

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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**

**RESPONDING MOTION RECORD OF 2557904 ONTARIO INC.
*Returnable June 12, 2024***

June 11, 2024.

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40 King Street West, Suite 5800
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Toronto ON M5H 3S1

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TO: THE SERVICE LIST

SERVICE LIST
As at June 11, 2024

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**ONTARIO
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Court File No. CV-23-00004031-0000

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**AFFIDAVIT OF ANTHONY MARCUCCI
(SWORN JUNE 11, 2024)**

I, Anthony Marcucci, of the City of Vaughan, in the Regional Municipality of York, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President, Director and Shareholder of 2557904 ONTARIO Inc. ("**255**"), the purchaser of the property located at 20 Regina Road, Vaughan, Ontario (the "Property") from the Respondent, 1000093910 Ontario Inc. (the "**Debtor**"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all cases, believe it to be true.

2. I provide this affidavit on an urgent basis for the assistance of the Court in respect of the Debtor's last-minute motion for various forms of relief which I understand from counsel for 255 was filed and served on the parties at approximately 3:59 pm on June 10, 2024.

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Preliminary Observations

3. I am advised by counsel for 255, and do verily believe that the Debtor's last-minute cross-motion leaves little, if any, time for a meaningful response given that the hearing is due to take place on June 12, 2024 at 10:00am. I am further advised by counsel for 255 that the Receiver served its motion materials on May 31, 2024 and the various interested parties have been serving materials since that time. I also understand from counsel for 255 that counsel for the Debtor had been copied on all emails coming from the Receiver in anticipation of the motion on June 12, 2024.

My Previous Affidavit

4. On March 14, 2024 I swore an affidavit in support of 255's motion to intervene in the Debtor's Appeal of the Decision of the Honourable Justice Valle dated December 20, 2023 (the "**First Affidavit**"). My First Affidavit sets out the background surrounding the negotiation of an Agreement of Purchase and Sale dated September 15, 2023 (the "**Original APS**"), the Receiver's proposed "Amending Agreement" as well as the subsequent execution of a new Stalking Horse Agreement of Purchase and Sale on November 13, 2023. A copy of my First Affidavit Sworn March 14, 2024 is attached hereto as **Exhibit "A"**.

The Stalking Horse Agreement

5. As I discussed in my First Affidavit, notwithstanding that 255 advised the Receiver that the Original APS was now null and void, 255 was and still intends to purchase 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. 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

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discussions were concluded on November 13, 2023 when the stalking horse agreement was signed by the parties (the “**Stalking Horse APS**”).

6. The Stalking Horse APS contains the following key terms:

- (a) the purchased assets include all of the Debtor’s title and interest in and to, among other things, the Property;
- (b) 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;
- (c) 255 will acquire the Property on an ‘as is, where is’ basis but with vacant possession, with limited representations and warranties;
- (d) closing of the transaction contemplated under the Stalking Horse APS is conditional upon, among other things, receipt of Court approval;
- (e) the Stalking Horse APS contemplates a break fee of \$200,000.00 (inclusive of HST) if 255 is not the successful bidder in the sale process; and
- (f) 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.

Prejudice to 255 Should the Sale Process Not be Approved

7. I understand that in their motion materials, the Debtor and the other Moving Parties suggest that 255, as the “disappointed purchaser”, will not experience any prejudice should the Stalking Horse APS, and the Sale Process more generally, not be approved by the Court.

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8. This cannot be further from the truth. Should the Stalking Horse APS be terminated or if the hearing is adjourned to some unknown date in the future and the Sale Process effectively stalled, 255 will experience significant prejudice if it is not able to close on the Stalking Horse APS and purchase the Property.

9. 255 purchased this Property for in September 2023, albeit under false pretenses. 255 is a manufacturer of custom interiors and furniture for commercial use and intends on moving into the Property for use of its business operations. Since the Stalking Horse APS was agreed with the Receiver in November 2023, 255 has been participating in the Sale Process, which was delayed by the Debtor's unsuccessful appeal. If 255 are not able to move into the Property, and if the Stalking Horse APS is not finalized and approved, 255 will be left in a situation where it is 5 days from closing a transaction and it now does not have a property to move into. Given the limited time I have to prepare this affidavit, it is difficult for me to quantify how much financial damage this will cause to 255's business. I can only say that the Termination of the Stalking Horse APS or even an adjournment of the Sale Process will result in considerable financial hardship for 255.

The Debtor's Relationship with Countertop Solutions Inc.

10. I understand from counsel for 255 that one of the moving parties in this motion is Countertop Solutions Inc. ("**Countertop**").

11. On Sunday, June 9, 2024, I understand that, Mr. Kevin Sherkin, received a payout schedule from Receiver's counsel. Having had a chance to review this document myself, I was surprised to see that it appears that Countertop, an affiliated company with the Debtor, has not paid any rent for at least a year. I also understand from Mr. Sherkin that the Receiver had not collected rent from Countertop during the term of the receivership. I attach as **Exhibit "B"** a copy

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of an email from Ben Luder to Kevin Sherkin dated Sunday, June 9, 2024. Attached as **Exhibit “C”** is a copy of an email chain between Sean Zweig and Kevin Sherkin dated June 10, 2024.

12. I also understand from Mr. Sherkin that the Receiver recently terminated Countertop’s lease. Attached as **Exhibit “D”** is a copy a lease agreement between the Debtor and Countertop dated April 13, 2022. Attached as **Exhibit “E”** is a copy of letter from Dominique Michaud, counsel to Peakhill Capital Inc., the lender in these proceedings, dated May 28, 2024 which attaches a copy of a termination agreement of the lease between the Debtor and Countertop.

SWORN by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on June 11, 2024, in accordance with O. Reg. 431/20, Administering Oath of Declaration Remotely.

DocuSigned by:
Kevin Sherkin
035BE5EE77D849F...

DocuSigned by:
113EBAC319124DC...

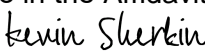
Commissioner for Taking Oaths
(as my be)

Anthony Marcucci

KEVIN D. SHERKIN (LSO#: 27099B)

RCP-E 4D (February 1, 2021)

This is Exhibit "A" referred to in the Affidavit of Anthony Marcucci


035BE6EE77D849F...

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

Court of Appeal File No. COA-23-CV-1357
Court File No. CV-23-0000403-000

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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Applicant
(Respondent in Appeal)

and

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Respondent
(Appellant)

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AFFIDAVIT OF ANTHONY MARCUCCI

I, ANTHONY MARCUCCI, of the City of Vaughan, in the Regional Municipality of York,
MAKE OATH AND SAY:

1. I am the President, Director and Shareholder of 2557904 Ontario Inc. ("**255**"), the purchaser of the property located at 20 Regina Road, Vaughan, Ontario (the "**Property**") from the Respondent, 1000093910 Ontario Inc. (the "**Debtor**"). As such, I have personal knowledge of the matters to which I hereinafter depose.

2. I provide this affidavit for the assistance of the Court in respect of the Debtor's appeal of the decision of the order of the Honorable Madam Justice Vallee dated December 20, 2023 (the "**Order**"). This affidavit sets out the background surrounding the negotiation of an Agreement of Purchase and Sale dated September 15, 2023 (the "**Original APS**"), the Receiver's proposed "Amending Agreement" as well as the subsequent execution of a new Stalking Horse Agreement of Purchase and Sale on

-2-

November 13, 2023. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all cases, believe it to be true.

The Original APS

3. While 255 was not substantively involved in the motion of KSV Restructuring Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”) dated December 13, 2023 or the Debtor’s cross-motion dated December 19, 2023 (the reasons for which I address below), having reviewed these motions and the Order, those previous motions which are the subject of this appeal appear to be premised on a misconceived notion that the Original APS is somehow still operative. It is not, as I explain below.

4. 255 originally executed the Original APS in what I would suggest are misleading circumstances perpetrated by the Debtor.

5. On September 7, 2023, 255 made an unconditional offer to the Debtor to purchase the Property for \$20,000,000.00. The original offer was not accepted. 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 pay a deposit of \$1,000,000.00 to Ren/Tex.

6. 255’s offer was accepted by the Debtor on September 15, 2023. At the time, 255 was not aware that the Debtor had already consented to the appointment of a Receiver to take possession and exercise control over all of its assets, including the Property (the

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“Receivership Order”). The Receivership Order was issued by Justice Lavine of the Superior Court of Justice on September 13, 2023.

7. As a result of the Receivership Order, certain representations by Debtor in the Original APS were not true, including Schedule ‘A’, s 4(e), that the Debtor 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 the date that the Debtor executed acceptance of the Original APS, the Debtor was fully aware that the Receiver would take possession and control of the Property and that the Debtor potentially lacked the capacity to close the transaction.

8. As of September 15, 2023, I 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. Attached as **Exhibit “A”** is a copy of the Original APS. As it turns out, this was not accurate.

The Receivership Order

9. On September 13, 2023, some two days before the Original APS was accepted, Peakhill Capital Inc. (the **“Applicant”**) proceeded with an application seeking to appoint KSV Restructuring Inc. as receiver (the **“Receiver”**) over all the assets, undertakings and properties of the Debtor (which resulted in the issuance of the Receivership Order). I understand from my review of the motion materials filed in this appeal that the Applicant had given the Debtor notice of its intention to appoint a receiver long before the Applicant made its application to Court.

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10. The Debtor's financial difficulties, and the possibility that a receiver could be appointed, was never disclosed to me at any point by the Debtor during the course of our negotiations. I question how the Debtor could have been able to close the transaction given its financial difficulties. Moreover, I would have expected that, at the minimum, the Debtor would have at least disclosed the possibility that a receiver might have been appointed during the negotiation process, especially considering that the Original APS required a lease back of the Property by the Debtor concurrently when the sale closed. I never would have purchased the Property had I known of the Debtor's financial difficulties. I had no interest getting tied up in a dispute between the parties and the complications that go with such trouble.

11. I did not know about the appointment of the Receiver until October 3, 2023, when I received a phone call from Mr. Noah Goldstein of the Receiver who informed me that the Debtor has been placed in receivership. This was after the suspension of the Receivership Order had expired and the Receivership Order came into force in early October 2023.

The Receiver's Proposed "Amending Agreement"

12. On October 3, 2023, my then counsel, Mr. Michael Mancini of Mancini Law, was approached by Mr. Goldstein of the Receiver and his counsel, Mr. Sean Zweig of Bennett Jones LLP, regarding the Original APS. Mr. Zweig informed Mr. Mancini that the Receiver needed some comfort that 255 had the financial backing to close the transaction and asked for a number of financial documents evidencing my ability to do so. These discussions continued along this vein over a number of weeks starting in the beginning

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of October 2023. Considerable amounts of financial information were provided to the Receiver throughout October 2023. A copy of an email chain between, amongst others, Mr. Mancini, Mr Zweig and Mr. Goldstein starting from October 3, 2023 to November 1, 2023 is attached as **Exhibit “B”**.

13. On October 23, 2023, Mr. Zweig again contacted Mr. Mancini regarding the Original APS. In his email, Mr. Zweig attached what he described as an “Amending Agreement” (the “**Amending Agreement**”) which had been drafted to reflect the fact that the Original APS needed to be completed by the Receiver, rather than the Debtor. Mr. Zweig requested that we review the draft Amending Agreement and let him know if we had any comments. A copy of Mr. Zweig’s email of October 23, 2023, together with the draft Amending Agreement, is attached as **Exhibit “C”**.

14. On October 27, 2023, Mr. Zweig wrote to Mr. Mancini again with respect to the proposed draft Amending Agreement. Mr. Zweig confirmed to Mr. Mancini that, if the parties could not agree on the Amending Agreement, the Receiver would need to “go back to the market” for the sale of the Property. A copy of Mr. Zweig’s email of October 27, 2023 is attached as part of the email chain attached as **Exhibit “B”**.

15. The Receiver’s Amending Agreement included a number of material changes that were not acceptable as they altered the deal that had been negotiated with the Debtor. For instance, the Amending Agreement removed the lease back provision. This change represented a departure from the Original APS and was not something that I wanted to entertain. The lease back provision in the Original APS was a significant benefit to me as a buyer, as it ensured that there would be a tenant already in place who would be making

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rental payments as soon as the sale took place for a portion of the building. The removal of the lease back provision increased 255's risk and costs associated with the sale given that there wouldn't be immediate rental income and, further, 255 would be required to incur additional costs of finding a new tenant following the sale.

16. I 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. I understand from my professional advisors that the assignment and Vesting Order would potentially relinquish certain rights and remedies that would have otherwise been available to 255 in the event that the vendor breached certain warranties and representations under the Original APS and potential statutory remedies post-closing.

17. In light of changes proposed by the Receiver, on October 31, 2023, my new counsel, Mr. Louis Raffaghello of Concorde Law, under no uncertain terms advised the Receiver and its counsel that 255 would not be signing any amendment to the Original APS and given that the Receiver would not proceed with the Original APS, the parties agreed at that point the Original APS was at an end and Mr. Raffaghello requested our deposit back. I attach hereto as **Exhibit "D"** a copy of Mr. Raffaghello's email to Mr. Zweig dated October 31, 2023. Because the Original APS was at an end, 255 did not make any further deposit payments required under the APS.

18. Following the termination of the Original APS, we engaged in further discussions with the Receiver 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

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when the stalking horse agreement was signed by the parties. I attach as **Exhibit “E”** a copy of the executed stalking horse agreement.

19. Given that the Original APS was terminated by the parties on October 31, 2023 and a new stalking horse agreement was executed on November 13, 2023 (the “**Stalking Horse Agreement**”), I really don’t see the point of the appeal.

The Receiver’s Motion and the Debtor’s Cross-Motion

20. I understand that, on December 13, 2023, the Receiver served a motion record for a motion hearing that was to take place on December 20, 2023. The Receiver sought various forms of relief to approve the sale process, bidding procedure, Stalking Horse Agreement, and the entering into a new listing agreement with a realtor and formally terminating the Original APS. I really didn’t care about what the Receiver sought at the hearing as 255 had its new agreement with the Receiver, and I didn’t think that 255 needed to take a position at that hearing.

21. On December 19, 2023, less than 24 hours before the motion hearing, I also understand that the Debtor served a cross-motion on the Receiver and the Service List in the receivership proceedings. I am now aware that my real estate lawyer received a digital copy of the Debtor’s cross motion by email on December 19, 2023 at approximately 3:55 p.m. Given the extremely short notice, I did not have an opportunity to retain a commercial litigator to represent 255, nor did I have an opportunity to place an affidavit before the lower court in respect of either of those motions. I am therefore asking the court for leave to be able to introduce this affidavit. While I understand this would normally be a right should the court send it back down to the lower court, I am filing this now so

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the court understands the merit of sending this back to the lower court as the Appellant is under a mistaken impression that somehow the Original APS is alive, which is the fundamental mistaken assumption they are appealing.

The Debtor's Appeal

22. I understand that, on December 29, 2023, the Debtor served and filed a notice of appeal from the reasons and requests that the 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. In the alternative, the Debtor sought an order remitting the matter back to the Superior Court.

23. I also understand that, on January 2, 2024, the Receiver took the position that service of the notice of appeal was improper because the Order was a procedural, not a substantive order, and therefore required leave to appeal. Although I understand that the Debtor disagreed with the Receiver's position, the Debtor subsequently served its motion materials for leave to appeal on counsel for the Receiver on January 3, 2024, with the materials being served on counsel for 255 on January 4, 2024. The Debtor's motion materials for leave to appeal were served on counsel to 255 on or around January 4, 2024. I understand that the Debtor's motion was to be heard by the Court on January 19, 2024.

24. I understand that, on January 19, 2024, the Debtor and the Receiver appeared before Justice Simmons in respect of the Debtor's motion for leave to appeal the Order. I understand that Justice Simmons accepted that the Debtor had a right of appeal as of

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right and ordered that the hearing of the appeal be expedited. A copy of the order of Justice Simmons dated January 19, 2024 is attached hereto as **Exhibit “F”**.

25. I understand that, on January 24, 2024, Mr. Kevin Sherkin of Miller Thomson LLP, wrote to Mr. Gary Caplan, counsel for the Debtor, confirming that it was 255’s intention to intervene in the Debtor’s appeal on the basis that 255’s rights would be affected. Mr. Sherkin asked Mr. Caplan if the Debtor would be prepared to consent to 255 intervening in this appeal and also confirmed that Mr. Jeremy Sacks would be appearing with him at the appeal on behalf of 255. Attached as **Exhibit “G”** is a copy of Mr. Sherkin’s email sent to Mr. Caplan on January 24, 2024.

26. I understand that, on January 30, 2024, Mr. Sacks wrote to Mr. Caplan regarding Mr. Sherkin’s request that the Debtor consent to 255 being granted intervenor status in the Debtor’s appeal of the Order. Mr. Sacks requested that, going forward, 255, through its counsel, should be provided with all appeal materials and asked Mr. Caplan to confirm. Attached as **Exhibit “H”** is a copy of Mr. Sacks’ email sent to Mr. Caplan on January 30, 2024.

27. I understand that, on January 31, 2024, Mr. Caplan responded to Mr. Sacks’ email of January 30, 2024. Mr. Caplan did not confirm that he would be sending Mr. Sacks and Mr. Sherkin all appeal materials going forward as requested. Instead, Mr. Caplan proposed a number of conditions on 255’s participation in the Debtor’s appeal before he would seek the Debtor’s consent to 255 being granted intervenor status by consent of the parties. A copy of Mr. Caplan’s email sent to Mr. Sacks of January 31, 2024 is attached as **Exhibit “I”**.

-10-

28. I understand that, on Friday, March 8, 2024, Mr. Sherkin was served with the Receiver's Responding Materials in the appeal. I understand from Mr. Sherkin that this was the first time that 255 was informed that the hearing of the Debtor's appeal had been scheduled for April 2, 2023. I understand from Mr. Sherkin that he was not provided with the Debtor's Appeal materials until Monday, March 11, 2024. Attached hereto as **Exhibit "J"** is an email from Ms. Stephanie Song dated Friday, March 8, 2024 attaching the Receiver's Appeal materials.


SWORN by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits
(or as may be)

KEVIN D. SHERKIN (LSO#: 27099B)

DocuSigned by:

113EBAC319124DC...

