operating Costs but which are recovered by the Landlord from tenants in the Building as a result of any act, omission, default or negligence of such tenants;
 - (ii) such of the Operating Costs as are recovered from insurance proceeds, to the extent such recovery represents reimbursements for costs previously included in Operating Costs;
 - (iii) any ground rentals, and any principal, interest or other carrying charges or mortgage payments or other financing costs in respect of the Lands;
 - (iv) any and all costs of structural repairs attributable to inherent structural defects in the Building (being inherent defects that did not comply with design criteria that existed at the time the Building was designed and built);
 - (v) any income taxes, corporation taxes or other taxes personal to the Landlord (other than Capital Taxes), or penalties relating to the late payment by the Landlord of any taxes, whether personal to the Landlord or not;
 - (vi) the amount of any leasing commissions, tenant inducements, legal fees or tenant allowances incurred by the Landlord in connection with leasing any part of the Building;
 - (vii) legal and other professional fees incurred in connection with the leasing of space in the Building or in enforcing leases of tenants in the Building;
 - (viii) all goods and services tax payable by the Landlord on the purchase of goods and services included in Operating Costs to the extent that the Landlord may claim same as a credit or refund in determining its net tax liability on account of goods and services tax;
 - (ix) any costs incurred in connection with the gross negligent acts of the Landlord, or a Person for whom the Landlord is solely responsible at Law; and
 - (x) costs that the Landlord has a right to recover under a contract to which the Tenant is not a party.

- (c) Operating Costs may be attributed by the Landlord in its sole discretion to the various components of the Building in accordance with reasonable and current practices and on the basis consistent with the nature of the particular costs being attributed, and the costs so attributed may be allocated to the tenants of such components accordingly.
- (d) If the Building is less than 100% occupied or operational during any period, the Landlord may adjust those Operating Costs which vary with the use and occupancy of rentable premises in the Building to what they would have been, in the Landlord's reasonable estimation, if the Building had been 100% occupied or operational for such period so that such Operating Costs are fairly allocated to the tenants actually obtaining the benefit of the services associated with such Operating Costs. Nothing in this section permits the Landlord to recover more than 100% of any cost or expense comprising Operating Costs.

5.2 Payment of Tenant's Proportionate Share

- (a) The Operating Costs may be estimated, or re-estimated from time to time, by the Landlord for each of the Landlord's fiscal periods (currently being a calendar year, but which may be changed, from time to time, by the Landlord) (a "Fiscal Period") and the Tenant shall pay to the Landlord as Additional Rent, such estimated payments in equal monthly instalments in advance during such period on the first day of the month. Despite the foregoing, as soon as bills for all or any portion of the said amounts are received, the Landlord may bill the Tenant for its relevant share of the said amounts (less all amounts previously paid by the Tenant on the basis of the Landlord's estimate which have not already been so applied) and the Tenant shall pay the Landlord such amount as Additional Rent within 15 days after receiving an invoice from the Landlord for same.
- (b) Within 180 days following the end of each Fiscal Period for which such estimated payments have been made, the Landlord shall deliver to the Tenant a statement certified to be true, correct and complete by an officer of the Landlord (the "Statement") containing:
 - (i) reasonable particulars of the actual Operating Costs and the Real Property Taxes for such period;
 - (ii) the Tenant's Proportionate Share of the Operating Costs;
 - (iii) a statement of the Real Property Taxes payable by the Tenant to the Landlord pursuant to section 6.2; and
 - (iv) the amount of the Utilities, if any, allocated by the Landlord to the Tenant.
- (c) The Landlord shall use reasonable efforts to deliver the Statement to the Tenant within 180 days following the end of each Fiscal Period, but its failure to do so shall not preclude the Landlord from subsequently delivering the Statement and from making any necessary adjustments. After the delivery of a Statement, the Landlord may subsequently render supplemental statements if it subsequently discovers errors or omissions in the amounts previously charged to the Tenant or if there are any changes to the Real Property Taxes and the parties shall make the appropriate adjustment in the same manner as set out in section 5.2(d).
- (d) If the Statement shows that the Tenant has paid:
 - more than the amount actually payable by it (the difference being called the "Excess"), (i) then, provided the Tenant is not in default of any of the Tenant's Covenants, the Excess will be applied by the Landlord against the next succeeding instalments of the Operating Costs and Real Property Taxes payable by the Tenant. If there is any Excess for the last year of the Term, the Excess will be refunded by the Landlord to the Tenant at the same time as the Landlord delivers the Statement for the last year of the Term, provided the Tenant is not in default of any of the Tenant's Covenants. If the Tenant is in default of any of the Tenant's Covenants, then the Landlord shall hold the Excess until such time as the default is rectified. If the default is a rental default, the Landlord may apply the Excess against the Rent in arrears. If the default is not a rental default, the Landlord may apply the Excess against the costs incurred by the Landlord if the Landlord elects to rectify the default, in whole or in part. Upon the default being rectified, the Landlord will either apply the Excess against the next succeeding instalments of the Operating Costs and Real Property payable to the Landlord or refund any remaining amount of the Excess to the Tenant; or

- (ii) less than the amount actually payable by it (the difference being called the "Deficiency"), the Tenant shall pay the Deficiency within 30 days following the date it receives the Statement from the Landlord.
- (e) The Tenant has 30 days from the date it receives a Statement (the "Objection Period") to (but only if the Tenant is not in default of any of the Tenant's Covenants):
 - (i) request, in writing, reasonable backup information directly relating to the information contained in such Statement to facilitate the Tenant's review and verification of those costs which the Tenant has reasonable grounds for believing have been overstated or include costs that may not be included in Operating Costs pursuant to the terms of this Lease. The purpose of this section is not to give the Tenant the right to review or see copies of every invoice relating to the Operating Costs. Upon receiving such a request, the Landlord shall either (as determined by the Landlord):
 - (A) provide to the Tenant copies of such backup information (and the Tenant shall pay for the costs incurred by the Landlord in having such copies made within 20 days following receipt of an invoice from the Landlord for such costs); or
 - (B) permit an employee of the Tenant who is acceptable to the Landlord, or the Tenant's independent chartered accountant, to inspect such backup information at the Landlord's or its property manager's offices. Such inspection is to occur during the Landlord's normal business hours and for no more than 2 Business Days. The Landlord may have a representative present to oversee such review. The Tenant and its representative may not photocopy any of the Landlord's records. The Tenant shall provide the Landlord with a copy of the report prepared by its representative regarding the results of such review and inspection within 3 Business Days of the Tenant receiving such report.

In either case, the Tenant shall keep all information provided or made available to the Tenant confidential, but the Tenant may reveal such information to its professional advisers, provided that they agree in writing to keep such information confidential. Such information may, however, be disclosed in any litigation proceedings between the parties; and

(ii) deliver to the Landlord written notice (an "Objection Notice") setting out in detail any objections it may have to the Statement and the reasons therefor.

The Tenant shall not retain or utilize the services of any Person whose fees are based on a contingency basis (including fees based on a percentage of the savings in Operating Costs and Real Property Taxes obtained as a result of any review of same) to assist the Tenant in reviewing and verifying the Operating Costs and Real Property Taxes charged by the Landlord, and the Landlord may refuse to deal with any such Person. If the Tenant:

- (iii) fails to deliver an Objection Notice to the Landlord within the Objection Period, the Tenant will be deemed to have accepted such Statement and such Statement will be conclusive and binding on the Tenant; or
- (iv) delivers an Objection Notice to the Landlord within the Objection Period, then the Tenant will be deemed to have accepted such Statement except for the matters set out in the Objection Notice and if the Landlord:
 - (A) is in agreement with the matters contained in the Objection Notice, the appropriate adjustments shall be made between the parties within 30 days following the date that the Landlord receives the Objection Notice; or
 - (B) is not in agreement with the Objection Notice, and the parties are unable to resolve the matter through consultation within 45 days following the date that the Landlord receives the Objection Notice, then the Tenant may, within 90 days following the expiry of such 45 day period, commence an action against Landlord with respect to the objections raised by the Tenant in the Objection Notice, failing which the Tenant will be deemed to have accepted such Statement and it will be conclusive and binding upon the Tenant.

5.3 <u>Reallocation of Operating Costs</u>

If the Landlord, acting reasonably, determines that there should be a disproportionate allocation of Operating Costs among the tenants of the Building, then the Landlord may make such disproportionate allocation and it will be binding on the Tenant.

ARTICLE 6.00 TAXES

- 6.1 <u>Business Taxes of Tenant</u>
- (a) The Tenant shall, on or before their due date, pay to the relevant Authorities all Business Taxes.
- (b) If the Tenant or any Person occupying the Premises, or any part thereof, elects to have the Premises or any part thereof assessed for separate school taxes, the Tenant shall pay to the Landlord as soon as the amount of the separate school taxes is ascertained, any amount by which the separate school taxes exceed the amount which would have been payable for school taxes had such election not been made as aforesaid, and any loss, costs, charges and expenses suffered by the Landlord may be collected by the Landlord as Additional Rent.
- (c) The Tenant shall, upon request of the Landlord from time to time, deliver to the Landlord for inspection, receipts for payment of all Business Taxes and will furnish such other information in connection therewith as the Landlord may reasonably require.
- 6.2 <u>Real Property Taxes</u>
- (a) The Tenant shall pay, as Additional Rent:
 - (i) all Real Property Taxes levied, rated, charged or assessed from time to time, respectively, against the Premises or any part thereof, on the basis of a separate real property tax bill and separate real property assessment notices rendered by any lawful taxing Authority; and
 - (ii) the Tenant's Proportionate Share of all Real Property Taxes levied, rated, charged or assessed from time to time, respectively, against the Common Areas, or any part thereof, on the basis of a separate real property tax bill and separate real property assessment notices rendered by any lawful taxing Authority.
- (b) If there are no such separate tax bills and assessment notices for the Premises and the Common Areas, but there are available to the Landlord working papers and calculations made by the taxing Authorities from which such separate assessments may, in the Landlord's opinion, be determined, then the Landlord may elect to make such separate assessments based on such working papers and calculations in which case such determinations made by the Landlord will be deemed to be separate tax bills and assessments for the purpose of this section 6.2.
- (c) If there are not actual or deemed separate real property tax bills and separate real property assessment notices for the Premises and the Common Areas, then the Tenant shall pay, as Additional Rent, its Proportionate Share of all Real Property Taxes levied, rated, charged or assessed from time to time against the Lands. In such case, if:
 - (i) there are not actual or deemed separate real property tax bills and separate real property assessment notices for the Premises and the Common Areas;
 - (ii) less than 100% of the Rentable Area in the Building has been leased by the Landlord to third parties and is vacant during any period; and
 - (iii) the Landlord is able to obtain a reduction in the Real Property Taxes for the Lands due to such vacancies as described in section 6.2(c)(ii) (and the decision to seek such a reduction shall be determined by the Landlord in its sole discretion),

then, for the purposes of this section 6.2(c), the Real Property Taxes on the Lands will be deemed to be the amount that they would have been if 100% of the Rentable Area in the Building had been fully leased to third parties.

(d) The Tenant shall pay the Real Property Taxes payable by it pursuant to section 6.2(a) or 6.2(c) either to, as determined by the Landlord in writing from time to time:

- (i) the Landlord. In such case, the Tenant shall pay such Real Property Taxes according to estimates or revised estimates made by the Landlord from time to time in respect of each Fiscal Period. The Tenant shall make such payments in advance on the first day of each month in monthly amounts and for such periods as determined by the Landlord. Until such time as the Landlord advises otherwise, the Real Property Taxes are payable in 12 equal monthly instalments, commencing on January 1 in each year and ending on December 31 in each year, subject to section 4.2.
- (ii) the relevant taxing Authorities. In such case, the Tenant shall:
 - (A) pay such Real Property Taxes to the relevant taxing Authorities at the times required by such taxing Authorities; and
 - (B) promptly deliver to the Landlord receipts evidencing the payment of all such Real Property Taxes and furnish such other information in connection therewith as the Landlord requests from time to time within 15 days following the Tenant's receipt of such request.
- (e) Until such time as the Landlord advises the Tenant in writing to the contrary, the Tenant shall pay the Real Property Taxes to the Landlord in accordance with section 6.2(d)(i).
- (f) The Tenant shall provide the Landlord, within 10 days after receipt by the Tenant, a copy of any separate tax bills and assessment notices for the Premises or any part thereof.
- (g) If the assessments and tax bills for the Real Property Taxes applicable to the Lands involve lands and/or buildings that do not form part of the Lands, then the Landlord will have its realty tax Experts allocate the Real Property Taxes between the Lands and such other lands and the amount allocated to the Lands will be conclusive and binding upon the Tenant and be deemed to be the amount assessed against the Lands. For clarity, the Real Property Taxes may not be allocated in a manner that permits the Landlord to recover more than 100% of the Real Property Taxes.

6.3 Alternate Methods of Taxation

If, during the Term, the method of taxation is altered so that the whole or any part of the Real Property Taxes now levied, rated, assessed or imposed on real estate and improvements are levied, assessed, rated or imposed wholly or partially as a capital levy or on the rents received or otherwise, or if any tax, assessment, levy, imposition or charge, in lieu thereof is imposed upon the Landlord, then all such taxes, assessments, levies, impositions and charges will be included within the Tenant's obligation to pay its Proportionate Share of Real Property Taxes as set out in section 6.2.

6.4 <u>Pro-Rata Adjustment</u>

If any taxation year during the Term of this Lease is less than 12 calendar months, the Tenant's Proportionate Share of Real Property Taxes will be subject to a per diem pro-rata adjustment in the manner contemplated by section 4.2.

6.5 <u>Deferrals and Appeals of Real Property Taxes</u>

- (a) The Landlord may defer payment of Real Property Taxes, or defer compliance with any statute, law, by-law, regulation or ordinance in connection with the levying of any such Real Property Taxes, in each case, to the fullest extent permitted by law, so long as it diligently prosecutes any contest, appeal or assessment on which such tax is based. The Tenant shall co-operate with the Landlord in respect of any such contest, appeal or assessment and shall provide the Landlord with all relevant information, documents and consents required by the Landlord.
- (b) The Tenant may appeal or contest any separate assessment of the Real Property Taxes for the Premises, in each case, to the fullest extent permitted by law, so long as it shall diligently prosecute any contest, appeal or assessment on which such tax is based, provided that it first obtains the Landlord's written consent. If the Tenant obtains the Landlord's written consent, the Tenant will deliver to the Landlord whatever security for the payment of Real Property Taxes the Landlord considers advisable and will keep the Landlord informed of its progress from time to time and upon the request of the Landlord. The Tenant may not, however, appeal the Real Property Taxes for (i) the Common Areas, if separately assessed; or (ii) the Building if there is a single assessment for the Building.

6.6 <u>HST</u>

The Tenant shall pay to the Landlord all HST payable on the Rent (including accelerated Rent), which payment shall be made at the same time as the Rent to which the HST relates is to be paid in accordance with the terms of this Lease. Regardless of any other provision of this Lease to the contrary, the amounts payable by the Tenant under this section shall be deemed not to be Rent, but the Landlord shall have all of the same remedies for and rights of recovery for such amounts as it has for the recovery of Rent under this Lease, including the right to distrain against the Tenant's property.

ARTICLE 7.00 UTILITIES

7.1 <u>Utility Rates</u>

(a) Throughout the Term, the Tenant shall pay, as Additional Rent, all rates and charges (the "Charges") for electric charges, air-conditioning, ventilation, water, gas, light, heat, power, telephone, television and other public utilities and services supplied to or used on or in connection with the Premises or in connection with the business or occupation of the Tenant (the "Utilities") and indemnify and keep indemnified the Landlord and the Premises from and against any and all Claims in respect thereof.

(b) The Tenant shall:

- (i) cause the account for each of the separately metered Utilities to be registered in the name of the Tenant throughout the Term by no later than the earlier of the Commencement Date and the date that the Tenant takes possession (exclusive or non-exclusive) of the Premises; and
- (ii) pay all such Utilities to the relevant utility supplier by the relevant due date.
- (c) Notwithstanding any other provision of this Lease, the Tenant shall commence paying the Charges for all Utilities consumed upon the Premises commencing on the earlier of the Commencement Date and the date that possession of the Premises (which need not be exclusive) is given to the Tenant.

7.2 <u>Heating, Ventilating and Air Conditioning</u>

- (a) Throughout the Term, the Tenant shall operate the HVAC Equipment in such manner as to maintain reasonable conditions of temperature, air circulation and humidity within the Premises as determined by the Landlord, acting reasonably. The Tenant shall comply with all reasonable rules and regulations as the Landlord may make from time to time respecting the operation and maintenance of the HVAC Equipment.
- (b) Without limiting the provisions of section 9.1, the Tenant shall, throughout the Term and at its sole cost, maintain, repair, replace when necessary and regulate the HVAC Equipment so as to maintain same in good operating condition as would a careful and prudent owner. The Tenant shall take out and maintain a service contract(s) for the HVAC Equipment with a Person (approved by the Landlord) experienced in servicing such equipment, which contract(s) shall provide for regular inspections and the making of any necessary repairs in accordance with the accepted standards of the industry. The Tenant shall provide the Landlord with a copy of such contract and with copies of all periodic inspection reports made pursuant to such contract(s), as well as copies of all renewals of such contract(s) or new contract(s), within 30 days of the Tenant receiving or entering into same.
- (c) If the Landlord determines that the Tenant will not comply with its obligations in section 7.2(b) to the Landlord's satisfaction, then the Landlord may elect, on written notice to the Tenant, to maintain and repair the HVAC Equipment (or to retain a service company to do so) in which case the Landlord or its duly authorized agents shall be entitled to enter upon the Premises for the purpose of maintaining and repairing the HVAC Equipment. The Tenant shall be responsible for all costs and expenses incurred by the Landlord in maintaining or repairing the HVAC Equipment, or causing such service company to maintain, repair and replace the HVAC Equipment, from time to time, together with an administrative fee in the amount of 15% of the said costs and expenses. Such costs shall be paid by the Tenant to the Landlord within 15 days of receiving an invoice from the Landlord in respect of such costs.
- (d) If the Premises are served by HVAC Equipment which serves more than one premises in the Building, then:

- (i) the Tenant shall not be required to maintain, repair or replace the HVAC Equipment;
- (ii) the Landlord shall maintain, repair and replace the HVAC Equipment (or cause it to be maintained, repaired and replaced) and the Tenant shall be responsible for paying its share of the costs of maintaining, repairing and replacing the HVAC Equipment. The Landlord and its contractors shall be entitled to enter upon the Premises for the purpose of maintaining, repairing and replacing the HVAC Equipment. Such costs shall be allocated by the Landlord on an equitable basis among the tenants (including the Tenant) served by the HVAC Equipment, and the Tenant shall pay its share of such costs (as so determined by the Landlord), plus an administrative fee of 15% of its share of such costs, to the Landlord within 15 days of receiving an invoice from the Landlord.

7.3 <u>Meters</u>

The Tenant shall pay the cost of installing and maintaining any meters installed at the request of the Landlord or the Tenant to measure the usage of Utilities in the Premises. No meter may be installed in the Premises by the Tenant without the Landlord's consent.

ARTICLE 8.00 CONTROL OF THE BUILDING

8.1 <u>Control of the Building</u>

- (a) The Building is at all times subject to the exclusive control and management of the Landlord. The Landlord shall operate and maintain the Building in such manner as the Landlord, in its sole discretion, determines from time to time. Without limiting the generality of the foregoing, the Landlord may:
 - (i) construct, maintain and operate lighting facilities and heating, ventilating, and air-conditioning systems;
 - (ii) police and supervise the Building;
 - (iii) close all or any portion of the Common Areas to such extent as may, in the opinion of the Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any Person or the public therein;
 - (iv) grant, modify and terminate easements or other agreements pertaining to the use and maintenance of all or any part or parts of the Common Areas;
 - (v) obstruct or close off all or any part or parts of the Building for the purpose of maintenance or repair, or for any other reason deemed necessary by the Landlord;
 - (vi) employ all personnel including supervisory personnel and managers necessary for the operation, maintenance and control of the Building;
 - (vii) make any changes or additions to the pipes, conduits, utilities and other services in the Premises which service the Premises or other premises in the Building;
 - (viii) designate and specify the kind of container to be used for garbage and refuse and the manner and the times and places at which same shall be placed for collection;
 - (ix) from time to time, change the area, level, location, arrangement and use of the Common Areas;
 - (x) construct other buildings, structures or improvements on or to the Building and/or make alterations thereof or additions thereto, or subtractions therefrom or re-arrangements thereof and/or enclose any open portion of the Building, and/or create any outdoor or indoor malls or any combination thereof, and/or build additional storeys on the Building;
 - (xi) re-locate or re-arrange the Common Areas from those existing at the Commencement Date;
 - (xii) designate the areas and entrances and the times in, through and at which loading and unloading of goods shall be done;

- (xiii) control, supervise and regulate the delivery or shipping of merchandise, supplies and fixtures to and from the Premises in such manner as in the sole judgment of the Landlord is necessary for the proper operation of the Building; and
- (xiv) do and perform such other acts in and to the Building which the Landlord determines, from time to time, to be advisable with a view towards the improvement of the convenience and use thereof by the tenants, their officers, agents, employees and customers, and those entitled, from time to time, to the use thereof.

