



**Sixth Report of
KSV Kofman Inc.
as Receiver and Manager of
1033803 Ontario Inc. and
1087507 Ontario Limited and
Certain Related Other Property**

July 4, 2019

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COURT FILE NO: CV-18-608978-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BRIDGING FINANCE INC. AS AGENT FOR
2665405 ONTARIO INC.

APPLICANT

- AND -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

RESPONDENTS

IN THE MATTER OF AN APPLICATION UNDER SECTION 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

SIXTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

JULY 4, 2019

1.0 Introduction

1. On November 19, 2018, Bridging Finance Inc., as agent (the "Agent") for 2665405 Ontario Inc. (the "Lender"), made an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") for the appointment of KSV Kofman Inc. ("KSV") as receiver and manager of:
 - a. all the assets, undertaking and property of 1033803 Ontario Inc., operating as Forma-Con Construction and Forma Finishing ("Forma Con"), including the real property municipally known as 3420 Queen Street East, Brampton (the "Brampton Property") and 407 Basaltic Road, Concord (the "Head Office");
 - b. all the assets, undertaking and property of 1087507 Ontario Inc. ("108" and together with Forma Con, the "Debtors"), including the real property municipally known as 4431 Stouffville Road, Stouffville (the "Stouffville Property");
 - c. certain assets (the "Forma Con Related Assets") of Bondfield Construction Company Limited ("BCCL") and Bondfield Construction Equipment Ltd. ("BCEL", together with BCCL, Forma Con, 108 and several other related entities, the "Group"); and

- d. the real property municipally known as 131 Saramia Crescent, Vaughan (the “Vaughan Property”), owned by Ralph Aquino, a limited guarantor of the indebtedness of the Group to the Lender (together, the Vaughan Property, the Stouffville Property and the Head Office are defined in this Report as the “Properties”).
2. The Court granted the relief requested by the Agent on the return of the receivership application and KSV was appointed receiver (the “Receiver”).
3. On February 25, 2019, the Court made an order (the “Sale Process Order”) approving a sale process for the Properties (the “Sale Process”).

1.1 Purposes of this Report

1. The purposes of this report (the “Report”) are to:
 - a. provide background information concerning Forma Con and these proceedings;
 - b. summarize the results of the Sale Process for the Vaughan Property and the Stouffville Property;
 - c. summarize a transaction (the “Vaughan Transaction”) with Tedescorp Holdings Inc. (the “Vaughan Purchaser”) for the sale of, *inter alia*, the Vaughan Property, pursuant to an Agreement of Purchase and Sale dated June 11, 2019 between the Receiver and the Vaughan Purchaser (the “Vaughan APS”);
 - d. summarize a transaction (the “Stouffville Transaction” and together with the Vaughan Transaction, the “Transactions”) with Tree Valley Garden Centre Ltd. (the “Stouffville Purchaser”) for the sale of, *inter alia*, the Stouffville Property, pursuant to an Agreement of Purchase and Sale dated June 24, 2019 between the Receiver and the Stouffville Purchaser (the “Stouffville APS” and together with the Vaughan APS, each an “APS” and jointly the “APSs”);
 - e. discuss the amounts available for distribution by the Receiver to the Agent from the proceeds of the Transaction; and
 - f. recommend that the Court issue orders, *inter alia*:
 - (i) approving the Transactions;
 - (ii) vesting title in and to the Vaughan Property and the Stouffville Property in the Vaughan Purchaser and Stouffville Purchaser, respectively, free and clear of all liens, claims and encumbrances, except for Permitted Encumbrances (as defined in the APSs) upon filing certificates confirming, among other things, the completion of the Transactions;
 - (iii) authorizing and directing the Receiver to make a distribution of \$7.8 million to the Agent from the proceeds of the Transactions;

- (iv) approving the fees and disbursements of the Receiver and its legal counsel, Torys LLP (“Torys”), for the periods referenced in the attached fee affidavits; and
- (v) approving this Report and the Receiver’s activities, as described herein.

1.2 Currency

1. All references to currency in this Report are in Canadian dollars.

1.3 Court Materials

1. Court materials filed in these proceedings are available on the Receiver’s website at <https://www.ksvadvisory.com/insolvency-cases/case/forma-con>.

1.4 Restrictions

1. In preparing this Report, the Receiver has relied upon the Group’s unaudited financial information, including certain of its books and records, discussions with its management and discussions with its advisors. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Group’s financial information should perform its own diligence.

2.0 Background

2.1 Forma Con

1. Forma Con was incorporated in 1993. It operated a concrete forming business that provided services to construction projects. The shares of Forma Con are privately held by members of the Aquino family.
2. On December 13, 2018, the Court made an order approving a transaction with GF Equipment Corp. (the “Forma Con Purchaser”) for the sale of the Forma Con Related Assets and certain other assets. The transaction closed on December 14, 2018.
3. On February 25, 2019, the Court made an order approving a transaction with 2657897 Ontario Inc., an affiliate of the Agent, by way of a credit bid for the sale of the Brampton Property. The transaction closed on February 25, 2019.
4. On May 30, 2019, the Court made an order approving a sale of the Head Office to the Vaughan Purchaser. The transaction closed on June 4, 2019.

2.2 BCCL

1. BCCL is a full-service construction company operating in Southern Ontario.
2. On April 3, 2019, BCCL and several related entities were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA"). Ernst & Young Inc. is the Court appointed monitor in the CCAA proceedings.

3.0 Sale Process

1. The Sale Process Order approved the retention by the Receiver of CBRE Group Inc. ("CBRE") as the listing agent for the Properties.
2. A summary of the Stouffville Property and the Vaughan Property is provided in the table below.

Property	Owner	Status	Type	Number of Tenants	Right of First Refusal
Stouffville	108	Leased	Garden Centre	1	Yes
Vaughan	Ralph Aquino	Leased	Industrial	2	Yes

3.1 Rights of First Refusal

1. As reflected in the table above, each of the Stouffville and Vaughan properties has a tenant (the "ROFR Holders") which has a right of first refusal ("ROFR") that is triggered in the event of a sale of their respective property.
2. Because the existence of a ROFR may dissuade interested parties from performing due diligence, the Receiver took steps to reduce the time and cost of due diligence that would be required by interested parties by engaging firms to provide environmental and building inspection reports (jointly, the "Diligence Reports"). The Receiver also advised interested parties that it would reimburse the successful bidders' legal expenses to a maximum of \$10,000 should a ROFR Holder exercise its ROFR.
3. The Sale Process required that all interested parties make their offer irrevocable for the amount of time that each ROFR Holder has to exercise its ROFR (three business days in the case of the Vaughan Property and 15 days in the case of the Stouffville Property).

3.2 Sale Process Overview

1. A summary of the Sale Process is as follows:

Pre-marketing Phase

- a) Following the making of the Sale Process Order, i) the Receiver and CBRE assembled information related to each of the properties for due diligence purposes so that it could be made available to interested parties; and ii) the Receiver retained firms to prepare the Diligence Reports.

- b) CBRE and/or the Receiver worked together to prepare for each property:
- an investment summary detailing the acquisition opportunity (the “Investment Summary”);
 - a confidentiality agreement (“CA”);
 - a data room, which contained, *inter alia*, the Diligence Reports and copies of the leases for the tenants in each building;
 - a form of asset purchase agreement, a soft copy of which was made available in the data room; and
 - a Confidential Information Memorandum (“CIM”), which included a summary of the property and details concerning the Sale Process.

Marketing Phase

- a) Pursuant to the Sale Process Order, the Receiver did not commence the marketing process until the Diligence Reports were completed in April 2019.
- b) On April 24, 2019, CBRE sent the Investment Summaries to approximately 4,200 parties in its database. The CA was attached to each Investment Summary. Interested parties were required to sign the CA in order to obtain a copy of the CIM and access to the data room.
- c) On April 30, 2019, CBRE placed “For Sale” signage on each property.
- d) On May 1, 2019, the opportunities were separately uploaded to the Toronto Real Estate Board Multiple Listing Services (“MLS”).
- e) The opportunities were advertised on May 9 and 14, 2019 in the national edition of *The Globe and Mail* newspaper.
- f) In order to facilitate comparison of the offers received and to reduce the cost of reviewing and negotiating various forms of offers, interested parties were encouraged to submit a blackline of the soft copy of the asset purchase agreement provided in the data room so that the Receiver could identify any changes to that document.
- g) The initial deadline to submit offers was May 28, 2019.

3.3 Sale Process Results

1. A summary of the results of the Sale Process is as follows:

Description	Vaughan	Stouffville
Number of parties that signed a CA	20	12
Number of parties that submitted offers in first round	4	6

2. The Receiver invited the three parties with the best offers on each property to participate in a second round of bidding. Second round bids were due on June 3, 2019. All bidders submitted second round offers.
3. A summary of the offers received for the Vaughan Property and Stouffville Property in each round of bidding is provided in Confidential Appendix “1” and “2”, respectively (jointly, the “Offer Summaries”). The Receiver’s rationale for requesting that the Offer Summaries be sealed is provided in Section 3.7 below.
4. After further negotiation, the second round offers submitted by the Vaughan Purchaser and by Mr. Wang, in trust and without personal liability (the “Pre-ROFR Stouffville Purchaser”), were accepted by the Receiver, subject to the rights of the ROFR Holders. The Vaughan Purchaser and the Pre-ROFR Stouffville Purchaser each paid the deposit in connection with their offers, as required by the Sale Process. Each offer was irrevocable for the period each ROFR Holder had to exercise its ROFR.
5. Each of the ROFR Holders was provided the opportunity to exercise their ROFRs in accordance with their terms. The ROFR Holder on the Vaughan Property declined to exercise its ROFR. The ROFR Holder on the Stouffville Property, being the Stouffville Purchaser, exercised its ROFR and submitted an offer that was identical to the offer submitted by the Pre-ROFR Stouffville Purchaser.
6. Upon receipt of the deposit from the Stouffville Purchaser, the Receiver returned the deposit to the Pre-ROFR Stouffville Purchaser and, in accordance with the Sale Process, paid its legal fees, which totalled approximately \$1,800 (including HST).
7. A summary of the Vaughan Transaction and Stouffville Transaction is provided below.

3.4 Vaughan Transaction¹

1. A summary of the Vaughan Transaction is as follows:
 - **Purchaser:** Tedescorp Holdings Inc.
 - **Purchased Assets:** All of the Receiver’s and Ralph Aquino’s right, title and interest in the following:
 - (i) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
 - (ii) the Real Property;
 - (iii) the Assumed Contract;
 - (iv) the Leases; and
 - (v) the Solar Panel Contract;

¹ Terms not defined in this section have the meaning provided to them in the Vaughan APS.

- **Purchase Price:** The Receiver recommends that the Purchase Price be sealed. The Purchase Price is to be adjusted on closing for property taxes and other adjustments standard for a real estate transaction;
- **Deposit:** The Vaughan Purchaser has paid a deposit representing approximately 17% of the purchase price.
- **Excluded Assets:** Comprised of: (i) original tax records and books and records pertaining thereto that do not exclusively or primarily relate to the Purchased Assets; (ii) tax refunds; and (iii); Excluded Contracts.
- **Representation and Warranties:** Consistent with the standard terms of an insolvency transaction, i.e. to be sold on an “as is, where is” basis, with limited representations and warranties.
- **Closing:** First Business Day which is five Business Days after the receipt of the Approval and Vesting Order.
- **Approval and Vesting Order:** The Approval and Vesting Order, once issued, will direct the land registrar to transfer title from the Vendor to the Vaughan Purchaser, subject to the permitted encumbrances set out therein. In addition, the Approval and Vesting Order will direct the land registrar to delete from title to the subject property certain title instruments which are not permitted encumbrances, and which have no valid reason to remain on title to the subject property. A summary of the title instruments to be expunged from title, other than security instruments, is contained in Appendix “A”.
- **Estoppel Certificate:** the Receiver shall use commercially reasonable efforts to obtain and deliver to the Vaughan Purchaser, on or before the date that is five Business Days prior to the Closing Date, estoppel certificates customarily requested in transactions similar to the Vaughan Transaction;
- **Material Conditions:**
 - (i) there shall be no order issued by a Governmental Authority against the Receiver, Ralph Aquino or the Vaughan Purchaser or involving the Purchased Assets that prevents completion of the Vaughan Transaction;
 - (ii) there shall be no new Encumbrances registered on title to the Real Property or affecting title to the Real Property arising or registered after the date of the Vaughan APS, which cannot be vested out pursuant to an Approval and Vesting Order; and
 - (iii) the Court shall have issued an Approval and Vesting Order.
- **Termination:** the Vaughan APS can also be terminated:
 - (i) upon mutual written agreement of the Receiver and the Vaughan Purchaser;

- (ii) if any of the conditions in favour of the Vaughan Purchaser or Receiver are not waived or satisfied; and
 - (iii) if prior to closing: (a) the Purchased Assets are substantially damaged or destroyed. Substantial damage is deemed to have occurred if the loss or damage to the Purchased Assets exceeds 25% of the Purchase Price; or b) all or a material part of the Real Property is expropriated by a Governmental Authority.
2. A redacted version of the Vaughan APS is attached as Appendix “B”. An unredacted version of the Vaughan APS is provided in Confidential Appendix “3”.