ANTHONY MARCUCCI

RCP-E 4D (February 1, 2021)

This is Exhibit "A" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)



Form 500

for use in the Province of Ontario

Agreement of Purchase and Sale Commercial

This Agreement of Purchase and Sale dated this 7 day of September, 2023

BUYER: 2537904 ONTARIO INC., agree to purchase from
(Full legal names of all Buyers)

SELLER: 1000093910 ONTARIO INC. the following
(Full legal names of all Sellers)

REAL PROPERTY

Address 20 Regina Rd. - City of Vaughan

fronting on the North side of Regina Rd

in the City of Vaughan

and having a frontage of more or less by a depth of \$31,000.00 more or less

and legally described as PCL 3-1 SEC 6502720; R/L 3 PL 6502720 ; S/T LT576260, LT576262 VAUGHAN \$31,500,000.00

RA (Legal description of land including agreements not described elsewhere) \$30,000.000 "property"

RA Thirty-One Million Five Hundred Thousand \$32,250,000

PURCHASE PRICE: Thirty-Two Million Two Hundred \$20,000,000.00
fifty thousand dollars Dollars

DEPOSIT: Buyer submits as otherwise described in this Agreement
(Monetary/Upon Acceptance/as otherwise described in this Agreement)

Dollars (CDN\$)

by negotiable cheque payable to REN/TEX REALTY INC., BROKERAGE "Deposit Holder"
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes
of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance
of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place
the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE A BUYER attached hereto form(s) part of this Agreement.

1. **IRREVOCABILITY:** This offer shall be irrevocable by SELLER BUYER until 11:59 am on 15th day of September, 2023

the 15th day of September, 2023 after which time, if not accepted, this
offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 21 day of December, 2023

Upon completion, vacant possession of the property shall be given to the Buyer
unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices. Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein, and in 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 facsimile number or email address is provided herein, when transmitted electronically to that facsimile 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 Seller)

FAX No.
(for delivery of Documents to Buyer)

Email Address: jracco@rentxrealty.com
(for delivery of Documents to Seller)

Email Address: vkolenc89658rogers.com
(for delivery of Documents to Buyer)

4. **CHATTLS INCLUDED:**

RA all office and warehouse light
fixtures and HVAC equipment
Existing compressors

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

RA all equipment related to the operating business
including but limited to air compressors and related
equipment, lines, machinery, and electrical, and or
HVAC specific to operations of the business.

Take what you want and leave what you want

6. **RENTAL ITEMS (including Lease, Lease to Own):** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable.

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST. If the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA in illustration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S)

INITIALS OF SELLER(S)

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 1 day of December, 2023 (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (Industrial) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.
9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection to made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.
11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendment thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer retaining any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.
12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
13. **INSPECTIONS:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

R.A.



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- 13. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 14. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, renty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. 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 abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Lynx high value payment system as set out and prescribed by the Canadian Payments Act (R.S.C., 1985, c. C-21), as amended from time to time.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFF:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing urea formaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains urea formaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion 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 Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the Electronic Commerce Act, 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
- 28. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S)



INITIALS OF SELLER(S)



20. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:
2557901 ONTARIO INC.
X
(Buyer/Authorized Signing Officer) (Seal) (Date) Sept 7/23
(Witness) (Buyer/Authorized Signing Officer) (Seal) (Date)

I, the Undersigned Seller, agree to the above offer I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.
SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:
1000093910 ONTARIO INC.
Ravi Aurora
(Seller/Authorized Signing Officer) (Seal) (Date) 09/09/2023
(Witness) (Seller/Authorized Signing Officer) (Seal) (Date)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness) (Spouse) (Seal) (Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 11:40 this 15 day of SEPT., 2023.
(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)	
Listing Brokerage	REN/TEX REALTY INC., Brokerage (Tel.No.) 905-850-3300
Jason Rocco/Michael Carlone (Salesperson/Broker/Broker of Record Name)	
Co-op/Buyer Brokerage	REN/TEX REALTY INC. (Tel.No.) 416-987-8000
Yusra Kolanc (Salesperson/Broker/Broker of Record Name)	

ACKNOWLEDGEMENT	
I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer. (Signature of Seller or Buyer) (Date) 9/15/23 (Buyer/Authorized Signing Officer) (Date) Address for Service (Tel. No.) Seller's Lawyer BARRY POLINSKY (Tel. No.) Address (Fax No.) Email (416) 496-3340 (Tel. No.)	I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer. X (Buyer/Authorized Signing Officer) (Date) (Buyer) (Date) Address for Service (Tel. No.) Buyer's Lawyer Address Email (Tel. No.) (Fax No.)

COMMISSION TRUST AGREEMENT	
To Cooperating Brokerage shown on the foregoing Agreement of Purchase and Sale in consideration for the Cooperating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the transaction as contemplated in the MSRP Rules and Regulations of the Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MSRP Rules and shall be subject to and governed by the MSRP Rules pertaining to Commission Trust. DATED on the date and time of the acceptance of the foregoing Agreement of Purchase and Sale Acknowledged by: (Signature) (Authorized to bind the Listing Brokerage) (Authorized to bind the Cooperating Brokerage)	

**Schedule A****Agreement of Purchase and Sale - Commercial****Form 500**

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: 2557904 ONTARIO INC. and

SELLER: 1000093910 ONTARIO INC.

for the purchase and sale of 20 Regina Rd. - City of Vaughan Vaughan

ON L4M 0P6 dated the 7 day 21 September, 2023

Buyer agrees to pay the balance as follows:

PAGE INTENTIONALLY LEFT BLANK

This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S)

INITIALS OF SELLER(S)

RA



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**SCHEDULE "A" TO THE
AGREEMENT OF PURCHASE AND SALE
(FOR USE IN THE PROVINCE OF ONTARIO)**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: 2557904 ONTARIO INC., and

SELLER: 1000093910 ONTARIO INC.,

for the purchase and sale of: 20 REGINA RD. - CITY OF VAUGHAN

1. PURCHASE TERMS:

a) **Price and Payment:**

Thirty-One Million Plus
Hundred Thousand

\$31,000,000.00

THIRTY TWO MILLION TWO HUNDRED
FIFTY THOUSAND DOLLARS

The purchase price for the Real Property shall be the sum of TWENTY EIGHT MILLION
(CDN\$ 28,000,000.00) DOLLARS in lawful money of Canada, payable as follows:

\$32,250,000 ~~\$30,000,000~~ ~~\$31,500,000.00~~
the sum of ONE MILLION TWO HUNDRED THOUSAND (CDN\$ 1,200,000.00) DOLLARS
by cheque forthwith upon acceptance to Ren/tex Realty Inc., pending completion or other termination
of this transaction and to be credited on account of the purchase price on closing;

(iii) the balance of the purchase price on closing, subject to usual adjustments.

b) **Disbursement of the Deposit:**

In the event the Agreement of Purchase and Sale is not completed by reason of the default of the Buyer, the Seller shall be entitled to retain the Deposit in full. The Seller and the Buyer acknowledge the deposit will not be cashed or certified by the Agent until acceptance of this Offer. If the deposit cheque is not paid when due or is not honoured by the Buyer's bank, this agreement may, at the Seller's option, be terminated by written notice to the Buyer and any deposit funds paid to the Seller shall be forfeited to the Seller.

The buyer will submit a further deposit of \$500,000.00
(Five hundred Thousand Dollars) 30 days after acceptance
to The Listing Broker and to be used towards
the purchase price.

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

X
(Buyer)

Ravi Aurora
(Seller)

X
(Buyer)

(Seller)

SCHEDULE "A" CONTINUED**PAGE 2****2. ADJUSTMENTS**

All adjustments with respect to municipal taxes, local improvement charges and utilities and all other items normally adjusted between a Seller and a Buyer on the sale of similar commercial property shall be made with respect to the Property as of the Closing Date. The Buyer shall receive all income and pay all expenses relating to the Property from and including the Closing Date. The Seller shall deliver to the Buyer not less than five (5) days prior to the Closing Date the Statement of Adjustments.

3. SELLER PROVIDED

The Buyer acknowledges receipt of the following:

- (1) Copy of Final Property Tax Bill 2021;
- (2) Area Certificate dated 2023-08-14, including As-Built Overall and Office Plan (Project No. 202030069), and corresponding .dwg file (the "Plans");
- (3) Phase I ESA issued on Nov. 19, 2021;
- (4) Narrative Appraisal Report dated August 21, 2023.

The Buyer specifically acknowledges and agrees that the Seller does not represent, warrant, or guarantee the accuracy, completeness or reliability of any report or study provided to the Buyer. The Buyer agrees that the Seller shall not be liable for any losses as a result of reliance on information or report provided to the Buyer.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SELLER:

The Seller hereby represents, warrants, and covenants to the Buyer, as the case may be, the following representations, warranties and covenants:

- a) the Seller is the registered legal owner of the Property;
- b) the Seller is not now and shall not be on the Closing Date a non-resident of Canada within the meaning of the Income Tax Act;

..... 3

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

X Ravi Aurora
(Buyer) (Seller)

RA
(Buyer) (Seller)

SCHEDULE "A" CONTINUED**PAGE 3**

- c) any orders or deficiency notices outstanding against the property shall be satisfied by the Seller at its sole expense before the date of closing;
- d) that no contracts exist for the servicing, maintenance or management of the Property which may be binding upon the Buyer after closing other than those disclosed by the Seller;
- e) It is duly authorized to enter into the Agreement with power and capacity to complete the transaction provided herein in accordance with the terms thereof;

5. AGENCY DISCLOSURE

THE PARTIES to this transaction hereby acknowledge that the Co-operating Broker acts for the Buyer under a Buyer's Agency Agreement and that the Co-operating Broker will be compensated through the Listing Broker.

6. WAIVER TO AGENT

The parties to this Agreement acknowledge that the Agents have recommended that they obtain advice from their legal Counsel prior to signing this document. The parties further acknowledge that the information provided by the Agents is not legal, accounting, environmental or tax advice, and the parties are cautioned not to rely on any such information without seeking specific legal, accounting, environmental or tax advice with respect to their unique circumstances.

7. FACSIMILE/ELECTRONIC COMMUNICATION OF AGREEMENT

THE SELLER AND BUYER acknowledge and agree that this Offer, any subsequent counteroffer amendments, notices and acknowledgements that are transmitted between the parties by facsimile or similar electronic transmission shall be treated as signed originals and shall be deemed communicated at the time and date of sending.

8. ~~CONDITION-BUYER~~

RA THIS OFFER shall be conditional for TWO (2) business days from receipt of an up-to-date Phase I Environmental report and on the Property from the Seller to the Buyer in his sole discretion, otherwise this offer shall become null and void and the deposit shall be returned to the Buyer in full without interest or deduction. This condition is included for the sole benefit of the Buyer and may be waived at his option in writing to the Seller within the time period stated herein.

8. SALE/LEASEBACK

RA It is agreed and understood that upon completion of this transaction, the Buyer will allow the Seller to lease the premises back, for a term of FOUR (4) MONTHS from the completion date at a semi-gross rental rate of \$20.00 per sq. ft. per annum including Net Rent and T.M.S. Said Lease shall have a no Option to Renew and shall contain standard lease terms as in a transaction of this nature and size. The Seller/Tenant shall be responsible for all Liability Insurance and utilities. *Plus T.M.S. and Utilities on entire building Seller/Tenant will pay his own contents insurance & Liability* Only 40% of the entire space to be determined by the Buyer & Seller and agreed upon Both parties

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

RA

(Buyer)Ravi Aurara

(Seller)_____
(Buyer)_____
(Seller)*RA*

SCHEDULE "A" CONTINUED**PAGE 4****8. SEVERABILITY**

If any provision contained herein shall be found to be unenforceable, such provision shall be severed from the Agreement, and the remainder of this Agreement shall continue to be in full force and effect.

9. SUCCESSORS AND ASSIGNS

This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

10. APPLICABLE LAW

This Agreement shall be interpreted in accordance with the laws of the province of Ontario and the laws of Canada applicable thereto.

11. FURTHER ASSURANCES

Except as provided herein, each of the parties shall, at the cost and expense of the other party, execute and deliver all such further documents and do such further acts and things that the other party may reasonably request from time to time to give full effect to this agreement.

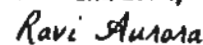
12. NO REGISTRATION BY BUYER

The Buyer agrees that it will at no time prior to the Closing Date register or permit to be registered on title to the Property this Agreement or a notice or assignment or transfer thereof or a caution or any other document pertaining to this Agreement or the Property. Any such registration shall be a default by the Buyer, entitling the Seller to all remedies available to it, including, the right to terminate this Agreement and claim the Deposit. In the event of such termination, this Agreement shall be deemed not to have created any interest in the Property and any improvements thereon, and the Buyer shall forthwith remove any such registration. If such registration is not removed within 3 days of the Seller notifying the Buyer in writing to do so, the Buyer, by the execution of this Agreement, hereby expressly appoints the Seller as its lawful attorney to execute any transfers, releases or applications to have the said registration removed, released or deleted from the title to the Property.

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)


(Buyer)

(Buyer)


Ravi Aurora

(Seller)

(Seller)

 RA

OREA Ontario Real Estate Association

Schedule B
Agreement of Purchase and Sale

**Toronto
Real Estate
Board**

Form 105

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, 2557904 ONTARIO INC.

SELLER: 1000093910 ONTARIO INC.

for the property known as **20 REGINA RD.** **City of Vaughan**

dated the 7TH day of September, 2023

The Parties to this Agreement hereby agree that Ren/Tex Realty Inc will not accept cash deposits. The Buyer agrees that the deposit, as stated herein, shall be submitted by Certified Cheque or Bank Draft, payable to Ren/Tex Realty Inc (the "Deposit Holder"), according to the time period contained in this Agreement, and will be held in a non-interest bearing Real Estate Trust Account.

The Buyer and Seller agrees and acknowledges that all the measurements and information provided by Rentex Realty Inc., Brokerage on the MLS Listing, Feature Sheets, Internet/Website and any other marketing materials for the subject property, have been supplied for reference purposes only, and such Rentex Realty Inc., Brokerage does not warrant their accuracy. The Buyer is advised to verify any measurements or information upon which he or she is relying.

The Parties to this Agreement acknowledge that the representatives of Listing and Co-operating Brokerages in this transaction have recommended that they obtain advice from their legal advisor, banker, accountant and inspector prior to signing this document. The Parties further acknowledged that no information provided by either Brokerages' representatives is to be construed as being expert legal, financial, tax, building condition or environmental advice.

Buyer's Acknowledgment: It is agreed and understood that notwithstanding anything contained herein to the contrary, the above-mentioned Property, the improvements within, and property condition are to be accepted in "as is" condition. The Seller or the Agent(s) named herein cannot be held liable for any of the above and that no representation or warranty exists in respect to all aspects of the Property. The Buyer agrees that this is a firm offer, without conditions and shall accept the entire Property in "as is" condition and is relying solely upon its own due diligence. The parties agree that this Buyer's Acknowledgment shall survive and not merge on completion of this transaction.

FOR ALL PURPOSES of this Agreement, the terms "banking day" or "business day" shall mean any day, other than Saturday, Sunday, or statutory holiday in the Province of Ontario.

THE BUYER SHALL have the Right to Assign this Agreement of Purchase and Sale and all its rights and obligations hereunder to a person(s), corporation(s), partnership of person(s) and/or corporation(s) or firm(s). Notwithstanding such assignment the purchasers named herein shall not be relieved of their obligations under the agreement and shall remain responsible hereunder in the event that the assignee defaults in its obligations under the Agreement of Purchase & Sale.

It is agreed and understood, in the case of any conflict between the provisions of the Agreement of Purchase and Sale, Schedule "A", or Schedule "B", then the terms of Schedule "B" shall prevail.

The form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S)

INITIALS OF SELLER(S):



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When printing or reproducing this standard format product, TMA's name is hereby for price use of 0.15 per unit.

1. **Experimental design**

This is Exhibit "B" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Louis Raffaghello
Sent: Wednesday, November 1, 2023 6:58 PM
To: Sean Zweig <ZweigS@bennettjones.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

I have an appointment out of the office at 9:30. I am available anytime after 11 am, except between 1 and 1:30 pm.

Regards,

Louis E. Raffaghello, LL.B., LL.M.



260 Edgeley Boulevard, Unit 12

Vaughan, ON L4K 3Y4

T | (647) 792-1272, x 208 F | 1 (866) 220-3747

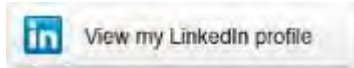
E | louisr@concordelaw.ca

Assistant: Sylvia Kirin, x 210

sylviak@concordelaw.ca

www.Concordelaw.ca

- 2 -



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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Wednesday, November 1, 2023 6:54 PM

To: Louis Raffaghello <louisr@concordelaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Louis,

Can we please have a call tomorrow to discuss? 9:30am?

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](tel:4167776254) | F. [416 863 1716](tel:4168631716)

[BennettJones.com](https://www.BennettJones.com)



From: Louis Raffaghello <louisr@concordelaw.ca>

Date: Tuesday, Oct 31, 2023 at 4:29 PM

[75736498.1](#)

- 3 -

To: Sean Zweig <ZweigS@bennettjones.com>, Noah Goldstein <ngoldstein@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hello Sean,

Further to our video call, I confirm that we act for 2557904 Ontario Inc.

For reasons that were discussed, I confirm that our client will not be executing the amending agreement and therefore the transaction will not proceed and is effectively null and void. Please instruct Ren/Tex Realty Inc., to refund the deposit funds of \$1M to our client as soon as possible.

Our client still remains interested in the property. Based on current market conditions, and subject to entering into a formal offer, it is prepared to pay \$385 per square foot for a total of \$24,255,000 (assuming the building is 63,000 square feet in size). The offer will be all cash, closing as soon as possible. Our client will pay a deposit of \$1.5M.

If these general terms are acceptable, please contact me asap to proceed with a formal binding offer.

Regards,

Louis E. Raffaghello, LL.B., LL.M.



260 Edgeley Boulevard, Unit 12

Vaughan, ON L4K 3Y4

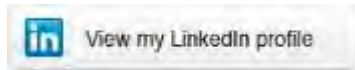
T | (647) 792-1272, x 208 F | 1 (866) 220-3747

E | louisr@concordelaw.ca

Assistant: Sylvia Kirin, x 210

sylviak@concordelaw.ca

www.Concordelaw.ca



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COVID-19 NOTICE: CONCORDE LAW continues to operate at full capacity with Covid-19 safeguards in place. We offer meetings and all other services by teleconference and videoconference and some in-person meetings by appointment only.