In exercising any of its foregoing rights, the Landlord may enter upon the Premises to make such changes to same as the Landlord in its sole discretion deems necessary in connection with any changes to the Building.

- (b) In exercising its rights in this section, the Landlord shall:
 - (i) make any such changes as expeditiously as reasonably possible; and
 - (ii) use reasonable commercial efforts to minimize interference with the Tenant's business operations in the Premises,

and the Tenant will not be entitled to any abatement in Rent or compensation for any inconvenience, nuisance or discomfort occasioned thereby and nothing herein contained is deemed or construed to impose upon the Landlord any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the Premises, or any part thereof, except as otherwise provided in this Lease. Any entry by the Landlord upon the Premises in accordance with the provisions of this section is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease and will not affect the Tenant's obligation to observe and perform the Tenant's Covenants.

8.2 Parking

(a) The Tenant acknowledges and agrees that the parking area forming part of the Common Areas (the "Parking Area") is intended to be utilized in common by the Tenant and all of the other tenants and other occupants of the Building and their respective employees, customers and visitors. The Tenant covenants and agrees not utilize the Parking Area so as to interfere with the use thereof by such other Persons.

ARTICLE 9.00 MAINTENANCE AND REPAIRS

9.1 <u>Tenant's and Landlord's Repairs</u>

- (a) If the Building or any part of it becomes damaged or destroyed through the negligence, carelessness or misuse by the Tenant, the Tenant's Employees or anyone permitted by it to be in the Building, or through it or them in any way stopping up or injuring the heating apparatus, water pipes, drainage pipes, or other equipment or part of the Building, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant who shall pay the same to the Landlord as Additional Rent upon demand.
- (b) Subject to sections 9.1(c), 9.4 and 17.1, the Tenant shall, at all times during the Term, at its sole cost and expense, keep and maintain the Premises in good order, condition and repair (which includes periodic painting of any office area within the Premises and preventative maintenance of the whole of the Premises, all as determined by the Landlord, acting reasonably) as would a prudent owner. The Tenant shall promptly make all needed maintenance, repairs and replacements to the Premises (including all glass and windows in the interior and exterior walls and doors of the Premises and all signs, partitions, doors in the interior and exterior walls of the Premises, fixtures (including lighting, wiring, plumbing fixtures), Building standard equipment and all mechanical, electrical and plumbing systems serving the Premises) with due diligence and dispatch.
- (c) The Tenant's obligations in section 9.1(b) do not extend to:
 - (i) repairs and maintenance necessitated by reasonable wear and tear to the Premises which would not be repaired by a careful and prudent owner of a first class building of the same type as the Building; and
 - (ii) repairs to be made by the Landlord pursuant to section 9.1(d).

- (d) Subject to section 17.1 and any other provision of this Lease dealing with the Landlord's obligation to effect repairs, the Landlord shall at all times throughout the Term:
 - (i) maintain, repair, and replace at such times as determined by the Landlord (but only if necessary in order to allow the Tenant to conduct its business operations in the Premises):
 - (A) the structural components of the Building (namely, the foundations, exterior weather walls, subfloor, roof deck, bearing walls and structural columns and beams of the Building);
 - (B) maintain and repair the roof membrane of the Building;
 - (C) the Common Areas, including the driveways and parking areas on the Lands;
 - (ii) repair Insured Damage; and
 - (iii) replace the roof membrane of the Building upon the Landlord determining, based on the advice of its Expert, that the roof membrane has come to the end of its useful life.

The timing and all aspects of the carrying out of such repairs, replacements and maintenance shall be within the sole discretion of the Landlord. The costs of such maintenance, repairs and replacements shall be included in Operating Costs in accordance with section 5.1 (subject to the exclusions contemplated by section 5.1(b)), unless same are necessitated as a result of the negligence, omission or wilful acts of the Tenant or the Tenant's Employees, in which case (except in the case of Insured Damage) the Tenant shall be responsible for the full cost of the maintenance, repairs and replacements (together with the Landlord's administrative fee of 15% of such costs) (collectively, the "Repair Costs"). If required by the Landlord, the Tenant shall provide a deposit to the Landlord equal to the Landlord's estimate of the Repair Costs (the "Repair Deposit") and the Landlord shall be under no obligation to undertake the repairs until such time as it receives the Repair Deposit. If the Repair Costs are to be paid by the Tenant, then upon completion of the repairs the Landlord will provide the Tenant with an invoice for the Repair Costs and:

- (i) to the extent that the Repair Costs exceed the Repair Deposit actually received by the Landlord (if any), the Tenant shall pay such excess to the Landlord within 20 days following the date that the Tenant receives such invoice; or
- (ii) to the extent that the Repair Costs are less than the Repair Deposit actually received by the Landlord (if any), the Landlord shall pay the deficiency to the Tenant within 20 days following the date that the Tenant receives such invoice.
- (e) Except as expressly set out in this Lease, the Landlord is not responsible for making any repairs or replacements in and to the Premises of any nature or kind whatsoever.

9.2 Repair on Notice

- (a) The Tenant shall commence to make those repairs and replacements that are its responsibility under this Lease upon 15 days' notice in writing from the Landlord (or such shorter period as may be required by the Landlord, acting reasonably) but the Landlord's failure to give notice shall not relieve the Tenant from its obligation to repair.
- (b) If the Landlord determines that the Tenant's business operations are being conducted in a manner that is causing damage to the Premises, then the Landlord may require the Tenant to make such installations in the Premises as the Landlord considers appropriate to help prevent or minimize the damage being caused to the Premises as a result of the Tenant's business operations, in which case the Tenant shall make such installations within 30 days following receipt of written notice from the Landlord.
- (c) If, after receiving a notice contemplated by section 9.2(a) or 9.2(b), the Tenant refuses or neglects to perform the repairs or installations set out in such notice, the Landlord may make such repairs without liability to the Tenant for any loss of or damage that may occur to anything in the Premises or to the Tenant's business by reason thereof. The Tenant shall pay to the Landlord, as Additional Rent, the Landlord's costs for making any such repairs or installations, plus an administrative fee equal to 15% of such costs (collectively, the "Repair & Installation Costs"), within 15 days following receipt of an invoice from the Landlord for the Repair & Installation Costs. If required by the Landlord, the Tenant shall provide, as Additional Rent, a deposit to the Landlord equal to the Landlord's estimate of the Repair & Installation Costs within 3 Business Days following written demand being made for same and the Landlord shall deduct the amount of any such deposit

received from the Tenant against the final Repair & Installation Costs that the Landlord invoices the Tenant.

9.3 <u>Landlord's Right to Enter</u>

- (a) The Landlord and the Landlord's Employees may, at all reasonable times and upon at least 24 hours prior notice (except in the case of an emergency, real or apprehended), enter the Premises for the purpose of:
 - (i) viewing the state of repair and maintenance of the Premises. The Tenant shall comply with all requirements of the Landlord with respect to the care, maintenance and repair thereof, provided that they are not inconsistent with Tenant's obligations contained in section 9.1;
 - (ii) making such repairs and replacements as are the Landlord's obligations under this Lease;
 - (iii) making such repairs and replacements as are the Tenant's obligations pursuant to the terms of this Lease and which the Tenant is in default of making after the expiry of the 15 day notice period referred to in section 9.2;
 - (iv) making changes and additions to the pipes, conduits, wiring and ducts in the Premises where necessary to serve other premises in the Building; and/or
 - (v) for any other purpose necessary to enable the Landlord acting reasonably to perform the Landlord's Covenants or to exercise its rights under this Lease.
- (b) The Landlord may bring onto the Premises all materials required in order for it to exercise its rights in this section 9.3.
- (c) In order to effect any maintenance, repairs, replacements, alterations or improvements which are the Landlord's obligation under this Lease, or which the Landlord is entitled to carry out pursuant to this Lease, the Landlord may, without any liability whatsoever and without thereby constituting an interference with the Tenant's rights under this Lease or a breach by the Landlord of this Lease, and without thereby entitling the Tenant to any rights in respect thereof, temporarily suspend or modify the provision of Utilities to the Premises.
- (d) In exercising its rights in this section, the Landlord:
 - (i) shall do so as expeditiously as reasonably possible;
 - (ii) shall endeavour to minimize the interference with the Tenant's business operations in the Premises;
 - (iii) shall, in the case of the exercise of its rights under section 9.3(c) (other than in the case of an emergency, real or apprehended), give the Tenant at least 2 Business Days prior written notice and endeavour to coordinate the timing of any suspension of Utilities with the Tenant; and
 - (iv) may require the Tenant to move its personal property and trade fixtures from the area to which the Landlord requires access to another part of the Premises, in which case the Tenant shall do so, failing which the Landlord may do so.
- (e) The Tenant is not entitled to any abatement in Rent as a result of the Landlord exercising its rights in this section 9.3. The Landlord is not liable for any damage caused to any property located in the Premises as a result of the Landlord exercising its rights in this section 9.3.
- (f) If the Tenant is not present to open and permit an entry into the Premises, the Landlord or the Landlord's Employees may, using reasonable force, exercise the Landlord's rights in section 9.3(a) to enter the Premises without rendering the Landlord or the Landlord's Employees liable therefor, and without affecting or releasing the Tenant from the observance and performance of any of the Tenant's Covenants.
- (g) Nothing in this section imposes upon the Landlord any obligation, responsibility or liability for the care, maintenance or repair of the Premises, except as specifically provided in this Lease.

9.4 <u>Alterations or Improvements</u>

- (a) The Tenant may not commence nor make any Alterations (which, for the purposes of this section 9.4, includes the Tenant's trade fixtures) to any part of the Premises without the Landlord's prior written consent.
- (b) If any proposed Alterations:
 - (i) affect the structure or roof of the Premises or the building in which the Premises are located:
 - (ii) affect any part of the Premises which may be under warranty to the Landlord;
 - (iii) affect any of the electrical, plumbing, mechanical, heating, ventilating or air-conditioning systems or other base Building systems thereof, or otherwise require compatibility with the Landlord's systems;
 - (iv) are to be installed outside of the Premises;
 - (v) are installed within the Premises but are part of the Common Areas; or
 - (vi) affect the Common Areas, the exterior doors of the Premises or the perimeter walls of the Premises including the windows or glass portions thereof,

then the Landlord may require such Alterations to be performed by the Landlord or its contractors (provided that such work is done at competitive rates), but at the Tenant's sole cost and expense. The Tenant shall pay all such costs and expenses, including the cost of all Experts retained by the Landlord (plus a sum equal to 15% of all such costs representing the Landlord's overhead and administrative costs), within 15 days of receiving an invoice from the Landlord.

- (c) No Alterations by or on behalf of the Tenant shall be permitted which may weaken or endanger the structure or adversely affect the condition or operation of the Premises or the Building or diminish the value thereof, or restrict or reduce the Landlord's coverage for municipal zoning purposes.
- (d) Prior to commencing any Alterations, the Tenant shall submit to the Landlord:
 - (i) details of the proposed Alterations, including, where appropriate (as determined by the Landlord) in light of the nature of the Alterations, 2 sets of working drawings, plans and specifications (which are to include, where appropriate (as determined by the Landlord) in light of the nature of the Alterations, architectural, structural, electrical, mechanical, plumbing, and telecommunication plans) prepared by qualified architects or engineers;
 - (ii) such indemnification against liens, costs, damages and expenses as the Landlord may reasonably require; and
 - (iii) evidence satisfactory to the Landlord that the Tenant has obtained all necessary consents, permits, licences and inspections from all Authorities having jurisdiction.
- (e) All Alterations by the Tenant shall be:
 - (i) at the sole cost of the Tenant;
 - (ii) performed by competent workmen who are approved by the Landlord and its contractors and who are fully covered by the Workplace Safety and Insurance Board of Ontario;
 - (iii) performed in a good and workmanlike manner in accordance with the approved drawings and specifications, all applicable Laws and the very best standards of practice;
 - (iv) subject to the reasonable supervision and direction of the Landlord;
 - (v) completed as expeditiously as possible with first class new materials;
 - (vi) done in a manner that does not disturb any of the other tenants of the Building; and
 - (vii) done in accordance with any design criteria manual which the Landlord has for the Building.

- (f) The Landlord may require that any cutting, coring, drilling and other elements of any Alterations that could disturb any of the other tenants of the Building be done during the hours of 6 p.m. to 7:00 a.m. and scheduled at least 48 hours in advance with the Landlord.
- (g) The Tenant or its contractors shall carry builder's all risks insurance in an amount not less than \$5,000,000 and which names the Landlord as an additional insured, but only in respect of occurrences arising out of the acts of the insured. The Tenant may not commence any Alterations until it has provided the Landlord with a certificate of insurance, signed by the relevant insurer (or authorized agent of such insurer), evidencing that such insurance has been taken out and is in place and the Landlord has approved such certificate.
- (h) The Tenant is responsible for all costs incurred by the Landlord (including fees of architects, engineers and designers) incurred in dealing with Tenant's request for Landlord's consent to any Alterations, whether or not such consent is granted, and in inspecting and supervising any such Alterations, together with a management fee in the amount of 5% of the costs of the Alterations. Such costs and management fee shall be paid by the Tenant to the Landlord within 15 days following the Tenant's receipt of an invoice for such costs and management fee.
- (i) Any Alterations made by the Tenant without the prior written consent of the Landlord or which are not in accordance with the drawings and specifications approved by the Landlord shall, if requested by the Landlord, be promptly removed by the Tenant at its expense and the Premises restored to their previous condition.
- (j) Upon completion of any Alterations, the Tenant shall provide to the Landlord as-built drawings for the Premises and shall secure all applicable statutory declarations and certificates of inspection, approval and occupancy and provide evidence of same to the Landlord.
- (k) The Tenant and the Tenant's Employees may not go on to the roof of the Building or make any opening in the roof of the Premises in connection with the performance of any Alterations or for any other reason whatsoever, except in order to carry out such maintenance, repairs and replacements to the equipment on the roof which are the Tenant's responsibility for maintaining, repairing or replacing pursuant to the terms of this Lease.
- (l) The opinion in writing of the Landlord's Expert shall be binding on both the Landlord and Tenant respecting all matters of dispute regarding the Alterations, including the state of completion and whether or not the Alterations are completed in a good and workmanlike manner and in accordance with Tenant's plans and specifications for the Alterations and with the provisions of this section.
- (m) Notwithstanding any consents granted by the Landlord to any proposed Alterations, such consents relate only to the general acceptability of the proposed Alterations and that by giving such consents, the Landlord shall not be deemed to have any direct or indirect interest, responsibility or liability with respect to such Alterations or the design, installation or maintenance of same or for the payment of same, all of which shall be the sole responsibility of the Tenant. Without limiting the generality of the foregoing, and notwithstanding any notices which the Landlord may receive from the Tenant's contractors or subcontractors, the Landlord shall not be liable, and no lien or other encumbrance shall attach to the Landlord's interest in the Building, pursuant to the Lien Act or any other Laws, in respect of materials supplied or work done by Tenant or on behalf of Tenant (including if done by or on the direction of the Landlord pursuant to its rights in this section) or related to any Alterations, and Tenant shall so notify or cause to be notified all its contractors and subcontractors. The Tenant shall indemnify and save harmless the Landlord from any Claims suffered or incurred by the Landlord which arise out of the performance of the Alterations. The Tenant acknowledges and agrees that the provision of any materials, work or services performed by the Landlord at Tenant's expense in respect of any Alterations or pursuant to any provision of this Lease shall be deemed to be provided by the Landlord on the Tenant's behalf as the Tenant's contractor.

9.5 Occupational Health and Safety

(a) The Tenant shall ensure that a comprehensive and rigorous health and safety program to protect workers in the Premises is implemented to ensure that no accidents or injuries occur in connection with the performance of any Alterations. The Tenant will indemnify the Landlord in respect of all Claims relating to fines or other offenses under all occupational health and safety and any similar legislation that might be brought, or imposed against or suffered by the Landlord or any of the

Landlord's Employees in connection with the performance of any Alterations. Without limiting the foregoing, the Tenant shall:

- (i) ensure that all obligations imposed by applicable Laws on "constructors" or other Persons completing or co-ordinating any Alterations are diligently and properly completed;
- (ii) co-operate with the Landlord in having any Alterations designated as a separate project so that the Landlord does not incur any obligations as a constructor or obligations similar to those of a constructor at law or by regulation imposed in connection with the performance of any Alterations;
- (iii) comply with all directions that the Landlord may give to the Tenant in connection with the performance of any Alterations having regard to construction health and safety requirements; and
- (iv) provide to the Landlord whatever rights of access, inspection, and whatever information, documents and other matters the Landlord requires in order to ensure that the Tenant's obligations under this section are complied with by the Tenant.

9.6 Notify Landlord

The Tenant shall give immediate notice in writing to the Landlord of any damage caused to the Premises, the HVAC Equipment, the Common Areas or the Building upon such damage becoming known to the Tenant. If the Landlord is responsible for repairing any such damage and the Tenant fails to give notice of such damage to the Landlord in accordance with its preceding obligation, the Tenant shall be liable for such of the costs incurred by the Landlord in repairing such damage as can be shown to be directly attributable to such failure on the part of the Tenant (including additional costs incurred by the Landlord in repairing such damage and which would not have been incurred had the Tenant given notice of such damage to the Landlord in accordance with its obligations in this section).

9.7 Maintenance and Garbage

The Tenant:

- (a) shall keep, operate and maintain the Premises as would a reasonably prudent owner in possession having regard to the nature of the business operations being carried on therein;
- (b) is responsible for the removal and disposal of its garbage from the Premises, at its sole cost and expense. If the Landlord provides or designates a service for picking up garbage, the Tenant shall use same at the Tenant's expense;
- (c) may only have and use a garbage container in the exterior Common Areas if permitted by applicable Laws and if approved by the Landlord in writing (such approval to include the location and size of such outside garbage container); and
- (d) shall not burn any trash or garbage of any kind in or about the Premises or the Building.

9.8 <u>Loading and Unloading</u>

The Tenant shall ensure that all deliveries or movement of heavy articles to and from the Premises shall be made only by doorways or corridors designated by the Landlord for such purpose.

9.9 Glass

The Tenant shall pay the cost of replacement with equal quality and size of any glass broken on the Premises including outside windows and doors of the perimeter of the Premises (including perimeter of the windows in the exterior walls) during the continuance of this Lease.

9.10 Pest Extermination

The Tenant shall engage at the Tenant's cost such pest extermination contractor as the Landlord may direct and at such intervals as the Landlord may require.

9.11 Tenant Not to Overload

(a) The Tenant shall not:

- (i) bring upon the Premises or any part thereof, any machinery, equipment, article or thing that by reason of its weight, size or use, might in the opinion of the Landlord damage the Premises;
- (ii) overload the floors of the Premises;
- (iii) overload any of the utility, electrical, mechanical or structural systems in or servicing the Premises; or
- (iv) place anything on or suspend anything from the roof structure or the building structure without first obtaining the Landlord's prior written consent, which consent may be unreasonably and arbitrarily withheld.
- (b) If any damage is caused to the Premises by any machinery, equipment, object or thing or by the overloading of the floors of the Building, or by any act, neglect, or misuse on the part of the Tenant, the Tenant shall promptly repair the Premises, or at the option of the Landlord, pay the Landlord on demand the cost of making good the Premises together with an amount equal to 15% of such costs for overhead.

9.12 Protrusions from the Premises

The Tenant covenants and agrees that it shall not allow any protrusions from the Premises for any reason whatsoever in order to protect the aesthetics of the Building. If, however, should any such protrusion exist (excluding any protrusions existing prior to the date the Tenant was given possession of the Premises or which are installed by the Landlord), the Tenant shall, if requested by the Landlord, remove such protrusion within 10 days following the Landlord's request, failing which the Landlord may do so, in which case the Tenant will pay the costs incurred by the Landlord in removing such protrusion, together with an administrative fee equal to 15% of such costs, within 30 days following the Tenant's receipt of an invoice for such costs.

9.13 Protection of Equipment

The Tenant shall protect from damage all of the heating and air-conditioning apparatus, water, gas and drain pipes, water closets, sinks and accessories thereof in or about the Premises and keep same free from all obstructions that might prevent their free working and give to the Landlord prompt written notice of any accident to or defects in same or any of their accessories. Any damage resulting from misuse or failure to protect same shall be the sole responsibility of the Tenant. The Tenant specifically undertakes to install and maintain at its sole cost and expense, fire extinguishers and such other fire protection equipment as is deemed reasonably necessary or desirable by the Landlord, any Authority or insurance body.

ARTICLE 10.00 USE OF PREMISES

10.1 <u>Use of Premises</u>

The Premises may only be used for the Permitted Uses and may not be used, in whole or in part, for any other business or purpose.