3.5 Solar Panel Contract

1. As part of the Vaughan APS, the Vaughan Purchaser offered to acquire the solar panels on the roof of the building on the Vaughan Property and the associated solar panel contract (jointly, the “Solar Equipment”). The Solar Equipment is not a receivership asset and is owned by BCCL. In order to facilitate the Vaughan Transaction, BCCL has agreed to convey the Solar Equipment to the Receiver in exchange for \$100,000 from the proceeds of the Vaughan Transaction, which is the value allocated to those assets by the Purchaser. The Receiver will then convey these assets to the Vaughan Purchaser as part of the Vaughan Transaction. The transfer of the solar panel contract is subject to the consent of the contract holder, and the Vaughan Purchaser has agreed to license the solar panels to BCCL pending the earlier of: (i) consent to the transfer of the solar panel contract being obtained; or (ii) the solar panel contract being disclaimed by BCCL. The structure of this part of the Vaughan Transaction is consistent with sale of the solar panels in the sale to the Vaughan Purchaser of the Head Office.

3.6 Stouffville Transaction²

1. A summary of the Stouffville Transaction is as follows:
- **Purchaser:** Tree Valley Garden Centre Ltd.
 - **Purchased Assets:** All of the Receiver’s and 108’s right, title and interest in the following:
 - (i) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
 - (ii) the Real Property; and
 - (iii) the Assumed Contract and Lease;

² Terms not defined in this section have the meaning provided to them in the Stouffville APS.

- **Purchase Price:** The Receiver recommends that the Purchase Price be sealed. The Purchase Price is to be adjusted on closing for property taxes and other adjustments standard for a real estate transaction;
 - **Deposit:** The Stouffville Purchaser has paid a deposit representing approximately 14% of the purchase price.
 - **Excluded Assets:** Comprised of: (i) original tax records and books and records pertaining thereto that do not exclusively or primarily relate to the Purchased Assets; (ii) tax refunds; and (iii); Excluded Contracts.
 - **Representation and Warranties:** Consistent with the standard terms of an insolvency transaction, i.e. to be sold on an “as is, where is” basis, with limited representations and warranties.
 - **Closing:** The later of: (i) July 8, 2019; and (ii) the first Business Day which is five Business Days after receipt of the Approval and Vesting Order, or such earlier date as agreed in writing among the parties provided the Closing Date shall be no later than July 26, 2019.
 - **Material Conditions:**
 - (i) there shall be no order issued by a Governmental Authority against 108, the Receiver or the Stouffville Purchaser or involving the Purchased Assets that prevents completion of the Stouffville Transaction;
 - (ii) there shall be no new Encumbrances registered on title to the Real Property or affecting title to the Real Property arising or registered after the date of the Stouffville APS, which cannot be vested out pursuant to an Approval and Vesting Order; and
 - (iii) the Court shall have issued an Approval and Vesting Order.
 - **Termination:** the Stouffville APS can also be terminated:
 - (i) upon mutual written agreement of the Receiver and the Stouffville Purchaser;
 - (ii) if any of the conditions in favour of the Stouffville Purchaser or Receiver are not waived or satisfied; and
 - (iii) if prior to closing: (a) the Purchased Assets are substantially damaged or destroyed. Substantial damage is deemed to have occurred if the loss or damage to the Purchased Assets exceeds 25% of the Purchase Price; or b) all or a material part of the Real Property is expropriated by a Governmental Authority.
2. A redacted version of the Stouffville APS is attached as Appendix “C”. An unredacted version of the Stouffville APS is provided in Confidential Appendix “4”.

3.7 Confidentiality

1. The Receiver respectfully requests that the Offer Summaries and the unredacted APSs be filed with the Court on a confidential basis and be sealed (“Sealing Order”) as the documents contain confidential information. If the terms of the APSs and the Offer Summaries are not sealed, the information may negatively impact realizations on the Vaughan Property and the Stouffville Property if either of the Transactions does not close. The Receiver is not aware of any party that will be prejudiced if the information is sealed. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the circumstances.

3.8 Recommendation

1. For the following reasons, the Receiver recommends that the Court issue orders approving the Transactions:
 - a) the Sale Process was conducted in accordance with the Sale Process Order;
 - b) the market was widely canvassed using several marketing techniques, including direct solicitation of prospective purchasers by CBRE, newspaper advertisements in a national publication and listing the property on MLS;
 - c) the Sale Process respected the rights of the ROFR Holders and each ROFR Holder was given time to exercise its ROFR in accordance with its terms (and the Stouffville APS was entered into with the ROFR holder for such property);
 - d) the Court previously approved the sale of the Head Office on the basis of the terms of the Sale Process, but for the provisions of the Sale Process related to the ROFRs;
 - e) CBRE is familiar with the local real estate market and is of the view that the Transactions are the best available in these circumstances;
 - f) absent the Transactions, a protracted marketing period will continue to be necessary. The ongoing professional fees would erode the proceeds available for distribution with no certainty that superior transactions could be completed; and
 - g) the Agent has the primary economic interest in the Transactions and has advised the Receiver that it consents to the Transactions, including the price for the Solar Equipment.

4.0 Distribution

4.1 Secured Lenders

1. The Agent, on behalf of the Lender, is the Group’s principal secured creditor. The Company is presently indebted to the Agent in the approximate amount of \$43 million, including \$1.495 million that it has advanced under Receiver’s Certificates, plus interest, costs and expenses which continue to accrue.

4.2 Distribution

1. Torys LLP (“Torys”), the Receiver’s legal counsel provided the Receiver with an opinion on the Agent’s security (the “Security Opinion”). Subject to the standard assumptions and qualifications, Torys is of the opinion that the security granted by the Debtors, BCCL and BCEL and Ralph Aquino, as guarantor, in favour of the Agent creates a valid and perfected security interest in the assets subject to the receivership. A copy of the Security Opinion was previously filed with this Court as Appendix “E” to the Third Report of the Receiver dated February 15, 2019 and a copy will be provided to the Court upon request.
2. Canada Revenue Agency (“CRA”) has filed a trust claim for Harmonized Sale Tax (the “Trust Claim”) in the amount of \$35,000 against 108. The Receiver intends to holdback proceeds from the sale to pay the Trust Claim.
3. The bank balance in the receivership bank account following closing of the Transactions is projected to be approximately \$9.7 million. The Receiver is seeking Court approval to make a distribution of \$7.8 million (the “Distribution”) from the proceeds of the Transactions to the Agent.
4. The Receiver intends to retain the balance to fund ongoing receivership costs.
5. Based on the foregoing, the Receiver recommends the Court approve the Distribution.
6. The Receiver is also seeking the Court’s authorization to make a payment of \$100,000 to BCCL with respect to the acquisition of the Solar Equipment noted in Section 3.5 above. The Receiver understands that the Agent consents to this payment.

5.0 Professional Fees

1. The fees of the Receiver and Torys for May 2019 are summarized in the table below. All fees of the Receiver and Torys incurred in these proceedings prior to May 2019 have previously been approved by the Court.

(\$)					
Firm	Period	Fees	Disbursements	Total	Average Hourly Rate
KSV	May 1/19 – May 31/19	62,637.50	1,528.15	64,165.65	520.38
Torys	May 1/19 – May31 /19	101,032.00	2,676.68	103,708.68	904.49
Total		163,669.50	4,204.83	167,874.33	

2. Detailed invoices for the Receiver and Torys can be found in the affidavits sworn by their representatives in Appendices “D” and “E”, respectively.
3. The Receiver is of the view that the hourly rates charged by Torys are consistent with the rates charged by major law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court make an order granting the relief detailed in Section 1.1(1)(f) of this Report.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
10338083 ONTARIO INC., 1087507 ONTARIO LIMITED
AND CERTAIN OTHER PROPERTY
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

Summary of Title Instruments to be expunged from title to the property municipally known as 131 Saramia Crescent, Vaughan, Ontario, pursuant to the Approval and Vesting Order:

- Instrument No. VA41945 registered May 22, 1959 is a by-law of The Corporation of the Township of Vaughan in respect of certain land use matters. The second recital of such bylaw indicates that it is a temporary bylaw intended to be in place pending the preparation and adoption of a comprehensive zoning bylaw. Bylaw 1-88, being the most recent comprehensive zoning bylaw was passed by the council of the Corporation of the Town of Vaughan on September 18, 1988 and as such the temporary bylaw is no longer needed.
- Instrument No. LT590331 registered June 12, 1989 is a transfer from York Jane Developments Inc. to Burkstone Management Ltd. and Neroli Developments Inc. (each as to an undivided 50% interest) which reserves a right of re-entry in favour of York Jane Developments Inc. until the earlier of: (i) 10 years from the date of this instrument, and (ii) the final assumption by the Corporation of the City of Vaughan of the roads and services in Registered Plan 65M-2724. Accordingly, the right of re-entry contained in this instrument has expired on its face because greater than 10 years have lapsed since the date of registration of this instrument. In addition, in this transfer the transferee granted certain easements for the installation and maintenance of public utilities and other services in favour of, *inter alia*, The Bell Telephone Company of Canada provided that said easements do not materially interfere with the transferee's enjoyment of the subject lands. Such easements are stated to expire on the later of the final assumption of Registered Plan 65M-2724 by the City of Vaughan or five years from the date of registration of this instrument. Per the building/zoning response dated May 28, 2019 excerpted on the following page, the City of Vaughan has confirmed that the works required under the subdivision agreements relating to Plan 65M-2724 have been completed and assumed by the City and as such, the right of re-entry and the easements referred to above have expired. This is also confirmed by the City of Vaughan's assumption bylaw no. 400-2001, a copy of which is excerpted below.



The City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
Canada L6A 1T1
Tel (905) 832-2281
Fax(905) 832-8558

May 28, 2019

Stikeman Elliott
Barristers and Solicitors
199 Bay St Suite 53
Toronto ON M5L 1B9



Our File No. 19-000324 CL

RE: PLAN 65M2724 Block 11
131 Saramia Cr

Attention: Vanessa Tagliaferri

Your File Number:

In reference to your letter of May 24, 2019, please be advised that as of May 22, 2019, records maintained by the Building Department indicate:

PAYMENTS:

This letter confirms receipt of your payment in the amount of \$157.00. Receipt Number 75683.

OUTSTANDING ORDERS AND NOTICES:

There are no outstanding Orders or Notices on file as of this date.

PLUMBING/SEPTIC APPROVALS:

Prior to January 1, 1999, the City of Vaughan had no jurisdiction with respect to plumbing/septic permits. If you require information concerning plumbing/septic facilities authorized prior to January 1, 1999, please contact the Region of York at (905) 830-4444.

OCCUPANCY/BUILDING PERMITS:

As this is a multi-tenant building, permission to occupy would be reviewed and given on an individual unit basis. For this information a further fee of \$157.00 per unit is first required.

A building permit has been issued and completed for the original shell structure.

Please contact Building Inspection Services at (905) 832-8511 for details. Requests for inspections must be made by the builder, owner or tenant.

The following building permit(s) have been issued and not all the required inspections have been completed:

16 002661 000 00 C Change in Use - Single Use (Industrial)

The following building permit(s) have been applied and not issued:

16 002661 000 R1 C Interior Unit Alteration - Single Use (Industrial)

ZONING:

The above noted property is presently zoned EM1, Prestige Employment Area by By-law 1-88.

SURVEY COMPLIANCE:

A copy of a survey, showing the exact location of structure/s on the above noted property, must be submitted to the Building Standards Department in order to ascertain compliance with the relevant City by laws.

SUBDIVISION AGREEMENT STATUS:

Building Standards Department records indicate that, except as otherwise noted herein, all the services, conditions and requirements required under the subdivision agreement(s) have been completed and assumed by the City. LT369951 and LT534810.

For information on releases of agreements, please contact Andrea Buchanan in the City Clerks' Department at (905) 832 - 8504, extension 8286.

OTHER COMMENTS:

- Please contact the Building Standards Department at (905) 832-8510 and speak with a Zoning Plans Examiner regarding permitted uses/parking requirements for the above noted property. If you wish to receive use information in writing, please complete a zoning search form and submit the completed form along with the applicable fees to the Building Standards Department.
- Please contact the Planning Department at (905) 832-8565 regarding Official Plan conformity and any contemplated rezoning.
- The Building Standards Department records indicate that Committee of Adjustments file number A138/16 affects the subject property. For more information and to obtain a copy of the decision please contact the Clerk's Department at (905) 832-8504.
- The records available to the City do not indicate any interment on the lands in question. The City is not in the position to guarantee that no interment took place.