From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Monday, October 30, 2023 1:34 PM

To: Noah Goldstein <ngoldstein@ksvadvisory.com>; Louis Raffaghello <louisr@concordelaw.ca>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Louis,

I am not available at 2:15pm. How is 4pm?

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](tel:4167776254) | F. [416 863 1716](tel:4168631716)

75736498.1

- 5 -

BennettJones.com



From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Sent: Monday, October 30, 2023 1:31 PM

To: Louis Raffaghello <louisr@concordelaw.ca>

Cc: Sean Zweig <ZweigS@bennettjones.com>

Subject: Re: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Pls connect with sean who is my lawyer today.

Noah Goldstein

416.844.4842

On Oct 30, 2023, at 1:30 PM, Louis Raffaghello <louisr@concordelaw.ca> wrote:

Hello Noah,

I will call you at 2:15 if that works for you.

Regards,

Louis E. Raffaghello, LL.B., LL.M.



CONCORDE LAW
PROFESSIONAL CORPORATION

- 6 -

260 Edgeley Boulevard, Unit 12

Vaughan, ON L4K 3Y4

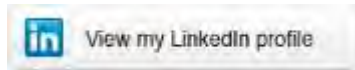
T | (647) 792-1272, x 208 F | 1 (866) 220-3747

E | louisr@concordelaw.ca

Assistant: Sylvia Kirin, x 210

sylviak@concordelaw.ca

www.Concordelaw.ca



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COVID-19 NOTICE: CONCORDE LAW continues to operate at full capacity with Covid-19 safeguards in place. We offer meetings and all other services by teleconference and videoconference and some in-person meetings by appointment only.

From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Sent: Monday, October 30, 2023 10:00 AM

To: Anthony Marcucci <anthony@crediblegroup.com>

Cc: Jagjeet Kaur <jagjeet@crediblegroup.com>; Vesna Kolenc <vkolenc8965@rogers.com>; Louis Raffaghello <louisr@concordelaw.ca>; zweigs@bennettjones.com

Subject: Re: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Louis, when can you chat today.

Noah Goldstein

416.844.4842

- 7 -

On Oct 30, 2023, at 9:58 AM, Anthony Marcucci <anthony@crediblegroup.com> wrote:

Good morning Noah,

Mancini Law has been terminated from this transation.

Louis Raffaghello is new council on this matter.

He will reach out to you today and or please communicate directly with him.

Thank you.

Please see his coordinates below:

Louis E. Raffaghello, LL.B., LL.M.

<image010.png>

260 Edgeley Boulevard, Unit 12

Vaughan, ON L4K 3Y4

T | (647) 792-1272, x 208 F | 1 (866) 220-3747

E | louisr@concordelaw.ca

www.Concordelaw.ca

- 8 -

Regards,

<image001.png>

From: Vesna Kolenc <vkolenc8965@rogers.com>

Sent: Sunday, October 29, 2023 11:41 PM

To: Jagjeet Kaur <jagjeet@crediblegroup.com>; Anthony Marcucci
<anthony@crediblegroup.com>

Subject: Fw: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Caution: This is an external email and has a suspicious subject or content. Please take care when clicking links or opening attachments. When in doubt, contact your IT Department

Thank you,

Vesna Kolenc

Sales Representative

RE/MAX Premier Inc.

[Sent from Yahoo Mail for iPhone](#)

Begin forwarded message:

On Sunday, October 29, 2023, 11:11 PM, Vesna Kolenc <vkolenc8965@rogers.com> wrote:

Good evening Noah

I just read all this

75736498.1

- 9 -

I was away and lost track of all this as it seems the lawyers got involved

This deal seems simple and in place as far as I'm concerned but I am not knowledgeable in what happens when it goes into receivership in the

Midst of an existing deal, being in place with Rentex and Remax as listing and selling brokers

Going back to our first conversation when you informed Anthony and me that the property went into receivership and it seemed that you were ok with the firm deal in place as you stated that there was enough money to pay everyone

From that point on I'm not sure what took place and where we actually stand at this moment

I did see that the aps was sent to you showing you that it was a firm deal closing December 21, 2023

A 1 million dollar deposit was submitted immediately to Rentex realty by way of a bank draft and a further deposit of \$500000 was due within the next couple of weeks

At that point it seems that there were some breaks put on this further deposit by Anthony's lawyers or I'm not sure by who else suggesting something else other than that the further deposit goes to the listing broker Rentex realty where this deal originated

Also you were given the paperwork regarding the sale of 830, 840 Edgley Blvd showing a firm sale closing December 18, 2023

So when you say that this is urgent I agree with you but I am not sure what is required at this moment as numerous emails are circulating between your lawyers and Anthony's lawyers

Please let me know what you need from me and how we can help this whole situation as you are addressing this email to me

- 10 -

Thank you,

Vesna Kolenc

Sales Representative

RE/MAX Premier Inc.

[Sent from Yahoo Mail for iPhone](#)

On Friday, October 27, 2023, 4:17 PM, Noah Goldstein <ngoldstein@ksvadvisory.com> wrote:

Vesna,

This is now getting urgent. We cant sit in this position.

Noah

From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Friday, October 27, 2023 4:01 PM

To: Noah Goldstein <ngoldstein@ksvadvisory.com>; Jonathan Sistilli <jonathan@mancinilaw.ca>; Michael Mancini <michael@mancinilaw.ca>

Cc: Ben Luder <bluder@ksvadvisory.com>; Christopher Ferencz <FerenczC@bennettjones.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Can we please hear back from you? If we cannot get this settled, we will need to go back to market.

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

75736498.1

- 11 -

BennettJones.com[<image002.png>](#)

From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Date: Thursday, Oct 26, 2023 at 9:25 AM

To: Sean Zweig <ZweigS@bennettjones.com>, Jonathan Sistilli <jonathan@mancinilaw.ca>, Michael Mancini <michael@mancinilaw.ca>

Cc: Ben Luder <bluder@ksvadvisory.com>, Christopher Ferencz <FerenczC@bennettjones.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Can we get back a turn of this today? It's a very short document

From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Monday, October 23, 2023 11:57 AM

To: Jonathan Sistilli <jonathan@mancinilaw.ca>; Michael Mancini <michael@mancinilaw.ca>

Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Ben Luder <bluder@ksvadvisory.com>; Christopher Ferencz <FerenczC@bennettjones.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Michael and Jonathan,

Further to the below, attached please find a draft amending agreement to reflect the fact that the APS will now need to be complete by the Receiver. Can you please review and let us know if any comments?

Thanks

Sean Zweig

75736498.1

- 12 -

*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](https://www.BennettJones.com)

[<image002.png>](#)

From: Sean Zweig

Sent: Wednesday, October 18, 2023 10:35 AM

To: 'Jonathan Sistilli' <jonathan@mancinilaw.ca>

Cc: Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Ben Luder
<bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Jonathan,

Apologies, but I'm in examinations today and tomorrow.

Thanks for the update. Let me chat with the Receiver (copied) re the deposit. Can you please remind me when it is due? We are currently preparing an amendment to address the receivership.

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](https://www.BennettJones.com)

[<image002.png>](#)

From: Jonathan Sistilli <jonathan@mancinilaw.ca>
Sent: Wednesday, October 18, 2023 10:31 AM
To: Sean Zweig <ZweigS@bennettjones.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Sean,

Sorry I was unable to speak with you yesterday, I had a family matter to attend to.

I just wanted to provide you with an update:

1. Our client is currently working with BDC to obtain a bank loan and it will take some time for BDC to provide an approval. In any event based on the payouts that we have provided our client has sufficient equity to complete the purchase transaction. I believe the shortly fall is between \$5-6 million from the sale of the Edgeley properties.
2. There is a further deposit that is payable under the agreement, which is to be paid to the seller's real estate agent. It is my client's intention to provide the deposit, however, I would like to hold the funds in our trust account until we confirm that the purchase transaction will proceed. It is my understanding based on the Court Order your client obtained, that we will need to speak with the Receiver on this point.

Can you please call me when you have a moment to discuss this.

Regards,

Jonathan C. Sistilli , J.D., Hons. B.A.

Barrister & Solicitor

- 14 -

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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Tuesday, October 17, 2023 3:39 PM

To: Jonathan Sistilli <jonathan@mancinilaw.ca>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

I'm available now if that works.

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

<[image002.png](#)>

From: Jonathan Sistilli <jonathan@mancinilaw.ca>

Sent: Tuesday, October 17, 2023 3:18 PM

To: Sean Zweig <ZweigS@bennettjones.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

- 15 -

Hi Sean,

Do you have a moment for a brief chat...wanted to discuss and provide you with an update.

Let me know what time works best for you.

Regards,

Jonathan C. Sistilli , J.D., Hons. B.A.

Barrister & Solicitor

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<image006.jpg>

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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Monday, October 16, 2023 5:12 PM

To: Jonathan Sistilli <jonathan@mancinilaw.ca>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Aiden Nelms <NelmsA@bennettjones.com>; Ben Luder <bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

- 16 -

Thanks Jonathan for this and for the vmail. Apologies I haven't had a chance to call you back but I've been on back-to-backs for a while.

When do you expect to get us evidence of the purchaser's access to funds to make up the rest of the purchase price?

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](https://www.bennettjones.com)[<image002.png>](#)**From:** Jonathan Sistilli <jonathan@mancinilaw.ca>**Sent:** Monday, October 16, 2023 4:51 PM**To:** Sean Zweig <ZweigS@bennettjones.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>**Subject:** RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Sean,

I was able to get a copy of the BNS mortgage, see attached.

In terms of the 2nd mortgage, it is an interest only charge, so the principal balance is \$1,800,000.00.

The remaining information will follow.

75736498.1

Regards,

Jonathan C. Sistilli , J.D., Hons. B.A.

Barrister & Solicitor

<image007.png>

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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Monday, October 16, 2023 11:06 AM

To: Alyssa Da Silva <alyssa@mancinilaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Jonathan Sistilli <jonathan@mancinilaw.ca>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Jonathan – your client said we would get the information today. Can you please confirm?

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

75736498.1

- 18 -

[<image002.png>](#)

From: Alyssa Da Silva <alyssa@mancinilaw.ca>
Sent: Monday, October 16, 2023 10:48 AM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Jonathan Sistilli <jonathan@mancinilaw.ca>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Noah,

Jonathan has carriage of this file, and is cc'd on the email chains regarding same. He is aware of the file, please feel free to reach out to him if you have any questions or comments.

Thanks,

Alyssa Da Silva, Law Clerk

Mancini Law Professional Corporation

3850 Steeles Ave. W. Unit 6,

Vaughan ON L4L 4Y6

T:905.265.8911 | F:905.265.0933

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: Monday, October 16, 2023 7:40 AM
To: Alyssa Da Silva <alyssa@mancinilaw.ca>

75736498.1

- 19 -

Cc: zweigs@bennettjones.com

Subject: Fwd: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

How do we progress a matter in Michael's absence?

Noah Goldstein

416.844.4842

Begin forwarded message:

From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Date: October 16, 2023 at 7:38:30 AM EDT

To: zweigs@bennettjones.com

Cc: Aiden Nelms <NelmsA@bennettjones.com>, Michael Mancini <michael@mancinilaw.ca>, Anthony Marcucci <anthony@crediblegroup.com>, Alyssa Da Silva <alyssa@mancinilaw.ca>, Vesna Kolenc <vkolenc8965@rogers.com>, Ben Luder <bluder@ksvadvisory.com>, Jonathan Sistilli <jonathan@mancinilaw.ca>

Subject: Re: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

We absolutely need this information today. Please get back to us

Noah Goldstein

416.844.4842

On Oct 14, 2023, at 9:03 AM, Sean Zweig <ZweigS@bennettjones.com> wrote:

Michael,

Just following-up on this chain. Can we please get confirmation of how much is owing on the mortgages, and your client's ability to fund whatever additional amount is needed to close our transaction?

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

75736498.1

- 20 -

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

BennettJones.com

[<image002.png>](#)

From: Aiden Nelms <NelmsA@bennettjones.com>

Date: Tuesday, Oct 10, 2023 at 1:39 PM

To: Michael Mancini <michael@mancinilaw.ca>, Sean Zweig <ZweigS@bennettjones.com>, Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Anthony Marcucci <anthony@crediblegroup.com>, Alyssa Da Silva <alyssa@mancinilaw.ca>, Vesna Kolenc <vkolenc8965@rogers.com>, Ben Luder <bluder@ksvadvisory.com>, Jonathan Sistilli <jonathan@mancinilaw.ca>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Thank you Michael.

Please pass the additional information along when you can as that is material to the Receiver's assessment.

Best,

Aiden Nelms

Associate, Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 4642 | F. 416 863 1716 | M. 416 671 3090

BennettJones.com

75736498.1

- 21 -

[<image002.png>](#)

From: Michael Mancini <michael@mancinilaw.ca>
Sent: Tuesday, October 10, 2023 1:36 PM
To: Aiden Nelms <NelmsA@bennettjones.com>; Sean Zweig <ZweigS@bennettjones.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>; Ben Luder <bluder@ksvadvisory.com>; Jonathan Sistilli <jonathan@mancinilaw.ca>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Sorry about that. The amendment is attached.

At the moment we do not have payout statements for the Charges. We have asked our client for statements.

We can get you additional information as it arrives.

Michael M. Mancini

[<image009.png>](#)

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From: Aiden Nelms <NelmsA@bennettjones.com>
Sent: Tuesday, October 10, 2023 11:52 AM
To: Michael Mancini <michael@mancinilaw.ca>; Sean Zweig <ZweigS@bennettjones.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna

- 22 -

Kolenc <vkolenc8965@rogers.com>; Ben Luder <bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Michael,

I think you inadvertently did not include the amendment referenced at point 2 in your below email – can you please send along when you have a moment? Additionally, can you please confirm how much is outstanding under both the BNS and Silverberg, Howard Merlin Inc. mortgages on the Edgeley properties?

Thank you in advance.

Best,

Aiden Nelms

Associate, Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 4642 | F. 416 863 1716 | M. 416 671 3090

BennettJones.com

<[image001.png](#)>

From: Michael Mancini <michael@mancinilaw.ca>

Sent: Friday, October 6, 2023 11:19 AM

To: Sean Zweig <ZweigS@bennettjones.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>; Aiden Nelms <NelmsA@bennettjones.com>; Ben Luder <bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

- 23 -

Hi Sean,

Pursuant to my client's instructions. I have enclosed the following:

1. Agreement of Purchase and Sale for 830-840 Edgeley Blvd;
2. Amendment to the Agreement removing the Buyer's Due Diligence condition and setting a Completion Date of December 18, 2023;
3. Parcel Registers for the subject properties; and
4. A certificate of Status for our client.

As it currently stands, I do not have mortgage payout statements for the BNS mortgage given to my client.

My client has advised that purchase proceeds for the acquisition of 20 Regina Road will be coming from the sale of the Edgeley properties.

Regards,

Michael M. Mancini

<image002.png>

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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Wednesday, October 4, 2023 1:13 PM

To: Noah Goldstein <ngoldstein@ksvadvisory.com>; Michael Mancini <michael@mancinilaw.ca>

Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>; Aiden Nelms <NelmsA@bennettjones.com>; Ben Luder

- 24 -

<bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Mike,

Further to our discussion yesterday, the Receiver needs comfort that your client has the financial wherewithal to close the transaction. Can you please provide a financing commitment letter, financial statements, or whatever else is available to give the Receiver that comfort?

Thanks

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

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<[image001.png](#)>

From: Sean Zweig

Sent: Tuesday, October 3, 2023 12:18 PM

To: 'Noah Goldstein' <ngoldstein@ksvadvisory.com>; Michael Mancini <michael@mancinilaw.ca>

Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Mike,

Good to connect with you. Please see attached, as promised.

75736498.1

Let me know if you have any questions.

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

[<image001.png>](#)

From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Sent: Tuesday, October 3, 2023 12:08 PM

To: Michael Mancini <michael@mancinilaw.ca>

Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>; Sean Zweig <ZweigS@bennettjones.com>

Subject: Re: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

At a lunch. Copying my lawyer, Sean Zweig

Noah Goldstein

416.844.4842

On Oct 3, 2023, at 12:07 PM, Michael Mancini <michael@mancinilaw.ca> wrote:

Hi Noah,

Further to my previous voicemail, I confirm that we are acting for the Buyer in the above-noted transaction.

- 26 -

I understand that you spoke to Mr. Marcucci and his realtor Ms. Kolenc yesterday and advised that the Seller has been placed in Receivership.

Would you be kind enough to forward me the Receivership Notice or any other filed pleadings in this regard?

I haven been unable to locate any information on the KSV website.

Regards,

Michael M. Mancini

<image002.png>

This e-mail is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, please destroy the message and be hereby notified that any dissemination, distribution or copying of it is prohibited.

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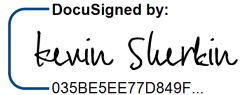
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- 28 -

not wish to receive future commercial electronic messages from Bennett Jones, you can unsubscribe at the following link: <http://www.bennettjones.com/unsubscribe>

This is Exhibit "C" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Sean Zweig <ZweigS@bennettjones.com>
Sent: Monday, October 23, 2023 11:57 AM
To: Jonathan Sistilli <jonathan@mancinilaw.ca>; Michael Mancini <michael@mancinilaw.ca>
Cc: Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Ben Luder <bluder@ksvadvisory.com>; Christopher Ferencz <FerenczC@bennettjones.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Michael and Jonathan,

Further to the below, attached please find a draft amending agreement to reflect the fact that the APS will now need to be complete by the Receiver. Can you please review and let us know if any comments?