10.2 <u>Conduct of Business</u>

- (a) In the conduct of the Tenant's business, the Tenant shall:
 - (i) not perform any acts or carry on any practices which may damage the Building or be a nuisance or menace to the Landlord or to other Persons;
 - (ii) not do, nor suffer or permit to be done, any act in or about the Building which hinders or interrupts the flow of traffic to, in and from the Building, or any part of it, and not do, nor suffer or permit anything to be done which will in any way obstruct the free movement of persons doing business in the Building with any tenant or occupant of the Building;
 - (iii) not commit or suffer or permit to be committed any waste upon the Premises;
 - (iv) not sell, or permit the sale of, counterfeit goods;
 - (v) not engage in acts or activities (including the sale of goods or services) which may infringe the intellectual property rights of third parties;

- (vi) not place or erect anything on the roof or exterior walls of the Building without first obtaining the Landlord's written consent, failing which the Landlord may remove the item(s) without any prior notice to the Tenant and at the cost of the Tenant, plus an administrative fee equal to 15% of such costs, same to be paid by the Tenant within 30 days following receipt of an invoice from the Landlord;
- (vii) not store or place anything in the Common Areas, including, without limitation (i) any outdoor Common Areas and/or (ii) the Exclusive Parking Spaces;
- (viii) not cause, permit or suffer any odours, vapours, steam, water, vibrations or other undesirable effects to emanate from the Premises or any equipment or installation therein;
- (ix) not use any travelling or flashing lights, or displays, or any signs, television or other audiovisual or mechanical devices, in a manner so that they can be seen outside of the Premises and not use any loudspeakers, sound system, television, phonographs, radio or other audio-visual or mechanical devices in a manner so that they can be heard outside of the Premises, without in each case obtaining the prior written consent of the Landlord. If the Tenant uses any such equipment without receiving the prior written consent of Landlord or in a manner inconsistent with the terms of the Landlord's consent, the Landlord may, without liability on its part, remove such equipment without notice at any time, in which case the Tenant shall: (A) reimburse the Landlord for the costs incurred by the Landlord in removing such equipment, plus an administration fee of 15% of such costs, within 30 days following the Tenant's receipt of an invoice from the Landlord; and (B) repair all damage to the Premises caused by the installation and removal of such equipment;
- (x) carry out all modifications, alterations of or to the Premises and the Tenant's conduct of business in or its use of the Premises which are required in order for the Tenant to comply with its obligations in section 10.3 or which are required by any Authority;
- (xi) obtain and provide evidence to the Landlord from time to time on demand being made by the Landlord that the Tenant has obtained all necessary approvals, licenses and consents from all Authorities having jurisdiction for the operation of its business on and from the Premises and that such approvals, licenses and consents are in full force and effect; and
- (xii) if required by the Landlord or any Authority, the Tenant shall properly contain within the Premises and dispose of its garbage in accordance with practices acceptable to the Landlord or any Authority, as the case may be.

10.3 Observance of Laws

- (a) The Tenant shall, at its sole cost and expense, and subject to the other provisions of this Lease, promptly:
 - (i) observe and comply with all Laws now or hereafter in force which pertain to or affect the Premises, the Tenant's use of the Premises or the conduct of any business in the Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Premises; and
 - (ii) observe and comply with all police, fire and sanitary regulations imposed by any Authority or made by fire insurance underwriters.

10.4 Rules and Regulations

The Tenant and the Tenant's Employees are bound by, and shall observe the rules and regulations attached as Schedule "E" and such further and other rules and regulations that may be made by the Landlord after the date of this Lease relating to the Building, or any part of its, and which the Landlord informs the Tenant of in writing. The Landlord may, from time to time, amend the rules and regulations or adopt and promulgate additional rules and regulations applicable to the Building, including rules and regulations for the operation, use and maintenance of the Common Areas, which rules and regulations may differentiate between different types of businesses in the Building. All such rules and regulations are deemed to be incorporated into and form part of this Lease, but if there is a conflict between such rules and regulations and any other provision of this Lease, such other provision of this Lease prevails. The Landlord is not responsible to the Tenant for the non-observance or violation of any of the rules and regulations by other tenants of the Building or other Person and is under no obligation to enforce any such provisions.

10.5 <u>Energy Conservation</u>

The Tenant shall cooperate with the Landlord regarding any programs and procedures undertaken by the Landlord, either voluntarily or by reason of legal, regulatory or insurance requirements, for environmental improvement, pollution control, waste recycling, energy conservation and similar matters.

10.6 <u>Exhibiting Premises</u>

The Landlord and the Landlord's Employees may, at all reasonable times and on twenty four (24) hour's prior notice, enter upon the Premises in order to exhibit them to such Persons as the Landlord may determine.

10.7 By-Laws

The Tenant shall not make any application or representation to or for any Authority which would have the effect of, in any way, amending or varying the provisions of any Laws affecting the Premises (including the zoning affecting the Premises), without first obtaining the written consent and authorization of the Landlord.

ARTICLE 11.00 ENVIRONMENTAL MATTERS

11.1 Environmental Laws and Policies

Without limiting the provisions of section 10.3, the Tenant shall, at its sole cost, comply with all Environmental Laws (including obtaining any required permits, licenses or similar authorizations) and all environmental terms, conditions and policies which may be established by the Landlord from time to time in respect of the use, treatment, handling, clean up and disposal of Hazardous Substances. The Tenant shall not permit any Person to engage in any activity on the Premises that may reasonably be anticipated to lead to a violation of any Environmental Laws or the imposition or assertion of liability or responsibility under any Environmental Laws on such Person, the Tenant or the Landlord.

11.2 <u>Use of Hazardous Substances</u>

- (a) The Tenant shall not bring or allow to be present in the Common Areas any Hazardous Substances.
- (b) The Tenant shall not bring or allow to be present in the Premises any Hazardous Substances. The Tenant shall provide the Landlord with a written statement describing:
 - (i) the procedures used by the Tenant to contain and handle Hazardous Substances; and
 - (ii) the procedures used by the Tenant to contain and deal with spills of Hazardous Substances,

within 20 days following the Landlord's request for such a statement.

- (c) The Tenant shall properly contain and handle all Hazardous Substances within the Premises and dispose of same in accordance with all applicable Environmental Laws.
- (d) Except as permitted by section 11.2(b), the Premises may not be used for the sale, transport, transfer, production, storage, manufacture, processing, packaging of or other dealing with any Hazardous Substance except if, and so long as, approved by the Landlord in writing and whenever any such approval is given, such sale, transport, transfer, production, storage, manufacture, processing, packaging thereof, or other dealing therewith, shall be only in accordance with the written directions of, and conditions imposed by, the Landlord.
- (e) The Tenant shall immediately notify the Landlord of the existence of any Hazardous Substances on the Lands of which it becomes aware.
- (f) The Tenant shall not use any Hazardous Substances in a manner which may cause or contribute to an adverse environmental effect upon the Premises, the Lands, any other lands or to the environment.
- (g) Upon the expiry of the Term, or at such other times as may be required by any lawful Authority, the Tenant shall:
 - (i) remove from:

(A) the Premises:

- (I) all Hazardous Substances which were placed, brought or allowed onto the Premises during the Term; and
- (II) anything contaminated by such Hazardous Substances and which the Landlord designates as being the Tenant's property in accordance with section 11.3(c); and

(B) the Common Areas:

- (I) all Hazardous Substances which were placed, brought or allowed onto the Common Areas during the Term by the Tenant, the Tenant's Employees or any Transferee; and
- (II) anything contaminated by such Hazardous Substances and which the Landlord designates as being the Tenant's property in accordance with section 11.3(c);

and carry out all remediation work necessitated as a result of such removal, all at the Tenant's sole cost and expense. If such removal is prohibited by any Environmental Laws, the Tenant shall take whatever action is required to ensure compliance with any Environmental Laws;

- (ii) remove any underground or above-ground storage tanks, pipes and other equipment associated with the tanks (including, but not limited to, any product which is in and has escaped from such tanks) installed at the Premises by or on behalf of, or used by the Tenant; and
- (iii) make good any damage caused to the Premises or the Building by the work described in sections 11.2(g)(i) and 11.2(g)(ii) at its sole cost and expense.

11.3 <u>Tenant's Responsibility</u>

- (a) The Tenant is solely responsible and liable for any clean-up and remediation required by the Landlord or any Authority having jurisdiction of any Hazardous Substances which the Tenant, the Tenant's Employees, any Transferee or any Person having business with the Tenant or any Transferee at the Premises caused or allowed to be released onto or into the air, the Premises, the Common Areas, other lands and/or the groundwater or surface waters under or on the Lands or any other lands. Upon the occurrence of any such release, the Tenant shall immediately give written notice to the Landlord and take all steps necessary to remedy the situation giving rise to such release.
- (b) If any clean-up or remediation is required in accordance with section 11.3(a), the Tenant shall, at its sole cost, prepare all necessary studies, plans and proposals and submit them to the Landlord for approval, provide all bonds and other security required by any lawful Authorities and carry out the work required. In carrying out such work, the Tenant shall keep the Landlord fully informed of the progress of the work. The Landlord may, in its sole discretion, elect to carry out all such work, or any part of it, and, if the Landlord does so, the Tenant shall pay for all costs in connection therewith, together with an administrative fee equal to 15% of such costs, within 15 days of written demand being made by the Landlord.
- (c) All Hazardous Substances brought or allowed onto the Lands during the Term by the Tenant, the Tenant's Employees, any Transferee or any Person having business with the Tenant or any Transferee at the Premises will, despite any other provision of this Lease to the contrary and any expiry, termination or disclaimer of this Lease, be and remain the property and sole responsibility of the Tenant regardless of the degree or manner of affixation of such Hazardous Substances to the Premises or the Lands. In addition, and at the option of the Landlord, anything contaminated by such Hazardous Substance shall become the property of the Tenant.
- (d) If the Tenant is required by any applicable Environmental Laws to maintain environmental and operating documents and records, including permits and licenses (collectively, "Environmental Records"), the Tenant shall maintain all requisite Environmental Records in accordance with all applicable Environmental Laws. The Landlord may inspect all Environmental Records at any time during Term on 24 hours' prior written notice, but no prior notice shall be required in the case of an emergency, real or apprehended.

- (e) The Tenant shall promptly notify the Landlord in writing of:
 - (i) any notice by any Authority alleging a possible violation of or with respect to any Environmental Laws in connection with operations or activities in the Premises;
 - (ii) any charges laid by any Authority alleging a violation by the Tenant, the Tenant's Employees or a Transferee of any Environmental Laws in connection with operations or activities in the Premises;
 - (iii) any orders made against the Tenant pursuant to any Environmental Laws in connection with its operations or activities in the Premises; and
 - (iv) any notices received by the Tenant from any Person concerning any release or alleged release of any Hazardous Substances from the Premises.
- (f) The Tenant shall provide to the Landlord a copy of any environmental site assessment of the Premises conducted by or for the Tenant at any time during the Term within 10 days of the Tenant receiving same.

11.4 Landlord's Audit Right

- (a) The Landlord may at any time:
 - (i) require the Tenant to cause an environmental audit of the Premises to be carried out; and
 - (ii) on twenty four (24) hour's prior notice enter the Premises for the purpose of causing an environmental audit of the Premises and/or the Common Areas to be carried out, and in connection with such audit, the Landlord may:
 - (A) conduct tests and environmental assessments or appraisals;
 - (B) remove samples from the Premises;
 - (C) examine and make copies of any relevant documents or records relating to the Premises; and
 - (D) interview the Tenant's Employees.
- (b) The scope and breadth of any such environmental audit will be determined by the Landlord in its sole discretion. The Landlord is responsible for the cost of any such audit except:
 - (i) if such audit reveals contamination of the Lands, or any part of it (including the Premises) caused by the Tenant, the Tenant's Employees, the Tenant's invitees or any Transferee; or
 - (ii) in the case of any audit done during the last year of the Term,

in which case the Tenant shall pay such costs to the Landlord within 30 days following receipt of an invoice from the Landlord on account of such costs.

- (c) If any audit reveals any breach by the Tenant of the Tenant's Covenants contained in this Lease, the Tenant shall immediately take such steps as are necessary so as to rectify such breach.
- (d) Unless instructed to do so by the Landlord pursuant to section 11.4(a)(i), the Tenant may not carry out, or cause to be carried out, any environmental audit of the Premises.
- (e) If the Tenant fails to comply with any of its obligations under this section, the Landlord may, in its sole discretion and at the expense of the Tenant, perform the necessary work to carry out such obligations and draw upon the bond, if any, to pay for the costs of such work. Upon the Landlord rendering an invoice to the Tenant on account of such work, the Tenant shall pay same to the Landlord within 20 days following receipt of such invoice from the Landlord.

11.5 <u>Survival of Obligations</u>

(a) For clarity, the obligations of the Tenant under this Article relating to Hazardous Substances shall survive the expiry, repudiation or earlier termination of this Lease. To the extent that the performance of such obligation requires access to or entry upon the Premises or the Lands, or any part thereof, following such expiry, repudiation or earlier termination:

- (i) the Tenant may have such entry and access only at such times and upon such terms and conditions as the Landlord may from time to time specify; and/or
- (ii) the Landlord may undertake the performance of any necessary work in order to complete such obligations of the Tenant, but having commenced such work, the Landlord shall have no obligation to the Tenant to complete such work and may require the Tenant to do so. All costs incurred by the Landlord in undertaking such work, together with an administrative fee of 15%, shall be paid by the Tenant to the Landlord within 20 days following delivery to the Tenant of an invoice for such work.

ARTICLE 12.00 INSURANCE AND INDEMNIFICATION

12.1 <u>Tenant's Insurance</u>

- (a) The Tenant shall, at its sole cost and expense, take out and keep in full force and effect throughout the Term and any period when it is in possession of the Premises, the following insurance:
 - (i) "all-risks" insurance (including flood and earthquake) upon property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or installed by or on behalf of the Tenant (including stock-in-trade, furniture, fittings, installations, signs (wherever located in the Building), alterations, additions, partitions and fixtures) and anything in the nature of a Leasehold Improvement in the Premises (regardless of when or who installed same), all of the foregoing in an amount not less than the full replacement cost thereof without deduction for depreciation. Such policy must contain a contingent liability from enforcement of building by-laws endorsement, a stated amount clause and an inflation protection endorsement. If there is a dispute as to the amount of full replacement cost of Leasehold Improvements, the decision of the Landlord or its Mortgagee shall be conclusive. The Landlord and every Mortgagee must be included on such insurance policies as additional insureds, but only in respect of the Leasehold Improvements. Such insurance policies may contain reasonable deductibles in amounts acceptable to the Landlord, acting reasonably;
 - (ii) commercial general liability insurance on an occurrence basis against claims for personal injury, bodily injury, contractual liability, "all-risks" tenants' legal liability for the full replacement cost of the Premises (without deduction for depreciation), non-owned automobile liability, employer's liability and owners' and contractors' protective insurance coverage with respect to the Premises and the Common Areas. The coverage under such insurance is to include the use, activities and operations in the Premises by the Tenant and the Tenant's Employees and the use, activities and operations in any other part of the Building by the Tenant and the Tenant's Employees. Such policies must be written on a comprehensive basis with limits of not less than \$5,000,000 for any one occurrence, or such higher limits as the Landlord or its Mortgagee may reasonably require from time to time. The Landlord, the Landlord's property manager (if any) and the Mortgagee must be included on such insurance policies as additional insureds;
 - (iii) business interruption insurance in an amount which will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils insured against in section 12.1(a)(i) and other perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or the Building as a result of such perils and which shall: (A) include a provision for the payment of Rent; (B) include a contingent business interruption endorsement; and (C) be in a profits form of coverage with an indemnity period of not less than 12 months;
 - (iv) broad form comprehensive boiler and machinery insurance on a blanket repair and replacement cost basis with limits for each accident in an amount at least equal to the replacement cost (without depreciation) of all Leasehold Improvements and of all boilers, pressure vessels, heating, ventilating and air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant (other than equipment owned by the Landlord) or by others (other than the Landlord) on behalf of the Tenant in the Premises or that relates to or serves the Premises, subject to an agreed amount clause. The Landlord and every Mortgagee must be included on such insurance policies as additional insureds, but only in respect of the Leasehold Improvements. The Tenant is only required to carry such insurance if it has in the Premises equipment that would be covered by such insurance:

- (v) standard owners' form automobile liability insurance providing third party liability insurance with \$5,000,000 inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or leased by or on behalf of the Tenant;
- (vi) exterior glass insurance, including without limitation, plate glass insurance; and
- (vii) any other form or forms of insurance as the Tenant or the Landlord or the Mortgagee may reasonably require from time to time in amounts and for insurance risks against which a prudent tenant would protect itself.
- (b) The Tenant is responsible for the payment of all:
 - (i) insurance premiums for the insurance policies required by this section; and
 - (ii) deductibles payable under the insurance policies required by this section.
- (c) All policies required by this section must:
 - (i) be with insurers qualified to sell insurance in the Province in which the Premises are located and who have an A.M. Best rating of A- or equivalent;
 - (ii) contain an endorsement requiring the insurers under such policies to notify the Landlord in writing at least 30 days prior to any cancellation thereof;
 - (iii) contain a waiver in favour of the required additional insureds pursuant to this Lease of any breach of warranty clause such that the insurance policies in question shall not be invalidated in respect of the interests of such additional insureds by reason of a breach by the Tenant of any warranty contained in such policies; and
 - (iv) contain a clause stating that the Tenant's insurance policy will be considered as primary insurance and will not call into contribution any other insurance that may be available to the Landlord.
- (d) All public liability insurance required by this section must contain a cross liability clause and a severability of interest clause.
- (e) All property, boiler and machinery and business interruption insurance required by this section must contain a waiver of any rights of subrogation which the insurers of the Tenant may have against the Landlord and the Landlord's Employees whether the damage is caused by the act, omission or negligence of the Landlord or the Landlord's Employees. All property and boiler and machinery insurance required by this section must:
 - (i) contain a dispute loss agreement clause, unless such insurance is with the same insurer, in which case such clause is not required;
 - (ii) contain the Mortgagee's standard form of mortgage clause; and
 - (iii) name the Landlord as the first loss payee in respect of the Leasehold Improvements in the Premises.
- (f) Prior to the Commencement Date, and within 10 days following the Landlord's written request from time to time, the Tenant shall furnish to the Landlord a certificate of insurance in the form attached as Schedule "F" signed by the Tenant's insurers or the authorized representative of the insurer. In no event may the Tenant have possession of the Premises until such time as such certificate is received and approved by the Landlord. The Tenant shall provide written evidence of the continuation of such policies not less than 10 days prior to their respective expiry dates. No review, approval or acceptance of any insurance policy or certificate by the Landlord will in any way alter the Landlord's rights under this Lease or the Tenant's obligations under this section 12.1.
- (g) If:
 - (i) the Tenant fails to take out or maintain any of the insurance required by this section; or
 - (ii) any of the insurance required by this section is not approved by the Landlord and the Tenant fails to rectify the situation within 48 hours after written notice by the Landlord that it does not approve of such insurance,

then the Landlord may:

- (iii) treat such failure as an Event of Default; or
- (iv) take out such of the insurance required by this section as the Landlord elects to take out. In such event, the Tenant shall reimburse the Landlord for all costs incurred by the Landlord in taking out the insurance the Landlord elects to take out, plus an administrative fee equal to 15% of such amount, immediately upon receipt of an invoice from the Landlord.
- (h) Regardless of any other provision of this Lease to the contrary, the Tenant hereby releases and waives any and all Claims against the Landlord and the Landlord's Employees with respect to occurrences to be insured against by the Tenant in accordance with its obligations under this Lease and whether any such Claims arise as a result of the negligence or otherwise of the Landlord or the Landlord's Employees.
- (i) In case of loss or damage under the Tenant's insurance, the proceeds of insurance for the Leasehold Improvements in the Premises are hereby assigned and made payable to the Landlord as first loss payee. If the Tenant is not in default of its obligations under this Lease, the Landlord shall, upon the Tenant's written request, release such proceeds to the Tenant in progress payments at stages determined by a certificate of the Landlord's Expert stating that repairs to each such stage have been satisfactorily completed free of liens by the Tenant. If the Tenant is in default of its obligations under this Lease, the Landlord may retain such proceeds without liability to the Tenant for interest or otherwise until the default has been, in the opinion of the Landlord, remedied. If the Tenant fails to make such repairs, the Landlord may perform the repairs and apply the proceeds to the cost thereof. If this Lease is terminated upon the happening of any damage or any destruction as provided for in Article 17.00 or for any other reason, all such proceeds of insurance shall be retained by the Landlord for the Landlord's own use.

12.2 Adverse Impact on Insurance

- (a) If any of the Landlord's insurance premiums are increased by reason of anything done or omitted or permitted to be done by the Tenant or by anyone permitted by the Tenant to be upon the Premises, the Tenant shall pay the full amount of such increase to the Landlord within 15 days after receipt of an invoice for such additional premiums. In determining the Tenant's responsibility for any increased insurance costs, a statement issued by the organization, company or insurer establishing the insurance premiums or rates for the relevant insurance policies stating the reasons for such increase will be conclusive evidence in determining the Tenant's responsibility for same.
- (b) If any insurance on any part of the Building is cancelled or threatened to be cancelled by the insurer by reason of the use or occupation of the Premises or any part thereof by the Tenant or by any Transferee or by anyone permitted by the Tenant to be upon the Premises and the Tenant fails to remedy the condition giving rise to the cancellation or threatened cancellation within 48 hours after receipt of written notice from the Landlord requiring the Tenant to so remedy such condition, then an Event of Default will be deemed to have occurred.