THE CITY OF VAUGHAN
BY-LAW

BY-LAW NUMBER 400-2001

A By-law to assume Municipal Services in York Jane Developments – Phase II, 19T-83073, Registered Plan 65M-2724.


WHEREAS the Subdivision Agreement between the City of Vaughan and York Jane Developments provides for the installation of certain public services.

AND WHEREAS the Executive Director of City Engineering and Public Works has certified that the services in Registered Plan 65M-2724, have been constructed and installed in accordance with City specifications.


NOW THEREFORE the Council of the Corporation of the City of Vaughan ENACTS AS FOLLOWS:

1. THAT the services in Registered Plan 65M-2724, more particularly described in the Subdivision Agreement between the Corporation of the City of Vaughan and York Jane Developments dated November 16, 1992, be and they are hereby assumed as public services.

READ a FIRST, SECOND and THIRD time and finally passed this 15th day of October, 2001.



L. D. Jackson, Mayor



J. D. Leach, City Clerk

Appendix “B”

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV KOFMAN INC.,

in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

- and -

TEDESCORP HOLDINGS INC.

Dated: June 11 , 2019

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 11th day of June , 2019.

BETWEEN:

KSV KOFMAN INC., in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

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

- and -

TEDESCORP HOLDINGS INC., a corporation formed under the laws of the Province of Ontario

(the "**Purchaser**")

RECITALS

- A. **WHEREAS** pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued on November 19, 2018 (the "**Receivership Order**"), the Receiver was appointed as the Court-appointed receiver of, *inter alia*, (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing), including without limitation the real property municipally known as 407 Basaltic Road, Concord, Ontario (the "**Concord Property**") and 1087507 Ontario Limited including real property municipally known as 4431 Stouffville Road, Stouffville, Ontario (the "**Stouffville Property**"); (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario (the "**Lands**" and, collectively with the Concord Property and the Stouffville Property, the "**Unsold Properties**");
- B. **AND WHEREAS** pursuant to the Receivership Order the Receiver was authorized to, among other things, market the Lands and apply for an order of the Court approving the sale of the Purchased Assets, as defined below, and vesting in and to a purchaser all the Debtor's right, title and interest in and to the Purchased Assets (as hereinafter defined);
- C. **AND WHEREAS** pursuant to an order of the Court issued on February 25, 2019, a sales and marketing process for the Unsold Properties was approved;
- D. **AND WHEREAS** the Purchaser wishes to purchase and the Receiver wishes to sell the Lands upon the terms and subject to the conditions set out herein;

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 Purchased Assets owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

"Additional Encumbrances" means the items registered as Instruments No. VA41945 and LT590331.

"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;

"Approval and Vesting Order" means the approval and vesting order issued by the Court (i) approving this Agreement and the Transaction, (ii) authorizing and directing the Receiver to complete the Transaction, and (iii) conveying to the Purchaser all of each of the Receiver's and 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 "A" attached hereto, provided that an Order which does not vest out the Additional Encumbrances shall be an acceptable Approval and Vesting Order;

"Assignment and Assumption of the Assumed Contracts" means an agreement pursuant to which the Receiver will assign to the Purchaser all of the Receiver's and the Debtor's right, title and interest in and to the Assumed Contracts and the Purchaser will assume the ongoing obligations of the Debtor arising under the Assumed Contracts from and after the Closing, such agreement to be in form agreed upon by the Receiver and Purchaser, each acting reasonably and in good faith, on or before the Closing Date;

"Assignment and Assumption of the Leases" means an agreement pursuant to which the Receiver will assign to the Purchaser all of the Receiver's and the Debtor's right, title and interest in and to the Leases and the Purchaser will assume the ongoing obligations of the Debtor arising under the Leases from and after the Closing, such agreement to be in form agreed upon by the Receiver and Purchaser, each acting reasonably and in good faith, on or before the Closing Date;

"Assignment and Assumption of the Solar Panel Contract" means an agreement pursuant to which the Receiver will assign to the Purchaser all of the Receiver's and the Debtor's right, title and interest in and to the Solar Panel Contract and the Purchaser will assume the ongoing obligations of the Debtor arising under the Solar Panel Contract from and after the Closing, such agreement to be in form agreed upon by the Receiver and Purchaser, each acting reasonably and in good faith, on or before the Closing Date;

"Assumed Contracts" means those Contracts set out in Schedule "D" attached hereto (save and except those that, by written notice to the Receiver on or before the Contract Selection Date, the Purchaser has elected to not assume on Closing (the **"Excluded Contracts"**), it being acknowledged that all Excluded Contracts will become part of the Excluded Assets);

"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;

"Building" means, collectively, the building, Fixtures and other improvements situated on the Lands, excluding any and all fixtures, equipment and chattels of the Tenants which, in accordance with the Leases, may be removed by the applicable Tenant in accordance with its Lease;

"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;

"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 earlier date as agreed in writing by the Parties;

"Closing Documents" means the documents and deliverables listed in Sections 7.5 and 7.6 herein and all other documents which the Receiver and/or the Purchaser reasonably requests to give effect to the Transaction.

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

"**Confidential Information**" has the meaning set out in Section 6.1 herein;

"**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 Real Property, provided that the Leases and the Solar Panel Contract shall not be included as a Contract for the purposes of this definition;

"**Contract Selection Date**" means the date which is five (5) Business Days after the Acceptance Date;

"**Court**" has the meaning set out in the recitals hereof;

"**Debtor**" means Ralph Aquino, and his successors, heirs, and assigns;

"**Deposit**" has the meaning set out 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;

"**Estoppel Certificates**" has the meaning set out in Section 16.1 herein;

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

"**Excluded Assets**" means, collectively, the Receiver's and the Debtor's right, title and interest in and to any asset of the Receiver and the Debtor other than the Purchased Assets, which Excluded Assets include the Receiver's and the Debtor's right, title and interest in and to the following:

- (a) original tax records and the 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;
- (b) 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; and
- (c) the Excluded Contracts;

"**Excluded Contracts**" means all contracts relating to the operation and/or maintenance of the Lands, other than the Assumed Contracts and the Solar Panel Contract;

"**Excluded Liabilities**" has the meaning set out in Section 3.3 herein;

"Fixtures" means all existing fixtures of every nature and kind which are incorporated in the Building and shall include, without limitation:

- (a) heating, ventilating, air-conditioning, plumbing, electrical, sprinkler, drainage, elevating and incinerating systems;
- (b) carpets and other installed floor coverings;
- (c) blinds and other window coverings;
- (d) electric light fixtures; and
- (e) the solar panels currently installed on the roof of the Building, together with all mounting systems, connections, cables, inverters, power stations and all other equipment for the harnessing, storing and transmitting of the energy generated through such system and all contracts associated therewith, including the benefit of any agreements for the sale of such energy.

For certainty, Fixtures shall not include any furniture, chattels or other moveable equipment or other tangible personal property owned by any of the Tenants or leased by the Receiver or the Debtor and incorporated in, situated upon and/or used in connection with the Lands and/or the Building, none of which are included in the Transaction;

"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 (i) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof, or (ii) 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;

"HST Undertaking and Indemnity" has the meaning set out in Section 7.3 herein;

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

"Lands" has the meaning set out in the recitals hereof, the legal descriptions of which Lands are attached as Schedule "C" attached hereto, and includes all rights and benefits appurtenant thereto;

"Leases" means the real property leases set out in Schedule "E" attached hereto, together with all related guarantees, indemnities, security deposits and other security, if any;

"LRO" means the Land Registry Office for the Land Titles Division of York (No. 65);

"Notice" has the meaning set out in Section 17.3 herein;

"Parties" means, collectively, the Receiver and the Purchaser;

"Permitted Encumbrances" means all those Encumbrances described in Schedule "B" attached 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;

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

"Purchased Assets" means all of the Receiver's and 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 Assumed Contracts;
- (d) the Leases; and
- (e) the Solar Panel Contract

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

"Purchaser" means Tedescorp Holdings Inc.;

"Purchaser Representatives" has the meaning given in Section 6.1 herein;

"Purchaser's Solicitors" means Stikeman Elliott LLP;

"Real Property" means, collectively, the Lands, the Building and the Fixtures;

"Receiver" has the meaning set out in the recitals hereof;

"Receiver's Solicitors" means Torys LLP;

"Receivership Order" has the meaning set out in the recitals hereof;

"Receiver's Solicitors" means Torys LLP;

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

"Solar Panel Contract" means, collectively, the contracts described in Schedule "F" attached hereto;

"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;

"Tenants" means all Persons having a right to occupy any rentable area of the Building pursuant to the Leases, and **"Tenant"** means any one of them; and

"Transaction" means the transaction of purchase and sale contemplated by this Agreement.

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	Approval and Vesting Order
Schedule B	Permitted Encumbrances
Schedule C	Legal Description of Lands
Schedule D	List of Assumed Contracts
Schedule E	List of Leases
Schedule F	Particulars of the Solar Panel Contract

ARTICLE 3 **AGREEMENT TO PURCHASE**

3.1 Purchase and Sale of Purchased Assets

- (a) Relying on the representations and warranties 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 Receiver and 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 the Transaction shall not constitute an assignment of any rights, benefits or remedies (in this Section

3.1(c), collectively, the "**Rights**") under the Solar Panel Contract and any Assumed Contracts 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. 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 such Assumed Contracts and/or the Solar Panel Contract in a form satisfactory to the Receiver and the Purchaser, each 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 such Assumed Contracts and/or the Solar Panel Contract to the Purchaser, including holding those Assumed Contracts and/or the Solar Panel Contract 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 Assumed Contracts and/or the Solar Panel Contract, 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 Assumed Contracts and/or the Solar Panel Contract.

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 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 the Receiver 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 Real Property 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 and incurred prior to Closing, and (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 [REDACTED] [REDACTED] (the "**Purchase Price**").

4.2 Deposit

Within two (2) Business Days after the Acceptance Date, the Purchaser shall pay to the Receiver's Solicitors, in trust, a deposit by wire transfer of immediately available funds of [REDACTED] [REDACTED] dollars (the "**Deposit**"), which Deposit shall be held 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.

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 on Closing; and
- (b) the balance of the Purchase Price, subject to adjustments contained in this Agreement, shall be paid by wire transfer of immediately available funds on

Closing by the Purchaser to the Receiver's Solicitors or as the Receiver's Solicitors may otherwise direct in writing.

4.4 Allocation of Purchase Price

The Parties, acting reasonably and in good faith, covenant to use 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 such that each Party 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 all operating costs, realty taxes (including realty tax arrears), local improvement rates and charges, water and assessment rates (including any arrears of water accounts), current rents, prepaid rents and interest thereon (if any), security deposits and interest thereon (if any), current expense and operation recoveries from Tenants, utility deposits (including replacement letters of credit or letters of guarantee therefor), amounts prepaid or payable under the Assumed Contracts and the Solar Panel Contract and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval no later than seven (7) 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 a final adjustment shall be made when the particular item can be determined. All claims for re-adjustments (save for realty taxes not yet assessed or under appeal) must be made within 90 days of Closing. At the expiry of such period, any adjustments made by the Parties shall become final and binding. Notwithstanding any other term in this Agreement, in no event shall the Purchaser be responsible for any charges, fees, Taxes, costs or other adjustments in any way relating to the period prior to the Closing Date or relating to the Excluded Liabilities or to any matters or assets other than the Purchased Assets for the period from and after the Closing Date.
- (b) 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

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.

ARTICLE 6

ACCESS AND CONFIDENTIALITY

6.1 Confidentiality

Prior to Closing, the Purchaser shall maintain in confidence and not disclose to any Person this Agreement or the terms thereof or any information or documentation obtained, prepared or summarized by the Purchaser or its representatives (collectively, the "**Confidential Information**"), except, on a need to know basis, to those individuals employed by the Purchaser, its professional consultants, including the Purchaser's legal counsel, and to those Persons who have agreed in favour of the Receiver and Purchaser not to disclose any Confidential Information (collectively, the "**Purchaser Representative**"). The Purchaser will ensure that each Purchaser Representative treats the Confidential Information as confidential and any failure of a Purchaser Representative to do so will be a breach of this Agreement by the Purchaser. If this Agreement is terminated for any reason, the Purchaser shall promptly return to the Receiver all Confidential Information and similar material including all copies and shall destroy all of the Purchaser's notes and due diligence materials containing Confidential Information related to the Transaction.

6.2 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 at the offices of the Receiver's lawyers, Torys LLP, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing.

7.2 Tender

Any Notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Receiver's Solicitors on behalf of the Receiver and any tender of Closing Documents may be made upon the Receiver's Solicitors and the Purchaser's Solicitors, as the case may be.