Thanks

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](tel:4167776254) | F. [416 863 1716](tel:4168631716)

[BennettJones.com](https://www.BennettJones.com)



Bennett Jones

From: Sean Zweig
Sent: Wednesday, October 18, 2023 10:35 AM
To: 'Jonathan Sistilli' <jonathan@mancinilaw.ca>
Cc: Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Ben Luder <bluder@ksvadvisory.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

75736383.1

AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is made as of the ____ day of October, 2023 (the "**Effective Date**")

BETWEEN:

KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager over **1000093910 ONTARIO INC.** (the "**Debtor**"), and all of the assets, undertakings and properties of the Debtor, including the property municipally known as 20 Regina Road, Vaughan, Ontario, and not in its personal or corporate capacity

(the "**Seller**")

- and -

2557904 ONTARIO INC.

(the "**Buyer**")

RECITALS:

- A. The Debtor and the Buyer entered into a purchase agreement dated September 7, 2023, (as the same has been and may be further amended, restated, modified, supplemented, or assigned from time to time, collectively, the "**Purchase Agreement**") whereby the Debtor agreed to sell, and the Buyer agreed to purchase, the property municipally known as 20 Regina Road, Vaughan, Ontario (the "**Property**").
- B. Pursuant to the Order of the Ontario Superior Court of Justice (the "**Court**") dated September 13, 2023 (the "**Receivership Order**"), KSV Restructuring Inc. (the "**Receiver**") was appointed as receiver and manager of the Debtor, and all of the assets, undertakings and properties of the Debtor, including the Property.
- C. The Seller and the Buyer wish to amend the Purchase Agreement as provided for in this Agreement to, *inter alia*, seek an Approval and Vesting Order (as hereinafter defined) from the Court vesting title in the Property to the Buyer.

FOR VALUE RECEIVED, the parties agree as follows:

1. **Definitions**

Capitalized terms used in this Agreement but not defined in this Agreement shall have the respective meanings given to them in the Purchase Agreement.

2. **Amendment of Purchase Agreement**

The Purchase Agreement is hereby amended as follows:

- (a) by deleting the date set out in section 2 ("Completion Date") of the Purchase Agreement and replacing it with "see Schedule C".
- (b) by deleting the words "transfer/deed" from section 11 of the Purchase Agreement and replacing them with the words "application for vesting order".
- (c) by deleting the existing last paragraph contained in Section 1 of Schedule A of the Purchase Agreement and replacing it with the following:

"c) The Buyer shall submit an additional deposit in the amount of Five Hundred Thousand Dollars (\$500,000.00) on the Effective Date to the Receiver, in trust, to be credited towards the purchase price due on closing, which deposit, together with the first deposit, shall constitute the Deposit for the purpose of this Agreement.

d) On the Effective Date, the Buyer shall direct Ren/Tex Realty Inc. to wire the first deposit in the amount of \$1,000,000 to the Receiver, in trust, and Receiver shall hereinafter be the "Deposit Holder" for the purposes of this Agreement.

e) The Parties hereby confirm that the Deposit, as stated herein, shall be transferred or submitted, as the case may be, by wire transfer to the Receiver, in trust, in accordance with the terms of this Agreement and that the Deposit shall be held in a non-interest bearing trust account.";

- (d) by deleting the first paragraph of Schedule B in its entirety;
- (e) by deleting the last paragraph of Schedule B in its entirety;
- (f) by adding the following as a new Schedule C:

(i) **Additional Defined Terms**

For the purpose of this Agreement:

"Approval and Vesting Order" means an approval and vesting order in form and substance acceptable to the Seller and Buyer, each acting reasonably, issued by the Court approving the transactions contemplated by this Agreement, and authorizing and directing the Receiver to complete the transaction and conveying to the Buyer all of the Debtor's right, title and interest to the Property and other assets of the Debtor more specifically set

out in this Agreement, if any, free and clear of all encumbrances except for those which are permitted encumbrances hereunder.

"**Completion Date**" means the date that is five (5) Business Days following the date on which the Receiver obtains the Approval and Vesting Order from the Court, or such other date as the Receiver and the Buyer may agree.

(ii) **Conditions in Favour of the Receiver**

The obligation of the Receiver to complete the transaction contemplated by this Agreement is subject and conditional to the satisfaction of the following conditions on or before the Completion Date:

(b) all the covenants of the Buyer contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Buyer; and

(c) there shall be no order issued by a governmental authority against either of the parties, or involving the Property, enjoining, preventing or restraining the completion of the transaction contemplated by this Agreement.

(iii) **Failure to Fulfill Conditions in Favour of Receiver**

If any of the conditions contained in Schedule C, section (ii) hereof is not fulfilled on or prior to the Closing Date and such non-fulfilment is not directly or indirectly as a result of any act or omission of the Receiver, then the Receiver may, in its sole discretion, and without limited any rights or remedies available to it at law or in equity:

(A) terminate this Agreement by notice to the Buyer, in which event the Receiver shall be released from its obligations under this Agreement to complete the transaction contemplated herein; or

(B) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

(iv) **Mutual Condition**

This Agreement shall be subject to the mutual condition precedent (the "Court Approval Condition") that the Receiver shall have obtained the Approval and Vesting Order, and there shall not be any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the transaction contemplated by this Agreement, that in each case has not been finally dismissed by a court of competent jurisdiction or abandoned by the moving

party. This is a true condition precedent and may not be waived by any party. If the Receiver's motion for the Approval and Vesting Order is denied by the Court, then, absent any express written agreement between the parties otherwise, this Agreement shall automatically terminate and upon such termination then the Deposit shall be returned to the Buyer.

(v) **Mutual Covenant**

The Receiver hereby covenants and agrees that, from the Effective Date until the termination of the Agreement or the completion of the transaction contemplated herein, it shall take all such actions as are necessary to have the transaction contemplated by this Agreement approved and to and to obtain the Approval and Vesting Order. The Buyer covenants and agrees to assist in this regard and to provide any information, approvals, consents, authorizations, or information, reasonably necessary.

(vi) **Additional Closing Deliverables**

The Receiver hereby covenants to execute, where applicable, and deliver the following to the Buyer on or prior to the Completion Date, which for greater certainty are in addition to the closing deliverables otherwise contemplated by this Agreement:

- (A) a copy of the issued and entered Approval and Vesting Order and the receiver's certificate which will be attached as an Exhibit to the Approval and Vesting Order, the "**Receiver's Certificate**"; and
- (B) a certificate from the Receiver, dated as of the Completion Date, certifying that the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the transaction contemplated by this Agreement, that in each case has not been finally dismissed by a court of competent jurisdiction or abandoned by the moving party.

The Buyer hereby covenants to execute and deliver, in addition to the closing deliverables otherwise contemplated by this Agreement, such further documentation relating to the completion of the transaction as may be required by the Receiver, acting reasonably, or by applicable law or any governmental authority.

(vii) **Receiver's Certificate**

On the Completion Date and upon receipt by the Buyer of written confirmation of the Receiver's satisfaction or waiver of all conditions contained in sections (ii) and (iv) of Schedule C hereof, the Receiver shall

forthwith deliver to the Buyer the Receiver's Certificate, and shall thereafter forthwith file same with the Court.

(viii) **Termination of the Agreement**

This Agreement may be terminated:

- (A) upon the mutual written agreement of the parties;
- (B) pursuant to section (iii)(A) of Schedule C hereof by the Receiver; or
- (C) pursuant to section (iv) of Schedule C hereof.

(ix) **Remedies for Breach of Agreement**

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Buyer shall be entitled to the return of the Deposit without deduction, which shall be returned to the Buyer forthwith, and this shall be the Buyer's sole right and remedy pursuant to this Agreement or at law as a result of the Receiver's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Buyer, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Buyer's breach.

(x) **Termination If No Breach of Agreement**

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a party, then the parties hereto shall be released from all obligations and liabilities hereunder, the Deposit shall be forthwith returned to the Purchaser without deduction, and neither party shall have any right to specific performance, to recover damages or expenses or any other remedy (legal or equitable) or relief other than as expressly provided herein.

3. **Further Confirmation**

The parties confirm that all other terms of the Purchase Agreement remain the same and that time shall remain of the essence. This Agreement and the Purchase Agreement shall hereafter be read together and shall collectively constitute one agreement.

4. **Governing Law**

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

5. **Successors and Assigns**

This Agreement shall enure to the benefit of and shall be binding upon the Parties, shall be binding upon their respective successors and permitted assigns and shall enure to the benefit of and be enforceable only by such successors and permitted assigns that have succeeded or which have received such assignment in the manner permitted by this Agreement.

6. **Counterparts**

This Agreement may be executed in any number of counterparts, and each of such counterparts shall constitute an original of this Agreement and all such counterparts together shall constitute one and the same agreement. This Agreement or counterparts hereof may be delivered by fax or email, and the Parties adopt any signatures provided or received by DocuSign, fax or email as original signatures of the applicable party or Parties.

[Remainder of page intentionally left blank]

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

KSV RESTRUCTURING INC., solely in its capacity as receiver and manager of 1000093910 Ontario Inc., and all of the assets, undertakings and properties of 1000093910 Ontario Inc., and not in its personal or corporate capacity

Per: _____

Name: Noah Goldstein

Title: Managing Director

2557904 ONTARIO INC.

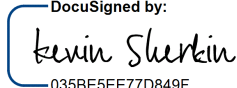
Per: _____

Name:

Title: Authorized Signing Officer

This is Exhibit "D" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

A blue ink signature of Kevin Sherkin, written in a cursive style.

035BE5EE77D849E

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Louis Raffaghello
Sent: Tuesday, October 31, 2023 4:29 PM
To: Sean Zweig <ZweigS@bennettjones.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hello Sean,

Further to our video call, I confirm that we act for 2557904 Ontario Inc.

For reasons that were discussed, I confirm that our client will not be executing the amending agreement and therefore the transaction will not proceed and is effectively null and void. Please instruct Ren/Tex Realty Inc., to refund the deposit funds of \$1M to our client as soon as possible.

Our client still remains interested in the property. Based on current market conditions, and subject to entering into a formal offer, it is prepared to pay \$385 per square foot for a total of \$24,255,000 (assuming the building is 63,000 square feet in size). The offer will be all cash, closing as soon as possible. Our client will pay a deposit of \$1.5M.

If these general terms are acceptable, please contact me asap to proceed with a formal binding offer.

Regards,

Louis E. Raffaghello, LL.B., LL.M.



260 Edgeley Boulevard, Unit 12

Vaughan, ON L4K 3Y4

T | (647) 792-1272, x 208 F | 1 (866) 220-3747

[75736284.1](#)

This is Exhibit "E" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Kevin Sherkin

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV RESTRUCTURING INC.,

solely in its capacity as court-appointed receiver and manager over **1000093910 ONTARIO INC.** (the "**Debtor**"), and all of the assets, undertakings and properties of the Debtor, including the property municipally known as 20 Regina Road, Vaughan, Ontario, and not in its personal or corporate capacity

- and –

2557904 ONTARIO INC.

Dated: November 13, 2023

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 13th day of November, 2023.

BETWEEN:

KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager over 1000093910 ONTARIO INC. (the "**Debtor**"), and all of the assets, undertakings and properties of the Debtor, including the property municipally known as 20 Regina Road, Vaughan, Ontario, and not in its personal or corporate capacity

(in such capacity, the "**Receiver**")

- and -

2557904 ONTARIO INC.

(the "**Purchaser**")

RECITALS

- A. **WHEREAS** pursuant to the Order of the Ontario Superior Court of Justice (the "**Court**") dated September 13, 2023 (the "**Appointment Order**"), KSV Restructuring Inc. was appointed as receiver and manager of the Debtor, and all of the assets, undertakings and properties of the Debtor, including the Real Property (as defined hereafter);
- B. **AND WHEREAS** pursuant to the Appointment Order, the Receiver was authorized to, among other things, market the Purchased Assets (as defined hereafter) and apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all the Debtor's right, title and interest in and to the Purchased Assets;
- C. **AND WHEREAS** the Receiver will seek to obtain the Bidding Procedures Order (as defined herein) pursuant to which the Court will authorize the sale process with respect to the Purchased Assets in accordance with the Bidding Procedures (as defined herein);
- D. **AND WHEREAS** the Purchaser has agreed (a) to act as a "stalking horse bidder", and (b) to purchase the Purchased Assets in the absence of a superior bid pursuant to the Bidding Procedures for the Purchased Assets in accordance with the transaction of purchase and sale contemplated in this Agreement.

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

ARTICLE 1

DEFINED TERMS

1.1 Definitions

In this Agreement:

“Acceptance Date” means the date that this Agreement is executed by and delivered to all Parties hereunder;

“Accounts Payable” means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

“Agreement” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **“article”**, **“section”** or **“schedule”** mean the specified article, section of, or schedule to this Agreement and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“Appointment Order” has the meaning set out in the recitals hereof;

“Approval and Vesting Order” means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and authorizing and directing the Receiver to complete the Transaction and conveying to the Purchaser all of the Debtor’s right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule B hereto;

“Bidding Procedures” means the bidding procedures substantially in the form attached hereto as Schedule A;

“Bidding Procedures Order” has the meaning set out in Section 14.1(b);

“Books and Records” means the files, documents, instruments, surveys, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) pertaining to the Purchased Assets that have been or will be delivered by the Receiver to the Purchaser at or before Closing; provided, however, that **“Books and Records”** shall not include any bank or accounting records;

“Business” means the business carried on by the Debtor with respect to the Real Property;

“Business Day” means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“Chattels” means all chattels, furniture and equipment in, on, around or upon the Real Property and which are used in operating or maintaining the Real Property (including, without limitation, all elevating devices and equipment, furniture, telephones and other equipment in the onsite property management office(s), any computer software, marketing materials and management records used in the leasing and operation of the Real Property, to the extent owned by the Debtor, electric light fixtures, furniture, equipment, plumbing fixtures, furnace burner equipment, oil tanks, heating and ventilating and air conditioning equipment, air handling equipment, existing compressors, boiler machinery and equipment, sprinklers, drainage and other mechanical and electrical systems and any other chattels or tangible personal property), excluding: (i) any of the foregoing owned by any of the current tenants under any Leases; or (ii) in the case of services to the Real Property or subterranean fiber optic cables, any of the foregoing owned by third parties;

“Claims” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Real Property, and **“Claim”** means any one of them;

“Closing” means the successful completion of the Transaction;

“Closing Date” means the first Business Day which is Five (5) Business Days after receipt of the Approval and Vesting Order, or such other date as agreed in writing by the Parties;

“Closing Time” means 4:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“Contracts” means all of the contracts, licences, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party and which relate to the Business;

“Court” has the meaning set out in the recitals hereof;

“Debtor” has the meaning set out in the recitals hereof;

“Deposit” has the meaning given in Section 4.2 herein;

“Encumbrances” means all liens, charges, security interests (whether contractual, statutory or otherwise), pledges, Leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

“ETA” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“Excluded Assets” means the Debtor’s right, title and interest in and to any asset of the Debtor other than the Purchased Assets, which Excluded Assets include the Debtor’s right, title and interest in and to the following:

- (a) any Leases;
- (b) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor that do not relate exclusively or primarily to any of the Purchased Assets; and
- (c) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate, or credit of Taxes for the period prior to the Closing Date.

“Excluded Liabilities” has the meaning given in Section 3.3 herein;

“Governmental Authority” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **“Governmental Authority”** means any one of them;

“HST” means harmonized sales tax imposed under Part IX of the ETA;

“ITA” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“Lands” means, that certain parcels or tract of land known as 20 Regina Road, Vaughan, Ontario, and as legally described in Schedule D hereto, and includes all rights and benefits appurtenant thereto;

“Leases” means, in respect of the Real Property, all offers to lease (unless a lease with respect thereto has been entered into which supersedes any such offer to lease), agreements to lease (unless a lease with respect thereto has been entered into which supersedes any such agreement to lease), leases, renewals of leases, and other rights or licenses granted to possess or occupy space within the Real Property to which it relates now or hereafter together with all security, guarantees and indemnities of the tenants' and licensees' obligations thereunder, in each case as amended, renewed or otherwise varied, and including any parking and storage space leases, if any; and **“Lease”** means any one of the Leases;

“Notice” has the meaning given in Section 17.3 herein;

“Parties” means the Receiver and the Purchaser;

“Permits” means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Real Property;

“Permitted Encumbrances” means all those Encumbrances described in Schedule C hereto;

“Person” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“Plans” means all plans, designs and specification in connection with the Real Property which are in the possession or control of the Receiver (it being acknowledged that the Receiver is under no obligation to incur additional expense to obtain such plans, designs and specifications);

“Purchase Price” has the meaning set out in Section 4.1 herein;

“Purchased Assets” means all of the Debtor’s right, title and interest in and to the following:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property;
- (c) the Chattels;
- (d) the Plans; and
- (e) the Permits and Contracts, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees.

provided, however, that the Purchased Assets shall not include the Excluded Assets or the Excluded Liabilities;

“Purchaser” means 2557904 Ontario Inc.;

“Qualified Bidder” has the meaning set out in the Bidding Procedures;

“Real Property” means the Lands, together with all buildings, improvements and structures thereon) and the fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith;

“Receiver’s Certificate” means the certificate referred to in the Approval and Vesting Order;

“Receiver’s Solicitors” means Bennett Jones LLP;

“Rights” has the meaning given in Section 3.1(c) herein, but only has such meaning in such Section;

“Stalking Horse Bid” has the meaning set out in Section 14.1(b);

“Taxes” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“Transaction” means the transaction of purchase and sale of the Purchased Assets as contemplated by this Agreement; and

“Vendor” means the Debtor, by KSV Restructuring Inc., in its capacity as Receiver.

ARTICLE 2 **SCHEDULES**

2.1 Schedules

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	Bidding Procedures
Schedule B	Approval and Vesting Order
Schedule C	Permitted Encumbrances
Schedule D	Legal Description of Lands

ARTICLE 3 **AGREEMENT TO PURCHASE**

3.1 Purchase and Sale of Purchased Assets

- (a) Subject to the terms and conditions herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Debtor in and to the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances.
- (b) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Purchased Assets.
- (c) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this Section 3.1(c), collectively, the **“Rights”**) under any Permits that form part of the Purchased

Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:

- (i) the Receiver will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and using commercially reasonable efforts, in applying for and obtaining all consents or approvals required under the Permits in a form satisfactory to the Receiver and the Purchaser, acting reasonably;
- (ii) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser;
- (iii) at the Purchaser's cost, the Receiver will use its commercially reasonable efforts to take such actions and do such things as may be reasonably and lawfully designed to provide the benefits of the Permits to the Purchaser, including holding those Permits in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
- (iv) in the event that the Receiver receives funds with respect to those Permits, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs directly related to the assignment in respect of such Permits.