12.3 <u>Landlord's Insurance</u>

- (a) The Landlord shall take out and maintain the insurance specified in sections 12.3(a)(i), 12.3(a)(ii), 12.3(a)(iii) and 12.3(a)(iv) throughout the Term and may take out the insurance contemplated by section 12.3(a)(v) at such times as the Landlord may determine:
 - (i) "all-risks" property insurance on the Building and all property owned by the Landlord relative to the Building for an amount not less than replacement cost thereof from time to time (including foundations), against loss or damage by perils from time to time embraced by or defined in a standard all-risk insurance policy (including fire, explosion, impact by air craft or vehicles, lightning, riot, vandalism, malicious acts, smoke, leakage from defective equipment, wind storm, hail, collapse, back-up of sewer, flood and earthquake);
 - (ii) boiler, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus and machinery insurance on the equipment contained in the Building which is owned by the Landlord and on a broad form blanket cover repair and replacement basis;
 - (iii) "all-risk" rent and rental value insurance insuring loss of gross rental value attributable to the perils insured against by the Landlord (including loss of rent and other amounts receivable from tenants in the Building (assuming full occupancy of the Building),

- including the Rent payable under this Lease) for an indemnity period of not less than 12 months;
- (iv) commercial general liability insurance on an occurrence basis with respect to the Landlord's operations in the Building, such coverage to include the Landlord's Employees and its contractors, subcontractors and agents while working on behalf of the Landlord. Such policy shall contain a limit of not less than \$2,000,000 per occurrence and in the aggregate; and
- (v) any other form or forms of insurance as the Landlord or its Mortgagee may reasonably require from time to time for insurance risks and in amounts against which a prudent landlord would protect itself.
- (b) All such insurance policies may contain such deductibles as would be carried by a prudent owner of a similar development.
- (c) Despite the Landlord's covenants in section 12.3(a) and the Tenant's contributions towards the cost of the Landlord's insurance:
 - (i) no insurable interest is conferred upon the Tenant under any policies of insurance carried by the Landlord;
 - (ii) the Tenant is not entitled to share in or receive the benefit of any portion of any insurance proceeds received by the Landlord; and
 - (iii) the Tenant is not relieved of any liability arising from or contributed to by its negligence or wilful acts or omissions.
- (d) The Landlord is not accountable to the Tenant regarding the use of any insurance proceeds arising from any claim and the Landlord is not obliged on account of such contributions to apply such proceeds to the repair or restoration of that which was insured, unless otherwise provided in this Lease. If the Tenant wishes to receive indemnity by way of insurance for any property, work or thing whatever, the Tenant shall insure same for its own account and may not look to the Landlord for reimbursement or recovery in the event of loss or damage from any cause, whether or not the Landlord has insured same and recovered therefor.

12.4 <u>Limitation of the Landlord's Liability</u>

- (a) The Landlord (when not found acting in gross negligence) is not liable or responsible in any way to the Tenant or to any other Person for and the Tenant hereby releases the Landlord in respect of:
 - (i) any Injury arising from or out of any occurrence on, in or relating to the Building or any loss or damage to property (including loss of use thereof) of the Tenant or any other Person located in, on or around the Building however caused;
 - (ii) without limiting the generality of the provisions of section 12.4(i), any Injury to the Tenant or any other Person or loss or damage to property resulting from: strikes; lockouts; war; riots; insurrection; acts of God; fire; smoke; explosions; falling or defective plaster, ceiling tiles, fixtures or signs; broken glass; steam; fumes; vapours; odours; dust; dirt; cinders; grease; acid; oil; any noxious, offensive or excessive liquids, solids or gases; any Hazardous Substance; debris; vibration; radiation; air or noise pollution; theft; vandalism; breakage; vermin; electricity; electrical or other wiring, computer or electronic equipment or systems malfunction or stoppage; water; rain; floods; flooding; freezing; earthquake, tornado or hurricane; wind; snow; sleet; hail; frost; ice; excessive heat or cold; sewage; sewer backup; toilet overflow; leaks or discharges from any part of the Building, or from any pipes, sprinklers, appliances, equipment, electrical or other wiring, plumbing fixtures, roof, windows, skylights, doors, trap doors or subsurface of any floor or ceiling of any part of the Building or from the street or any other place, or by dampness or climatic conditions or from any other cause whatsoever;
 - (iii) any Injury, loss or damage caused by other tenants or any Person in the Building or by occupants of adjacent property thereto, or by the public, or by construction or renovation, or by any private, public or quasi-public work, or by interruption, cessation or failure of any public or other utility service or any other cause whatsoever;

- (iv) any Injury to the Tenant or any other Person or any loss or damage suffered to the Premises or the contents thereof by reason of the Landlord or its representatives entering the Premises to undertake any work therein, or to exercise any of the Landlord's rights or remedies hereunder, or to fulfil any of the Landlord's obligations hereunder, or in the case of emergency;
- (v) all Claims of every nature and kind (including damages for personal discomfort or illness) resulting from or contributed to by any interruption or cessation of or failure in the supply of any Utilities or heating, ventilating, air-conditioning and humidity control; or
- (vi) any Injury, loss or damage insured against or required to be insured against by the Tenant pursuant to this Lease.
- (b) All property kept or stored on the Premises is at the risk of the Tenant and the Tenant shall hold the Landlord harmless from and against Claims arising out of damages to same, including any subrogation claims by the Tenant's insurers or by third parties.

12.5 <u>Indemnification of Landlord</u>

- (a) The Tenant shall indemnify the Landlord and save it harmless from and against any and all Claims in connection with:
 - (i) any Injury referred to in section 12.4 or any loss or damage to property referred to in section 12.4, except to the extent caused by the negligence of the Landlord or the Landlord's Employees;
 - (ii) all Claims of the Tenant and Persons permitted by it to be on the Premises by reason of the suspension, non-operation, or failure for any period of time of any Utilities, heating, ventilating, air-conditioning or humidity control;
 - (iii) the failure of the Tenant to observe and perform any of the Tenant's Covenants;
 - (iv) the occupancy or use by the Tenant of the Premises, including the conduct and operation by the Tenant of its business on the Premises;
 - (v) any Hazardous Substance being brought into, produced or maintained in, or discharged from, the Premises during the Term, unless brought in by the Landlord or the Landlord's Employees;
 - (vi) any occurrence in or around the Common Areas caused, in whole or in part, by the act, failures, omissions or negligence of the Tenant or the Tenant's Employees; and
 - (vii) any occurrence on the Premises however caused, unless caused by the negligence of the Landlord or the Landlord's Employees.
- (b) If the Landlord, without actual fault on its part, is made a party to any litigation commenced by or against the Tenant, the Tenant shall protect and hold the Landlord harmless and shall pay all costs and expenses (including all legal expenses) incurred or paid by the Landlord in connection therewith.

12.6 <u>Employees</u>

- (a) Every indemnity, exclusion or release of liability by the Tenant in this Lease and every waiver of subrogation contained in any of the Tenant's insurance policies extend to and benefit the Landlord, the Landlord's Mortgagee, any management company employed by the Landlord to manage the Building and all of their respective servants, agents, directors, officers, employees and those for whom the Landlord is in law responsible (collectively, the "Landlord Beneficiaries"). The Landlord is the agent or trustee of the Landlord Beneficiaries solely to the extent necessary for the Landlord Beneficiaries to take the benefit of this section, but the Landlord is under no obligation to take any steps or actions on behalf of the Landlord Beneficiaries to enable them to obtain the benefits of this section unless it chooses to do so in its sole and absolute discretion.
- (b) Every indemnity, exclusion or release of liability by the Landlord in this Lease and every waiver of subrogation contained in any of the Landlord's insurance policies extend to and benefit the Tenant and the Tenant's Employees. The Tenant is the agent or trustee of the Tenant's Employees solely to the extent necessary for the Tenant's Employees to take the benefit of this section, but the Tenant

is under no obligation whatsoever to take any steps or actions on behalf of the Tenant's Employees to enable them to obtain the benefits of this section unless it chooses to do so in its sole and absolute discretion.

ARTICLE 13.00 ASSIGNING AND SUBLETTING

13.1 <u>Consent Required</u>

The Tenant may not effect a Transfer without the prior written consent of the Landlord in each instance, which consent will not be unreasonably or arbitrarily withheld and the decision as to whether or not such consent will be given will not be unreasonably delayed. The consent by the Landlord to any Transfer to a Transferee, if granted, will not constitute a waiver of the necessity for such consent to any subsequent Transfer. This prohibition against a Transfer includes a prohibition against any Transfer by operation of law. No Transfer will occur by reason of a failure by the Landlord to reply to a request by the Tenant for consent to a Transfer.

13.2 <u>Factors for Consent</u>

Notwithstanding the fact that the Landlord may not unreasonably or arbitrarily withhold its consent to a Transfer, the Landlord will be considered to be reasonably withholding its consent if its reason or reasons for doing so is or are based upon all or any of the following factors:

- (i) any factor which a court of law would consider to be reasonable;
- (ii) the Tenant is in default of any of the Tenant's Covenants;
- (iii) there is an outstanding Event of Default;
- (iv) the Transferee not having, in the Landlord's opinion, a satisfactory financial covenant or business history;
- (v) the failure of the Transferee to provide such guarantees or other security as may be required by the Landlord to guarantee or secure the Transferee's obligations pursuant to any document evidencing the Transfer and its obligations under this Lease;
- (vi) the Transferee, its principals or any partnership or corporation in which the Transferee or its principals was a member or a shareholder at the time (other than a public corporation described in section 13.4) having become bankrupt or insolvent or having defaulted (other than by a minor technical default which shall be determined by the Landlord acting reasonably) under the terms of any lease for commercial, office or shopping centre premises whether leased from the Landlord or other Persons;
- (vii) a Mortgagee, whose consent is required to the proposed Transfer, refuses to give its consent to the Transfer; or
- (viii) the giving of such consent would cause the Landlord to be in breach of restrictive or exclusive use clauses granted by the Landlord to third parties.

13.3 Transfers

- (a) If the Tenant intends to effect a Transfer, in whole or in part, the Tenant shall provide the Landlord with prior written notice of its intention to effect a Transfer, which written notice shall set out the name of the proposed Transferee and its principals and be accompanied by:
 - (i) such information regarding the proposed Transferee as the Landlord may reasonably require in order to determine whether or not to consent to the proposed Transfer, including information concerning the principals of the Transferee, a detailed breakdown of the proposed Transferee's, and its principals', prior business experience, complete credit, financial and business information regarding the proposed Transferee and its principals and an original copy of all documents and agreements relating to the proposed Transfer; and
 - (ii) the Landlord's then current non-refundable administrative fee (not exceeding \$1,000.00) for considering the Tenant's request for consent. Such fee excludes any legal fees and disbursements which the Landlord may incur in connection with a request for its consent.

- (b) The Landlord is not required to consider any request for its consent until such time as it has received all of the preceding information and monies. The Landlord will, within 20 days after having received such written notice and all such necessary information and monies, notify the Tenant in writing either that it consents (subject to the Tenant complying with all of the provisions of this section 13.3 on its part to be complied with) or does not consent to the Transfer.
- (c) If there is a Transfer of this Lease, the Landlord may collect the Transferee the rent payable by it under the agreement giving effect to the Transfer and apply the net amount collected to the Rent, but no acceptance by the Landlord of any payments by a Transferee shall be deemed a waiver of the obligation to obtain the Landlord's consent to a Transfer, or the acceptance of the Transferee as tenant, or a release of the Tenant from the further performance by the Tenant of the Tenant's Covenants.
- (d) Any document evidencing an assignment shall be prepared by the Landlord or its solicitors. Any document evidencing the Landlord's consent to a Transfer shall be prepared by the Landlord or its solicitors.
- (e) All legal costs incurred by the Landlord with respect to a request by the Tenant for the Landlord's consent to a proposed Transfer shall be paid by the Tenant to the Landlord upon demand, and, in any event, prior to the Landlord giving its consent. For clarity, such costs shall be paid by the Tenant whether or not the Landlord consents to the proposed Transfer. The Tenant shall provide to the Landlord such deposit on account of the Landlord's legal cost as the Landlord or its solicitors may require prior to the Landlord instructing its solicitors to deal with the proposed Transfer.
- (f) Every Transfer is conditional upon the Tenant and the Transferee executing an agreement with the Landlord providing for the following:
 - (i) the Transferee's agreement to be bound by all of the Tenant's Covenants as if such Transferee had originally executed this Lease as tenant;
 - (ii) if the Transferee is not an assignee, the Transferee's agreement that, at the Landlord's option, all of the Transferee's right, title and interest in and to the Premises absolutely terminates upon the surrender, release, disclaimer or merger of this Lease, despite the provisions of sections 17, 21 or 39(2) of the Act;
 - (iii) the Transferee's agreement to waive any right it, or any person on its behalf, may have to disclaim, repudiate or terminate this Lease pursuant to any bankruptcy, insolvency, winding-up or other creditors' proceeding, including the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada), and to agree that in the event of any such proceeding the Landlord will comprise a separate class for voting purposes; and
 - (iv) amending this Lease to increase the Minimum Rent specified in the Basic Provisions to equal the fair market rental value. If this Lease has been renewed, then for the purpose of the foregoing calculation, the Commencement Date will be deemed to be the first day of such Renewal Term.
- (g) In the event of any such Transfer, the Tenant shall not be permitted to receive, either directly or indirectly, rent (excluding rent on account of Additional Rent) which is greater than the Minimum Rent payable hereunder to the Landlord.
- (h) All amounts payable by the Tenant pursuant to this Lease up to the effective date of the Transfer, including all amounts required to be paid by the Tenant pursuant to this section 13.3, shall be paid in full to the Landlord prior to the Landlord executing the document affecting the Transfer and evidencing its consent thereto, and until such time as the said amounts are paid in full, the Landlord shall be under no obligation to give its consent to the Transfer or execute the document effecting the Transfer and evidencing its consent thereto. Where any such amounts cannot be finally determined at that time, the Tenant shall deposit with the Landlord an amount reasonably estimated by the Landlord to cover such undetermined amounts, such amount to be held by the Landlord without any liability for interest thereon until the estimated amounts become finally determined by the Landlord, at which time the appropriate adjustments shall be made.
- (i) Notwithstanding the effective date of any permitted Transfer as between the Tenant and the Transferee, all Rent for the month in which such effective date occurs shall be paid in advance by the Tenant so that the Landlord shall not be required to accept partial payments of Rent for such month from either the Tenant or any Transferee.

- (j) If this Lease is disclaimed or terminated by any trustee in bankruptcy of any Transferee or by the Transferee in accordance with its rights under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors Arrangement Act* (Canada), the Tenant shall not be released from its obligations under this Lease, as amended by the document affecting the Transfer, and the Tenant shall, from the date of such disclaimer or termination, continuously, actively and diligently carry on business in the Premises pursuant to the terms of this Lease for the balance of the Term. The Tenant's obligations under this section shall survive any such disclaimer or termination.
- (k) The Landlord has no liability for any losses, damages (direct, indirect, consequential, economic or otherwise), costs or expenses incurred by the Tenant as a result of the Landlord unreasonably withholding its consent to any Transfer. The Tenant's only remedy in connection with the Landlord unreasonably withholding its consent to a proposed Transfer is to bring an application to the courts (after giving the Landlord the prescribed notice under the Rules of Civil Procedure) for a declaration that such Transfer should be allowed.
- (l) Notwithstanding any Transfer permitted or consented to by the Landlord, the Tenant will not be released from its obligation to observe and perform the Tenant's Covenants and the Tenant and the Transferee will be jointly and severally liable for the observance and performance of the Tenant's Covenants.

13.4 <u>Corporate Ownership</u>

- (a) If the Tenant is a corporation or if the Landlord consented to a Transfer of this Lease to a corporation, any transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription, from time to time of all or any part of the corporate shares of the Tenant or of any direct or indirect parent corporation of the Tenant which results in any change in the present effective voting control of the Tenant by the Person holding such voting control at the date of execution of this Lease (or at the date a Transfer of this Lease to a corporation is permitted) shall, for the purposes of this Article 13.00, be deemed a Transfer and the provisions of sections 13.1, 13.2 and 13.3 will apply (with such changes in points of detail as are necessary) to the fullest extent possible even though there will not be a Transferee.
- (b) If the Tenant does not acquire the prior written consent of the Landlord as required by section 13.1 to a Transfer of the type described in section 13.4(a), then without limiting any of the Landlord's rights and remedies against the Tenant, the Landlord may, but is not obligated to, terminate this Lease upon 5 days' written notice to the Tenant given up to 60 days after the date the Landlord becomes aware of such Transfer. The Tenant shall make available to the Landlord, or its lawful representatives, all corporate books and records of the Tenant for inspection at all reasonable times, in order to ascertain whether there has been any change in control.
- (c) The preceding provisions of this section 13.4 do not apply:
 - (i) to the Tenant if at the time of a Transfer contemplated by section 13.4(a):
 - (A) the Tenant is a public corporation whose shares are traded and listed on any recognized stock exchange in Canada or in the United States; or
 - (B) the Tenant is a private corporation but is controlled by a public corporation defined as aforesaid; or
 - (ii) to a change of control arising from a transfer of shares among the shareholders of the Tenant in existence on the date of this Lease.

13.5 No Advertising of the Premises

The Tenant shall not print, publish, post, display or broadcast any notice or advertisement to the effect that the Premises are for lease or for sale or otherwise advertise the proposed sale or lease of the whole or any part of the Premises and shall not permit any broker or other party to do any of the foregoing, unless the complete text and format of any such notice, advertisement or offer is first approved in writing by the Landlord acting reasonably. Without in any way restricting or limiting the Landlord's right to refuse any text or format on other grounds, no text proposed by the Tenant shall contain any reference to the rental rate of the Premises.

13.6 Sale or Assignment by Landlord

If the Landlord sells or leases the Lands, or any part of it, or if the Landlord assigns this Lease, or any interest in it, then to the extent that such purchaser, tenant or assignee assumes the Landlord's Covenants, the Landlord will, and without further agreement, be freed and relieved of all liability with respect to the Landlord's Covenants.

ARTICLE 14.00 CONSTRUCTION AND OTHER LIENS

14.1 <u>Discharge of Liens</u>

- (a) The Tenant shall pay all of its contractors and suppliers and do all things necessary so as to minimize the possibility of a lien attaching to the Lands, but if any such lien is registered on title to the Lands, the Tenant shall discharge it within 10 days following the date that the Landlord gives written notice to the Tenant demanding it be discharged (the "Discharge Period"). The Tenant may, however, contest the validity of any such lien, but in doing so it must, prior to the expiry of the Discharge Period:
 - (i) obtain an order of a court of competent jurisdiction discharging the lien from the title to the Lands by paying into Court such monies as may be required in order to obtain such an order; and
 - (ii) discharge such lien from title to the Lands.
- (b) If the Tenant fails to discharge any such lien prior to the expiry of the Discharge Period, then, in addition to any other right or remedy of the Landlord, the Landlord may discharge such lien by paying the amount claimed to be due into Court and the Tenant shall reimburse the Landlord for the amount paid by the Landlord into court and for all costs and expenses (including legal expenses) incurred by the Landlord in securing such discharge within 10 days following the Tenant's receipt of an invoice from the Landlord.

ARTICLE 15.00 FIXTURES AND SIGNS

15.1 Removal and Restoration by Tenant

- (a) All Alterations made to the Premises by the Tenant, or made by the Landlord on the Tenant's behalf, whether before or after the Commencement Date (including all electrical, computer and telephone cabling), shall become the property of the Landlord immediately upon their installation in the Premises and without compensation to the Tenant. The Tenant shall not remove from the Premises any plumbing, heating, ventilation, air-conditioning or lighting equipment, wiring (including computer and telecommunication wiring and cabling) or electric panels and services, other building services, Alterations or Leasehold Improvements, but the Tenant:
 - (i) shall remove its trade fixtures at the end of the Term, but if the Tenant is in default of any of the Tenant's Covenants, it may only remove its trade fixtures if the Landlord consents to the Tenant removing them;
 - (ii) may remove its trade fixtures during the Term in the usual and normal course of its business and with the prior written consent of the Landlord, if such trade fixtures have become excess for the Tenant's purposes or the Tenant is substituting new and similar trade fixtures, provided the Tenant is not in default hereunder;
 - (iii) shall, at the end of the Term, remove from the Premises all of its (whether owned or leased) equipment, inventory, furniture and other personal property not affixed to the Premises;
 - (iv) shall, at the end of the Term, remove from the Building all exterior and interior signs (other than Building standard signage erected by the Landlord) which the Tenant caused to be erected; and
 - (v) shall, at the end of the Term, carry out the removals and work required by section 11.2(g),

all such items being removed being called a "Removable Item" or "Removable Items". The Tenant shall, in the case of every removal of a Removable Item, either during or at the end of the Term, make good any damage caused to the Premises or the Building by the installation and removal of

any Removable Item, all at the Tenant's sole cost and expense. The Tenant shall also, if required by the Landlord (either before or after the expiration of the Term), restore the Premises to the condition in which they existed prior to the installation of the Removable Items, reasonable wear and tear of the type described in section 9.1(c) excepted, including the restoration of such standard fixtures as may have been installed by the Landlord and which were removed or altered by the Tenant in connection with the installation of the Removable Items.