7.3 Registration and Other Costs

- (a) The Receiver shall be responsible for the costs of the Receiver's Solicitors in respect of this Transaction. The Purchaser shall be responsible for the costs of the Purchaser's Solicitors. The Purchaser shall be responsible for and pay any land transfer taxes payable on the transfer of the Lands, all registration fees payable in respect of registration by it of any documents on Closing (other than discharges of Encumbrances which are required to be made by the Receiver, which shall be the responsibility of the Receiver) and all federal and provincial sales and other taxes payable by a purchaser upon or in connection with the conveyance or transfer of the Lands, including provincial retail sales tax and HST; provided, however, that the Purchaser shall not be required to pay HST to the Receiver on Closing if it delivers an undertaking to remit HST in accordance with applicable legislation, confirmation that it is a "registrant" under the *Excise Tax Act* (Canada) and an indemnity on the terms set out in Section 7.3(b)(i) (the "**HST Undertaking and Indemnity**").
- (b) The Purchaser shall indemnify and save harmless the Receiver and its shareholders, directors, officers, employees, advisors and agents from all Claims incurred, suffered or sustained as a result of a failure by the Purchaser:
 - (i) to pay any federal, provincial or other taxes payable by the Purchaser in connection with the conveyance or transfer of the Lands whether arising from a reassessment or otherwise, including provincial retail sales tax and HST, if applicable; and/or
 - (ii) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any Governmental Authority in connection with the conveyance or transfer of the Lands.

This Section 7.3(b) shall survive Closing.

7.4 Escrow Closing and Registration

- (a) It is a condition of Closing that all matters of payment and the execution and delivery of Closing Documents by each Party to the other shall be deemed to be concurrent requirements and it is specifically agreed that nothing will be complete at the Closing until everything required at the Closing has been paid, executed and delivered.
- (b) All Closing Documents and monies shall be delivered in escrow on the Closing Date as reasonably required by the solicitors for the Parties together with receipt of such evidence as they shall reasonably request to the effect that all conditions of this Agreement have been satisfied.
- (c) The Receiver and Purchaser covenant and agree to cause their respective solicitors to enter into a document registration agreement in the form recommended by the

Law Society of Ontario to govern the electronic submission of the transfer/deed for the Lands to the LRO.

7.5 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 and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (b) a direction as to the payee or payees of the Purchase Price;
- (c) a statement of adjustments prepared in accordance with Section 4.5 hereof, to be delivered not less than seven (7) Business Days prior to Closing;
- (d) the Assignment and Assumption of the Assumed 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);
- (e) Assignment and Assumption of the Solar Panel Contract 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);
- (f) the Assignment and Assumption of the Leases;
- (g) a certificate signed by a senior officer of 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;
- (h) 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;
- (i) endorsements in favour of the Purchaser of the Tenants' insurance required under the Leases showing the Purchaser as additional insured and loss payee thereunder;
- (j) 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;

- (k) the Estoppel Certificates described in Section 16.1; and
- (l) 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.

7.6 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) the Assignment and Assumption of the Assumed 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);
- (c) Assignment and Assumption of the Solar Panel Contract 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);
- (d) the Assignment and Assumption of the Leases;
- (e) 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;
- (f) the HST Undertaking and Indemnity; and
- (g) 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.

7.7 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 comprising Schedule "A" of the Approval and Vesting Order, 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) the Court shall have issued the Approval and Vesting Order.

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 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) the Court shall have issued the Approval and Vesting Order.

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 and in favour of the Purchaser as follows:

- (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) save and except for the solar panels affixed to the Building and the Solar Panel Contracts, the Receiver has been duly appointed as the receiver of the Real Property by the Receivership Order and such Receivership Order is in full force and effect and has not been stayed, and 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 Receiver and 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 Receivership 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 and in favour of the Receiver as follows:

- (a) the Purchaser is 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 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 a registrant under Part IX of the ETA and its HST number is 84025 8180 RT0001; 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, subject to the Leases, 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, subject to the Leases. 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) If, prior to Closing, the Real Property is 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 and the Receiver shall cause to be paid all applicable deductibles in connection therewith. 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 and the Receiver shall cause to be paid all applicable deductibles in connection therewith. 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 twenty-five percent (25%) of the total Purchase Price (inclusive of the Deposit).
- (c) If, prior to the Closing Date, all or a material part of the Lands is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Lands 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 shall be payable to the Purchaser and all right, title and interest of the Receiver or 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.

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 Acceptance Date (subject to reasonable wear and tear), 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.

Notwithstanding the foregoing, in the event that, prior to Closing, the Real Property is substantially damaged by some intentional act of the Debtor or any related party, the Purchaser may, at its sole option, exercisable in its sole discretion, request a reduction of the Purchase Price in an amount corresponding with the anticipated dollar value of such damage or destruction, as determined by the Receiver, acting reasonably, and shall complete the Transaction as herein provided.

ARTICLE 14 **POST-CLOSING MATTERS**

14.1 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. 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 or bankruptcy trustee of the estate of the Debtor, as the case may be, and at no cost to the Purchaser.

ARTICLE 15 **TERMINATION**

15.1 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.

15.2 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 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, and the Receiver shall have the right to pursue any other damages available pursuant to this Agreement or at law as a result of the Purchaser's breach.

15.3 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 shall be released from all obligations and liabilities hereunder, other than their obligations under Article 6, and the Deposit shall be forthwith returned to the Purchaser without deduction:

- (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 16
TENANT ESTOPPEL CERTIFICATES

16.1 Estoppel Certificates

The Receiver shall use commercially reasonable efforts to obtain and deliver to the Purchaser, on or before the date that is five (5) Business Days prior to the Closing Date, estoppel certificates customarily requested in transaction similar to the Transaction (the "**Estoppel Certificates**") from the Tenants.

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 15.2 and Section 15.3 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 Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Attention: Robert Kofman and Noah Goldstein
Tel: (416) 932-6228 / (416) 932-6207
Email: bkofman@ksvadvisory.com / ngoldstein@ksvadvisory.com

and a copy to the Receiver's counsel to:

Torys LLP
79 Wellington Street West, Box 270, TD South Tower
Toronto, ON M5K 1N2

Attention: Scott Bomhof and Adam Slavens
Tel: (416) 865-7370 / (416) 865-7333
Email: sbomhof@torys.com / aslavens@torys.com

(b) to the Purchaser:

Tedescorp Holdings Inc.
240 Toryork Drive
Weston, ON M9L 1Y1

Attention: Michael Tedesco/Tullio Tedesco
Tel: (416) 749-6184
Email: mtedesco@michaelbros.ca / ttesesco@michaelbros.ca

and a copy to the Purchaser's counsel to:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Eric Carmona
Tel: (416) 869-5597
Email: ecarmona@stikeman.com

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 sitting in Toronto. 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

Closing, 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 forgoing 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 Transaction 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 of the Lands 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 KOFMAN INC., in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

Per: 

Name: ROBERT HOFFMAN

Title: PRESIDENT

ACCEPTED by the Purchaser this 11 day of June, 2019

TEDESCORP HOLDINGS INC.

Per: _____

Name:

Title: Authorized Signing Officer

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

KSV KOFMAN INC., in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

Per: _____
Name:
Title:

ACCEPTED by the Purchaser this 11 day of June, 2019

TEDESCORP HOLDINGS INC.

Per: 
Name: TULLIO TESCO
Title: Authorized Signing Officer



**SCHEDULE A
APPROVAL AND VESTING ORDER**

Court File No. CV-18-608978-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) <*>, THE <*> DAY
) <*>
JUSTICE) OF <*>, 2019

**BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.**

- and -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the "**Receiver**") of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. operating as Forma-Con Construction and Forma Finishing ("**Forma-Con**") and 1087507 Ontario Limited (together with Forma-Con, the "**Debtors**"); (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and <*> (the "**Purchaser**"), as purchaser, dated <*>, 2019 (the "**Sale Agreement**"), a copy of which is attached as [**Confidential**] Appendix "<*>" to the <*> Report of the Receiver dated <*>, 2019 (the "<*> **Report**"), and vesting in the

Purchaser, or as it may direct in accordance with the Sale Agreement, all the Receiver's and the Debtors' right, title and interest in and to the property described as the "Purchased Assets" in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the <*> Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of <*> sworn <*>, 2019, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all the Receiver's and the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement, including without limitation the subject real property identified in **Schedule "B"** hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases (other than the Leases (as defined in

the Sale Agreement)), notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Hainey dated November 19, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York (No. 65) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to vest title in and enter [■] [**NTD: Insert name of Purchaser entity taking title**] as the owner of the Real Property in Schedule "B" hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims

and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and

any assignment in bankruptcy made in respect of the Debtors,

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

Court File No. CV-18-608978-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.

- and -

1033803 ONTARIO INC. and 1087505 ONTARIO LIMITED

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 19, 2018, KSV Kofman Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**") of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. operating as Forma-Con Construction and Forma Finishing ("**Forma-Con**") and 1087507 Ontario Limited (together with Forma-Con, the "**Debtors**"); (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario.

II. Pursuant to an Order of the Court dated <*>, 2019, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and <*> (the "**Purchaser**"), as purchaser, dated <*>, 2019 (the "**Sale Agreement**"), and provided for the vesting in the Purchaser, or as it may

direct in accordance with the Sale Agreement, of all the Receiver's and the Debtors' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The transaction has been completed to the satisfaction of the Receiver; and

4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV KOFMAN INC., in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

131 Saramia Crescent, Vaughan, Ontario

PIN 03276-0174(LT): PCL 11-1 SEC 65M2724; BLK 11 PL 65M2724; S/T LT590331 ; S/T
LT579695 VAUGHAN

SCHEDULE "C"
INSTRUMENTS TO BE DELETED

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR27067 15	July 25, 2017	Charge	\$90,000,00 0	Ralph Aquino	Bridging Finance Inc.
YR27067 16	July 25, 2017	Notice of Assignment of Rents-General	N/A	Ralph Aquino	Bridging Finance Inc.
VA41945	May 22, 1959	Bylaw	n/a		
LT590331	June 12, 1989	Transfer reserving a right of re-entry and a covenant	n/a	York Jane Developments Inc.	Burkstone Management Ltd., as to an undivided 50% interest and Neroli Developments Inc., as to an undivided 50% interest
18- 0002786	November 5, 2018	Writ of Execution	\$38,013.50 plus costs, fees plus HST	Ralph Aquino Bondfield Construction Company Limited	AGF Access, a division of AGF Access Group Inc.

SCHEDULE "D"
PERMITTED ENCUMBRANCES

PART I: GENERAL PERMITTED ENCUMBRANCES

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Governmental Authority or regulated utility.
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Lands.
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Lands.
6. Such other minor Encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Lands or any part thereof, or materially impair the value thereof.
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
8. The following exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario): paragraphs 7, 8, 9, 10, 12 and 14.

PART II: SPECIFIC PERMITTED ENCUMBRANCES

1. Instrument No. VA41945 registered on May 22, 1959 being a TEMPORARY ZONING BY-LAW NO. 2298 of the TOWNSHIP OF VAUGHAN.
2. Instrument No. LT369951 registered on April 2, 1987 being a NOTICE OF SUBDIVISION AGREEMENT in favour of THE CORPORATION OF THE TOWNSHIP OF VAUGHAN.

3. Instrument No. LT534810 registered on November 14, 1988 being a NOTICE OF SUBDIVISION AGREEMENT in favour of THE CORPORATION OF THE TOWNSHIP OF VAUGHAN.
4. Instrument No. LT579695 registered on May 2, 1989 being a TRANSFER OF EASEMENT in favour of VAUGHAN HYDRO-ELECTRIC COMMISSION.
5. Instrument No. LT590331 registered on June 12, 1989 being a TRANSFER reserving a right of re-entry and a covenant to grant certain easements.

**SCHEDULE B
PERMITTED ENCUMBRANCES**

PART I: GENERAL PERMITTED ENCUMBRANCES

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Governmental Authority or regulated utility.
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Property.
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Property.
6. Such other minor Encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Property or any part thereof, or materially impair the value thereof.
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
8. The following exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario), paragraphs 7, 8, 9, 10, 12 and 14.

PART II: SPECIFIC PERMITTED ENCUMBRANCES

9. Instrument No. VA41945 registered on May 22, 1959 being a TEMPORARY ZONING BY-LAW NO. 2298 of the TOWNSHIP OF VAUGHAN.
10. Instrument No. LT369951 registered on April 2, 1987 being a NOTICE OF SUBDIVISION AGREEMENT in favour of THE CORPORATION OF THE TOWNSHIP OF VAUGHAN.
11. Instrument No. LT534810 registered on November 14, 1988 being a NOTICE OF SUBDIVISION AGREEMENT in favour of THE CORPORATION OF THE TOWNSHIP OF VAUGHAN.
12. Instrument No. LT579695 registered on May 2, 1989 being a TRANSFER OF EASEMENT in favour of VAUGHAN HYDRO-ELECTRIC COMMISSION
13. Instrument No. LT590331 registered on June 12, 1989 being a TRANSFER reserving a right of re-entry and a covenant to grant certain easements.