The provisions of this Section 3.1 shall not merge but shall survive the completion of the Transaction. Notwithstanding the forgoing, nothing herein shall prohibit the Receiver, in its sole, absolute and unfettered discretion, from seeking to be discharged as Receiver of the Debtor at any time after Closing. The parties hereto hereby acknowledge and agree that the covenants of the Receiver contained in this Section 3.1 shall terminate concurrently with the discharge of the Receiver as Receiver of the Debtor.

3.2 Excluded Assets

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities

The Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with: (i) the Accounts Payable incurred prior to Closing; or (ii) any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4

PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price

The purchase price for the Purchased Assets shall be the aggregate of Twenty-Four Million, Two Hundred and Fifty-Five Thousand (\$24,255,000) dollars (the “**Purchase Price**”), plus all applicable Taxes payable in respect of the Transaction.

4.2 Deposit

Within two (2) Business Days after the Acceptance Date, the Purchaser shall pay to the Receiver, in trust, a deposit by wire or certified cheque of Two Million, Four Hundred Thousand dollars (\$2,400,000.00) dollars (the “**Deposit**”), which Deposit shall be held by the Receiver in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date. The Parties acknowledge that Ren/Tex Realty Inc. is currently holding One Million dollars (\$1,000,000.00), in trust for the Purchaser, and in partial satisfaction of the Deposit due to the Receiver, the Parties agree to direct Ren/Tex Realty Inc. to pay such amount to the Receiver by wire transfer on or before the date on which the Deposit is due.

4.3 Satisfaction of Purchase Price

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the balance of the Purchase Price, subject to adjustments contained in this Agreement, shall be paid by wire or bank draft on Closing by the Purchaser to the Receiver or as the Receiver may otherwise direct in writing.

4.4 Allocation of Purchase Price

The Parties, acting reasonably and in good faith, covenant to use commercially reasonable efforts to agree to allocate the Purchase Price among the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this Section 4.4 of the Agreement such that each of the Parties shall be free to make its own reasonable allocation.

4.5 Adjustment of Purchase Price

- (a) The Purchase Price shall be adjusted as of the Closing Time for any realty taxes and local improvement rates and charges (including interest thereon), utilities, rental income, and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets as contemplated by this Agreement. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval no later than three (3) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination. Other than as provided for in this Section 4.5, there shall be no adjustments to the Purchase Price.

ARTICLE 5 **TAXES**

5.1 Taxes

In addition to the Purchase Price, the Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least three (3) Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6

ACCESS

6.1 Authorizations

Upon request, the Receiver shall provide the Purchaser with authorizations executed by the Receiver and addressed to the appropriate municipal building department, zoning department and fire department and to any other Governmental Authority, authorizing the release of any and all information on file in respect of the Purchased Assets, but such authorization shall not authorize any inspections by any Governmental Authority.

ARTICLE 7

CLOSING ARRANGEMENTS

7.1 Closing

Closing shall take place at the Closing Time.

7.2 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party. The Receiver and the Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete the Transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed and any other Closing document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such document(s) to the other party's solicitor for registration.

7.3 Receiver's Closing Deliverables

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (a) a copy of the issued Approval and Vesting Order and the Receiver's Certificate;
- (b) a statement of adjustments prepared in accordance with Section 4.5 hereof, to be delivered not less than three (3) Business Days prior to Closing;
- (c) to the extent applicable, an assignment and assumption agreement with respect to all Permits and Contracts and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);

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- (d) a bill of sale with respect to the Chattels;
- (e) a certificate signed by the Receiver confirming that the Receiver is not a non-resident of Canada within the meaning of section 116 of the ITA and that, to the best of the Receiver's knowledge, the Debtor is not a non-resident of Canada within the meaning of the said section 116;
- (f) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (i) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction; and
 - (ii) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (g) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.1 hereof have been fulfilled, performed or waived as of the Closing Time; and
- (h) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, or by Applicable Law or any Governmental Authority.

7.4 Purchaser's Closing Deliverables

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (a) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3 hereof;
- (b) an assignment and assumption agreement with respect to all Permits and Contracts pertaining to the Real Property (to the extent assignable) and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (c) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in Article 10 are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (d) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with Article 5 hereof; and

- (e) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, or by Applicable Law or any Governmental Authority.

7.5 Receiver's Certificate

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 8.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in Section 8.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate, and shall file same with the Court.

ARTICLE 8

CONDITIONS PRECEDENT TO CLOSING

8.1 Conditions in Favour of the Receiver

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Purchaser contained in Article 10 to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction; and
- (d) this Agreement shall be the Successful Bid with respect to all or any of the Purchased Assets; and
- (e) the Court shall have issued the Bidding Procedures Order and Approval and Vesting Order, which Approval and Vesting Order shall provide for the termination of the Leases, and the operation and effect of such orders shall not have been stayed, amended, modified, reversed or dismissed at the Time of Closing.

8.2 Conditions in Favour of Receiver Not Fulfilled

If any of the conditions contained in Section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion (other than as stipulated below) and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or

- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

8.3 Conditions in Favour of the Purchaser

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date, which conditions are inserted for the sole benefit of the Purchaser and may be waived in whole or in part at the Purchaser's sole option:

- (a) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction;
- (d) from the Acceptance Date to Closing, there shall have been no new work orders, deficiency notices, notices of violation or non-compliance or similar orders, and no new Encumbrances registered on title to the Lands or matters affecting the title to the Lands arising or registered after the Acceptance Date, in each case which are not otherwise vested-out pursuant to the Approval and Vesting Order; and
- (e) this Agreement shall be the Successful Bid with respect to all or any portion of the Purchased Assets; and
- (f) the Court shall have issued the Bidding Procedures Order and Approval and Vesting Order, and the operation and effect of such orders shall not have been stayed, amended, modified, reversed or dismissed at the Time of Closing.

8.4 Conditions in Favour of Purchaser Not Fulfilled

If any of the conditions contained in Section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction and the Deposit and all interest accrued thereon shall be immediately returned to the Purchaser without deduction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 9
REPRESENTATIONS & WARRANTIES OF THE RECEIVER

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (a) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (b) the Receiver has been duly appointed as the Receiver of the Debtor by the Appointment Order and such Appointment Order is in full force and effect and has not been stayed, and, subject to obtaining the Approval and Vesting Order, the Receiver has the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Debtor in and to the Purchased Assets;
- (c) the Receiver is not a non-resident of Canada for the purposes of the ITA; and
- (d) subject to any charges created by the Appointment Order, the Receiver has done no act itself to encumber or dispose of the Purchased Assets and is not aware of any action or process pending or threatened against the Debtor that may affect its ability to convey any of the Purchased Assets as contemplated herein.

ARTICLE 10
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (a) the Purchaser is and will be at closing a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (b) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all

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necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;

- (c) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 11

COVENANTS

11.1 Mutual Covenants

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof.

11.2 Receiver Covenants

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall use commercially reasonable efforts to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Article 5 hereof and to execute all necessary forms related thereto.

ARTICLE 12

POSSESSION AND ACCESS PRIOR TO CLOSING

12.1 Possession of Purchased Assets

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in this Agreement and the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in Section 8.1 hereof.

12.2 Risk

- (a) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (b) The Receiver covenants that, on Closing, vacant possession of the Real Property shall be given to the Purchaser, subject only to the Permitted Encumbrances.
- (c) If, prior to the Closing Date, all or a material part of any of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of any of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation of any of the Real Property shall be payable to the Purchaser and all right, title and interest of the Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis, or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.
- (d) If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this Section 12.2(b), substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds fifteen percent (15%) of the total Purchase Price (inclusive of the Deposit).

ARTICLE 13 **AS IS, WHERE IS**

13.1 Condition of the Purchased Assets

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets

shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser will conduct such inspections of the condition and title to the Purchased Assets as it deems appropriate and will satisfy itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

ARTICLE 14

Bidding Procedures

14.1 Bidding Procedures

- (a) The Receiver and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval.
- (b) The Receiver and the Purchaser acknowledge and agree that the Receiver shall apply to the Court as soon as practicable for an order (the “**Bidding Procedures Order**”), *inter alia*, recognizing this Agreement, and in particular the Purchase Price, as a baseline or “stalking horse bid” (the “**Stalking Horse Bid**”) and approving the Bidding Procedures, the payment of the break fee and expense reimbursement in the circumstances set out in Section 14.2, and the parties will use commercially reasonable efforts to have the Bidding Procedures Order issued. The Purchaser acknowledges and agrees that the Bidding Procedures are in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

14.2 Break Fee and Expense Reimbursement

In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, and subject to Court approval, the Purchaser shall be entitled to (a) a break fee in the amount of \$200,000 (inclusive of HST) of the amount of the Purchase Price in the event that the Purchaser is not the Successful Bidder, and (b) an expense reimbursement amount for legal expenses and disbursements actually incurred, such amount not to exceed \$50,000 (inclusive of HST), in each case payable by the Receiver to the Purchaser only in the event that a Successful Bid for any of the Purchased Assets other than the Stalking Horse Bid is accepted by the Receiver, approved by the Court and completed. The payment of the

foregoing amounts shall be approved in the Bidding Procedures Order and shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of the Successful Bid for all of the Purchased Assets. Each of the Parties acknowledges and agrees that the foregoing amounts represent a fair and reasonable estimate of the costs and damages that will be incurred by the Purchaser as a result of the Purchaser not being the Successful Bidder, and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets. The Purchaser agrees to indemnify and hold harmless the Receiver from and against any Tax, interest and penalties assessed, reassessed or imposed upon the Receiver as a result of or in connection with the failure to withhold or remit any amount required to be withheld and remitted under Part XIII of the ITA in respect the break fee or expense reimbursement payable pursuant to this Section 14.2.

ARTICLE 15

POST-CLOSING MATTERS

15.1 Books and Records

The Purchaser shall keep and maintain the Books and Records for a period of two (2) years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority or as requested by the Receiver, the Debtor or the Debtor's trustee in bankruptcy (the "**Retention Period**"). Upon reasonable advance notice, during such two (2) year period after the Closing Date, the Purchaser will grant the Receiver and the Debtor and, in the event the Debtor is adjudged bankrupt, any trustee of the estate of the Debtor and their respective representatives, reasonable access during normal business hours to use and copy the Books and Records at the sole cost of the Receiver, Debtor or bankruptcy trustee of the estate of the Debtor, as the case may be, and at no cost to the Purchaser. After the Retention Period, the Purchaser shall give the Receiver, the Debtor or bankruptcy trustee of the estate of the Debtor, as the case may be, thirty (30) days' prior written notice of its intent to destroy the Books and Records. The Parties agree that the covenants of the Purchaser in this Section 15.1 shall survive the closing of the Transaction.

ARTICLE 16

TERMINATION

16.1 Termination of this Agreement

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Parties;
- (b) pursuant to Section 8.2 hereof by the Receiver;
- (c) pursuant to Section 8.4 hereof by the Purchaser; or
- (d) pursuant to Section 12.2 hereof.

16.2 Remedies for Breach of Agreement

Notwithstanding any other term or condition of this Agreement, if this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith, and this shall be the Purchaser's sole right and remedy pursuant to this Agreement or at law as a result of the Receiver's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

16.3 Termination If No Breach of Agreement

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then the parties hereto shall be released from all obligations and liabilities hereunder, other than their obligations under Article 6, and:

- (a) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (b) the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith; and
- (c) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

ARTICLE 17 **GENERAL CONTRACT PROVISIONS**

17.1 Further Assurances

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

17.2 Survival Following Completion

Notwithstanding any other provision of this Agreement, Article 9, Article 10, Section 16.2 and Section 16.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of the Receiver, the Parties' respective obligations by

reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

17.3 Notice

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a “**Notice**”) shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

(a) to the Receiver:

KSV Restructuring Inc.
220 Bay Street, 13th Floor, PO Box 20
Toronto, ON M5J 2W4

Attention: Noah Goldstein & Ben Luder
Tel: (416) 932-6207 & (437) 889-9995
Email: ngoldstein@ksvadvisory.com & bluder@ksvadvisory.com

and a copy to the Receiver's counsel to:

Bennett Jones LLP
3400 One First Canadian Place
Toronto, ON M5X 1A5

Attention: Sean Zweig & Aiden Nelms
Tel: (416) 777-6254 & (416) 777-4642
Email: zweigs@bennettjones.com & nelmsa@bennettjones.com

(b) to the Purchaser:

Credible Group
830 Edgeley Blvd.
Concord, ON
L4K 4X1

Attention: Anthony Marcucci
Tel: (416) 745-9100
Email: anthony@crediblegroup.com

and a copy to the Purchaser's counsel to:

Concorde Law
260 Edgeley Boulevard, Unit 12
Vaughan, ON L4K 3Y4

Attention: Louis Raffaghello
Tel: (647) 792-1272, x 208
Email: louisr@concordelaw.ca

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third (3rd) Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first (1st) Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth (4th) Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

17.4 Waiver

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

17.5 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

17.6 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

17.7 Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

17.8 Time of the Essence

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

17.9 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

17.10 Assignment

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion. Notwithstanding the foregoing, up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Lands be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) that is an affiliate of the Purchaser, provided that the Purchaser shall not be released from any and all obligations and liabilities hereunder until after the Closing of the transaction. The foregoing right may only be exercised once by the Purchaser. Any other requested direction of title shall require the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion.

17.11 Expenses

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

17.12 Severability

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

17.13 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

17.14 Cumulative Remedies

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

17.15 Currency

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

17.16 Receiver's Capacity

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed Receiver and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

17.17 Planning Act

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

17.18 No Third Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. No other person or entity shall be regarded as a third party beneficiary of this Agreement.

17.19 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

17.20 Counterparts

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as receiver and manager of 1000093910 Ontario Inc., and all of the assets, undertakings and properties of 1000093910 Ontario Inc., and not in its personal or corporate capacity

Per: 

Name: Noah Goldstein

Title: Managing Director

ACCEPTED by the Purchaser this 13th day of November, 2023

2557904 ONTARIO INC.

Per: _____

Name: Anthony Marcucci

Title: Authorized Signing Officer

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as receiver and manager of 1000093910 Ontario Inc., and all of the assets, undertakings and properties of 1000093910 Ontario Inc., and not in its personal or corporate capacity

Per: _____
Name: Noah Goldstein
Title: Managing Director

ACCEPTED by the Purchaser this 13th day of November, 2023

2557904 ONTARIO INC.

Per: _____
Name: Anthony Marcucci
Title: Authorized Signing Officer

**SCHEDULE A
BIDDING PROCEDURES**

Attached.

BIDDING PROCEDURES

Introduction

On September 13, 2023, the Superior Court of Justice (the “**Court**”) made an order (the “**Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (KSV, in such capacity, the “**Receiver**”) of 1000093910 Ontario Inc. (the “**Debtor**”), and all of the assets, undertakings and properties of the Debtor, including the land known as 20 Regina Road, Vaughan, Ontario, together with all buildings, improvements and structures thereon and the fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith (the “**Property**”).

The Receiver intends to bring a motion before the Court for an order (the “**Bidding Procedures Order**”), and such motion the (“**Bidding Procedures Approval Motion**”), among other things, approving: (i) the agreement of purchase and sale (the “**Stalking Horse Bid**”) made as of November •, 2023, between the Receiver and 2557904 Ontario Inc. (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Bidder has agreed to purchase the Property; (ii) the payment of a Break Fee and Expense Reimbursement (each as defined below) by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid; and (iii) the procedures as described in this document (the “**Bidding Procedures**”).

This document contains the Bidding Procedures to be followed by the Receiver in connection with the sale (the “**Sale**”) of the Property. The Receiver will conduct the Bidding Procedures in accordance with the Bidding Procedures Order. All amounts specified herein are in Canadian dollars.

Assets to Be Sold

The Receiver is offering for sale all the Debtor’s right, title and interest in and to the Property.

The Bidding Procedures

The Bidding Procedures Order approves the retention of • (the “**Broker**”) to act as real estate broker and listing agent for the Property, and the entry into a retention agreement with the Broker by the Receiver, among other things.

Interested parties may be provided by the Receiver with such access to due diligence materials and information relating to the Property as the Receiver deems appropriate in its reasonable business judgment. In the Receiver’s sole discretion, this may include the provision of access to an electronic data room of due diligence information. The Receiver shall require interested parties to execute a form of non-disclosure agreement in form and substance satisfactory to the Receiver prior to the provision of any such access.

The Receiver shall have the right to adopt such other rules for the Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Procedures and/or achieving a Sale. The Receiver may seek Court approval of an amendment to the Bid Procedures that it considers material. The extension of any deadline by up to two weeks shall not be considered material.

Bid Deadline

An interested party that desires to make a bid shall deliver written copies of its bid (including the Required Bid Terms and Materials) to the Broker, with a copy to the Receiver, by 5:00 p.m. (Toronto time) on the date that is one month after the Court approves the Bidding Procedures or the following business day (the “**Bid Deadline**”).

Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Receiver in its sole discretion, the following:

- (i) A base cash purchase price equal to or greater than \$24,555,000, which is the amount of the Stalking Horse Bid plus \$300,000, being a break fee of \$200,000 (the “**Break Fee**”), an expense reimbursement of up to \$50,000 (the “**Expense Reimbursement**”) and \$50,000;
- (ii) A provision stating that the bidder’s offer is irrevocably open for acceptance until the first business day after the Property has been sold pursuant to the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order (as defined below);
- (iii) Disclosure of the identity of each entity (including its ultimate shareholders and/or sponsors) that will be bidding for the Property or otherwise participating in such bid and the complete terms of any such participation;
- (iv) Written evidence of a firm, irrevocable commitment for financing or other evidence of an ability to consummate the proposed transaction comprising such bid, that will allow the Receiver to make a determination as to the bidder’s financial and other capabilities to consummate the proposed transaction;
- (v) Written evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (vi) An acknowledgment and representations of the bidder that: (A) it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid; (B) it has relied solely upon its own independent review, investigation and/or inspection of the Property (including, without limitation, any documents in connection therewith) in making its bid; and (C) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) executed by the Receiver and approved by the Court;

- (vii) An executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting any variations from the Stalking Horse Bid; and
- (viii) A cash deposit in the amount of 10% of the purchase price in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the "**Bid Deposit**"), which shall be held by the Receiver in an escrow account (the "**Escrow Account**"). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest to the purchase price payable by it under its bid on the closing thereof or as otherwise provided for in the purchase agreement; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer;

provided, however, that a bid shall not be subject to further due diligence, financing, bid protections, expense reimbursement, third party approvals or any other conditions or conditions precedent except those that are customary in a transaction of this nature (collectively, the "**Required Bid Terms and Materials**").