- (b) If the Tenant does not remove the Removable Items which it is required to remove pursuant to section 15.1(a) at the expiration or earlier termination of the Term, the Removable Items remaining on the Premises beyond the end of the Term (or such part of them as the Landlord may designate) shall be deemed abandoned and, to the extent not otherwise the property of the Landlord, become the property of the Landlord and the Landlord may use them, retain them, destroy them, sell them (on such terms as the Landlord may determine, which need not be reasonable) or otherwise deal with them in such manner as the Landlord determines in its sole and absolute discretion, all without any obligation, compensation or duty to account to the Tenant. For clarity, if the Landlord sells any Removable Items in accordance with the foregoing, the Landlord shall be entitled to retain all proceeds received from such sale for its own account and without any duty to account to the Tenant. The Landlord may also remove such of the Removable Items as the Landlord may designate and store them at the Tenant's risk and expense. The Tenant shall indemnify and save harmless the Landlord:
 - (i) for the costs of removing the Removable Items from the Premises and for the repair and restoration of the Premises caused by the removal of the Removable Items; and
 - (ii) from all Claims made by third parties against the Landlord in connection with the Landlord dealing with the Removable Items in accordance with the terms of this section.
- (c) Despite the foregoing, in no event will any Hazardous Substances be deemed to become the Landlord's property (unless the Landlord was responsible for any Hazardous Substances being located on the Premises) but they will otherwise be considered Removable Items.

15.2 <u>Tenant's Signs</u>

The Tenant may not paint, affix or display any sign, fixture, advertisement, notice, lettering or decoration on any part of the Lands or the exterior part of the Building or in any part of the Premises which is visible from the exterior of the Premises without the prior written consent of the Landlord as regards the size, content, location and manner of affixation of such signs, such consent not to be unreasonably or arbitrarily withheld or delayed. All signs installed by the Tenant must comply with all applicable Laws. The Landlord may institute a sign policy for tenants of the Building from time to time and same are incorporated as an integral part of this Lease. The Landlord may erect all of the Tenant's signs in or on the Building and the cost of the signs and their installations, on going maintenance, hydro (if applicable), removal and restoration shall be paid by the Tenant as Additional Rent on demand together with 15% of the cost of such expenses.

15.3 <u>Landlord's Sign</u>

The Landlord may at any time during the:

- (i) last 6 months of the Term, place upon the exterior of the Premises or on the Lands a sign stating that the Premises are "For Lease"; and
- (ii) Term, place upon the exterior of the Building or on the Lands, a sign stating the Building is "For Sale".

Such signs shall be of reasonable dimensions and shall be reasonably placed so as not to interfere with the Tenant's business, and the Tenant shall not remove such signs, or permit same to be removed.

ARTICLE 16.00 STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

16.1 <u>Status Statement</u>

The Tenant shall, at the request, from time to time, of the Landlord, execute and deliver to the Landlord a statement in writing, in the form supplied by the Landlord and addressed to the Person(s) required by the

Landlord, certifying that this Lease is unmodified and in full force and effect (or if modified, stating the modification and that this Lease is in full force and effect as modified); the Commencement Date; the amount of Rent then being paid under this Lease; the dates to which Rent has been paid; whether or not there is any existing default on the part of the Landlord of which the Tenant is aware; and any other particulars regarding this Lease, the Premises, the Building or the Lands as the Landlord may require. The Tenant shall execute and return such statement to the Landlord within 10 days following the date that the request for such statement was made, failing which the Landlord may sign such statement on behalf of the Tenant, in which case the Tenant may not dispute the validity or accuracy of the matters contained in such statement.

16.2 <u>Attornment</u>

If proceedings are brought for the foreclosure of, or if there is exercise of the power of sale under any Mortgage of the Lands, the Tenant shall attorn to the Mortgagee or the purchaser upon any such foreclosure or sale and recognize such Mortgagee or the purchaser as the landlord under this Lease. The Tenant shall execute, within 15 days following the Landlord's written request, such instruments or certificates to carry out the intent of this section 16.2 as shall be requested by the Landlord, or such Mortgagee or purchaser.

16.3 <u>Lease Subordination</u>

- (a) This Lease and all of the Tenant's rights under this Lease are subject and subordinate to all Mortgages registered on title to the Lands on the date when the parties execute this Lease (and to all advances made or subsequently made upon the security thereof and all renewals, modifications and extensions thereof). If required by the Landlord or any future Mortgagee, this Lease will be deemed to be subject and subordinate to all future Mortgages registered on title to the Lands after the date the parties execute this Lease (and to all advances made or hereafter to be made upon the security thereof and all renewals, modifications and extensions thereof). The Tenant agrees to execute, within 15 days following the written request of the Landlord or a Mortgagee, an agreement or instrument confirming such subordination.
- (b) Despite section 16.3(a), the Tenant is not required to subordinate this Lease to any future Mortgage unless the Mortgagee thereunder provides the Tenant with a non-disturbance agreement on the Mortgagee's standard form, provided such form provides that notwithstanding the exercise by the Mortgagee of its rights under the Mortgage, the Mortgagee agrees not to disturb the Tenant's occupation of the Premises as long as the Tenant is not in default under this Lease.

16.4 <u>Non-Disturbance Agreement</u>

Provided that the Tenant is not in breach of the Tenant's Covenants hereunder beyond any applicable cure period, the Landlord, upon written request of the Tenant shall, using reasonable commercial efforts, request from each of its Mortgagees a non-disturbance agreement in favour of the Tenant. Such non-disturbance agreement shall be on the Mortgagee's standard form and will, among other things, provide that if the Mortgagee enforces its security, the Tenant will be entitled to remain in possession of the Premises in accordance with the terms of this Lease provided that no Event of Default occurs. If the Tenant wishes to make changes to a Mortgagee's standard form of non-disturbance agreement, the Tenant shall negotiate such changes directly with the Mortgagee. All costs incurred by the Landlord in connection with attempting to obtain such non-disturbance agreements, including all legal costs and any amounts charged by the Mortgagee, shall be paid for by the Tenant on demand being made by the Landlord. For clarity, all such costs shall be paid by the Tenant regardless of whether or not the Landlord obtains the said non-disturbance agreements. The Tenant shall provide to the Landlord such deposit on account of such costs as the Landlord may reasonably require prior to the Landlord attempting to obtain such non-disturbance agreements.

16.5 <u>Power of Attorney</u>

The Tenant hereby irrevocably constitutes the Landlord the agent or attorney of the Tenant for the purpose of executing the documents contemplated by sections 16.1, 16.2 and 16.3 and for making application at any time and from time to time to register postponements of this Lease in favour of Mortgages in order to give effect to the provisions of section 16.2 and section 16.3. The Landlord shall only exercise such power of attorney if the Tenant fails to execute and return to the Landlord the document requested within 15 days after the Landlord requests the Tenant in writing to sign same. The Tenant may not dispute the validity or effectiveness of any document signed by the Landlord in accordance with this section 16.5 and this section may be pleaded by the Landlord as a complete estoppel against any Claims brought by the Tenant seeking to dispute or challenge the validity or effective of any document signed by the Landlord in accordance with this section.

16.6 <u>Financial and Other Information</u>

- (a) The Tenant shall, within 10 days following the Landlord's written request, provide the Landlord with:
 - (i) copies of such of the Tenant's financial statements as the Landlord may require. Despite the foregoing, the Landlord may only request such financial information if it is required by an actual or potential Mortgagee or purchaser of the Premises, and then only if such Persons covenant to keep such information confidential (subject to their being entitled to disclose it to their professional advisors, who shall be instructed to keep such information confidential); and
 - (ii) a certificate (certified to be true and correct by a senior officer of the Tenant or by a knowledgeable partner where the Tenant is a partnership) which shall:
 - (A) in the case where the Tenant is a corporation, name every direct and indirect shareholder of the Tenant; or
 - (B) in the case where the Tenant is a partnership, name every direct and indirect partner of the Tenant,

but if the Tenant, or a direct or indirect shareholder of the Tenant, is a public corporation, such certificate does not have to disclose the names of the shareholders of such public corporation.

ARTICLE 17.00 DAMAGE, DESTRUCTION AND EXPROPRIATION

17.1 <u>Destruction</u>

- (a) If at any time during the Term the Building is damaged or destroyed by fire, lightning or tempest or by other casualty (the date of such damage or destruction being called the "Damage Date"), then the following provisions apply:
 - (i) if:
 - (A) the damage or destruction renders 30% percent or more of the Rentable Area of the Building wholly unfit for occupancy or it is impossible or unsafe to use and occupy it;
 - (B) in the opinion of the Expert the Building is damaged or destroyed to such a material extent or the damage or destruction is of such a nature that the Building must be or should be totally or partially demolished, whether or not the Premises are damaged or destroyed and whether the Premises are to be reconstructed in whole or in part or not;
 - (C) the damage or destruction is caused by an uninsured peril (being a peril not covered under the insurance to be maintained by the Landlord pursuant to this Lease); or
 - (D) if any Mortgagee exercises its rights under its Mortgage to apply all or part of the insurance proceeds received, or receivable, by the Landlord on account of such damage or destruction so that there would not be sufficient, or if for any other reason there are insufficient, insurance proceeds to pay for the estimated cost (as estimated by the Landlord) of the Landlord's Reconstruction (as defined below),

then the Landlord may at its option terminate this Lease by giving to the Tenant notice in writing of such termination within 60 days following the Damage Date, in which event this Lease and the Term hereby demised will cease and be at an end as of the Damage Date and the Rent will be apportioned and paid in full to the Damage Date;

(ii) if the damage or destruction is such that the Premises, in the opinion of the Landlord, cannot be repaired with reasonable diligence within 240 days from the Damage Date (the "Repair Period"), then the Landlord or the Tenant may terminate this Lease by giving to the other notice in writing of such termination within 60 days following the Damage Date, in which event this Lease and the Term hereby demised will cease and be at an end as at

the Damage Date and the Rent will be apportioned and paid in full to the Damage Date. If neither the Landlord nor the Tenant terminates this Lease, then the Landlord will do the Landlord's Reconstruction and if the Premises has been rendered wholly unfit for occupancy or if it is impossible or unsafe to use and occupy it, the Minimum Rent (but not the Additional Rent) will abate (to the extent of insurance recoveries received by the Landlord) from the Damage Date until the earlier of:

- (A) 30 days following the date on which the Landlord has completed the Landlord's Reconstruction; and
- (B) the date that the Tenant recommences its business operations in the Premises,

the "Abatement Period". The term "Landlord's Reconstruction" in this Article 17.00 means the reconstruction or repair of those items (other than Leasehold Improvements) insured under the insurance carried by the Landlord pursuant to sections 12.3(a)(i) and 12.3(a)(ii), but excluding any items to be covered under the insurance to be maintained by the Tenant pursuant to section 12.1;

- (iii) if the damage or destruction is such that the Premises, in the opinion of the Landlord, can be repaired with reasonable diligence within the Repair Period, then the Landlord will do the Landlord's Reconstruction and, if the Premises has been rendered wholly unfit for occupancy or if it is impossible or unsafe to use and occupy it, the Minimum Rent (but not the Additional Rent) will abate (to the extent of insurance recoveries received by the Landlord) throughout the Abatement Period;
- (iv) if this Lease is not terminated in accordance with the preceding provisions of this section 17.1 and the damage or destruction is such that a portion of the Premises is capable of being partially used for the purposes for which it is hereby demised, then:
 - (A) notwithstanding the preceding provisions of this section 17.1, the Minimum Rent (but not the Additional Rent) will only abate proportionately (to the extent of insurance recoveries received by the Landlord) to the part of the Premises rendered untenantable throughout the Abatement Period, but only if the length of time to complete the necessary repairs will take more than 30 days; and
 - (B) the Landlord shall do the Landlord's Reconstruction;
- (v) if this Lease is not terminated in accordance with the preceding provisions of this section 17.1, then the Tenant may not commence carrying out the repairs and replacements which are the Tenant's obligations in this Lease (the "Tenant's Reconstruction") until such time as the Landlord advises the Tenant in writing that the Landlord's Reconstruction, if any, has progressed to the point that the Tenant may commence the Tenant's Reconstruction without interfering with the completion of the Landlord's Reconstruction. Upon being so advised by the Landlord or if there is no Landlord's Reconstruction to be performed, the Tenant shall thereafter proceed to carry out and complete the Tenant's Reconstruction as soon as reasonably possible;
- (vi) if the Landlord elects to repair, reconstruct or rebuild the Building in accordance with the provisions of this Article 17.00, the Landlord may use plans and specifications and working drawings in connection therewith which are different from those used in the original construction of the Building; and
- (vii) the decision of the Landlord's Expert as to the time in which the Building and/or the Premises can or cannot be repaired, the state of tenantability of the Premises and/or the Building and as to the date on which the Landlord's Reconstruction is completed, shall be final and binding on the parties. The Landlord shall use reasonable efforts to cause its Expert to advise the Landlord and the Tenant of the length of time it will take to repair the damage to the Building and/or the Premises as soon as possible following the Damage Date.

17.2 <u>Expropriation</u>

If the Premises or the Building is expropriated, then each party has the right to recover from the expropriating Authority, but not from the other, such compensation as may be separately available to each party from the expropriating Authority by reason of such expropriation or taking. Neither party shall take

any steps or actions which would compromise the other party's claim against the expropriating Authority. No party shall assert any Claims against the other arising out of such expropriation or taking.

ARTICLE 18.00 LANDLORD'S COVENANTS

18.1 Quiet Enjoyment

If the Tenant observes and performs the Tenant's Covenants, then the Tenant may peaceably possess and enjoy the Premises for the Term without any hindrance, interruption or disturbance from the Landlord or any other Person lawfully claiming by, from or under the Landlord.

18.2 <u>Landlord's Warranty</u>

The Landlord warrants that, as of the Commencement Date, the Building and all its systems relating thereto comply with all applicable Laws.

18.3 <u>Landlord's Additional Covenants</u>

- (a) Throughout the Term, the Landlord covenants and agrees to:
 - (i) maintain, repair, replace, operate and insure the Building as would a prudent owner of a similar building in proximity to the Lands, including without limitation, maintain, repair and replace the foundation, HVAC Equipment, roof membrane, roof structure, structural walls and all other structural elements of the Building including the Premises, and parking areas and driveways; and
 - (ii) ensure that access to the Building and Premises is available at all times in accordance with the terms and conditions herein.

ARTICLE 19.00 DEFAULT

19.1 <u>Default</u>

- (a) On the occurrence of an Event of Default:
 - (i) the Landlord may re-enter the Premises and expel all Persons and remove all property from the Premises. Such property may be removed and sold or disposed of by the Landlord in such manner as the Landlord in its sole and absolute discretion deems advisable or it may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby including any such loss or damage caused by the negligence of the Landlord or its servants and agents. If the Landlord sells such property, the Landlord may retain all proceeds received from such sale for its own account, but the Landlord will apply such proceeds against the damages suffered by the Landlord as a result of such re-entry; and
 - (ii) the full amount of the current month's Rent together with the next 3 months' Rent becomes immediately due and payable as accelerated Rent.
- (b) If the Landlord elects to re-enter the Premises or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, the Landlord may either:
 - (i) terminate this Lease. The Landlord may effect such termination by written notice to Tenant (a "Termination Notice"), it being understood and agreed to by the Tenant that actual possession of the Premises shall not be required to effect a termination of this Lease and that the delivery of a Termination Notice to the Tenant alone shall be sufficient. Such Termination Notice may, in the Landlord's sole discretion, permit the Tenant to remain on the Premises as a tenant at will, which tenancy at will may be terminated at any time by either party without any prior notice. The Tenant agrees that, if Landlord serves a Termination Notice which, among other things, permits Tenant to remain in possession of the Premises as a tenant at will, this Lease will thereupon be terminated and the Tenant shall be a tenant at will and that the Landlord may re-enter the Premises at any time thereafter without further notice; or

- (ii) as agent for the Tenant and without terminating this Lease, make any alterations and repairs which the Landlord, in its sole and absolute discretion, deems necessary in order to re-let the Premises, or any part thereof, as agent for the Tenant for such term or terms (which may be for a term extending beyond the Term) and at such rent and upon such other terms, covenants and conditions as the Landlord in its sole and absolute discretion considers advisable. Upon each such re-letting all rent received by the Landlord will be applied as follows:
 - (A) first to the payment of any indebtedness other than Rent due hereunder;
 - (B) second, to the payment of any costs and expenses of re-letting, including brokerage fees and solicitors' fees and the costs of all alterations and repairs to the Premises which the Landlord, in its sole and absolute discretion, deems necessary in order to re-let the Premises;
 - (C) third, to the payment of Rent due and unpaid hereunder; and
 - (D) the residue, if any, will be held by the Landlord and applied in payment of future Rent as same becomes due and payable hereunder.

If the rent received from such re-letting during any month is less than that payable by the Tenant under the terms of this Lease, the Tenant will pay any such deficiency in advance on the first day of each month. If the Landlord has other premises available in the Building for lease, the Landlord shall be under no obligation whatsoever to first re-let, or attempt to re-let, the Premises ahead of such other available premises and the Landlord shall be entitled to lease all such other available premises prior to re-letting the Premises, and in so leasing such other available premises, the Landlord will not be in breach of any obligation on its part, if any, to mitigate its losses upon re-entering or taking possession of the Premises. The Landlord shall in no way be responsible or liable for any failure to re-let the Premises or any part thereof, or for any failure to collect any Rent due upon any such reletting. Notwithstanding any re-entry or re-letting without termination of this Lease, the Landlord may at any time thereafter elect to terminate this Lease for the previous breach.

- (c) No re-entry or taking possession of the Premises by the Landlord will be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to the Tenant.
- (d) If the Landlord terminates this Lease, in addition to any other remedies it may have, the Landlord may recover from the Tenant all damages it incurs by reason of the Tenant's breach, including the cost of recovering the Premises, brokerage fees and solicitors' fees, the cost of all tenant inducements, alterations and repairs to the Premises which the Landlord, in its sole and absolute discretion, deems necessary in order to re-let the Premises and the worth at the time of such termination of the excess, if any, of the amount of Rent required to be paid pursuant to this Lease for the remainder of the Term (had this Lease not been terminated) over the then rental value of the Premises, as determined by the Landlord, for the remainder of the Term (had this Lease not been terminated), all of which amounts shall be immediately due and payable by the Tenant to the Landlord. Upon any termination of this Lease, the Landlord shall be entitled to retain all of the monetary deposits provided by the Tenant as liquidated damages on account of the minimum amount of damages which the parties agree the Landlord will suffer as a result of such termination, all without the necessity for any legal proceedings and without prejudice to the Landlord's right to claim and recover such additional damages as the Landlord may suffer or incur. In no circumstances whatsoever shall the Landlord be required to return the said deposits or any part thereof to the Tenant.

19.2 <u>Legal Expenses</u>

If the Landlord seeks the assistance of legal counsel to recover possession of the Premises, re-let the Premises, recover Rent, or because of the breach of any of the other Tenant's Covenants, or to advise the Landlord on any of the foregoing matters, the Tenant shall pay to the Landlord all legal expenses incurred by the Landlord on demand.

19.3 <u>Rights Cumulative</u>

The rights and remedies given to the Landlord in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by the Landlord will be deemed to be in exclusion of any other rights or remedies provided in this Lease or by law or in equity.

19.4 <u>Acceptance of Rent - Non-Waiver</u>

No receipt of monies by the Landlord from the Tenant after the cancellation or termination of this Lease in any lawful manner will reinstate, continue or extend the Term, or affect any notice previously given to the Tenant or operate as a waiver of the right of the Landlord to enforce the payment of Rent then due or thereafter falling due, or operate as a waiver of the right of the Landlord to recover possession of the Premises by proper suit, action, proceedings or other remedy. After the service of any notice to terminate or cancel this Lease and the expiration of any time therein specified or after the commencement of any suit, action, proceeding or other remedy, or after a final order or judgment for possession of the Premises, the Landlord may demand, receive and collect any monies due, or thereafter falling due without in any manner affecting such notice, suit, action, proceeding, order or judgment. Any and all such monies so collected will be deemed payments on account of the use and occupation of the Premises or at the election of the Landlord on account of the Tenant's liability hereunder.

19.5 <u>No Waiver</u>

No condoning or waiver by either the Landlord or Tenant of any default or breach by the other at any time or times in respect of any of the Landlord's Covenants or the Tenant's Covenants, respectively, to be performed or observed by the other will be deemed or construed to operate as a waiver of the Landlord's or Tenant's rights or remedies under this Lease or at law, as the case may be, in respect of any continuing or subsequent default or breach nor so as to defeat or affect in any way the rights or remedies of the Landlord or Tenant under this Lease or at law, as the case may be, in respect of any such continuing or subsequent default or breach. In particular, no act by the Landlord (including the subsequent acceptance of Rent by the Landlord) will be deemed to be a waiver of any preceding breach by the Tenant of any of the Tenant's Covenants or constitute a waiver of any of the Landlord's rights or remedies (including its right to terminate this Lease) in respect of such preceding breach by the Tenant regardless of the Landlord's knowledge of such preceding breach at the time of such act by the Landlord. Unless expressly waived in writing, the failure of the Landlord or the Tenant to insist in any one or more cases upon the strict performance of any of the Landlord's Covenants or the Tenant's Covenants, respectively, to be performed or observed by the other will not be deemed or construed to operate as a waiver for the future strict performance or observance of such Landlord's Covenants or Tenant's Covenants, as the case may be.