**SCHEDULE C
LEGAL DESCRIPTION OF LANDS**

131 Saramia Crescent, Vaughan, Ontario

PIN 03276-0174(LT): PCL 11-1 SEC 65M2724; BLK 11 PL 65M2724; S/T LT590331 ; S/T
LT579695 VAUGHAN

SCHEDULE D
LIST OF ASSUMED CONTRACTS

None.

SCHEDULE E
LIST OF LEASES

1. Lease dated July 6, 2006 between Ralph Aquino, as landlord, and 1516666 Ontario Inc., as tenant, in respect of premises comprising a gross leasable area of approximately 16,936 square feet in the Building, as amended by: renewal agreement dated February 22, 2011, renewal of lease agreement dated April 21, 2014, renewal of lease agreement dated November 16, 2015, and renewal letter dated November 22, 2017.
2. Lease dated July 20, 2016 between Ralph Aquino, as landlord, and Tecmotiv Corporation, as tenant, in respect of premises comprising a gross leasable area of approximately 4,895 square feet in the Building.

SCHEDULE "F"
SOLAR PANEL CONTRACT

Connection agreement made the 3rd day of September, 2015 between PowerStream Inc., as distributor, and Bondfield Construction Company Limited, as customer in respect of the rooftop solar generation facility located at the lands and premises municipally known as 131 Saramia Crescent, Vaughan, Ontario, and together with the Feed-in Tariff Contract with the Ontario Power Authority entered into in connection therewith and any and all other contracts and agreements associated with the generation and distribution of energy associated with such contracts, in each case as such contracts and agreements have been amended and assigned from time to time.

Appendix “C”

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV KOFMAN INC.,

in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

- and -

TREE VALLEY GARDEN CENTRE LTD.

(formerly known as "TREEVALLEY GARDEN CENTRE LTD.")

June 24, 2019

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 24 day of June, 2019.

BETWEEN:

KSV KOFMAN INC., in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

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

- and -

TREE VALLEY GARDEN CENTRE LTD.

(the "**Purchaser**")

RECITALS

- A. **WHEREAS** pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued on November 19, 2018 (the "**Receivership Order**"), the Receiver was appointed as the Court-appointed receiver of, *inter alia*, (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing) (the "**Debtor**"), including without limitation the real property municipally known as 407 Basaltic Road, Concord, Ontario (the "**Concord Property**") and 1087507 Ontario Limited including real property municipally known as 4431 Stouffville Road, Stouffville, Ontario (the "**Stouffville Property**" or the "**Lands**"); (ii) certain assets of Bondfield Construction Company Limited ("**BCCL**") and Bondfield Construction Equipment Ltd ("**BCEL**"); and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario (the "**Vaughan Property**" and, collectively with the Concord Property and the Stouffville Property, the "**Unsold Properties**");
- B. **AND WHEREAS** pursuant to the Receivership Order the Receiver was authorized to, among other things, market the Lands and apply for an order of the Court approving the sale of the Purchased Assets, as defined below, and vesting in and to a purchaser all the Debtor's right, title and interest in and to the Purchased Assets;
- C. **AND WHEREAS** pursuant to an order of the Court issued on February 25, 2019, a sales and marketing process for the Unsold Properties was approved;
- D. **AND WHEREAS** the Purchaser wishes to purchase and the Receiver wishes to sell the Lands upon the terms and subject to the conditions set out herein;

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 Purchased Assets 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;

"**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 each of the Receiver's and 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 "A" hereto;

"**Assignment and Assumption of the Assumed Contracts**" means an agreement pursuant to which the Receiver will assign to the Purchaser all of the Receiver's and the Debtor's right, title and interest in and to the Assumed Contracts and the Purchaser will assume the ongoing obligations of the Debtor arising under the Assumed Contracts from and after the Closing, such agreement to be in form agreed upon by the Receiver and Purchaser, each acting reasonably and in good faith, on or before the Closing Date;

"**Assignment and Assumption of the Leases**" means an agreement pursuant to which the Receiver will assign to the Purchaser all of the Receiver's and the Debtor's right, title and interest in and to the Leases and the Purchaser will assume the ongoing obligations of the Debtor arising

under the Leases from and after the Closing, such agreement to be in form agreed upon by the Receiver and Purchaser, each acting reasonably and in good faith, on or before the Closing Date;

"**Assumed Contracts**" means those Contracts set out in Schedule "D" attached hereto (save and except those that, by written notice to the Receiver on or before the Contract Selection Date, the Purchaser has elected to not assume on Closing (the "**Excluded Contracts**"), it being acknowledged that all Excluded Contracts will become part of the Excluded Assets;

"**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;

"**Building**" means, collectively, the building, fixtures and other improvements situated on the Lands, excluding any and all fixtures, equipment and chattels of the Tenants which, in accordance with the Leases, may be removed by the applicable Tenant in accordance with its Lease;

"**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;

"**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 later of: (i) July 8, 2019; or (ii) first Business Day which is five (5) Business Days after receipt of the Approval and Vesting Order, or such earlier date as agreed in writing by the Parties provided that the Closing Date shall be no later than July 26, 2019;

"**Closing Documents**" means the documents and deliverables listed in Sections 7.5 and 7.6 herein and all other documents which the Receiver and/or the Purchaser reasonably requests to give effect to the Transaction.

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

"**Confidential Information**" has the meaning given in Section 6.1 herein;

"**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 Real Property, provided that the Leases shall not be included as a Contract;

"**Contract Selection Date**" means the date which is five (5) Business Days after the Acceptance Date;

"**Court**" has the meaning set out in the recitals hereof;

"**DRA**" has the meaning set out in Section 7.4 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 Receiver's and the Debtor's right, title and interest in and to any asset of the Receiver and the Debtor other than the Purchased Assets, which Excluded Assets include the Receiver's and the Debtor's right, title and interest in and to the following:

- (a) 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;
- (b) 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; and
- (c) the Excluded Contracts;

"**Excluded Liabilities**" has the meaning given in Section 3.3 herein;

"**Fixtures**" means all existing fixtures of every nature and kind which are incorporated in the Building and shall include, without limitation:

- (a) heating, ventilating, air-conditioning, plumbing, electrical, sprinkler, drainage, elevating and incinerating systems;
- (b) carpets and other installed floor coverings;
- (c) blinds and other window coverings; and

- (d) electric light fixtures.

For certainty, Fixtures shall not include any furniture, chattels or other moveable equipment or other tangible personal property owned by any of the Tenants or leased by the Receiver or the Debtor and incorporated in, situated upon and/or used in connection with the Lands and/or the Building, none of which are included in the Transaction;

"**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;

"**HST Undertaking**" has the meaning set out in Section 7.3 hereof;

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

"**Lands**" has the meaning set out in the recitals hereof, the legal descriptions of which Lands are attached as Schedule "C" hereto, and includes all rights and benefits appurtenant thereto;

"**Leases**" means those real property leases set out in Schedule "E" attached hereto;

"**LRO**" means the Land Registry Office for the Land Titles Division of York Region;

"**Notice**" has the meaning given in Section 16.3 herein;

"**Parties**" means the Receiver and the Purchaser;

"**Permitted Encumbrances**" means all those Encumbrances described in Schedule "B" 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;

"**Purchase Price**" has the meaning set out in Section 4.1 herein;

"**Purchased Assets**" means all of the Receiver's and 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; and

(c) the Assumed Contracts and the Leases

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

"Purchaser" means TREE VALLEY GARDEN CENTRE LTD.

"Purchaser Representatives" has the meaning given in Section 6.1 herein;

"Real Property" means collectively the Lands, the Building and the Fixtures;

"Receiver" has the meaning set out in the recitals hereof;

"Receivership Order" has the meaning set out in the recitals hereof;

"Receiver's Solicitors" means Torys LLP;

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

"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;

"Tenants" means all persons having a right to occupy any rentable area of the Building pursuant to the Leases, and "Tenant" means any one of them;

"Transaction" means the transaction of purchase and sale contemplated by this Agreement;

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	Approval and Vesting Order
Schedule B	Permitted Encumbrances
Schedule C	Legal Description of Lands
Schedule D	List of Assumed Contracts
Schedule E	List of Leases

ARTICLE 3
AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets

- (a) Relying on the representations and warranties 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 Receiver and 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 Assumed Contracts 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 such Assumed Contracts in a form satisfactory to the Receiver and the Purchaser, each 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 such Assumed Contracts to the Purchaser, including holding those Assumed Contracts 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 Assumed Contracts, 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 Assumed Contracts.

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 the Receiver 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 Real Property 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 and 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 [REDACTED] (the "Purchase Price").

4.2 Deposit

Within two (2) Business Days after the Acceptance Date, the Purchaser shall pay to the Receiver's Solicitors, in trust, a deposit by wire transfer of immediately available funds of [REDACTED] (the "Deposit"), which Deposit shall be held 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.

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 transfer of immediately available funds on Closing by the Purchaser to the Receiver's Solicitors or as the Receiver's Solicitors may otherwise direct in writing.

4.4 Allocation of Purchase Price

The Parties, acting reasonably and in good faith, covenant to use 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 Party 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 all operating costs, realty taxes (including realty tax arrears), local improvement rates and charges, water and assessment rates, current rents, prepaid rents and interest thereon (if any), security deposits and interest thereon (if any), current expense and operation recoveries from Tenants, utility deposits (including replacement letters of credit or letters of guarantee therefor), amounts prepaid or payable under the Assumed Contracts and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval no later than five (5) 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 a final adjustment shall be made when the particular item can be determined. All claims for re-adjustments (save for realty taxes not yet assessed or under appeal) must be made within 90 days of Closing At the expiry of

such period, any adjustments made by the Parties shall become final and binding. Notwithstanding any other term in this Agreement, in no event shall the Purchaser be responsible for any charges, fees, Taxes, costs or other adjustments in any way relating to the period prior to the Closing Date or relating to the Excluded Liabilities or to any matters or assets other than the Purchased Assets for the period from and after the Closing Date.

- (b) 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

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.

ARTICLE 6

ACCESS AND CONFIDENTIALITY

6.1 Confidentiality

Prior to Closing, the Purchaser shall maintain in confidence and not disclose to any Person this Agreement or the terms thereof or any information or documentation obtained, prepared or summarized by the Purchaser or its representatives (collectively, the "**Confidential Information**"), except, on a need to know basis, to those individuals employed by the Purchaser, its professional consultants, including the Purchaser's legal counsel, and to those Persons who have agreed in writing in favour of the Receiver and Purchaser not to disclose any Confidential Information (collectively, the "**Purchaser Representatives**"). The Purchaser will ensure that each Purchaser Representative treats the Confidential Information as confidential and any failure of a Purchaser Representative to do so will be a breach of this Agreement by the Purchaser. If this agreement is terminated for any reason, the Purchaser shall promptly return to the Receiver all Confidential Information and similar material including all copies, and shall destroy all of the Purchaser's notes and due diligence materials containing Confidential Information related to the Transaction.

6.2 Authorizations

Upon request, the Receiver shall provide the Purchaser with authorizations executed by the Receiver and addressed to the appropriate municipal Buildings 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 at the offices of the Receiver's lawyers, Torys LLP, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing.

7.2 Tender

Any Notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Receiver's Solicitors on behalf of the Receiver and any tender of Closing Documents may be made upon the Receiver's Solicitors and the Purchaser's Solicitors, as the case may be.

7.3 Registration and Other Costs

- (a) The Receiver shall be responsible for the costs of the Receiver's Solicitors in respect of this Transaction. The Purchaser shall be responsible for the costs of the Purchaser's Solicitors. The Purchaser shall be responsible for and pay any land transfer taxes payable on the transfer of the Lands, all registration fees payable in respect of registration by it of any documents on Closing (other than discharges of Encumbrances which are required to be made by the Receiver, which shall be the responsibility of the Receiver) and all federal and provincial sales and other taxes payable by a purchaser upon or in connection with the conveyance or transfer of the Lands, including provincial retail sales tax and HST; provided, however, that the Purchaser shall not be required to pay HST to the Receiver on Closing if it delivers an undertaking to remit HST in accordance with applicable legislation, confirmation that it is a "registrant" under the *Excise Tax Act* (Canada) and an indemnity on the terms set out in Section 1.1(a)(i)(b)(i) (the "**HST Undertaking and Indemnity**").
- (b) The Purchaser shall indemnify and save harmless the Receiver and its shareholders, directors, officers, employees, advisors and agents from all Claims incurred, suffered or sustained as a result of a failure by the Purchaser:
 - (i) to pay any federal, provincial or other taxes payable by the Purchaser in connection with the conveyance or transfer of the Lands whether arising from a reassessment or otherwise, including provincial retail sales tax and HST, if applicable; and/or
 - (ii) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Lands.

This Section 7.3(b) shall survive Closing.

7.4 Escrow Closing and Registration

It is a condition of Closing that all matters of payment and the execution and delivery of Closing Documents by each party to the other shall be deemed to be concurrent requirements and it is specifically agreed that nothing will be complete at the Closing until everything required at the Closing has been paid, executed and delivered.