A bid received from a bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a "**Qualified Bid**", and such bidder is a "**Qualified Bidder**". Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed a Qualified Bid and the Stalking Horse Bidder shall be deemed a Qualified Bidder.

The Receiver may waive strict compliance with the Bid Deadline or any one or more of the Required Bid Terms and Materials and deem such non-compliant bid to be a Qualified Bid, provided that doing so shall not constitute a waiver by the Receiver of the Bid Deadline or the Required Bid Terms and Materials or an obligation on the part of the Receiver to designate any other bid as a Qualified Bid. At any time during the Bidding Procedures, the Receiver may, in its reasonable business judgment, eliminate an interested party, a bidder or a Qualified Bidder (other than the Stalking Horse Bidder) from the Bidding Procedures, in which case such party will no longer be an interested party, bidder or a Qualified Bidder for the purposes of the Bidding Procedures.

Credit Bids

No person shall be permitted to credit bid the indebtedness owed to them by the corporation in connection with the making of a Qualified Bid or in the conduct of the Auction.

"As Is, Where Is, With All Faults"

The sale of the Property shall be on an "as is, where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Receiver or its agents, counsel, representatives, partners or employees, or any of the other parties participating in the procedures outlined in these Bidding Procedures, except as may otherwise be provided in a definitive purchase agreement with the Receiver. Any party (including, without limitation, a Qualified Bidder) shall be deemed to

acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Receiver.

Free of Any and All Liens

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, all of the Debtor's right, title and interest in and to the Property shall be sold free and clear of all liens and encumbrances pursuant to the Sale Approval Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

Selection of Successful Bidder

If one or more Qualified Bids is received by the Bid Deadline or so designated by the Receiver, all such Qualified Bidders shall proceed to an auction with the Stalking Horse Bidder (an "**Auction**"), which shall proceed according to the Auction Procedures set out in Schedule "A" hereto (the "**Auction Procedures**") to identify the Successful Bidder. In such event, the Receiver shall determine, in its reasonable business judgment, which Qualified Bid is the highest and/or best bid (the "**Lead Bid**"). In determining the Lead Bid, the Receiver may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; and (v) the net economic effect of any changes from the Stalking Horse Bid; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment.

If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder.

The "**Successful Bid**" will be either (i) the Stalking Horse Bid if no Qualified Bid is received by the Bid Deadline or so designated by the Receiver; (ii) in the event of an Auction, the highest and best bid as determined by the Receiver at the Auction; or (iii) a bid that is so designated by the Receiver in the event that the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order (as defined below) does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder). The party that submitted the Successful Bid is referred to herein as the "**Successful Bidder**".

Break Fee and Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse

Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Break Fee in the amount of \$200,000 and an Expense Reimbursement on account of its reasonable and documented fees and expenses up to a maximum of \$50,000. The Receiver will take into account the Break Fee and Expense Reimbursement in each round of bidding with respect to the Stalking Horse Bidder. The Break Fee and Expense Reimbursement were material inducements for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee and Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Bidding Procedures Order.

Sale Approval Motion

Subject to the availability of the Court, within ten (10) business days following the conclusion of the Auction, the Receiver shall bring a motion (the “**Sale Approval Motion**”) for an order of the Court authorizing and approving the Sale of the Property to the Successful Bidder (such order, as approved, the “**Sale Approval Order**”). At the hearing of the Sale Approval Motion, the Receiver shall, among other things, seek approval from the Court to consummate the Successful Bid. Notwithstanding the foregoing, as part of the Bidding Procedures Order, the Receiver may seek approval to proceed with the Stalking Horse Bid without the need for the Sale Approval Motion in the event the Stalking Horse Bid is the Successful Bid.

Acceptance of Qualified Bids

The sale of the Property to any Successful Bidder by the Receiver is expressly conditional upon the approval of the Successful Bid by the Court. The Receiver's presentation of the Successful Bid to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. All of the Qualified Bids other than the Successful Bid, shall be deemed rejected by the Receiver on and as of the date of the closing of the Sale that is approved by the Court.

In the event that the closing of the Sale that is approved by the Court does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder), the Receiver shall be authorized, but not required, to: (a) exercise such rights and remedies as are available to the Receiver under the Successful Bid including, if applicable, deeming that the Successful Bidder has breached its obligations pursuant to the Successful Bid and that the Successful Bidder has forfeited its Deposit to the Receiver; (b) accept any Qualified Bid or other bid of a Qualified Bidder, including, without limitation, a bid made at the Auction, in which case such bid and bidder shall be a Successful Bid and Successful Bidder, respectively, for the purposes of these Bidding Procedures, and close the transaction under such bid; and/or (c) take such other steps as it deems advisable. The Receiver reserves its right to seek all available damages and remedies, including specific performance, from any defaulting Successful Bidder.

Miscellaneous

The Receiver will oversee, in all respects, the conduct of the Bidding Procedures and, without limitation, the Receiver will participate in the Bidding Procedures in the manner set out in these Bidding Procedures and the Bidding Procedures Order. All discussions or inquiries regarding the Bidding Procedures should be directed to the Receiver.

The Sale Process and these Bidding Procedures are solely for the benefit of the Receiver and nothing contained in the Bidding Procedures Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order. Other than as specifically set forth in the Broker's retention agreement, the Stalking Horse Bid or in a definitive agreement between the Receiver and another Successful Bidder, the Bidding Procedures do not, and will not be interpreted to create any contractual or other legal relationship among the Receiver, the Broker, any interested party, any bidder, and Qualified Bidder, the Successful Bidder, or any other party.

The Receiver may consult with any other parties with a material interest in the receivership proceedings regarding the status and material information and developments relating to the Bidding Procedures to the extent considered appropriate by the Receiver; provided that such parties may be required to enter into confidentiality arrangements satisfactory to the Receiver.

Subject to the terms of the Receivership Order, participants in the Bidding Procedures are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any bids, participation in the Auction, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order and the Bidding Procedures.

Schedule “A”

Auction Procedures

1. If the Receiver determines to conduct an Auction pursuant to the Bidding Procedures, the Receiver will notify the Qualified Bidders who made a Qualified Bid that the Auction will be held either virtually or at the offices of Bennett Jones LLP at 10:00 a.m. (Toronto time) on date that is determined by the Receiver, provided that that is not later than five business days after the Bid Deadline, or such other place and time as the Receiver may advise. Capitalized terms used but not defined have the meaning given to them in the Bidding Procedures.
2. The Auction shall be conducted in accordance with the following procedures:
 - (a) Participation At The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Receiver shall provide all Qualified Bidders with the amount of the Leading Bid, a copy thereof and a blackline to the Stalking Horse Bid by 5:00pm (Toronto Time) two business days before the scheduled date of the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Toronto time) on the business day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Receiver, the Receiver, Peakhill Capital Inc., Zaherali Visram and their respective counsel and other advisors shall be permitted to attend the Auction.
 - (b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the “Opening Bid” for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the “Opening Bid” for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
 - (c) Receiver Shall Conduct The Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any and all factors that the Receiver reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver’s assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment (collectively, the “**Bid Assessment Criteria**”). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the

highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Receiver shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- (d) Terms of Overbids. An “**Overbid**” is any Bid made at the Auction subsequent to the Receiver’s announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in such increments as the Receiver may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”). The amount of any Overbid shall not be less than the amount of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
 - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply.
 - (iii) *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
 - (iv) *Consideration of Overbids:* The Receiver reserves the right to make one or more adjournments in the Auction to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (C) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Qualified Bidder, and the Receiver may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions.
 - (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the Auction.

- (e) Additional Procedures. The Receiver may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Bidding Procedures (including these Auction Procedures) and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- (f) Closing the Auction. The Auction shall be closed after the Receiver has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and advised the Qualified Bidders participating in the Auction of such determination.
- (g) Finalizing Documentation. Promptly following a bid of a Qualified Bidder being declared the Successful Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid.

This is Exhibit "F" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

COURT OF APPEAL FOR ONTARIO

CITATION: Peakhill Capital Inc. v. 1000093910 Ontario Inc., 2024 ONCA 59

DATE: 20240124

DOCKET: M54775 (COA-23-CV-1357)

Simmons J.A. (Motion Judge)

BETWEEN

Peakhill Capital Inc.

Applicant
(Respondent on Appeal)

and

1000093910 Ontario Inc.

Respondent
(Appellant on Appeal/Moving Party)

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

Gary M. Caplan and Aram Simovonian, for the moving party

Richard Swan and Aiden Nelms, for the Receiver, KSV Restructuring Inc., for the
responding party

Heard: January 19, 2024

ENDORSEMENT

[1] This is a motion by 1000093910 Ontario Inc. (the “Debtor”) for an extension
of time to serve this motion, if necessary, and for directions concerning whether
leave to appeal and a stay is required with respect to the reasons and an order

made in a receivership proceeding in light of ss. 193 and 195 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”). If leave is required, the Debtor seeks leave to appeal the order, and the reasons for the order, under s. 193(e) of the BIA, and a stay of the order pending appeal.

[2] The order at issue is an order dated December 20, 2023 (the “Order”), which approved Bidding Procedures and a “Stalking Horse APS” proposed by the court appointed receiver for the sale of the Debtor’s primary asset, an industrial building occupied by tenants located in the City of Vaughan (the “Property”).

[3] In her reasons for making the Order, the motion judge declined to hear a cross-motion the Debtor served late in the day on December 19, 2023 seeking to amend the receivership order by: i) approving an agreement of purchase and sale for the sale of the Property entered into by the Debtor prior to the receivership order (the “original APS”); and ii) directing the court appointed receiver to permit the Debtor to complete the original APS.

[4] The Debtor served and filed a notice of appeal of the reasons for the Order and the Order on December 29, 2023, relying on s. 193(c) of the BIA as the basis for an appeal as of right, and on s. 195 of the BIA as the basis for an automatic stay pending appeal. Subsequently, after the receiver took the position that leave to appeal the Order is required, the Debtor brought this motion out of an abundance of caution.

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[5] For the reasons that follow, I conclude that the Debtor has an automatic right of appeal to this court, and I direct that the appeal should be expedited.

Background

[6] On September 13, 2023, KSV Restructuring Inc. (the “Receiver”) was appointed on consent as Receiver over the Debtor and all of its assets under s. 243(1) of the BIA and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The receivership order was obtained by Peakhill Capital Inc., which holds a first mortgage on the Property in the principal amount of \$19,000,000. Peakhill’s first mortgage matured on May 1, 2023. In accordance with the terms of the consent, the receivership order became effective on October 2, 2023 after the Debtor failed to pay certain sums specified in the consent.

[7] Among other things, the receivership order specifies that the Receiver may cease to perform any contracts of the Debtor and also states that no Person shall repudiate or terminate a contract held by the Debtor without written consent of the Receiver or leave of the Court:

3. THIS COURT ORDERS that the Receiver ... is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

...

c) to manage, operate, and carry on the business of the Debtor, including the powers to ... cease to perform any contracts of the Debtor;

...

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Debtor without written consent of the Receiver or leave of this Court. [Emphasis added.]

[8] On September 7, 2023, prior to the receivership order being made but with notice of the receivership proceeding, the Debtor entered into an unconditional agreement of purchase and sale (the “original APS”) to sell the Property to 2557904 Ontario Inc. (“255”) for \$31,000,000. Upon execution of the original APS, 255 paid a deposit of \$1,000,000 to the Debtor’s real estate agent. The closing date under the original APS was December 21, 2023.

[9] According to the Debtor, a sale of the Property under the original APS would yield sufficient funds to pay all of the Debtor’s creditors, including Peakhill, a second mortgage on the Property in the principal amount of \$8,000,000, and outstanding property taxes owing to the City of Vaughan in the approximate amount of \$162,786.

[10] After the receivership order was made, the Receiver had discussions with 255 concerning amending the original APS to include terms the Receiver considered necessary to implement a receivership sale, including substituting the Receiver as the vendor and allowing for a vesting order of the Property to complete the transaction.

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[11] After being informed that 255 was not willing to amend the original APS, on November 13, 2023, the Receiver entered into a stalking horse agreement (the “Stalking Horse APS”) with 255 to establish a minimum sale price of \$24,255,000 as part of a proposed auction sale process for the Property. Under the terms of the Stalking Horse APS, 255 agreed to purchase the Property in the absence of a superior bid. The Stalking Horse APS included a break fee of \$200,000 in the event 255 was not the successful bidder as well as provision for an expense reimbursement of up to \$50,000 to 255 if that occurred.

[12] Around the same time, the Debtor’s counsel informed the Receiver’s counsel that the Debtor wished the Receiver to enforce the original APS. However, the Receiver’s counsel informed the Debtor’s counsel that the Receiver could not close the original APS without 255’s consent and that the Debtor’s proposal that the Receiver should seek to enforce the original APS was not tenable. Nonetheless, the Receiver’s counsel suggested that the Debtor could bring a motion to seek to close the original APS if it thought that appropriate.

[13] At some point, the Receiver’s counsel reserved time for a motion on December 20, 2023, to seek approval of Bidding Procedures to allow the Receiver to sell the Property and the Stalking Horse APS.

[14] On December 6, 2023, the Debtor’s counsel informed the Receiver’s counsel that it would require time on December 20, 2023, to either seek the

discharge of the Receiver or vary the receivership order to allow the Debtor to complete the original APS.

[15] On December 13, 2023, the Receiver issued its First Report in the receivership recommending Bidding Procedures, which included a marketing plan, a 30-day listing period with a specified realtor, and the Stalking Horse APS. It also served a motion returnable December 20, 2023, requesting: i) approval of the Bidding Procedures and the Stalking Horse APS, ii) an order terminating the original APS, and iii) an order directing the Debtor's real estate agent to return the deposit paid in relation to the original APS to 255.

[16] In its First Report, the Receiver said the following about its discussions with the Debtor:

The Receiver and its legal counsel have engaged extensively with counsel to the [Debtor] regarding the Original APS. Counsel to the [Debtor] has advised that prior to the return of this motion, the [Debtor] intends to either: (a) repay Peakhill and bring a motion to terminate the receivership proceedings; or (b) bring a motion to amend the receivership order to allow the [Debtor] to close the Original APS. In connection with the foregoing, the Receiver has been advised by counsel to the [Debtor] that the [Debtor] is negotiating a commitment letter to repay Peakhill. As of the date of this Report, the Receiver has not seen a copy (including any drafts) of any such commitment letter, despite multiple requests therefor.

As the Receiver has not seen any commitment letter and the [Debtor] has not filed its materials as of the date of this Report, the receiver intends to file a supplemental report with its views on any motion brought by the [Debtor]. The supplemental report may or may not

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include revised recommendations for the Court.
[Emphasis added.]

[17] On December 19, 2023, just before 4 p.m., the Debtor served a cross-motion returnable on December 20, 2023, requesting amendments to the receivership order to approve the original APS and directing the receiver to permit it to complete the original APS.

[18] On December 20, 2023, the motion judge abridged the time for service of the Receiver's motion and approved the Bidding Procedures and Stalking Horse APS proposed by the Receiver. Although her reasons do not address the issue specifically, she apparently declined the Receiver's request to terminate the original APS and direct the return of the deposit by deleting terms from the proposed draft order submitted by the Receiver because of an objection by the Debtor's real estate agent.

[19] The Order includes a term specifying that nothing in it approves the sale of the Property to 255 under the Stalking Horse APS and that approval of such a sale would be considered on a subsequent motion following completion of the sale process under the Bidding Procedures if 255 was the successful bidder.

[20] In her December 20, 2023 reasons, the motion judge declined to hear the Debtor's cross-motion for several reasons. It was late served and thus provided essentially no notice; it could not be "piggybacked" onto an existing motions list;

and it could have been brought earlier as the facts on which it was based had been known for some time.

[21] The motion judge also concluded that, in any event, the Debtor's cross-motion had little chance of success. She noted that the cross-motion concerned the original APS, which was entered into six days before the receivership order. The closing date was the next day, December 21, 2023, and the Receiver had advised it could not close the transaction based on its terms. Further, the Receiver's agreement with 255, namely the Stalking Horse APS, was now in play and the Receiver's request for relief related to that transaction. Finally, 255, the purchaser under the original APS, had advised that it would refuse to close the original APS, which it considered to be null and void.

[22] On December 29, 2023, the Debtor served and filed a notice of appeal from the reasons for the Order and the Order in which it asked that the Order be set aside and in its place an order be made allowing it or the Receiver to enforce the terms of the original APS, including the right to specific performance. In the alternative, the Debtor sought an order remitting the matter back to the Superior Court.

[23] In its notice of appeal, the Debtor asserted, among other things, that the motion judge erred by failing to consider its cross-motion; by preferring the interests of 255 over the interests of the Debtor; and by failing to apply or consider

the principles outlined in *Royal Bank of Canada v. Sound Air Corp* (1991), 4 O.R. (3d) 1 (C.A.).

[24] On January 2, 2024, the Receiver took the position that service of the notice of appeal was improper because the Order is procedural and not substantive. Although the Debtor disagrees with the Receiver's position, as I have said, it subsequently served this motion on January 3, 2024 out of an abundance of caution.

Discussion

[25] The Debtor's primary position on this motion is that it is entitled to an automatic right of appeal under s. 193(1)(c) of the BIA. In the alternative, it requests leave to appeal under s. 193(1)(e) and a stay pending appeal under s. 195.

[26] Section 193 of the BIA provides, in relevant part, as follows:

193 Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

...

(c) if the property involved in the appeal exceeds the value of \$10,000;

...

(e) in any other case by leave of a judge of the Court of Appeal.

[27] The Debtor acknowledges that decisions from this court have interpreted s. 193(c) narrowly and restricted the automatic right of appeal so that it does not

apply to decisions or orders that: are procedural in nature; do not bring the value of the debtor's property into play; or do not result in a loss of more than \$10,000: e.g. *Cardillo v. Medcap Real Estate Holdings Inc.*, 2023 ONCA 852.