19.6 <u>Accord and Satisfaction</u>

No payment by the Tenant or receipt by the Landlord of a lesser amount than any instalment or payment of Rent due under this Lease will be deemed to be other than on account of the amount due. No endorsement or statement on any cheque or any letter accompanying any cheque or payment of Rent will be deemed an acknowledgement of full payment or an accord and satisfaction, and the Landlord may accept and cash such cheque or payment without prejudice to the Landlord's rights to recover the balance of such instalment or payment or pursue any other remedy provided in this Lease or at law (including its right to terminate this Lease). The Landlord may, at its option, apply or allocate any sums received from or due to the Tenant against any amounts, monies or charges due and payable under this Lease in such manner as the Landlord sees fit.

19.7 Distress

- (a) The Tenant hereby waives and renounces the benefit of any present or future Laws, statutory or otherwise, taking away or limiting or purporting to take away or limit the Landlord's right of distress and the Tenant hereby agrees with the Landlord that, notwithstanding any such Laws, all goods, chattels and inventory (collectively, the "Goods") from time to time on the Premises shall be subject to distress for Rent and the fulfilment of all of the Tenant's obligations under this Lease in the same manner as if such laws had not been made. Upon the Landlord effecting a distress, this provision may be pleaded as an estoppel against any Claims which the Tenant, or any Person claiming through the Tenant, may bring against the Landlord in respect of any distress levied by the Landlord.
- (b) In addition to any other rights of the Landlord to distrain, the Landlord shall have the right to distrain on all of the Goods on the Premises, including all heavy or connected machinery and equipment. The Landlord may without notice to the Tenant exercise any right of distress on the Premises and for such purpose the Tenant agrees that the Landlord may enter the Premises by any means which the Landlord in its sole and absolute discretion deems necessary, including, without limiting the generality of the foregoing, by using any keys in the Landlord's possession to unlock any locks preventing access to the Premises or by the use of such force as the Landlord in its sole and absolute discretion deems necessary, including the breaking of any lock, door or window or other point of entry into the Premises. The Landlord shall have the right to lock the Premises,

change any locks on the Premises and by any means exclude the Tenant from all or any parts of the Premises and the Landlord shall not thereby be terminating this Lease in the absence of an express written notice terminating this Lease. The Tenant hereby consents to being excluded by the Landlord from all or any parts of the Premises for the purpose of the Landlord exercising its right of distress and acknowledges and agrees that such exclusion shall not constitute a termination of this Lease in the absence of an express written notice from the Landlord terminating this Lease. The Landlord may exercise any right of distress at any time during the day or night and on any day of the week whether or not the Premises are occupied by any Person at the time.

- (c) The Tenant agrees that a distress of all of the Goods may be effected by written notice posted in or on the Premises, whether or not the Landlord locks or otherwise secures such Goods from the Tenant on the Premises or elsewhere. If the Landlord effects a distress by written notice or by any other means, the Tenant agrees not to use, remove or permit to be used or removed any distrained Goods and not to interfere with the Landlord's exercise of its right of distress.
- (d) The Tenant agrees that the Landlord's exercise of any right of distress as permitted hereby or at law shall not:
 - (i) constitute a trespass or breach of any express or implied term of this Lease or render the Landlord subject to any legal proceeding; or
 - (ii) render the Landlord liable or responsible in any way to the Tenant or any other Person for any act, fault, default, negligence, breach or omission of the Landlord or its bailiffs, agents, servants, employees or any other Persons, or for any occurrence or for any cause whatsoever, including any Injury to the Tenant or others or for any loss or damage to any property of the Tenant or others.
- (e) In addition to others entitled to do so, the Landlord and its agents and employees shall have the right without notice to the Tenant to purchase any Goods on the Premises distrained by the Landlord, provided that the price paid is not less than the lowest of the 2 valuations to be obtained by the Landlord as of the distress.
- (f) If there remains arrears of Rent following the completion of a distress, the Landlord may levy a further distress on the remaining Goods on the Premises.
- (g) The Tenant shall sign and deliver to the Landlord an undated Authorization in the form attached as Schedule "F" contemporaneously with its execution of this Lease, and at such other times as the Landlord may require in writing, in which case the Tenant will sign and return such undated Authorization within 10 days following the Landlord's written request. The Tenant hereby (i) authorizes the Landlord to insert such date in the Authorization as the Landlord determines from time to time; and (ii) acknowledges and agrees that the Landlord may provide such Authorization to the relevant taxing Authorities in order to obtain information from such taxing Authorities as to the amount of taxes (including penalties and interest) owing by the Tenant to such taxing Authority. The Landlord shall only be entitled to use such Authorization if there are outstanding arrears of Rent and then only to obtain information on such taxes (including penalties and interest) owing by the Tenant and for which the Landlord may become liable for paying (in whole or in part) in connection with the process of distraining upon any of the Goods.
- (h) The rights given to the Landlord pursuant to this section are in addition to, and not in replacement of, its common law right to distrain upon the Goods and this section shall in no way derogate from or in any way impair the Landlord's common law right to distrain upon the Goods.

19.8 <u>Restriction on Right</u>

The Tenant hereby waives any right it, or any person on its behalf, may have to disclaim, repudiate, terminate or compromise this Lease pursuant to any bankruptcy, insolvency, winding-up or other creditors proceeding, including the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) ("Insolvency Proceedings") and agrees that in the event of any Insolvency Proceedings, the Landlord will comprise a separate class for voting purposes.

19.9 Right to Perform

If the Tenant fails to comply with any of the Tenant's Covenants (the "Unperformed Covenants") and such failure continues after the Landlord has given the Tenant prior written notice of such failure and the cure period set out in such notice has expired, then the Landlord may, at its option, and without waiving or releasing the Tenant from the strict performance of the Tenant's Covenants, perform such of the

Unperformed Covenants as the Landlord considers desirable in such manner and to such extent as the Landlord considers desirable and in doing so may pay any necessary and incidental costs and expenses. All amounts paid by the Landlord in exercising its rights in this section, plus an administrative fee equal to 15% of the amounts so paid by the Landlord, together with interest thereon at the rate provided for in section 4.5 calculated from the date of the making of the payment by the Landlord, shall be deemed Additional Rent and shall be paid by the Tenant within 5 days of demand being made on the Tenant for the payment of same.

19.10 Repayment by the Tenant

- (a) If during the original Term:
 - (i) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors (including electing to terminate or disclaim this Lease in connection with a proposal made by the Tenant under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangements Act* (Canada) or any other statute allowing the Tenant to terminate or disclaim this Lease); or
 - (ii) this Lease is terminated for any reason,

then the Tenant shall pay to the Landlord:

- (iii) the Rent which the Tenant was not required to pay during the Rent free period described in the Basic Provisions; and
- (iv) the unearned portion of:
 - (A) all real estate commissions and legal fees paid by the Landlord in connection with the negotiation of and entering into of this Lease,

(the "Costs"). Such unearned portion shall be determined in accordance with the following formula: Costs $x R \div T$, where:

- (B) "R" means the number of days remaining in the Term as of the date of the termination or disclaimer; and
- (C) "T" means the total number of days in the Term (including any Renewal Term),

within 10 days following the date of such termination or disclaimer, the amount payable being deemed to be Rent in arrears immediately prior to the date of such termination or disclaimer.

ARTICLE 20.00 GENERAL

20.1 <u>Lease Entire Agreement</u>

This Lease constitutes the entire agreement between the parties pertaining to the subject matter of this Lease and supersedes all prior agreements, offers to lease, understandings, negotiations and discussions, whether oral or written, of the parties. This Lease may not be modified or amended except pursuant to an agreement in writing executed by the Landlord and the Tenant. There are no representations, warranties, covenants, inducements, conditions or other agreements, whether oral or written, express or implied, forming part of or in any way affecting or relating to this Lease, the Building, the Premises, the business which may be carried on in the Premises or the sales which may be expected from such business, except as expressly set out in this Lease. Without limiting the generality of the foregoing, the Tenant specifically acknowledges and agrees that the Landlord has not made any representations or warranties to the Tenant regarding whether the Tenant's intended use of the Premises is permitted by the applicable zoning, the Tenant having independently satisfied itself with respect to this matter prior to signing this Lease. All representations, warranties, covenants, inducements, conditions and other agreements made by either party or their representatives which are relied upon by the other party are contained in this Lease and each party disclaims reliance on any other representations, warranties, covenants, inducements, conditions or agreements.

20.2 <u>Impossibility of Performance</u>

- (a) In this Lease, "Force Majeure" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this Lease (other than an obligation to pay money) and includes:
 - (i) being unable to obtain the material, goods, equipment, service, utility or labour required to enable it to perform such obligation;
 - (ii) not being able to obtain any required permission or authority;
 - (iii) strikes, lockouts, walkouts, labour troubles, blockades or industrial disturbances;
 - (iv) power failures, fluctuations or non-availability;
 - (v) restrictive Laws or the orders or directions of any Authority (unless given as a result of a party's failure to comply with any Laws);
 - (vi) riots, insurrections, war, warlike operations, sabotage, terrorism, invasion or rebellion;
 - (vii) abnormal weather conditions or abnormal subsurface conditions; and
 - (viii) acts of God,

but excludes changes in Laws and events or circumstances that results in a party not having sufficient funds to comply with an obligation to pay money.

- (b) If a party (the "Non-performing Party") is prevented by an act of Force Majeure from performing any one or more of its obligations under this Lease (the "Affected Obligations"), the Non-performing Party will be excused from performing the Affected Obligations for the period during which the event of Force Majeure is ongoing (the "Force Majeure Period"), provided that the Non-performing Party's inability to perform those obligations is not due to its failure to take reasonable measures to protect itself against the event or circumstance giving rise to the event of Force Majeure. The Non-performing Party must perform the Affected Obligations within a period of time following the end of the relevant Force Majeure Period that is equivalent to the period of delay caused by any such Force Majeure.
- (c) Upon the occurrence of an event of Force Majeure, the Non-performing Party shall:
 - (i) promptly notify the other party of the occurrence of such event of Force Majeure, its effect on the performance of the Affected Obligations and how long it expects such event to last (but its failure to do so will not deprive the Non-performing Party of the benefit of this section);
 - (ii) update such information upon there occurring a change in such information;
 - (iii) promptly advise the other party of the expiry of the Force Majeure Period; and
 - (iv) use reasonable efforts to limit damages to the other party as a result of the delay in the performance of the Affected Obligations.
- (d) For clarity, the financial impecuniosity of a party does not entitle such party to the benefit of this section and the provisions of this section do not operate to excuse the Tenant from its obligation to pay Rent when due.
- (e) Provided that notwithstanding the foregoing and/or anything contained herein to the contrary, the parties hereto hereby acknowledge and agree that if the Commencement Date is delayed as a result of a Force Majeure, the Expiry Date shall be extended by a period equal to the Force Majeure Period accordingly.

20.3 Notice

- (a) Any notice or other communication required or permitted to be given by this Lease shall be in writing and shall be effectively given if:
 - (i) delivered by hand;
 - (ii) sent by prepaid courier service; or

(iii) sent by email,

in the case of notice to:

the Landlord at:

20 Caldari Rd. Unit # 2 Concord, Ontario L4K 4N8

Attention: Ravi Aurora

Email: Ravi@Aurora-Group.ca

the Tenant at: the Premises

or at such other address as the party to whom such notice or other communication is to be given advises the party giving same in the manner provided in this section, but notice by the Landlord to the Tenant will be sufficiently given if sent to the Premises notwithstanding any other address which the Tenant may give to the Landlord. Any notice or other communication delivered by hand or by prepaid courier service will be deemed to have been given and received on the day it is so delivered at such address, unless such day is not a Business Day in which case it will be deemed to have been given and received on the next following Business Day. Any notice or other communication sent by email will be deemed to have been given and received on the day it is sent provided that such day is a Business Day and it is sent before 5:00 p.m. on such day, failing which it will be deemed to have been given and received on the first Business Day after it is sent. Regardless of the foregoing, if there is a mail stoppage or labour dispute or threatened labour dispute which has affected or could affect normal mail delivery by Canada Post. If two or more Persons are named as Tenant, any notice or other communication given to any one of them in accordance with this section will be deemed to have been given to all of them.

20.4 Registration

- (a) The Tenant may not register this Lease or permit anyone acting on the Tenant's behalf to register it. The Tenant may, however, register a notice of lease (the "Notice") which only discloses the Premises, the Term, the Commencement Date, the renewal or extension rights, if any, and the parties to this Lease. In no event shall the Notice disclose the financial terms of this Lease (including the Rent) nor exhibit this Lease or any part of it. The Notice shall be subject to the approval of the Landlord's solicitors, at the Tenant's expense, such approval to be obtained prior to the Notice being registered on title to the Lands. The Tenant shall, at its sole cost and expense, discharge any Notice which it registers on title to the Lands within 20 days following the expiration or earlier termination of this Lease. If the Tenant fails to discharge any such Notice within the time period set out above, the Landlord (or its lawyers) may do so and the Tenant:
 - (i) consents to the Landlord and the Landlord's lawyers signing such documentation as may be required to discharge the Notice (and, in the case of the Landlord's lawyers, making all legal statements which are required to be made in order to obtain such discharge);
 - (ii) releases all Claims which it may have against the Landlord and the Landlord's lawyers for discharging the Notice in accordance with the provisions of this section; and
 - (iii) shall reimburse the Landlord for all costs incurred by the Landlord in discharging the Notice within 30 days following the Tenant's receipt of an invoice from the Landlord.

20.5 Applicable Law

This Lease is to be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario and is to be treated in all respects as an Ontario contract. Each of the parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

20.6 Tenant

If the Tenant consists of more than one Person, they are jointly and severally liable for the observance and performance of the Tenant's Covenants. If the Tenant is a partnership (the "Tenant Partnership") each Person who is, on the date this Lease is signed, a member of the Tenant Partnership and each Person who subsequently becomes a member of the Tenant Partnership (or any successor of it), are and will be jointly and severally liable for the observance and performance of the Tenant's Covenants and such liability will continue after such Person ceases to be a member of the Tenant Partnership (or any successor of it).

20.7 Partial Invalidity

If for any reason whatsoever any term, covenant or condition of this Lease, or the application thereof to any Person, firm or corporation or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (i) is deemed to be independent of the remainder of this Lease and to be severable and divisible therefrom, and its validity, unenforceability or illegality does not affect, impair or invalidate the remainder of this Lease or any part thereof; and
- (ii) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person and circumstance other than those as to which it has been held or rendered invalid, unenforceable or illegal.

20.8 Compliance with the Planning Act

It is an express condition of this Lease that the provisions of section 50 of the *Planning Act* (Ontario), as amended or replaced from time to time, be complied with if applicable in law. Until any necessary consent to this Lease is obtained, the Term (including any extensions or renewals thereof) and the Tenant's rights and entitlement granted by this Lease shall be deemed not to exceed a period of 21 years less a day from the Commencement Date. The Tenant shall apply diligently to prosecute such application for such consent promptly following the execution of this Lease by both the Landlord and the Tenant, and the Tenant shall be responsible for all costs, expenses, taxes and levies imposed, charged or levied as a result of such application and in order to obtain such consent. The Tenant shall at all times keep the Landlord informed of its progress in obtaining such consent and the Landlord shall cooperate with the Tenant in regard to such application, but at the sole expense of the Tenant. Notwithstanding the foregoing, the Landlord reserves the right at any time, at the Tenant's expense, to apply for such consent in lieu of the Tenant and the Tenant's application is hereby expressly made subject to any application which the Landlord intends to make.

20.9 Survival of Obligations

- (a) If the Tenant is in default of any of the Tenant's Covenants at the time this Lease expires or is terminated:
 - (i) the Tenant shall remain fully liable for the performance of such Tenant's Covenants; and
 - (ii) all of the Landlord's rights and remedies in respect of such failure shall remain in full force and effect,

all of which will be deemed to have survived such expiration or termination of this Lease.

- (b) The Landlord will not be released from its obligations under sections 4.6 and 5.2 following the expiration or earlier termination of this Lease.
- (c) Regardless of the expiry or earlier termination of this Lease:
 - (i) every indemnity, exclusion or release of liability and waiver of subrogation contained in this Lease or in any of the Tenant's insurance policies; and
 - (ii) those provisions of this Lease which are intended to have effect beyond the end of the Term,

will survive the expiration or termination of this Lease and continue in full force and effect.

20.10 No Option

The Tenant acknowledges and agrees that: (a) the provision of this Lease (whether in blank form, with the particulars inserted or with negotiated amendments included) by the Landlord to the Tenant for examination by the Tenant; (b) any negotiations between the Landlord and the Tenant regarding this Lease; or (c) the submission of this Lease duly signed by the Tenant (whether or not accompanied by any deposits or rent payments) to the Landlord, shall not give the Tenant any right, interest or option in or to the Premises. The Tenant will only acquire a right and interest in the Premises, and this Lease will only become effective as a lease, upon the execution of this Lease by both the Landlord and the Tenant and the delivery of a fully executed copy of this Lease by the Landlord to the Tenant. Upon the Tenant signing and providing this Lease to the Landlord, the Tenant will be deemed to have made an offer to lease the Premises on the

terms contained in such Lease which offer will be irrevocable for a period of 30 days following the date that the Landlord receives such signed copy of this Lease.

20.11 Time

Time is of the essence of this Lease and every part of it, except as may be expressly provided to the contrary in this Lease, and no extension or variation of this Lease will operate as a waiver of this provision. When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Lease, unless this Lease provides to the contrary, the date which is the reference date in calculating such period will be excluded.

20.12 <u>Interest in Lands</u>

The Tenant will look solely to the interest of the Landlord in the Building for the collection or satisfaction of any money or judgment which the Tenant may recover against the Landlord and the Tenant will not look for the collection or satisfaction of any such money or judgment from any of the other assets of the Landlord or of any person who is at any time a partner, joint venturer or co-tenant with the Landlord in the Building.

20.13 No Adverse Presumption

This Lease has been negotiated and approved by the parties and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of the authorship of any of the provisions of this Lease.

20.14 Binding Effect

This Lease enures to the benefit of and is binding on the parties and their respective heirs, executors, administrators, successors and permitted assigns. For clarity, no rights will enure to the benefit of any Transferee unless the Transfer to such Transferee has been done in accordance with the terms of Article 13.00.

20.16 Paramountcy

This Lease has been entered into in accordance with the terms and conditions of the offer to lease entered into by the Tenant and the Landlord, accepted by the Landlord as of November 13, 2020 (the "Offer"). In the event of a conflict or inconsistency between the terms and conditions of this Lease and the terms and conditions of the Offer, the Landlord shall determine, in its sole and unfettered discretion, which shall prevail. The Tenant acknowledges and agrees that any provisions contained herein which are not dealt with in the Offer or which expand and elaborate on provisions in the Offer shall be deemed not to be an inconsistency or in conflict with the provisions of the Offer.

20.17 <u>Counterparts and Execution</u>

This Lease may be executed by the parties in separate counterparts all of which, when taken together, will constitute a single agreement among the parties. Execution of this Lease by a party may be evidenced by electronic transmission of such party's signature, or by a photocopy of a party's signature, each of which will constitute the original signature of such party to this Lease. Any party who evidences its signature of this Lease by electronic transmission shall, promptly following a request by any other party, provide an originally executed counterpart of this Lease, but its failure to do so will not invalidate this Lease.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Lease.

Per:					
	RAVI AURORA				
Title:					
Per:					
Name:					
Title:					
I/We authority to bind the Corporation. GRAFCO INTERNATIONAL LAMINATING					
CORP.	ander				
Per:					
Name:	DEEPAK VASANDANI				
Title:					
Per:					

1000093910 ONTARIO INC. INC.

I/We authority to bind the Corporation.

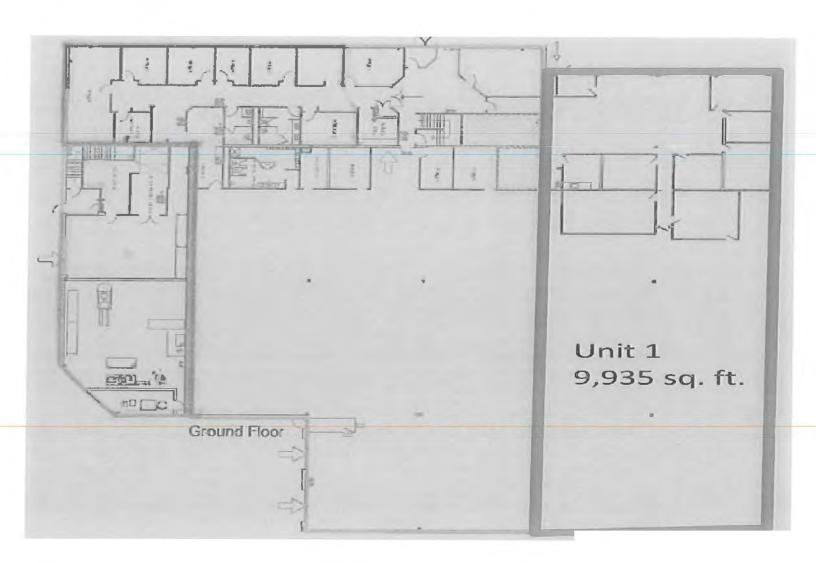
Title:

SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS

- 58 -SCHEDULE "B"

DIAGRAM OF THE BUILDING



SCHEDULE "C"

LANDLORD'S WORK

The Landlord shall complete the following work to the Property at its sole cost in good workmanlike order (the "Landlord's Work"):

(a) deliver the Premises in a clean, broom swept condition, free of any debris.