All Closing Documents and monies shall be delivered in escrow on the Closing Date as reasonably required by the solicitors for the parties together with receipt of such evidence as they shall reasonably request to the effect that all conditions of this Agreement have been satisfied.

The Receiver and Purchaser covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "DRA") in the form recommended by the Law Society of Ontario to govern the electronic submission of the transfer/deed for the Lands to the applicable land registry office.

7.5 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 and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (b) a direction as to the payee or payees of the Purchase Price;
- (c) a statement of adjustments prepared in accordance with Section 4.5 hereof, to be delivered not less than five (5) Business Days prior to Closing;
- (d) the Assignment and Assumption of the Assumed 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);
- (e) the Assignment and Assumption of the Leases;
- (f) a certificate signed by a senior officer of 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;
- (g) 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;
- (h) 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
- (i) 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.

7.6 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) the Assignment and Assumption of the Assumed 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);
- (c) the Assignment and Assumption of the Leases;
- (d) 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;
- (e) the HST Undertaking and Indemnity; and
- (f) 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.

7.7 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 comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

7.8 Estoppel Certificate

The Receiver shall use commercially reasonable efforts to obtain and deliver to the Purchaser, on or before the Closing Date, estoppel certificates from each of the Tenants in a form to be provided by the Purchaser's Solicitor (or if not so provided by the Purchaser's Solicitor within 5 days of the Acceptance Date, in a form prepared by the Receiver's Solicitor).

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) the Court shall have issued the Approval and Vesting Order.

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 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) the Court shall have issued the Approval and Vesting Order.

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 and in favour of the Purchaser as follows:

- (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 Real Property by the Receivership Order and such Receivership Order is in full force and effect and has not been stayed, and 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 Receiver and 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 Receivership 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 and in favour of the Receiver as follows:

- (a) the Purchaser has sufficient funds available in cash to complete the transactions contemplated hereunder;
- (b) the Purchaser has all necessary 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 any Applicable Law. 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 his creditors generally, has not had any application for a bankruptcy order filed against him, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of his assets, has not had an encumbrancer take possession of any of his property and has not had any execution or distress become enforceable or levied against any of his 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, subject to the Leases, 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, subject to the Leases. 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) 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 twenty-five percent (25%) of the total Purchase Price (inclusive of the Deposit).
- (c) If, prior to the Closing Date, all or a material part of the Lands is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Lands 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 shall be

payable to the Purchaser and all right, title and interest of the Receiver or 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.

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
POST-CLOSING MATTERS

14.1 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. 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 or bankruptcy trustee of the estate of the Debtor, as the case may be, and at no cost to the Purchaser.

ARTICLE 15
TERMINATION

15.1 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.

15.2 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 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, and the Receiver shall have the right to pursue any other damages available pursuant to this Agreement or at law as a result of the Purchaser's breach.

15.3 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 the Deposit shall be forthwith returned to the Purchaser without deduction:

- (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 16
GENERAL CONTRACT PROVISIONS

16.1 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.

16.2 Survival Following Completion

Notwithstanding any other provision of this Agreement, Article 9, Article 10, Section 15.2 and Section 15.3 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.

16.3 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 Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Attention: Robert Kofman and Noah Goldstein
Tel: (416) 932-6228 / (416) 932-6207
Email: bkofman@ksvadvisory.com / ngoldstein@ksvadvisory.com

and a copy to the Receiver's counsel to:

Torys LLP
79 Wellington Street West, Box 270, TD South Tower
Toronto, ON M5K 1N2

Attention: Scott Bomhof and Adam Slavens
Tel: (416) 865-7370 / (416) 865-7333
Email: sbomhof@torys.com / aslavens@torys.com

(b) to the Purchaser:

Attention: Angelo Pignatelli

Tel: 416-315-6047

Email: ang@treevalley.ca

and a copy to the Purchaser's counsel to:

Attention: Enzo Salvatori

Tel: 416-745-1777

Email: enzo@salvatorilaw.com

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.

16.4 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.

16.5 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.

16.6 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 sitting in Toronto. 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.

16.7 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.

16.8 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.

16.9 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.

16.10 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 closing, 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 forgoing 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.

16.11 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.

16.12 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.

16.13 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.

16.14 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.

16.15 Currency

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

16.16 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 of the Lands and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

16.17 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.

16.18 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.

16.19 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".

16.20 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 KOFMAN INC., in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

Per:

Name:

Title:

North Goldstein
Managing Director

ACCEPTED by the Purchaser this 24 day of June, 2019

TREE VALLEY GARDEN CENTRE LTD.

Per:

Name: Angelo Pignatelli

Title: Authorized Signing Officer

I have authority to bind the Corporation.


Witness

Report"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all the Receiver's and the Debtors' right, title and interest in and to the property described as the "Purchased Assets" in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the <*> Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of <*> sworn <*>, 2019, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all the Receiver's and the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement, including without limitation the subject real property identified in **Schedule "B"** hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licences,

restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Hainey dated November 19, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter [■] [NTD: Insert name of Purchaser entity taking title] as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the

same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and

any assignment in bankruptcy made in respect of the Debtors,

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

Court File No. CV-18-608978-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.




- and -

1033803 ONTARIO INC. and 1087505 ONTARIO LIMITED

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Mr. Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 19, 2018, KSV Kofman Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**") of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. operating as Forma-Con Construction and Forma Finishing ("**Forma-Con**") and 1087507 Ontario Limited (together with Forma-Con, the "**Debtors**"); (ii) certain assets of Bondfield Construction Company Limited ("**BCCL**") and Bondfield Construction Equipment Ltd ("**BCEL**"); and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario.

II. Pursuant to an Order of the Court dated , 2019, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and  (the "**Purchaser**"), as purchaser, dated , 2019 (the "**Sale Agreement**"), and provided for the vesting in the Purchaser, or as it may

direct in accordance with the Sale Agreement, of all the Receiver's and the Debtors' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

IV. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The transaction has been completed to the satisfaction of the Receiver; and

4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV KOFMAN INC., in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

4431 Stouffville Road, Stouffville, Ontario

PIN 03725-0367(LT): PT LOT 35 CON 6 MARKHAM AS IN R643215 EXCEPT PT 1, EXPROP
PL YR1315253. S/T MA23836 IF ANY ; WHITCHURCH-STOUFFVILLE

SCHEDULE "C"
INSTRUMENTS TO BE DELETED

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
R670518	December 18, 1995	Charge	\$1,413,723	1087507 Ontario Limited	Ralph Aquino
YR2706728	July 25, 2017	Charge	\$90,000,000	1087507 Ontario Limited	Bridging Finance Inc.
YR2706729	July 25, 2017	Notice of Assignment of Rents-General	N/A	1087507 Ontario Limited	Bridging Finance Inc.
YR2706730	July 25, 2017	Postponement of Interest	N/A	Ralph Aquino	Bridging Finance Inc.
YR2706731	July 25, 2017	Postponement of Interest	N/A	Ralph Aquino	Bridging Finance Inc.

SCHEDULE "D"
PERMITTED ENCUMBRANCES

PART I: GENERAL PERMITTED ENCUMBRANCES

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement;
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and Buildings by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable buildings codes;
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Authority or regulated utility;
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Lands;
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Lands;
6. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Lands or any part thereof, or materially impair the value thereof;
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
8. The following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

PART II: SPECIFIC PERMITTED ENCUMBRANCES

1. Instrument No. MA23836 registered on August 26, 1943 being a TRANSFER OF EASEMENT in favour of THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO
2. Instrument No. R367196 registered on April 22, 1985 being a NOTICE OF SITE PLAN CONTROL AGREEMENT in favour of THE TOWN OF WHITCHURCH-STOUFFVILLE

3. Instrument No. R412432 registered on October 10, 1986 being a NOTICE OF SITE PLAN CONTROL AGREEMENT in favour of THE TOWN OF WHITCHURCH-STOUFFVILLE
4. Instrument No. YR700115 registered on September 14, 2005 being a NOTICE OF AIRPORT ZONING REGULATIONS in favour of HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT

SCHEDULE B
PERMITTED ENCUMBRANCES

PART I: GENERAL PERMITTED ENCUMBRANCES

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement;
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and Buildings by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable Buildings codes;
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Authority or regulated utility;
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Property;
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Property;
6. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Property or any part thereof, or materially impair the value thereof;
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
8. The following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

PART II: SPECIFIC PERMITTED ENCUMBRANCES

1. Instrument No. MA23836 registered on August 26, 1943 being a TRANSFER OF EASEMENT in favour of THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO
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4. Instrument No. YR700115 registered on September 14, 2005 being a NOTICE OF AIRPORT ZONING REGULATIONS in favour of HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT

**SCHEDULE C
LEGAL DESCRIPTION OF LANDS**

4431 Stouffville Road, Stouffville, Ontario

PIN 03725-0367(LT): PT LOT 35 CON 6 MARKHAM AS IN R643215 EXCEPT PT 1, EXPROP
PL YR1315253. S/T MA23836 IF ANY ; WHITCHURCH-STOUFFVILLE

SCHEDULE D
LIST OF ASSUMED CONTRACTS

All contracts relating to the Property as may be disclosed by the Receiver or its broker to the Purchaser or the Purchaser's Solicitor.

SCHEDULE E
LIST OF LEASES

1. Lease dated August, 2013 between 1087507 Ontario Limited, as landlord, and Treevalley Garden Centre Ltd., as tenant, in respect of certain lands and/or premises on the Lands more particularly described therein.

Appendix “D”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BRIDGING FINANCE INC. AS AGENT FOR
2665405 ONTARIO INC

APPLICANT

- AND -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

RESPONDENTS

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

AFFIDAVIT OF NOAH GOLDSTEIN
(Sworn July 4, 2019)

I, Noah Goldstein, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am a Vice President and Managing Director of KSV Kofman Inc. ("KSV").
2. Pursuant to an order (the "Receivership Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on November 19, 2018, KSV was appointed as the receiver and manager ("Receiver") of:
 - a) all the assets, undertaking and property of 1033803 Ontario Inc., operating as Forma-Con Construction and Forma Finishing;
 - b) all the assets, undertaking and property of 1087507 Ontario Inc.;
 - c) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and
 - d) the real property known municipally as 131 Saramia Crescent, Vaughan.

3. I have been integrally involved in this mandate since the date of the Receivership Order. As such, I have knowledge of the matters to which I hereinafter depose.

4. On July 4, 2019, the Receiver finalized its Sixth Report to Court in which it provided a summary of the Receiver's fees for the period commencing May 1, 2019 to May 31, 2019.


5. I hereby confirm that attached as Exhibit "A" hereto is a true copy of the account of KSV for the period indicated and confirm that this account accurately reflects the services provided by KSV in this matter and the fees and disbursements claimed by it.

6. Additionally, attached hereto as Exhibit "B" is a summary of roles, hours and rates charged by members of KSV who have worked on this matter, and I hereby confirm that the list represents an accurate account of such information.

7. I consider the accounts to be fair and reasonable considering the circumstances connected with this matter.

8. I also confirm that the Receiver has not received, nor expects to receive, nor has the Receiver been promised any remuneration or consideration other than the amounts claimed in the accounts.

SWORN BEFORE ME at the City of)
Toronto, in the Province of Ontario, this 4th)
day of July, 2019.)



Commissioner for taking affidavits, etc.)



NOAH GOLDSTEIN)

Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Kofman Inc.
Expires January 22, 2021.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF NOAH GOLDSTEIN
SWORN BEFORE ME THIS 4th DAY OF JULY, 2019



A Commissioner for taking Affidavits, etc.

**Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Kefman Inc.
Expires January 22, 2021.**



ksv advisory inc.
150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6262
F +1 416 932 6266

ksvadvisory.com

Bridging Finance Inc.
77 King Street West
Suite 2925, P.O. Box 322
Toronto, ON M5K 1K7

June 11, 2019

Attention: Brian Champ and Lekan Temidire

Invoice No.: 1277
HST No.: 818808768RT0001

Re: 1033803 Ontario Inc. ("Forma Con") and 1087507 Ontario Limited
("108" and together with Forma Con, the "Companies")

For professional services rendered by KSV Kofman Inc. in its capacity as receiver (the "Receiver") of the Companies for May 2019, including:

General Receivership Activities

- Corresponding with Torys LLP ("Torys"), legal counsel to the Receiver, and Bridging Finance Inc., in its capacity as agent to 2665405 Ontario Inc. (the "Agent"), and Goodmans LLP, counsel to the Agent, regarding matters in the Companies' receivership proceedings, including the sale of the Companies' real property and Bondfield Construction Company Limited's ("BCCL") *Companies' Creditors Arrangement Act* ("CCAA") proceedings;
- Dealing with cash management issues, including paying post-filing expenses from the receivership accounts;
- Dealing with Advance Forming Inc. regarding the rental of Aluma equipment;

BCCL Issues

- Reviewing cash position reports circulated by Ernst & Young Inc. ("E&Y"), Court appointed Monitor of BCCL;
- Dealing with "obsolete equipment" pursuant to the terms of the CCAA filing agreement dated March 15, 2019, among, *inter alia*, E&Y, the Receiver and the Agent;
- Reviewing materials filed in BCCL's CCAA proceedings regarding E&Y's investigation into the Companies and corresponding with Torys regarding same;
- Preparing a schedule of bonded costs to be reimbursed by BCCL to • for the period ending April 30, 2019 (the "Bonded Schedule") and corresponding with E&Y regarding same;
- Reviewing comments by E&Y on the Bonded Schedule;

Employee Matters

- Reviewing Forma Con's payroll on a weekly basis and coordinating funding of the bonded payroll with E&Y;
- Preparing an estimate of source deductions related to bonded projects that are utilizing Forma Con's employees and facilitating payment of same with E&Y;
- Working with Forma Con's payroll administrator to review employee expense reimbursement claims;
- Dealing with Torys regarding several liens filed by the Companies' unions;

Sale Process for Unsold Properties

- Corresponding extensively with CBRE Inc. regarding the sale process for 131 Saramia Crescent, Vaughan (the "Vaughan Property") and 4431 Stouffville Road, Stouffville (the "Stouffville Property");
- Reviewing and commenting on draft sale process materials for the Vaughan Property and Stouffville Property, including a confidential information memorandum;
- Reviewing and commenting on draft agreements of purchase and sale for the Vaughan Property and Stouffville Property;
- Reviewing a Phase Two Report for the Stouffville Property and corresponding with the Agent regarding same;
- Reviewing weekly updates concerning the sale process for the Vaughan Property and Stouffville Property;
- Reviewing first round offers submitted on May 30, 2019 for the Vaughan Property and the Stouffville Property and corresponding with the Agent and Torys regarding same;

Sale of Head Office

- Negotiating an Agreement of Purchase and Sale with Tedescorp Holdings Inc. (the "Purchaser") to sell the Company's Head Office (the "Transaction");
- Corresponding with the Purchaser regarding equipment owned by BCCL that may be available for sale;
- Corresponding with E&Y and its counsel, Norton Rose Fulbright Canada LLP ("Norton Rose"), regarding the sale to the Purchaser of solar panels owned by BCCL affixed to the roof of the Head Office;
- Reviewing and commenting on a Bill of Sale for the solar panels prepared by Norton Rose;
- Preparing the Receiver's Fifth Report to Court dated May 24, 2019 to, *inter alia*, seek approval of the Transaction;
- Reviewing and commenting on motion materials prepared by Torys in connection with the Transaction, including a Notice of Motion and Factum;
- Attending at Court on May 30, 2019 in connection with a motion to approve the Transaction;

Project Correspondence

- Corresponding with owners and general contractors of Forma Con's projects, including:
 - Elite Construction ("Elite") regarding the East United project;
 - Camrost Felcorp regarding the Cumberland project; and
 - Canderel Residential regarding the YC Condos project;
- Preparing funding requests on May 14 and 30, 2019 for Elite in connection with the "close out agreement" on the East United project (the "East United Funding Requests");
- Providing all information requested and responding to questions from Elite regarding the East United Funding Requests, including attending calls on May 9, 13, 15, 20, and 23, 2019 regarding same;
- Reconciling time and material costs in connection with the East United Funding Requests;
- Sending Elite all support for the East United Funding Requests and reconciliations, including invoices, payroll reports and proofs of payment;
- Corresponding extensively with the Companies' procurement team regarding materials required for the Companies' projects;
- Dealing with Torys regarding lien claims registered by the Receiver on the Massey Tower and Waterworks projects;

Creditor/Supplier Correspondence

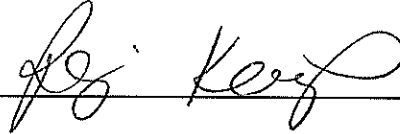
- Corresponding with Cooper's Equipment to provide an update on the status of the receivership;
- Corresponding with Bell Canada to obtain updated statements of account; and
- To all other meetings, correspondence, etc. pertaining to this matter.

Total professional fees and disbursements	\$ 64,165.65
HST	8,341.53
Total	<u>\$ 72,507.18</u>

KSV Kofman Inc.
Receivership of 1033803 Ontario Inc. and 1087507 Ontario Limited
Time Summary
For the period ending May 31, 2019

<u>Personnel</u>	<u>Rate (\$)</u>	<u>Hours</u>	<u>Amount (\$)</u>
Robert Kofman	725	22.20	16,095.00
Noah Goldstein	575	46.25	26,593.75
Jonathan Joffe	475	3.50	1,662.50
Esther Mann	425	38.85	16,511.25
Eli Brenner	350	0.25	87.50
Other staff and administration		9.25	1,687.50
Total Fees		120.30	62,637.50
Disbursements			1,528.15
Total Fees and Disbursements		120.30	64,165.65

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF NOAH GOLDSTEIN
SWORN BEFORE ME THIS 4th DAY OF JULY, 2019

A handwritten signature in black ink, appearing to read "Rajinder Kashyap", written over a horizontal line.

A Commissioner for taking Affidavits, etc.

Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Kofman Inc.
Expires January 22, 2021.

1033803 Ontario Inc. and 1087507 Ontario Limited and certain other property

Schedule of Professionals' Time and Rates

For the Period from May 1, 2019 to May 31, 2019

Personnel	Title	Duties	Hours	Billing Rate (\$ per hour)	Amount (\$)
Robert Kofman	Managing Director	Overall responsibility	22.20	725	16,095.00
Noah Goldstein	Managing Director	All aspects of mandate	46.25	575	26,593.75
Esther Mann	Associate	Dealing with project owners	38.85	425	16,511.25
Other staff and administrative			13.00	100-475	3,437.50
Total fees					<u>62,637.50</u>
Total hours					120.30
Average hourly rate					\$ 520.68

Appendix “E”

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN

**BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.**

Applicant

-and-

1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED

Respondents

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

**AFFIDAVIT OF ADAM SLAVENS
(sworn July 4, 2019)**

I, Adam Slavens, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Partner with Torys LLP (“Torys”), lawyers for KSV Kofman Inc., in its capacity as receiver (in such capacity, the “Receiver”), of (i) all the assets, undertakings and properties of 1033803 Ontario Inc. operating as Forma-Con Construction and Forma Finishing and 1087507 Ontario Limited (the “Debtors”), acquired for or used in relation to a business carried on by the Debtors, (ii) the specific assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd, and (iii) the real property known municipally as 131 Saramia Crescent in Vaughan, Ontario, and as such I have personal knowledge of the matters to which I depose, except where my knowledge is based upon information and belief, in which case I believe such information to be true.

2. This affidavit is sworn in support of the Receiver's motion for, *inter alia*, an order authorizing and approving the fees and disbursements of Torys as counsel to the Receiver.
3. I confirm that the account attached as Exhibit "A" is a true copy of the account of Torys (the "Account") for the period from May 1, 2019 to May 31, 2019, and affirm that the Account accurately reflects the services provided by Torys in this matter and the fees and disbursements claimed by it. I also affirm that the time summary attached to the Account relate to the Account, and was generated by Torys.
4. Torys' account for which approval is being sought is in the total amount of \$117,217.06 for fees and disbursements (inclusive of HST).
5. Attached as Exhibit "B" is a summary of additional information with respect to all members of Torys who have worked on this matter, their title, their year of call (if applicable) and their rates, and I confirm that the list represents an accurate account of such information.
6. The legal costs and expenses incurred in respect of the receivership proceedings of the Debtor as set out in the Account was properly incurred, and is fair and reasonable considering the circumstances of these proceedings.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario,
this 4th day of July, 2019.

Commissioner for Taking Affidavits

JEREMY R. OPOLSKY

ADAM SLAVENS

**This is Exhibit "A" referred to in the
Affidavit of Adam Slavens
sworn before me, this 4th
day of July, 2019.**

A Commissioner, etc.

JEREMY R. OPOLSKY



79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada
P. 416.865.0040 | F. 416.865.7380
www.torys.com
GST / HST Registration R119420685

June 7, 2019

Invoice: 1470835
Matter: 40363-0001

KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON
M5H 1J9

Email: bkofman@ksvadvisory.com

Re: Receivership of Bondfield Construction Company Limited et al

To Professional Services Rendered, for the period ending May 31, 2019 as described on the attached Schedule.

Fee		\$101,032.00
Disbursements Subject to Ontario - HST		
Binding Charges	\$243.00	
CYBERBAHN - Searches	10.00	
Copies	144.76	
Copies	19.13	
Courier	525.96	
Exhibit Tabs	128.52	
Image Down Load	54.00	
Laser Printing	1,351.20	
Laser Printing-Colour	2.00	
Miscellaneous	10.24	
PS Filing - Civil	35.00	
Parcel Register	43.95	
Postage	63.92	
Process Server Issuing	<u>45.00</u>	2,676.68
Disbursements Not Subject to Tax		
CYBERBAHN - Searches (Non-Taxable)	\$8.00	
Parcel Register w/o tax	<u>18.25</u>	26.25
Ontario - HST		<u>13,482.13</u>
Total		<u>\$117,217.06</u>

Re: Receivership of Bondfield Construction Company Limited et al

Invoice: 1470835

Time Summary

Date	Lawyer	Narrative	Hours
01/05/19	Lily E. Coodin	Conference call with Norton Rose; discussions regarding same;	1.2
01/05/19	Joshua A. Daniels	Revising draft agreements of purchase and sale for Vaughan (Saramia Cr.) and Stouffville properties; review of updated PINs and title documents to inform same;	0.9
01/05/19	Scott A. Bomhof	Various telephone calls with N. Goldstein, E. Cobb and E. Carmona regarding Basaltic property sale process; prepare letter to R. Gilbert regarding Aluma payables; review APA for Basaltic property; review Basaltic lease and Access Agreement for adjoining property;	3.2
02/05/19	Lily E. Coodin	Revising Saramia and Stouffville APAs;	0.7
02/05/19	Scott A. Bomhof	Various telephone conversations with E. Cobb (Norton Rose), N. Goldstein and E. Carmona (Stikemans) regarding Basaltic property sale issues; review FZT contract for 407 Basaltic; revise Basaltic APA;	3.0
02/05/19	Adam M. Slavens	Email correspondence with KSV team and S. Bomhof regarding receivership matters;	0.3
03/05/19	Joshua A. Daniels	Revising Stouffville and Saramia PSAs to add in Schedule E (assumed leases); high-level review of leases;	0.3
03/05/19	Scott A. Bomhof	Review and revise Tedescorp purchase agreement; various telephone calls with E. Carmona of Stikemans and E. Cobb of Norton Rose regarding solar panels and office furnishings at Basaltic property;	3.0
06/05/19	Lily E. Coodin	Reviewing APA and bill of sale; reviewing initial order; commenting on documents; discussions regarding same;	2.2
06/05/19	Scott A. Bomhof	Finalizing Tedescorp APA and related documents; discuss Basaltic Road asset sale with E. Cobb of Norton Rose; forward IESO consent to transfer FIT contract and materials to E. Carmona; discuss solar panel license with A. Bannock;	2.7
07/05/19	Lily E. Coodin	Reviewing APA; correspondence regarding same;	1.4
07/05/19	Scott A. Bomhof	Revise purchase agreement and related documents regarding Basaltic Road property sale; exchange	0.8

Re: Receivership of Bondfield Construction Company Limited et al

Invoice: 1470835

Time Summary

Date	Lawyer	Narrative	Hours
		messages with D. Yiokaris regarding Union claims;	
07/05/19	Adam Banack	Telephone call with S. Bomhof and drafting License Agreement regarding rooftop solar project at 407 Basaltic Road;	1.0
08/05/19	Lily E. Coodin	Revising APAs; reviewing license agreement; correspondence regarding same;	3.2
08/05/19	Scott A. Bomhof	Review and revise solar panel license agreement regarding Tedescorp APA; telephone call with N. Goldstein regarding Tedescorp purchase agreement;	0.9
09/05/19	Scott A. Bomhof	Finalize Tedescorp APA regarding Basaltic property and exchange draft documents and emails with E. Carmona; exchange messages with E. Cobb regarding bill of sale for fixtures and solar panels; revise solar panel license agreement; telephone call and email to J. McLellan regarding Zurich coverage for liens filed on Axis and St. Josephs Morrow projects;	2.8
09/05/19	Adam Banack	Corresponding with S. Bomhof regarding the License Agreement for the rooftop solar project at 407 Basaltic Road;	0.2
10/05/19	Scott A. Bomhof	Review E. Cobb comments on solar panel/fixture bill of sale; exchange messages with E. Carmona regarding BCCL documents related to Basaltic property sale; exchange emails with J. McLellan regarding Zurich bond and outstanding liens on Axis project and St. Joseph Morrow project; exchange messages with N. Goldstein regarding court approval for Basaltic property;	2.0
13/05/19	Lily E. Coodin	Reviewing correspondence; revising deal documents;	1.0
13/05/19	Scott A. Bomhof	Exchange messages with E. Carmona and E. Cobb regarding Basaltic APA;	0.3
14/05/19	Nicholas E. Kennedy	Email to client regarding deadlines for serving claims;	0.1
14/05/19	Joshua A. Daniels	Review of final executed APS for Basaltic property; correspondence with S. Bomhof regarding same;	0.4
14/05/19	Scott A. Bomhof	Finalize solar panel transfer/license arrangements regarding Basaltic property; various telephone calls with E. Carmona and release Tedescorp APA from	2.1