[28] The Debtor also acknowledges that, on its face, the Order appears to be procedural in that it simply approves a sale process.

[29] In that respect, because the Order simply approves a sale process, it is similar to the order at issue in *Re Harmon International Industries Inc.*, 2020 SKCA 95, a decision on which the Receiver relies.

[30] In *Re Harmon*, the order at issue authorized a sale process that included a requirement to list one property for \$3,800,000. The Saskatchewan Court of Appeal found that all the order in question did was “establish a process for the sale of the property”, with future transactions still requiring court approval. As a result, the Court found that any claim of loss was without foundation and that the order did not “directly have an impact on the proprietary or monetary interests of Harmon or crystallize any loss at this time.” The order therefore “concern[ed] a matter of procedure only” and was “merely an order as to the manner of sale”. As “no value was in jeopardy”, leave to appeal was required under s. 193(e) of the BIA.

[31] However, the Debtor submits that in assessing whether an automatic right of appeal exists under s. 193(c), the court must “make a critical examination of the effect of the order sought to be appealed.” In doing so, the court must undertake a

fact-specific, evidence-based inquiry to “discern the operative effect of the order ... does the order result in a loss or gain, or put in jeopardy value of property, in excess of \$10,000”: *Comfort Capital Inc. v. Yeretsian*, 2023 ONCA 282 at paras. 20 and 21, citing *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228 at paras. 35, 42 and 45.

[32] The Debtor asserts that in refusing to hear its cross-motion and also making the Order approving the Bidding Procedures and Stalking Horse APS but failing to terminate the original APS, the motion judge both left the original APS in place and also deprived it of the right to complete, or obtain an order for specific performance of, the original APS that had a fixed value of \$31,000,000. The Debtor contends that by adopting the Bidding Procedures and Stalking Horse APS, which sets a floor price of \$24,455,000 based on an offer from 255 (the purchaser under the original APS), the Order puts in play, and jeopardizes, the value of the Property for an amount in excess of \$10,000. The Order is thus not merely procedural, it also affects substantive rights.

[33] The Receiver responds that the Order had no substantive effect on the original APS. Because of the receivership Order, the Debtor had no ability to complete the APS. As was the case in *Re Harmon*, the Order did nothing more than establish the sale process for the Property. It did not crystalize any loss and was merely procedural in its effect.

[34] I agree that, on their face, the motion judge's decision not to entertain the Debtor's cross-motion (the "refusal decision") and the Order both appear to be procedural in nature. Nonetheless, I conclude that, in the particular circumstances of this case, at least the refusal decision, although procedural in nature, also had the effect of putting in play, and jeopardizing, the value of property by an amount exceeding \$10,000.

[35] Although the Receiver is correct in stating that because of the receivership order, the Debtor lacked the ability to complete the APS, the Receiver effectively acknowledged in its dealings with the Debtor and the Debtor's counsel leading up to the December 20, 2023 motion date that the original APS had not been terminated. Further, the Receiver had at least acknowledged, if not suggested, that the Debtor could bring a motion to seek to close the original APS, if the Debtor thought that appropriate, and had reserved its rights concerning the position it would take on such a motion.

[36] On its face, the original APS was an unconditional agreement of purchase and sale with a purchase price of \$31,000,000. No basis has been advanced to support 255's claim on December 20, 2023 that the original APS was null and void. The Receiver had not terminated the original APS. Nor did the motion judge accede to the Receiver's request that she do so. The Order does not address the original APS. As I see it, by declining to hear the Debtor's cross-motion, the refusal

decision deprived the Debtor of any ability to complete or enforce the original APS, a prospect the Receiver appears to have acknowledged could occur.

[37] Instead, the Order sanctioned a sale process which approved the Stalking Horse APS of \$24,455,000 from the purchaser under the original APS and required payments of up to \$250,000 to that purchaser if a superior bid was obtained. In my view, the refusal decision clearly put in play, and jeopardized, the value of property by an amount exceeding \$10,000. Although no loss was crystallized by the refusal decision or the Order, given the circumstances of a receivership sale and the terms of the Stalking Horse APS, which established a floor price of \$24,455,000 and required payment of up to \$250,00 to 255 if a superior bid was obtained, the likelihood of loss in excess of \$10,000, as compared to completion or enforcement of the unconditional original APS at a sale price of \$31,000,00 appears inevitable.

[38] The refusal decision deprived the Debtor of any right it may have had to enforce the unconditional original APS at a price of \$31,000,000 and instead required that the Property be sold, subject to the uncertainties of the market, based on a floor price of almost \$7,000,000 less and a guarantee to the stalking horse purchaser of a payment of up to \$250,000 in the event of a superior bid. The Debtor asserts that, because the original APS has not been terminated, either it or the Receiver can still enforce it. Whether that is so remains to be seen. In the circumstances, I conclude that the property involved on the appeal exceeds \$10,000 as required under s. 193(c) of the BIA.

[39] In reaching this conclusion, I recognize that the Debtor purports, in part, to appeal the motion judge's reasons. As an appeal must be from a judgment or order and not the reasons, the Debtor will be required to obtain a formal order incorporating the motion judge's decision not to consider the Debtor's cross-motion.

Disposition

[40] In the result, I conclude that the Debtor is not required to seek leave to appeal under s. 193(e) of the BIA and that its notice of appeal was validly served. As the appeal and automatic stay will hinder the progress of an ongoing receivership proceeding under the BIA, I direct that the appeal be expedited. If necessary, the Debtor may perfect the appeal without a formal order concerning the motion judge's decision not to consider the Debtor's cross-motion, but the Debtor is directed to obtain a formal order relating to that decision as soon as possible and the Receiver is directed to take any steps necessary to assist in that regard. If so advised, the parties may make brief written submissions not to exceed three pages concerning any further directions that may be required to expedite the perfection and hearing of the appeal.

[41] The Debtor may file a costs outline and make written submissions not to exceed three pages within 10 days from the release of this decision. The Receiver

Page: 15

may respond with written submissions not to exceed three pages within 10 days thereafter.

“Janet Simmons J.A.”

This is Exhibit "G" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:


035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Sherkin, Kevin <ksherkin@millerthomson.com>
Sent: Wednesday, January 24, 2024 5:39 PM
To: gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Sacks, Jeremy <jsacks@millerthomson.com>;
Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>
Subject: 2024_ONCA_059.pdf

I see you can appeal.. We are going to intervene as our rights will be affected. Please advise if you will consent. My partner Jeremy Sacks will be appearing with me on the Appeal

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner


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Toronto, Ontario | M5H 3S1
T +1 416.597.6028
ksherkin@millerthomson.com



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This is Exhibit "H" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Sacks, Jeremy <jsacks@millerthomson.com>
Sent: Tuesday, January 30, 2024 1:34 PM
To: gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>; Sherkin, Kevin <ksherkin@millerthomson.com>
Subject: RE: 2024_ONCA_059.pdf [MTDMS-Legal.FID12467635]

Hi Gary,

I am following up regarding Kevin's request to consent to our client intervening on the appeal. We will be relying upon Rule 13.01(1) (a) and (b). We would appreciate if moving forward all materials will be sent to mine and Kevin's attention. Please confirm. Thanks,

JEREMY SACKS

Providing services on behalf of a Professional Corporation
Partner

MILLER THOMSON LLP

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P.O. Box 1011
Toronto, Ontario | M5H 3S1
T +1 416.597.6037
jsacks@millerthomson.com



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From: Sherkin, Kevin <ksherkin@millerthomson.com>
Sent: Wednesday, January 24, 2024 5:39 PM
To: gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Sacks, Jeremy <jsacks@millerthomson.com>; Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>
Subject: 2024_ONCA_059.pdf

- 2 -

I see you can appeal.. We are going to intervene as our rights will be affected. Please advise if you will consent. My partner Jeremy Sacks will be appearing with me on the Appeal

KEVIN SHERKIN

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Partner

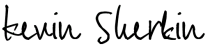
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ksherkin@millertthomson.com



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This is Exhibit "I" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

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Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Gary Caplan <gary@sclawpartners.ca>
Sent: Wednesday, January 31, 2024 5:53 AM
To: Sacks, Jeremy <jsacks@millerthomson.com>; gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>; Sherkin, Kevin <ksherkin@millerthomson.com>; Aram Simovonian <aram@sclawpartners.ca>; Carmine Scalzi <carmine@sclawpartners.com>
Subject: [**EXT**] Re: 2024_ONCA_059.pdf [MTDMS-Legal.FID12467635] without prejudice

Jeremy:

The governing section is 13.03(2). As a condition of intervention and before I seek instructions and subject to the position of the Receiver,

- a) The intervenor should not file any materials other than a factum;
- b) The intervenor should accept the record as is;
- c) No costs of the intervention if allowed by the panel.
- d) The proposed intervention cannot delay the expedited appeal.

From: "Sacks, Jeremy" <jsacks@millerthomson.com>
Date: Tuesday, January 30, 2024 at 1:33 PM
To: gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>, "Martins, Michelle" <mmartins@millerthomson.com>, "Carli, Michael" <mcarli@millerthomson.com>, Kevin Sherkin <ksherkin@millerthomson.com>
Subject: RE: 2024_ONCA_059.pdf [MTDMS-Legal.FID12467635]
Resent-From: <gcaplan.scalzilaw@outlook.com>

Hi Gary,

I am following up regarding Kevin's request to consent to our client intervening on the appeal. We will be relying upon Rule 13.01(1) (a) and (b). We would appreciate if moving forward all materials will be sent to mine and Kevin's attention. Please confirm. Thanks,

JEREMY SACKS

Providing services on behalf of a Professional Corporation
Partner

75736034.1

MILLER THOMSON LLP

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40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario | M5H 3S1
T +1 416.597.6037
jsacks@millerthomson.com



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From: Sherkin, Kevin <ksherkin@millerthomson.com>

Sent: Wednesday, January 24, 2024 5:39 PM

To: gary caplan <gcaplan.scalzilaw@outlook.com>

Cc: Sean Zweig <ZweigS@bennettjones.com>; Sacks, Jeremy <jsacks@millerthomson.com>;
Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>

Subject: 2024_ONCA_059.pdf

I see you can appeal.. We are going to intervene as our rights will be affected. Please advise if you will consent. My partner Jeremy Sacks will be appearing with me on the Appeal

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner

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ksherkin@millerthomson.com



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This is Exhibit "J" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Kevin Sherkin

035BE5EE77D849E...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Stephanie Song <SongS@bennettjones.com>

Sent: Friday, March 8, 2024 3:57 PM

To: Court of Appeal for Ontario (coa.e-file@ontario.ca) <coa.e-file@ontario.ca>

Cc: Sean Zweig <ZweigS@bennettjones.com>; ngoldstein@ksvadvisory.com; bluder@ksvadvisory.com; dmichaud@robapp.com; jjamil@robapp.com; bp@friedmans.ca; diane.winters@justice.gc.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; pat.confalone@cra-arc.gc.ca; rhe@thcllp.com; george@chaitons.com; hmanis@manislaw.ca; dmagisano@lernal.com; Louis Raffaghella <louisr@concordelaw.ca>; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; Vesna Kolenc <vkolenc8965@rogers.com>; Sherkin, Kevin <ksherkin@millerthomson.com>; Aram Simovonian <aram@sclawpartners.ca>; Gary Caplan <gary@sclawpartners.ca>; Preet Gill <GillP@bennettjones.com>; Richard Swan <SwanR@bennettjones.com>

Subject: [**EXT**] Appeal Book and Compendium of the Respondent on Appeal and Factum of the Receiver M54775

Dear Registrar,

We act for KSV Restructuring Inc. in its capacity as court-appoint receiver and manager (the “Receiver”) in the above-mentioned matter. Please find attached the following documents which are being submitted for Court filing for the motion returnable April 2, 2024:

1. Appeal Book and Compendium of the Respondent on Appeal, dated March 8, 2024
2. Factum of the Receiver, dated March 8, 2024
3. Affidavit of Service of Aiden Nelms sworn March 8, 2024

Please confirm receipt. Thank you.

Stephanie Song

Assistant to Mike Shakra and Jamie Ernst, Bennett Jones SLP
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 7817 | F. 416 863 1716
BennettJones.com



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PEAKHILL CAPITAL INC.
Applicant
(Respondent in Appeal)

and

1000093910 ONTARIO INC. et al.
Respondents
(Appellant)

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at TORONTO

**AFFIDAVIT OF ANTHONY MARCUCCI
SWORN MARCH 14, 2024**

MILLER THOMSON LLP
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

Jeremy Sacks (LSO#: 62361R)
jsacks@millerthomson.com
Tel: 416.597.6037

Lawyers for the Respondent
2557904 Ontario Inc.

Served by Email:
Dominique Michaud: dmichaud@robapp.com
Gary M. Caplan: gary@sclawpartners.ca
Sean Zweig: zweigs@bennettjones.com

This is Exhibit "B" referred to in the Affidavit of Anthony Marcucci

DocuSigned by:
Kevin Sherkin
035BE5EE77D849F...

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

From: Ben Luder <bluder@ksvadvisory.com>
Sent: Sunday, June 9, 2024 8:05 PM
To: Sherkin, Kevin <ksherkin@millerthomson.com>; zweigs@bennettjones.com
Cc: Carli, Michael <mcarli@millerthomson.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: update ---Peakhill

Hi Kevin – see below for our estimate:

Purchase price	24,255,000
Less: fees in affidavit + fee accrual	- 697,177
Less: \$100k in expenses incurred	- 100,000
Less: JLL commission	- 158,200
Less: Peakhill’s debt amount	- 21,963,175
Net	1,336,448

Thanks,



Ben Luder	T	437.889.9995
Manager	M	416.953.9421
	E	bluder@ksvadvisory.com

KSV Advisory Inc.

220 Bay Street
Suite 1300, Box 20
Toronto, Ontario, M5J 2W4

T 416.932.6262 | **F** 416.932.6266 | www.ksvadvisory.com

From: Sherkin, Kevin <ksherkin@millerthomson.com>
Sent: Sunday, June 9, 2024 2:26 PM

- 2 -

To: zweigs@bennettjones.com

Cc: Carli, Michael <mcarli@millerthomson.com>; Noah Goldstein
<ngoldstein@ksvadvisory.com>; Ben Luder <bluder@ksvadvisory.com>

Subject: Re: update ---Peakhill

Thanks

On Jun 9, 2024, at 2:25 PM, Sean Zweig <ZweigS@bennettjones.com> wrote:

Defer to Noah and Ben on that.

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](tel:4167776254) | F. [416 863 1716](tel:4168631716)

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[<04C0E117-41BC-4393-91F5-4127C7E598AD.jpg>](#)

KEVIN SHERKIN

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Partner

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ksherkin@millerthomson.com

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From: Sherkin, Kevin <ksherkin@millerthomson.com>

Date: Sunday, Jun 09, 2024 at 12:50 PM

To: Sean Zweig <ZweigS@bennettjones.com>

Cc: Carli, Michael <mcarli@millerthomson.com>, 'Noah Goldstein' (ngoldstein@ksvadvisory.com)' <ngoldstein@ksvadvisory.com>

Subject: RE: update ---Peakhill

Should know later today . do you have a rough idea what is left after 1st payout and fees to you and the receiver just need to do some rough calculations

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner

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ksherkin@millerthomson.com

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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Saturday, June 8, 2024 11:16 PM

To: Sherkin, Kevin <ksherkin@millerthomson.com>

Cc: Carli, Michael <mcarli@millerthomson.com>; 'Noah Goldstein' (ngoldstein@ksvadvisory.com)' <ngoldstein@ksvadvisory.com>

Subject: RE: update ---Peakhill

- 4 -

Any update on this?

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

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From: Sherkin, Kevin <ksherkin@millerthomson.com>

Date: Friday, Jun 07, 2024 at 12:43 PM

To: Sean Zweig <ZweigS@bennettjones.com>

Cc: Carli, Michael <mcarli@millerthomson.com>

Subject: RE: update ---Peakhill

I will speak to Carli

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation

Partner

MILLER THOMSON LLP

Scotia Plaza

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From: Sean Zweig <ZweigS@bennettjones.com>
Sent: Friday, June 7, 2024 12:40 PM
To: Sherkin, Kevin <ksherkin@millერთhompson.com>
Subject: [****EXT****] RE: update ---Peakhill

What's the story with the current tenant move-out?

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](tel:4167776254) | F. [416 863 1716](tel:4168631716)

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[<image001.png>](#)

From: Sherkin, Kevin <ksherkin@millერთhompson.com>
Sent: Friday, June 7, 2024 11:05 AM
To: Jason Squire <jsquire@lerner.ca>
Cc: Martins, Michelle <mmartins@millერთhompson.com>; Lightowler, Mitchell <mliightowler@millერთhompson.com>; Carli, Michael <mcarli@millერთhompson.com>; Sean Zweig <ZweigS@bennettjones.com>; Aiden Nelms <NelmsA@bennettjones.com>
Subject: update ---Peakhill

Jason

I spoke at length yesterday with Sean Zweig yesterday. Here is what he is proposing which makes sense to me. Please confirm it is acceptable to you. He confirmed there are adequate funds to hold back the amount I proposed (722,650 plus HST (\$822,244.50 total), which would be the total commission on the sale with HST (in my view the max of your entitlement). He said he would pay the balance into court so you could fight it out with the second mortgagee and he will then take

no issue as to entitlement and neither will we. Your clients will need to turn over the funds back to us or send it to the trustee. We would also want an indemnity for costs of any further proceedings if we have to be involved. Lastly in my view there is no reason we were put to this expense and you could have turned the funds over long ago and made the proper claim in the matter. Your client, also, I assume did not put the money's in an interest bearing account since it's request for return which cost us the about \$25,000 to date and counting. I am suggesting that in the event that you are successful in your quest for a commission your provide us with \$25,000 as compensation for our costs, losses and expenses in the event you are successful, which has nothing to do with Sean

Let me know

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner

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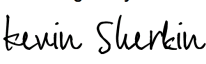
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Commissioner for Taking Affidavits (or as may be)
KEVIN D. SHERKIN (LSO#: 27099B)

From: Sean Zweig <ZweigS@bennettjones.com>
Sent: Monday, June 10, 2024 12:29 PM
To: Sherkin, Kevin <ksherkin@millerthomson.com>; Ben Luder <bluder@ksvadvisory.com>
Cc: Carli, Michael <mcarli@millerthomson.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: update ---Peakhill

We have not.