SCHEDULE "D"

TENANT'S WORK

The Tenant's Work consists of such work as the Tenant requires to be made to or in the Premises in order for the Tenant to be able to carry on its business operations in the Premises. The Tenant shall have the right to install its fixtures and equipment reasonably necessary for its operations in accordance with and subject to the provisions of the Lease, including without limitation, Article 9 thereof.

SCHEDULE "E"

RULES AND REGULATIONS

The Common Areas shall not be obstructed by the Tenant or occupants of the Building, or used by them for any other purpose than for ingress to and egress from the Premises, nor shall they sweep any dust, rubbish or other substance from the Premises into the Common Areas. Nothing shall be thrown by the Tenant or those for whom the Tenant is at law responsible, out of the windows or doors of the Building. The Landlord may, but in no event shall be obligated to, remove at the expense of the Tenant any such obstruction without notice or obligation to the Tenant at the sole cost and expense of the Tenant.

The Landlord shall have the right to control and operate the Building and the Common Areas in such manner as it deems best for the benefit of the tenants generally. The Landlord reserves the right to restrict or prohibit canvassing, soliciting or peddling in the Building.

The toilets, urinals, sinks and other water apparatus shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein. Any damage resulting by misuse shall be borne by the Tenant.

No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in any Common Areas without the prior written consent of the Landlord.

The Tenant shall not make or commit any improper noises in the Building, or interfere in any way with other tenants.

No birds or animals shall be kept in or about the Premises, nor shall radios, recordings or the like or other musical instruments be played in the Building so as to annoy other tenants, occupants or the Landlord.

No space in the Building shall be used for lodging, sleeping, or any immoral or illegal purposes.

If the Tenant desires telegraphic or telephonic connections, the Landlord will direct the electricians as to where and how the wires are to be introduced, and without such directions no boring or cutting for wires will be permitted. No pipes or wires or conduits will be permitted which have not been ordered or authorized in writing by the Landlord, and no outside radio or television aerials shall be allowed in the Building without authorization in writing by the Landlord. The Tenant shall not mark, drill into, bore or cut in any way damaging the walls, ceilings or floors of the Premises without the Landlord's prior written approval. No broadloom or carpeting shall be affixed to the Premises by means of a non-soluble adhesive or similar product.

No additional locks or bolts of any kind shall be placed upon any of the doors or windows by the Tenant, nor shall any changes whatsoever be made to existing locks or the mechanisms thereof except by the Landlord, at its option. The Tenant shall not permit any duplicate keys to be made, since additional keys as are reasonably required shall be supplied by the Landlord when requested by the Tenant in writing and such keys shall be paid for by the Tenant, and upon termination of the Tenant's Lease, the Tenant shall surrender to the Landlord all keys of the Premises and other part or parts of the Building.

Furniture and effects shall not be taken into or removed from the Premises except at such times and in such manner as may be previously consented to and approved by the Landlord. No heavy furniture shall be moved over floors so as to mark them.

All glass and trimmings in, upon or about the doors and windows of the Premises shall be kept whole, and whenever any part thereof shall become broken, the same shall be immediately replaced or repaired under the direction and to the satisfaction of the Landlord and the cost thereof shall be paid for by the Tenant.

Nothing shall be placed on the outside of window sills or projections of the Building.

The Tenant shall give the Landlord prompt notice of any accident to or any defect in the plumbing, heating, air-conditioning, mechanical or electrical apparatus or any other part of the Building.

The Tenant shall not permit any cooking in the Premises without the written consent of the Landlord.

The Tenant shall not hinder or prevent window cleaners from cleaning the windows of the Premises during normal business hours.

The Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such controls as in the judgment of the Landlord are necessary for the proper operation of the Premises and or the Building.

The Tenant shall have the right to place its own waste disposal bins onsite, at its own cost, subject to compliance with all Laws and the Rules and Regulations of this Schedule "E". All garbage and refuse shall not be burned in or about the Premises.

The Landlord shall have the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be helpful for the safety, care, cleanliness and appearance of the Premises and the Building, and for the preservation of good order therein, and the same shall be kept and observed by the Tenant and those for whom the Tenant is at law responsible.

SCHEDULE "F"

INSURANCE CERTIFICATE

TO:	1000093910 ONTARIO INC. (the "Landlord")		
RE:	GRAFCO INTERNATIONAL LAMINATING CORP. (the "Insured") - Lease made as of the day of April, 2022 (the "Lease") between the Landlord and the Insured for Premises known as 20 Regina Road, Vaughan, Ontario (the "Premises")		
	ndersigne er"), that	ed hereby certifies, on behalf of and as agent for (the :	
	(i)	the undersigned and the Insurer have received and reviewed the Lease;	
	(ii)	the Insured has taken out the insurance required by section 12.1 of the Lease and that such insurance complies with the requirements of section 12.1 of the Lease;	
	(iii)	nothing in the insurance policies issued to the Insured in connection Insured's obligations under the Lease prohibits Insured from giving the releases in favour of the Landlord contained in the Lease and such releases will not invalidate or entitle the Insurer to deny coverage under such insurance policies; and	
	(iv)	the Landlord may rely upon this Certificate as being binding on the undersigned and the Insurer.	
Insurar unders electro	nce Certi signed a nically tr surance	ed certifies that it has the express right and authority to bind the Insurer to the terms of this ficate and confirms that the Landlord may rely upon this Certificate as being binding on the and the insurer. Execution of this Insurance Certificate may be evidenced by way of cansmitted signed copy of this Insurance Certificate and any such signature on such copy of Certificate will be deemed to constitute an originally signed copy of this Insurance	
Dated			
		[Name of insurance broker],	
as ager	nt for	[Name of Insurance Company]	
Per:			

SCHEDULE "G"

AUTHORIZATION

TO: Whom It May Concern

RE: GRAFCO INTERNATIONAL LAMINATING CORP.

This is your good and sufficient authorization to advise 1000093910 Ontario Inc. (and its successors and assigns), and its property manager and lawyers, (both orally and in writing) whether or not there are any taxes (including any penalties and interest) owing by the undersigned to you and, if there are any taxes (including any penalties and interest) owing, the amount of same. You may rely upon a signed photocopy or an electronically transmitted copy of this Authorization as if it were an original copy of same.

Dated the ____12 day of April, 2022.

	INTERNATIONAL	LAMINATING
Per:		
Name: DEE	EPAK VASANDANI	
Title:		
Per:		
Name:		
Title:		
I/We have a	authority to bind the Co	rporation.

SCHEDULE "H"

SPECIAL PROVISIONS

1. <u>Interpretation</u>

- (a) In this Schedule "H", all references to:
 - a section is deemed to refer to the applicable section of this Lease to which this Schedule "H" is attached; and
 - (ii) a paragraph is deemed to refer to the applicable paragraph of this Schedule "H".

2. <u>Required Conditions</u>

- (a) In this Schedule "H", the term "Required Conditions" means:
 - (i) the Tenant has not been in default of the Tenant's Covenants during the Term;
 - (ii) the Tenant is in possession of and is conducting its business in the whole of the Premises;
 - (iii) the Tenant is not insolvent or bankrupt, and has not made any assignment for the benefit of creditors and has not, becoming bankrupt or insolvent, taken the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors;
 - (iv) no petition in bankruptcy has been filed against Tenant and no receiving order has been made against Tenant and no proceedings have been commenced respecting the winding up or termination of the existence of Tenant;
 - (v) no receiver or other person has taken possession or effective control of the assets or business of Tenant or a substantial portion thereof pursuant to any security or other agreement or by any other means whatsoever, and there are no outstanding writs of execution against the Tenant; and
 - (vi) the Tenant has not assigned this Lease.

3. Right to Renew the Term

- (a) The Tenant may renew the Term for two (2) additional periods of one (1) year (the "Renewal Term") if:
 - (i) the Required Conditions have been met; and
 - (ii) it advises the Landlord in writing that it wishes to renew the Term not less than six (6) months prior to the expiration of the original Term or the then current Renewal Term, as the case may be, failing which this right to renew will be rendered null and void.
- (b) If the Tenant exercises its right to renew the Term in accordance with the foregoing, this Lease will be read as if the original term of this Lease was for a period of time commencing on the Commencement Date and ending on the last day of the relevant Renewal Term, and:
 - (i) the Minimum Rent for the relevant Renewal Term shall be determined by mutual agreement by the Landlord and the Tenant. If the Minimum Rent for the applicable Renewal Term has not been mutually agreed upon by the parties at least three (3) months prior to the commencement of such Renewal Term, the Minimum Rent for such Renewal Term will be determined by arbitration by a single arbitrator chosen by the parties, but if they cannot agree upon the arbitrator within five (5) days after the written request for arbitration by either party to the other, either party may apply to a judge for the appointment of an arbitrator in accordance with the provisions of the *Arbitration Act*, 1991 (Ontario). The provisions of the *Arbitration Act*, 1991 will govern the arbitration and the decision of the arbitrator will be final and binding upon the parties. Either or both of the parties shall instruct the arbitrator to render its decision no later than fifteen (15) days prior to the commencement of the applicable Renewal Term.
 - (ii) for clarity, upon the Tenant exercising its within rights to renew the Term;
 - (A) the Tenant will not be entitled to further renew the Term;

- (B) the Landlord will not be required to perform any Landlord's work and the Tenant will not be required to perform the Tenant's Work; and
- (C) the Tenant will not again be entitled to any fixturing period, leasehold improvement allowance, tenant inducement or rent free period.
- (c) The exercise of the within rights to renew are solely within the control of the Tenant and nothing contained in this Lease, including this Schedule, obligates or requires the Landlord to remind the Tenant to exercise the within rights to renew.

THIS IS **EXHIBIT "L"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024

A Commissioner, etc.

List of Equipment - Grafco International Laminating Corp.

2x Forklifts

8x Line Laminating machines (custom made for this specific business)

Dust Collector system

Temperature controlled Boiler system for Plastic

Air make up Unit

Storage Racks

2x 50 HP Compressors

Laminating roll Cutter

Splicer for large Vinyl

Various hand tools

Furniture

Lunch room furniture.

THIS IS **EXHIBIT "M"** REFERRED TO IN THE AFFIDAVIT OF RAVI AURORA SWORN REMOTELY BEFORE ME ON

June 10, 2024

A Commissioner, etc.

List of Equipment – Countertop Solutions Inc.

1x Forklift

1x Jib Crane

1x CNC Saw Machine

1x CNC Router Machine

1x CNC router Machine

1x Straight edge Polisher

1x Air purifier for dust control

10x slab Racks

4x slab trollies

22x Slab A Frames

1x Vacuum Lifter

Polishing tools

CNC tooling

Hand tools

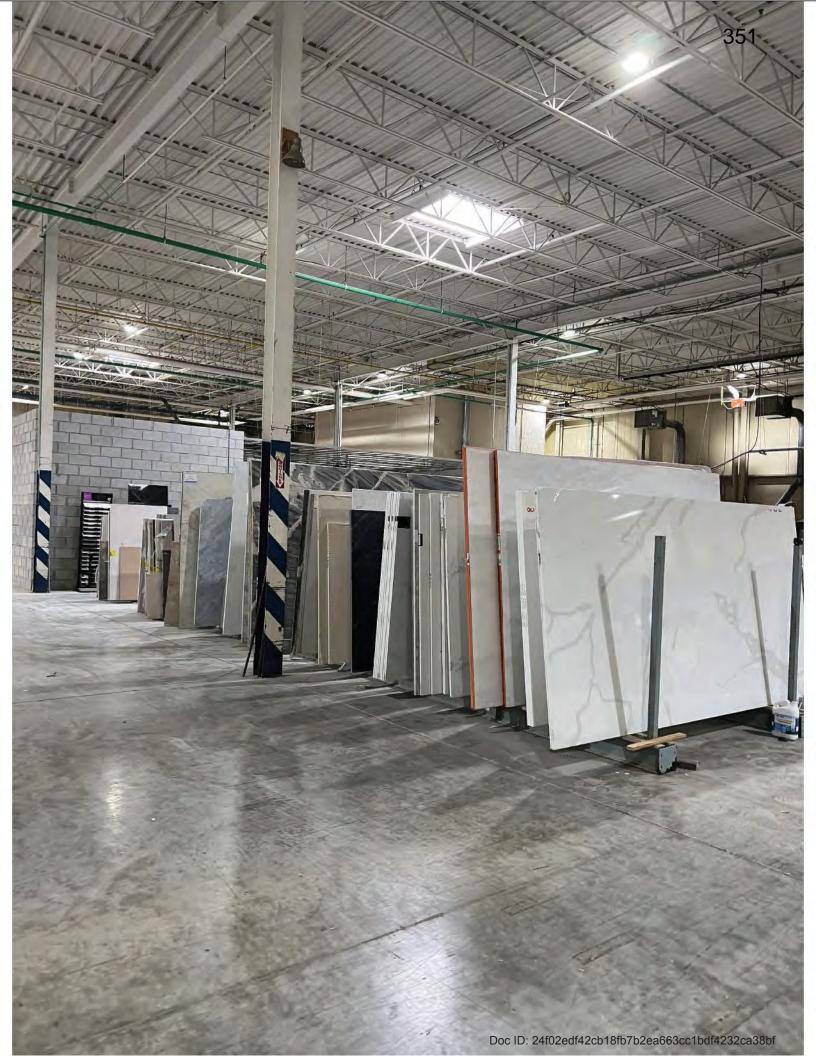
1x 25 HP Compressor

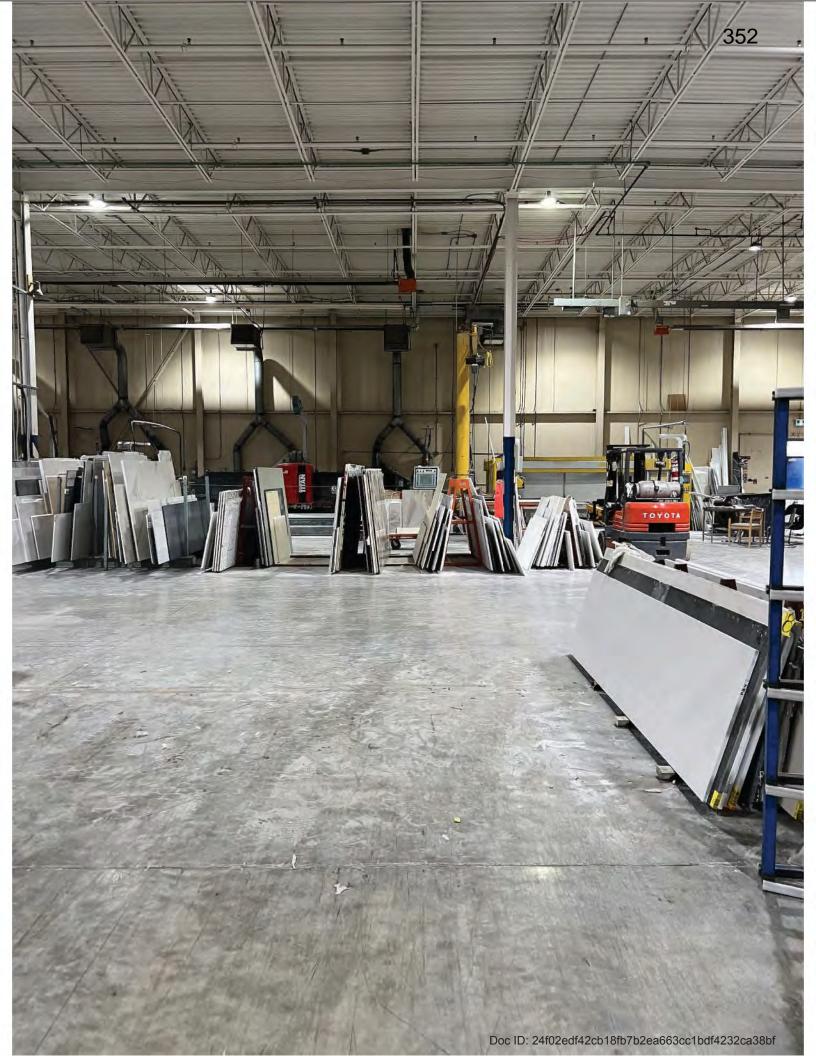
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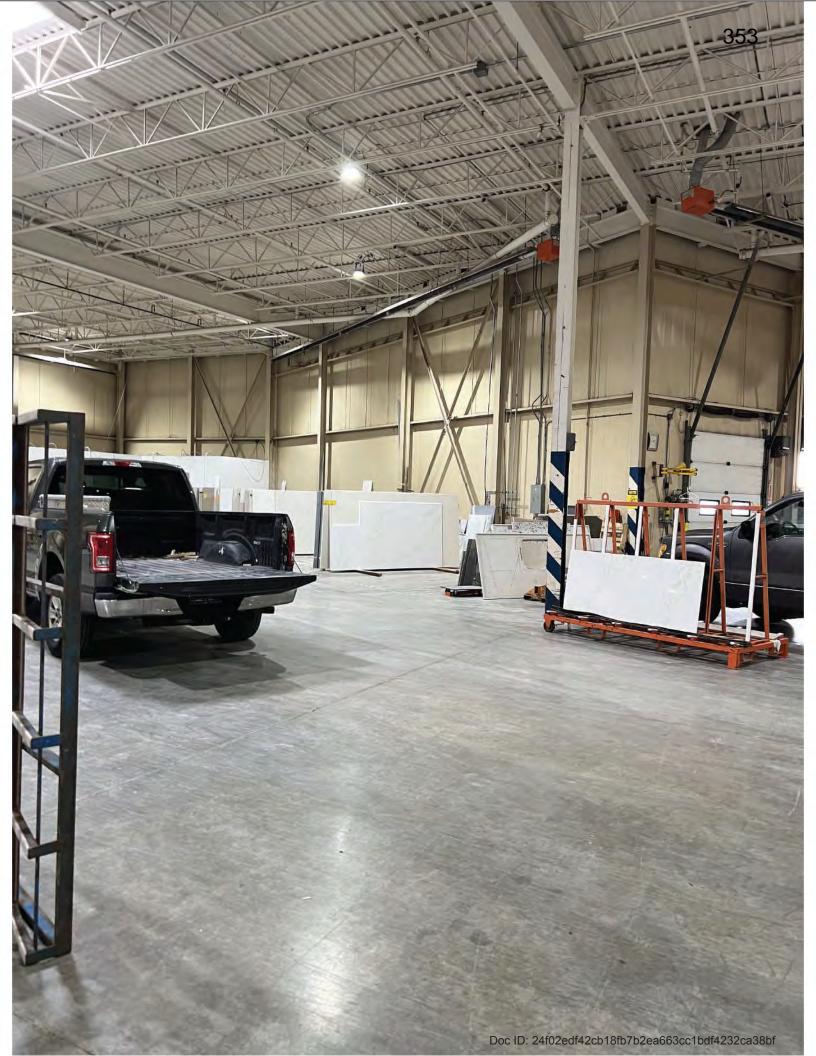
June 10, 2024

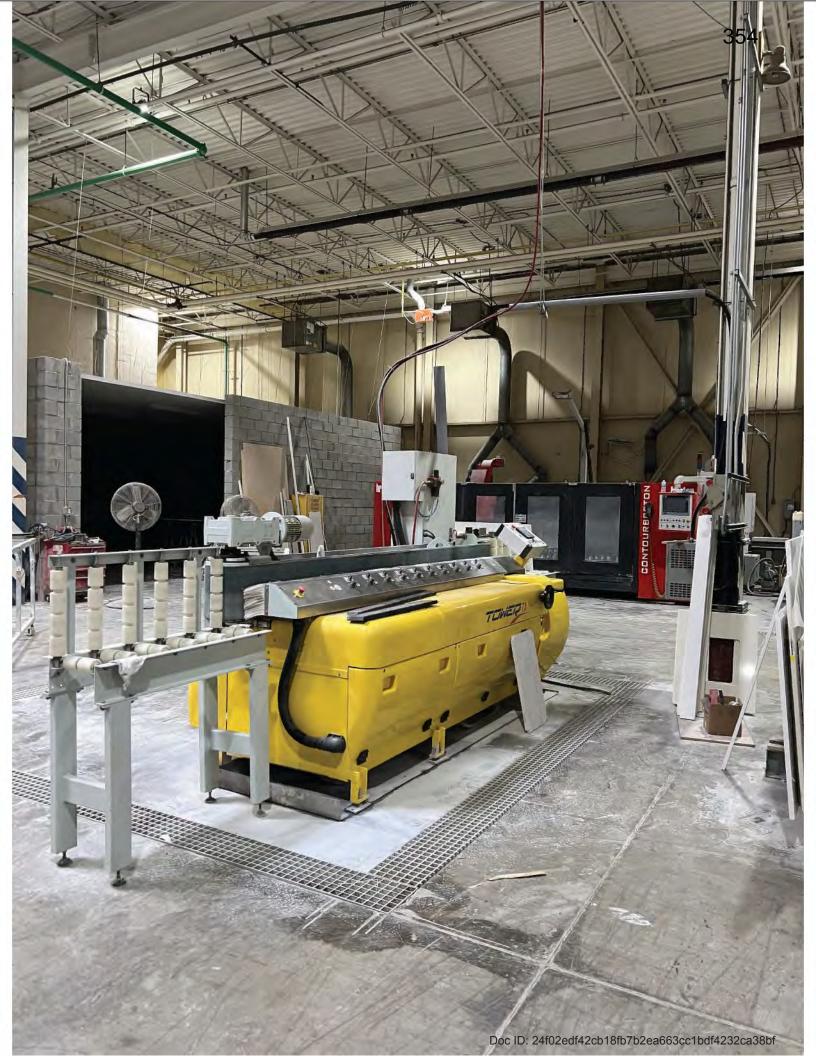
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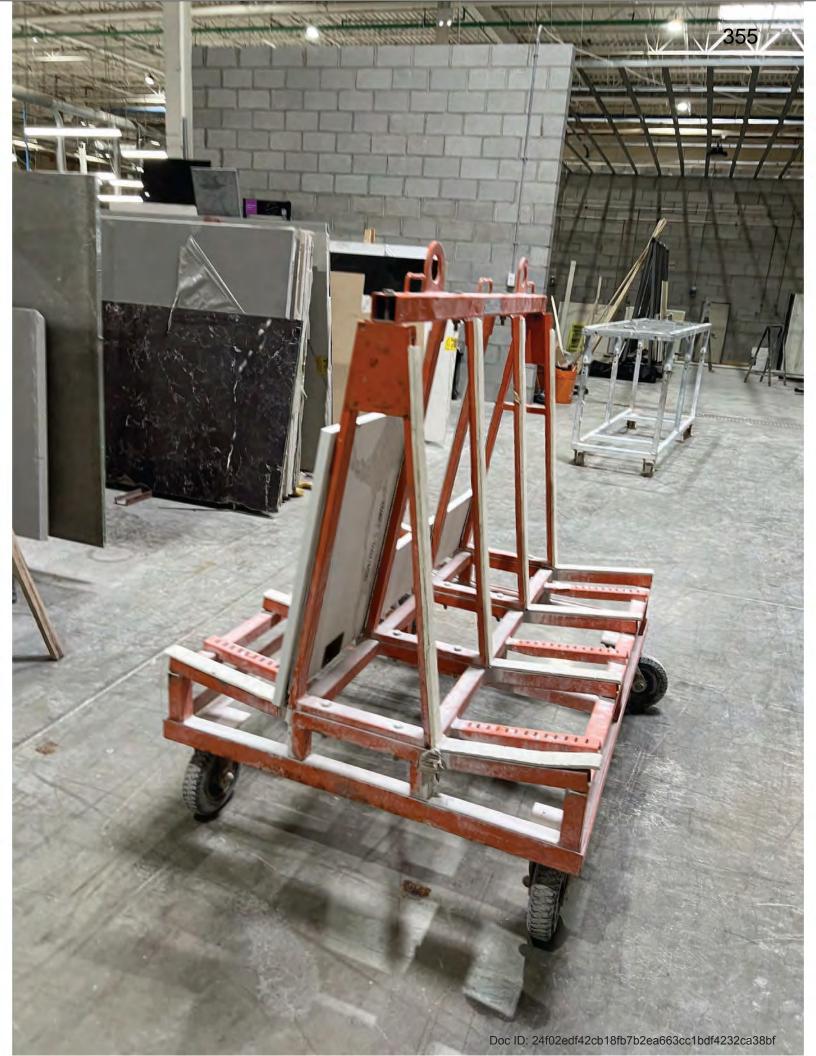
A Commissioner, etc.

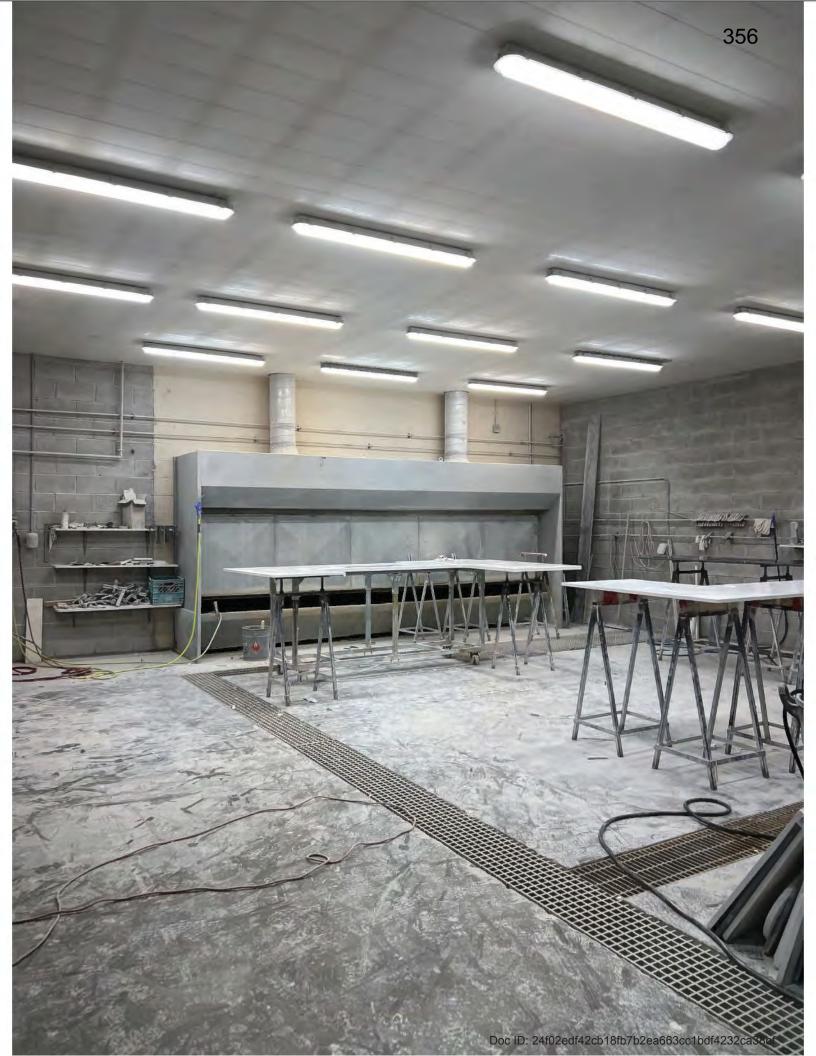


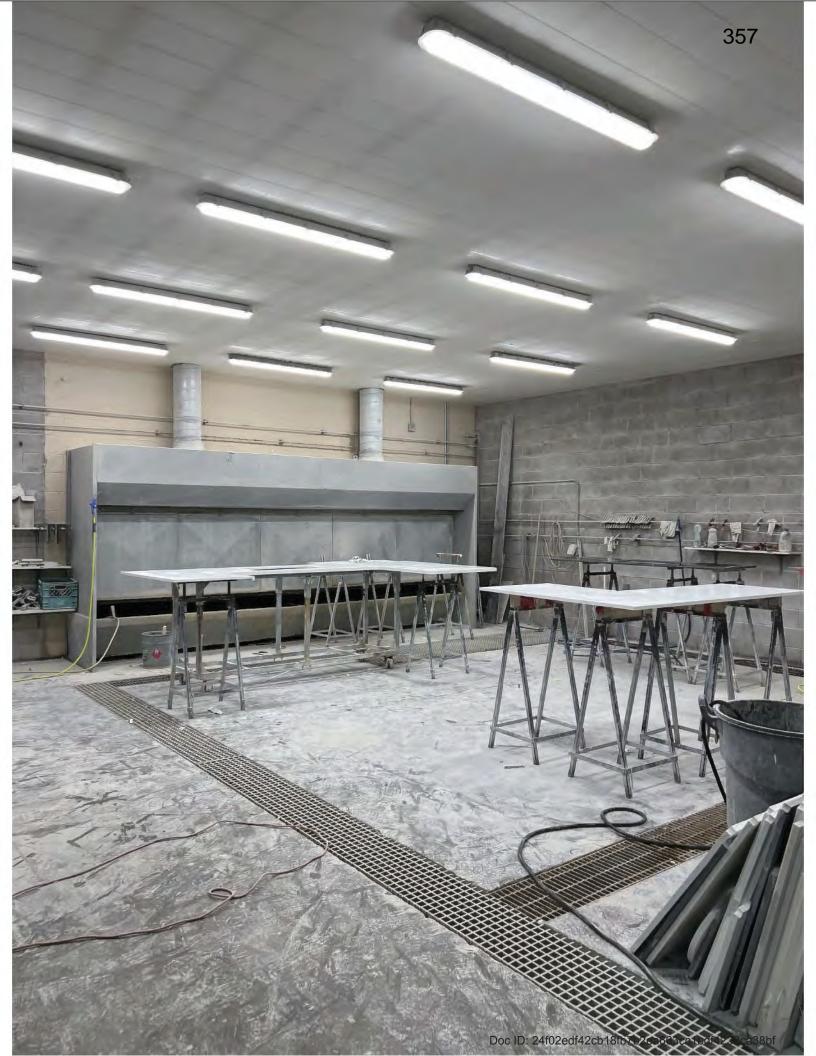


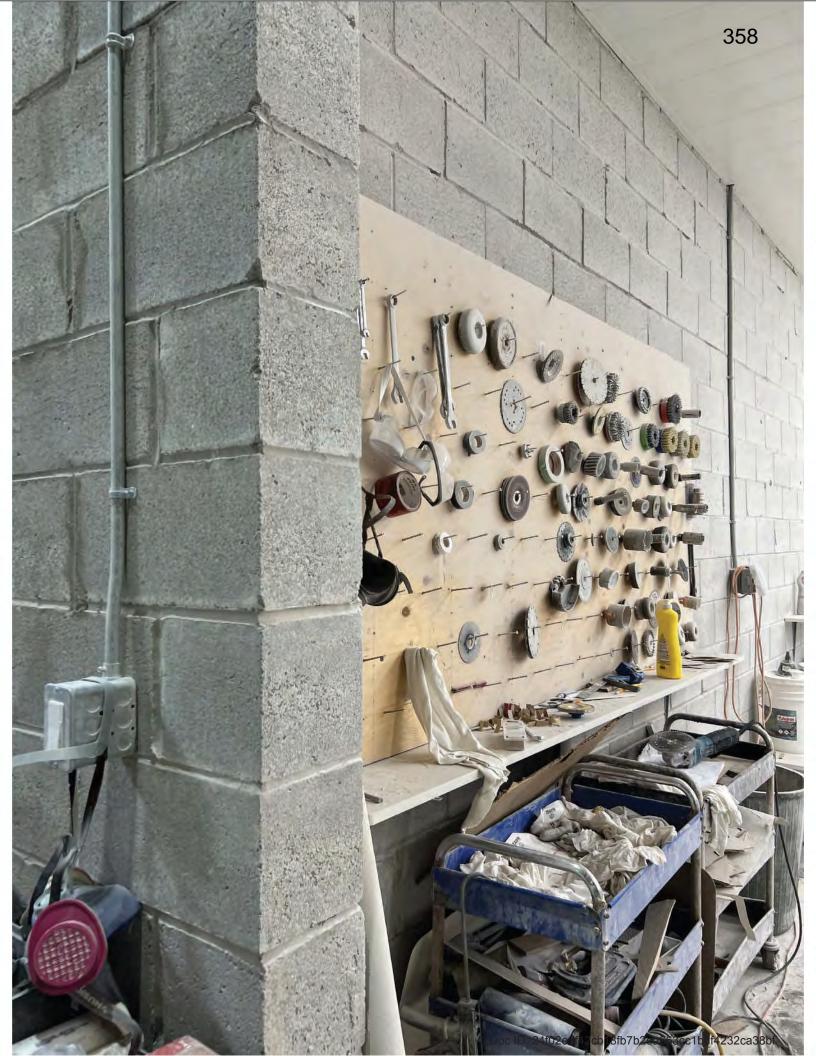








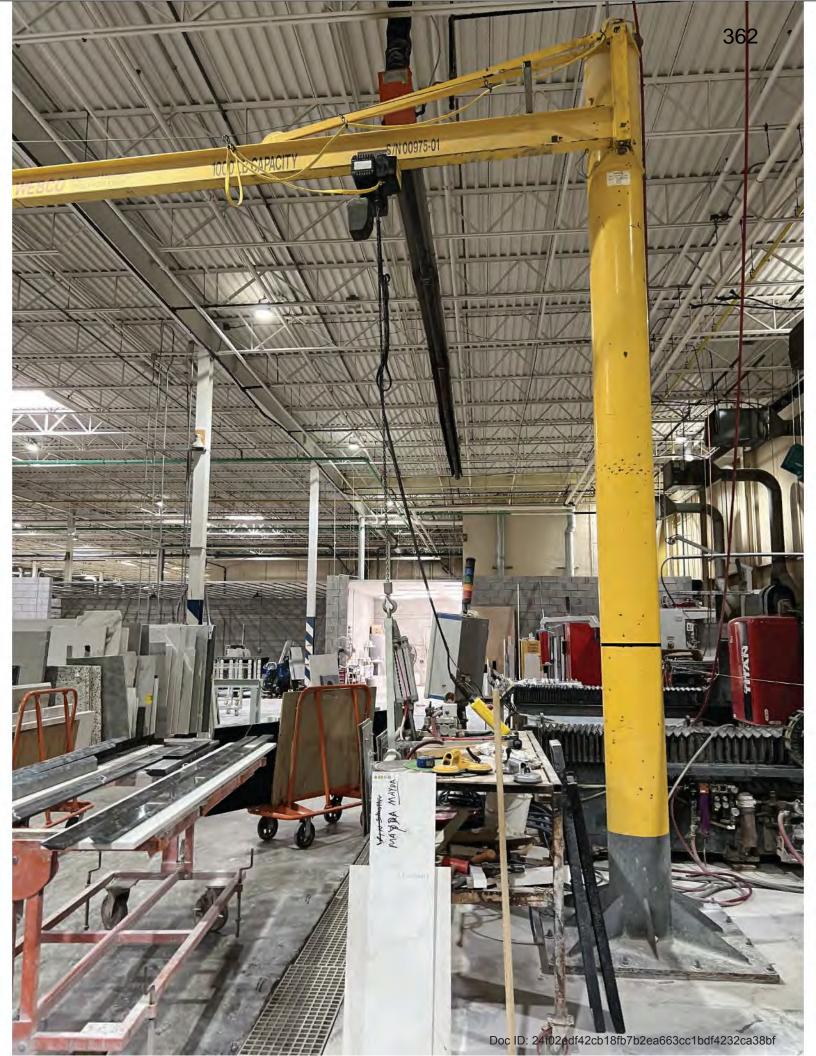




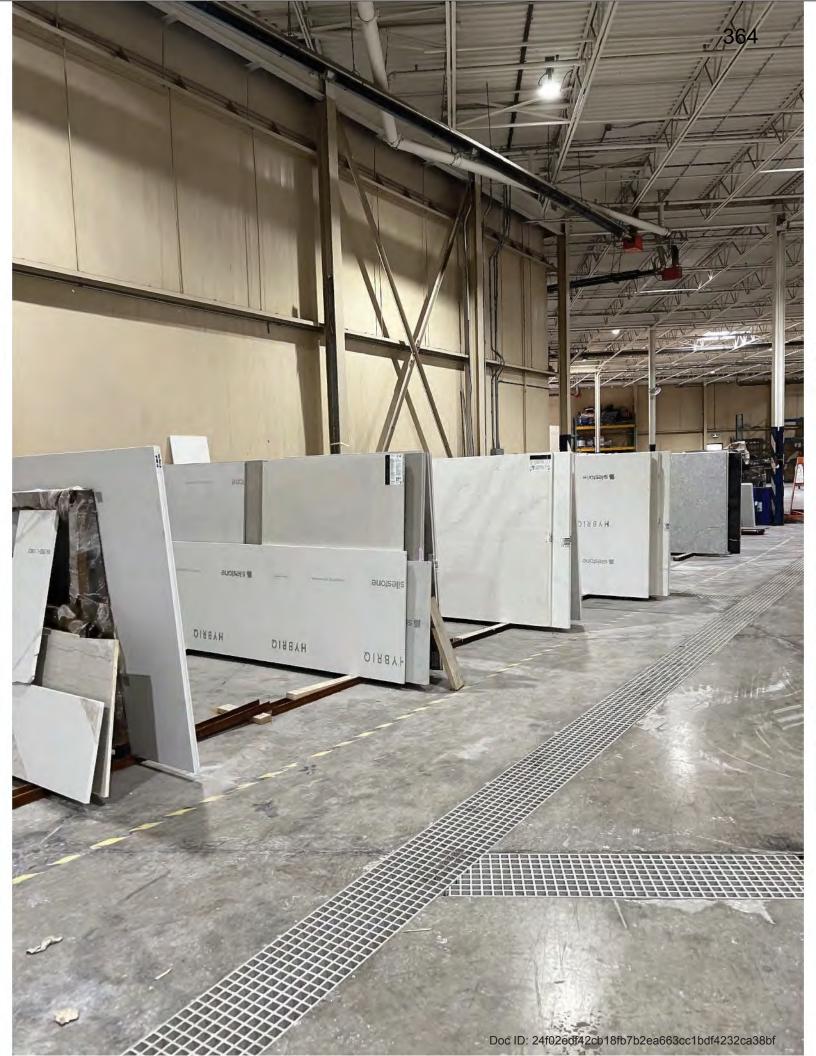


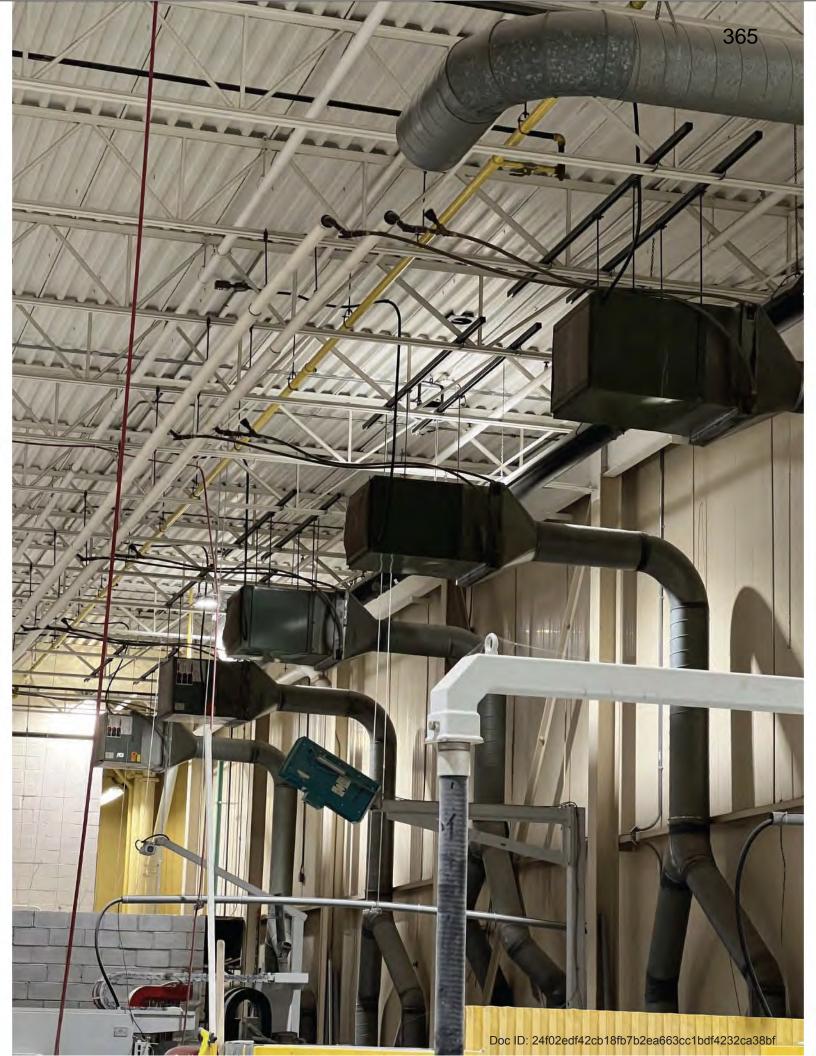














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PEAKHILL CAPITAL INC. et al.

and

1000093910 ONTARIO INC.

Court of Appeal File No.:

Court File No. CV-23-00004031-0000

Applicant

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at NEWMARKET

MOTION RECORD OF 2557904 ONTARIO INC. VOLUME 1 OF 3

MILLER THOMSON LLP

Respondent

Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto ON M5H 3S1

Kevin D. Sherkin (LSO#: 27099B) ksherkin@millerthomson.com

Tel: 416-597-6028

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Lawyers for 2557904 Ontario Inc.