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](tel:4167776254) | F. [416 863 1716](tel:4168631716)

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From: Sherkin, Kevin <ksherkin@millerthomson.com>
Sent: Monday, June 10, 2024 12:28 PM
To: Ben Luder <bluder@ksvadvisory.com>; Sean Zweig <ZweigS@bennettjones.com>
Cc: Carli, Michael <mcarli@millerthomson.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: update ---Peakhill

Have you not collected any rent from the tenant during the time you have been in possession

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner

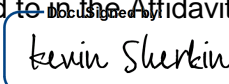
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ksherkin@millerthomson.com



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

MULTI-TENANT LEASE

THIS AGREEMENT is made as of the 13th 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 Lands:	20 Regina Road, Vaughan, Ontario L4L 8L6			
Location of the Premises:	Unit 2 of the building situate on the Lands			
Rentable Area of the Premises	Approximately 25,000 square feet			
Term:	10 years, expiring on April 30, 2032 (the “Expiry Date”), subject to extension in 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 including April 30th, 2032	\$16.50	\$34,375.00	\$412,500.00
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:
 - (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 compounds, 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;
- (jj) **"Leasehold Improvements"** means all items in or serving the Premises and considered at common 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
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 Delegation of Authority

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 Interpretation

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 Premises

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 Use of Common Areas

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 Examination and Acceptance

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 Measurement of Areas

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 Tenant's Work

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 Minimum Rent

- (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 Accrual and Adjustments of Rent

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 Currency and Place of Payment

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 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 Landlord's Option

- (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:

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- (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:
 - (i) more than the amount actually payable by it (the difference being called the "Excess"), 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 Reallocation of Operating Costs

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 Business Taxes of Tenant

- (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 Real Property Taxes

- (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 Pro-Rata Adjustment

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 Deferrals and Appeals of Real Property Taxes

- (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 HST

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 Utility Rates

- (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 Heating, Ventilating and Air Conditioning

- (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 Meters

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 Control of the Building

- (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 Tenant's and Landlord's Repairs

- (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 Alterations or Improvements

- (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 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 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 Use of Premises

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 Conduct of Business

- (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 audio-visual 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 Energy Conservation

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 Exhibiting Premises

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 Use of Hazardous Substances

- (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 Tenant's Responsibility

- (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 Survival of Obligations

- (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 Tenant's Insurance

- (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 Landlord's Insurance

- (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 Limitation of the Landlord's Liability

- (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 Indemnification of Landlord

- (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 Employees

- (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 Factors for Consent

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 Corporate Ownership

- (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 Discharge of Liens

- (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 Tenant's Signs

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 Status Statement

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 Lease Subordination

- (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 Non-Disturbance Agreement

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 Power of Attorney

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 Financial and Other Information

(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 Destruction

(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 untenable 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 Expropriation

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 Landlord’s Warranty

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 Default

- (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 re-letting. 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 Legal Expenses

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 Acceptance of Rent - Non-Waiver

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 No Waiver

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 Accord and Satisfaction

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 Restriction on Right

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: $\text{Costs} \times R \div T$, 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 Lease Entire Agreement

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 Impossibility of Performance

(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 Interest in Lands

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 Counterparts and Execution

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.

1000093910 ONTARIO INC. INC.

Per:  _____
Name: RAVI AURORA
Title: PRESIDENT

Per: _____
Name:
Title:

I/We authority to bind the Corporation.

COUNTERTOP SOLUTIONS INC.

Per:  _____
Name: RAVI AURORA
Title: PRESIDENT

Per: _____
Name:
Title:

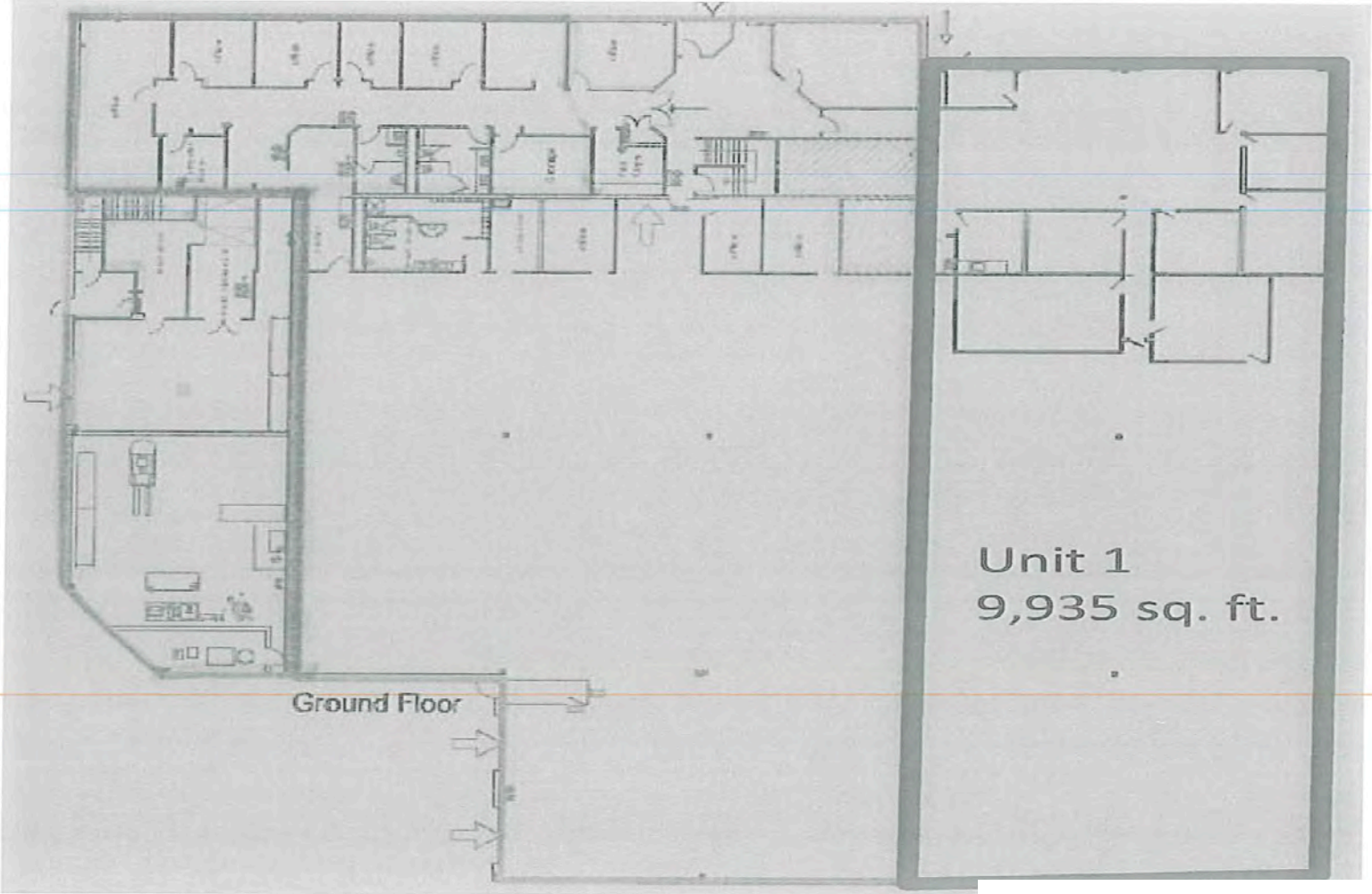
I/We authority to bind the Corporation.

SCHEDULE “A”

LEGAL DESCRIPTION OF THE LANDS

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. INC. (the "Landlord")

RE: 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")

The undersigned hereby certifies, on behalf of and as agent for _____ (the "Insurer"), that:

- (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.

The undersigned certifies that it has the express right and authority to bind the Insurer to the terms of this Insurance Certificate and confirms that the Landlord may rely upon this Certificate as being binding on the undersigned and the insurer. Execution of this Insurance Certificate may be evidenced by way of electronically transmitted signed copy of this Insurance Certificate and any such signature on such copy of this Insurance Certificate will be deemed to constitute an originally signed copy of this Insurance Certificate.

Dated _____

_____ *[Name of insurance broker],*

as agent 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 12 day of April, 2022.

COUNTERTOP SOLUTIONS INC.

Per: 
Name: RAVI AURORA
Title: PRESIDENT

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

SCHEDULE "H"

SPECIAL PROVISIONS1. Interpretation

(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. Required Conditions

(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 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.

SCHEDULE "F"

INSURANCE CERTIFICATE

TO: 1000093910 ONTARIO INC. INC. (the "Landlord")

RE: COUNTERTOP SOLUTIONS INC.(the "Insured") - Lease made as of the 14 day of April, 2022 (the "Lease") between the Landlord and the Insured for Premises known as 20 Regina Road, Vaughan, Ontario (the "Premises")

The undersigned hereby certifies, on behalf of and as agent for Intact Insurance (the "Insurer"), that:

- (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.

The undersigned certifies that it has the express right and authority to bind the Insurer to the terms of this Insurance Certificate and confirms that the Landlord may rely upon this Certificate as being binding on the undersigned and the insurer. Execution of this Insurance Certificate may be evidenced by way of electronically transmitted signed copy of this Insurance Certificate and any such signature on such copy of this Insurance Certificate will be deemed to constitute an originally signed copy of this Insurance Certificate.

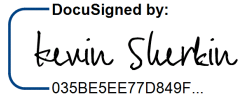
Dated April 14/22

R. Robertson Insurance*[Name of insurance broker],*

as agent for Intact Insurance *[Name of Insurance Company]*

Per: 

This is Exhibit "E" referred to in the Affidavit of Anthony Marcucci

DocuSigned by:

035BE5EE77D849F...

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



ROBINS APPLEBY
BARRISTERS + SOLICITORS

Dominique Michaud
T. 416.360.3795
E. dmichaud@robapp.com
F. 416.868.0306

Delivered by: Regular Mail, Courier and Email
File No.: 2300283

May 28, 2024

Countertop Solutions Inc.

20 Regina Road
Vaughan, ON L4L 8L6

and

1000093910 Ontario Inc.

20 Caldari Road
Concord, ON L4K 4N8

Attention: Ravi Aurora

Ravi Aurora

20 Caldari Road
Concord, ON L4K 4N8
ravi@aurora-group.ca

Nakul Aurora

20 Caldari Road
Concord, ON L4K 4N8

Akash Aurora

20 Caldari Road
Concord, ON L4K 4N8
akash@aurora-group.ca

Dear Sir:

Re: Termination Notice to Countertop Solutions Inc. (the "Tenant") from Peakhill Capital Inc. (the "Lender") regarding Tenant's lease (the "Lease") at 20 Regina Road Vaughan, ON (the "Property")

We are the litigation lawyers for the Lender.

As you are aware, there has been an Event of Default by 1000093910 Ontario Inc. (the "**Borrower**") in respect of the loan of \$19,000,000.00 (the "**Loan**") between the Lender and the Borrower pursuant to the terms of a Commitment Letter dated April 1, 2022, and amended April 20, 2022 (the "**Agreement**"). The Loan was also secured by a charge registered on title



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BARRISTERS + SOLICITORS

- 2 -

against the Property as Instrument No. YR3416767. (the "**Mortgage**"). In addition to the Mortgage, the Lender also holds a Termination Agreement Re: Lease from the Borrower and the Tenant that permits the Lender to terminate the Lease upon the occurrence of an Event of Default and having provided notice to the Borrower and the Tenant (the "**Termination Agreement**"). A copy of the Termination Agreement is attached to this letter.

Following the Event of Default, pursuant to the Order of Justice Lavine dated September 13, 2023 (the "**Appointment Order**"), KSV Restructuring Inc. was appointed as Receiver (the "**Receiver**") over the Borrower and all of its assets, including the Property. The Receiver is now in the process of selling the Property in accordance with the Order of Justice Vallee dated December 20, 2023 ("**Sale Process Order**") and requires vacant possession of the Property to complete the sale of the Property to 2557004 Ontario Inc. In the circumstances, the Receiver has consented to the Lender exercising its rights under the Termination Agreement and to have the Lender terminate the Lease.

Accordingly, the Lender hereby terminates the Lease and demands that the Tenant vacate the Property by **June 10, 2024**.

If you have any questions please contact me at the above coordinates.

Yours very truly,

ROBINS APPLEBY LLP

Per:

Dominique Michaud

DM:

Noah Goldstein ngoldstein@ksvadvisory.com

Aiden Nelms NelmsA@bennettjones.com

Sean Zweig ZweigS@bennettjones.com

Derek Ketelaars derek@sclawpartners.com

Gary Caplan gary@sclawpartners.ca

TERMINATION AGREEMENT RE LEASE

THIS AGREEMENT is made as of the ____ day of April, 2022

FROM:

1000093910 ONTARIO INC.

(hereinafter called the “**Borrower**”)

and

COUNTERTOP SOLUTIONS INC.

(hereinafter called the “**Tenant**”)

IN FAVOUR OF:

PEAKHILL CAPITAL INC.

(hereinafter called the “**Lender**”)

WHEREAS the Borrower and the Tenant have entered into a lease agreement dated as of April 13, 2022 (as amended, amended and restated, renewed, extended, supplemented, replaced, or otherwise modified from time to time, the “**Lease**”), wherein the Borrower has agreed to lease to the Tenant a portion of the property located on the lands and premises municipally known as 20 Regina Road, Vaughan, Ontario and legally described as PCL 3-1 SEC 65M2720; BLK 3 PL 65M2720 ; S/T LT576260,LT576262 VAUGHAN (the “**Property**”);

AND WHEREAS in consideration of the Lender making a loan to the Borrower under a commitment letter dated April 1, 2022 (the “**Commitment Letter**”) upon the security of, among other things, a charge (the “**Charge**”) and a notice of general assignment of rents (the “**Notice**”) in favour of the Lender and securing the Property and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and Tenant hereby agrees as follows:

1. Upon the occurrence of an Event of Default, as defined in the Charge, the Lender may, at its option, terminate the Lease at any time thereafter by notice in writing to the Tenant and the Borrower.
2. Each agreement and obligation of any of the parties hereto in this Agreement, even if not expressed as a covenant, is considered for all purposes to be a covenant.
3. The headings preceding the text of the sections and subsections hereof as well as the section numbers and references themselves are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. Unless something in the subject matter is inconsistent therewith, the references herein to articles and sections are to articles and sections of this Agreement.

4. This Agreement and everything herein contained shall extend to and bind the heirs, executors, administrators, successors and assigns of the Borrower and Tenant and shall enure to the benefit of the successors and assigns of the Lender.

[Signatures to Follow on Next Page]

IN WITNESS WHEREOF the Borrower and Tenant have duly executed this Agreement on the day and year first above written.

1000093910 ONTARIO INC.

Per: 

Name: Ravi Aurora

Title: President

I have authority to bind the Corporation

COUNTERTOP SOLUTIONS INC.

Per: 

Name: Ravi Aurora

Title: President

I have authority to bind the Corporation

TERMINATION AGREEMENT RE LEASE

THIS AGREEMENT is made as of the ____ day of April, 2022

FROM:

1000093910 ONTARIO INC.

(hereinafter called the “**Borrower**”)

and

COUNTERTOP SOLUTIONS INC.

(hereinafter called the “**Tenant**”)

IN FAVOUR OF:

PEAKHILL CAPITAL INC.

(hereinafter called the “**Lender**”)

WHEREAS the Borrower and the Tenant have entered into a lease agreement dated as of April 13, 2022 (as amended, amended and restated, renewed, extended, supplemented, replaced, or otherwise modified from time to time, the “**Lease**”), wherein the Borrower has agreed to lease to the Tenant a portion of the property located on the lands and premises municipally known as 20 Regina Road, Vaughan, Ontario and legally described as PCL 3-1 SEC 65M2720; BLK 3 PL 65M2720 ; S/T LT576260,LT576262 VAUGHAN (the “**Property**”);

AND WHEREAS in consideration of the Lender making a loan to the Borrower under a commitment letter dated April 1, 2022 (the “**Commitment Letter**”) upon the security of, among other things, a charge (the “**Charge**”) and a notice of general assignment of rents (the “**Notice**”) in favour of the Lender and securing the Property and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and Tenant hereby agrees as follows:

1. Upon the occurrence of an Event of Default, as defined in the Charge, the Lender may, at its option, terminate the Lease at any time thereafter by notice in writing to the Tenant and the Borrower.
2. Each agreement and obligation of any of the parties hereto in this Agreement, even if not expressed as a covenant, is considered for all purposes to be a covenant.
3. The headings preceding the text of the sections and subsections hereof as well as the section numbers and references themselves are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. Unless something in the subject matter is inconsistent therewith, the references herein to articles and sections are to articles and sections of this Agreement.

4. This Agreement and everything herein contained shall extend to and bind the heirs, executors, administrators, successors and assigns of the Borrower and Tenant and shall enure to the benefit of the successors and assigns of the Lender.

[Signatures to Follow on Next Page]

IN WITNESS WHEREOF the Borrower and Tenant have duly executed this Agreement on the day and year first above written.

1000093910 ONTARIO INC.

Per: 

Name: Ravi Aurora

Title: President

I have authority to bind the Corporation

COUNTERTOP SOLUTIONS INC.

Per: 

Name: Ravi Aurora

Title: President

I have authority to bind the Corporation

PEAKHILL CAPITAL INC. et al.
Applicants

Court File No. CV-23-00004031-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at NEWMARKET

**AFFIDAVIT OF ANTHONY MARCUCCI
(SWORN JUNE 11, 2024)**

MILLER THOMSON LLP

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

Mitchell Lightowler (LSO#: 76305T)

mightowler@millerthomson.com

Tel: 416-595-7938

Lawyers for the Intervener, 2557904 Ontario Inc.

PEAKHILL CAPITAL INC. et al.

and

1000093910 ONTARIO INC.

Court File No. CV-23-00004031-0000

Respondent

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at NEWMARKET

**RESPONDING MOTION RECORD OF 2557904 ONTARIO
INC.**

Returnable June 12, 2024

MILLER THOMSON LLP

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

Mitchell Lightowler (LSO#: 76305T)

mlightowler@millerthomson.com

Tel: 416-595-7938

Lawyers for 2557904 Ontario Inc.