Re: Receivership of Bondfield Construction Company Limited et al

Invoice: 1470835

Time Summary

Date	Lawyer	Narrative	Hours
		escrow; book court time for approval of Tedescorp APA; follow up on Frieden accounts and Aluna accounts with R. Gelbart;	
14/05/19	David J. Outerbridge	Emails with N. Kennedy regarding serving statements of claim;	0.1
14/05/19	Adam M. Slavens	Office conference with S, Bomhof regarding receivership matters; reviewing SISP;	0.8
15/05/19	Lily E. Coodin	Drafting court documents regarding Basaltic sale;	1.5
15/05/19	Scott A. Bomhof	Finalize Tedescorp APA and prepare court materials for approval and vesting order; discuss Tedescorp APA with counsel to Bridging finance; book court time;	3.1
16/05/19	Joshua A. Daniels	Meeting with S. Bomhof and L. Coodin to discuss closing agenda, closing documents for Basaltic sale; review of settled bill of sale and licence agreement regarding solar panel contracts and solar generating equipment; correspondence with N. Goldstein regarding realty tax arrears;	1.0
16/05/19	Scott A. Bomhof	Prepare materials for court approval of Basaltic property sale; follow up on Aluma claims and Frieden Engineering claims;	2.0
16/05/19	Adam M. Slavens	Reviewing email correspondence regarding receivership matters; office conference with S. Bomhof regarding status of SISP; email correspondence with S. Bomhof and L. Coodin regarding court materials;	0.9
17/05/19	Lily E. Coodin	Reviewing closing documents; correspondence regarding same;	0.6
17/05/19	Nicholas E. Kennedy	Correspondence with client regarding service of claims;	0.1
17/05/19	Joshua A. Daniels	Drafting, revising and circulating closing agenda; correspondence with S. Bomhof and L. Coodin regarding same; began drafting closing documents;	1.2
17/05/19	Adam M. Slavens	email correspondence with N. Goldstein regarding receivership matters;	0.2
17/05/19	David J. Outerbridge	Emails with N. Kennedy regarding service of statements of claim;	0.1
21/05/19	Lily E. Coodin	Drafting court documents regarding sale approval;	4.0
21/05/19	Nicholas E. Kennedy	Preparing materials to serve claims;	0.1

Re: Receivership of Bondfield Construction Company Limited et al

Invoice: 1470835

Time Summary

Date	Lawyer	Narrative	Hours
21/05/19	Joshua A. Daniels	Basaltic property - preparing service list for real property instruments to be expunged from title; preparing all draft closing documents for purchase and sale transaction; correspondence with S. Bomhof regarding the foregoing; revising closing agenda;	2.5
21/05/19	Kristina Milne	Order from Ontario a corporation profile report for 941615 Ontario Inc.;	0.4
21/05/19	Scott A. Bomhof	Prepare court materials related to sale approval for Basaltic property; prepare factum for May 30 hearing;	3.5
22/05/19	Lily E. Coodin	Drafting factum and other court documents;	2.2
22/05/19	Nicholas E. Kennedy	Preparing to serve materials in lien cases;	0.4
22/05/19	Joshua A. Daniels	Basaltic property - drafting summary of title instruments to be expunged under approval and vesting order; correspondence with S. Bomhof regarding same; circulating draft closing documents to Stikeman Elliott for review;	1.1
22/05/19	Scott A. Bomhof	Review draft closing documents for Basaltic property sale; finalize court materials for May 30 hearing; prepare fee affidavit for May 30 hearing; telephone call with E. Carmona regarding Saramia sales process; prepare for May 30 motion and update law for factum;	5.3
23/05/19	Lily E. Coodin	Revising court documents; preparing same for filing;	4.5
23/05/19	Nicholas E. Kennedy	Correspondence and discussions with client regarding serving claim;	0.2
23/05/19	Joshua A. Daniels	Basaltic - revising Monitor's fifth report to include reference to approval and vesting order and list of instruments to be expunged from title; correspondence with S. Bomhof regarding same; preparing draft statement of adjustments for sale transaction; review of purchaser's counsel's markups to draft closing documents and correspondence regarding same;	2.2
23/05/19	Scott A. Bomhof	Prepare court materials for May 30 motion regarding Basaltic property; telephone call with N. Goldstein and E. Cobb of Norton Rose regarding outstanding tax arrears on Basaltic;	2.7

June 7, 2019

Re: Receivership of Bondfield Construction Company Limited et al

Invoice: 1470835

Time Summary

Date	Lawyer	Narrative	Hours
24/05/19	Lily E. Coodin	Revising court documents for filing;	2.1
24/05/19	Joshua A. Daniels	Revising draft statement of adjustments; correspondence with S. Bomhof regarding same; review of draft e-reg notice of approval and vesting order from K. Newman and provided comments to same;	0.8
24/05/19	Scott A. Bomhof	Review final comments on Fifth Report; telephone call with C. Armstrong of Goodmans and telephone call with D. Yiokaris of Koskie Minsky regarding proposed distribution to Bridging; review Bondfield motion material for May 30 CCAA motion; finalize and serve court materials for May 30 motion regarding Basaltic property; exchange messages with J. McLellan regarding Forma-Con lien on Laurentian; telephone call with D. Resnick regarding Union lien on St. Joseph Morrow project;	5.9
27/05/19	Nicholas E. Kennedy	Discussions regarding serving claims;	0.1
27/05/19	Kelley Madar	Telephone call with City of Vaughan Tax Department to inquire about 2019 taxes for 407 Basaltic Road and email J. Daniels;	0.4
27/05/19	Joshua A. Daniels	Correspondence with Osler regarding 2019 interim realty tax payments for Basaltic property; correspondence with City of Vaughan Tax Department regarding same; review of Stouffville property lease to determine Landlord access/inspection rights;	0.5
27/05/19	Scott A. Bomhof	Telephone call with E. Stewart of CBRE regarding questions from bidders on Stouffville and Saramia properties; coordinate filing of court material for May 30 hearing regarding Basaltic property; telephone call with M. Mader of Department of Justice and telephone call with C. Armstrong regarding CRA priority issues related to May 30 distribution order; prepare for May 30 hearing;	3.9
27/05/19	Adam M. Slavens	Email correspondence with S. Bomhof regarding motion materials;	0.2
28/05/19	Nicholas E. Kennedy	Discussions with client regarding serving claims;	0.1
28/05/19	Scott A. Bomhof	Review and reply to requests from CBRE regarding Saramia and Stouffville properties; review closing documents regarding Basaltic sale; various	4.8

June 7, 2019

Re: Receivership of Bondfield Construction Company Limited et al

Invoice: 1470835

Time Summary

Date	Lawyer	Narrative	Hours
		telephone calls with Norton Rose and Goodmans regarding Basaltic property sale issues; prepare for May 30 hearing; review reply materials filed by Bridging regarding May 30 Bondfield CCAA hearing;	
28/05/19	Adam M. Slavens	Reviewing motion record regarding motion returnable May 30, 2019; reviewing CCAA motion materials;	0.9
28/05/19	Adam Banack	reviewing questions posed by S. Bomhof regarding YC Condo Liens and telephone call regarding same;	0.4
29/05/19	Nicholas E. Kennedy	Correspondence about client call;	0.1
29/05/19	Joshua A. Daniels	Review of bid summaries for Saramia and Stouffville properties; review of blackline purchase agreements from bidders; prepared and circulated summary/evaluation of bids from a legal perspective; correspondence with S. Bomhof regarding flow of funds for Basaltic transaction;	2.1
29/05/19	Adam M. Slavens	Reviewing report on real property sale process and email correspondence regarding same; reviewing email correspondence regarding receivership matters;	0.7
29/05/19	Scott A. Bomhof	Telephone call with M. Mader of Department of Justice and discuss deemed trust carve-out with N. Goldstein and C. Armstrong; revise Basaltic approval order; telephone call with A. Andison-Boyle regarding City of Vaughan by-law deletion; telephone call with D. Woods of TriCap regarding deletion of instruments from Basaltic title; review bids on Saramia and Stouffville; discuss right of first refusal issue with N. Goldstein; prepare for May 30 motion;	4.0
30/05/19	Nicholas E. Kennedy	Telephone call with client regarding service of claims And follow up discussions with A. Banack;	0.7
30/05/19	Joshua A. Daniels	Basaltic - correspondence with S. Bomhof regarding statement of adjustments, closing documents; review of Powerstream connection agreement for assignment restrictions;	0.8
30/05/19	Adam M. Slavens	Office conference with S. Bomhof regarding motion returnable May 30, 2019; reviewing SISP;	0.5
30/05/19	Scott A. Bomhof	Prepare for and attend motion before Justice Hainey regarding Basaltic property sale; exchange emails with M. Mader regarding deemed trust claim holdback; telephone call with D. Woods regarding	5.0

Re: Receivership of Bondfield Construction Company Limited et al

Invoice: 1470835

Time Summary

Date	Lawyer	Narrative	Hours
		deletion of notices from Basaltic title; exchange messages with Stikemans and Norton Rose regarding closing documents for Basaltic sale; exchange emails with N. Goldstein and L. Kung of Koskie Minsky regarding discontinuance of Argo Lumber lien actions;	
31/05/19	Joshua A. Daniels	Basaltic sale - revising internal direction regarding funds; revising statement of adjustments; correspondence with S. Bomhof regarding outstanding closing deliverables; correspondence with E. Cobb regarding realty tax amounts owing;	1.0
31/05/19	Adam Banack	Corresponding with N. Kennedy regarding YC Condo liens;	0.3
31/05/19	Scott A. Bomhof	Prepare closing documents regarding Basaltic sale; various telephone calls with E. Cobb regarding E&Y investigation and Basaltic property taxes;	1.9
31/05/19	David J. Outerbridge	Email to N. Kennedy regarding serving claims;	0.1

Lawyer Summary

<u>Timekeeper</u>	<u>Hours</u>
Lily E. Coodin	24.6
Nicholas E. Kennedy	1.9
Joshua A. Daniels	14.8
Kristina Milne	0.4
Kelley Madar	0.4
Scott A. Bomhof	62.9
Adam M. Slavens	4.5
Adam Banack	1.9
David J. Outerbridge	0.3
TOTAL HOURS & FEES	111.7



79 Wellington St. W., 30th Floor
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www.torys.com
GST / HST Registration R119420685

June 7, 2019

KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON
M5H 1J9

Email: bkofman@ksvadvisory.com

Invoice Number: 1470835
Matter Number: 40363-0001
Invoice Total: **\$117,217.06**

Please mail remittance to:

Torys LLP
79 Wellington Street West, Suite 3000
Box 270, TD Centre
Toronto, Ontario M5K 1N2
Canada

Remittance by Electronic Banking (please include invoice number):

TD Canada Trust	Account Name:	Torys LLP
55 King Street	Bank ID:	004
West	Branch Number:	10202
Toronto, Ontario	Account (CAD):	5364535
M5K 1A2	Account (USD):	7389354
Canada	Bank Swift Code:	TDOMCATTTOR

Intermediary Bank (only needed for USD wiring from outside of Canada):

Bank of America New York, NY USA
Bank Swift Code BOFAUS3N
ABA 026 009 593

**This is Exhibit "B" referred to in the
Affidavit of Adam Slavens
sworn before me, this 4th
day of July, 2019.**

A Commissioner, etc.


JEREMY R. OPOLSKY

ADDITIONAL INFORMATION

Name	Title	Year of Call	Hourly Rate
Adam Banack	Counsel	2009	\$820
Adam Slavens	Partner	2007	\$875
David Outerbridge	Partner	2000	\$975
Joshua Daniels	Associate	2016	\$595
Kristina Milne	Searcher	N/A	\$180
Kelley Madar	Support Clerk	N/A	\$175
Lily Coodin	Sr. Associate	2012	\$780
Nicholas Kennedy	Associate	2014	\$725
Scott Bomhof	Partner	1995	\$1,045

**BRIDGING FINANCE INC.,
as agent for 2665405 ONTARIO INC.**

Applicant

**1033803 ONTARIO INC. and
1087507 ONTARIO LIMITED**

Respondents

Court File No.: CV-18-608978-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

AFFIDAVIT OF ADAM SLAVENS
(sworn July 4, 2019)

TORYS LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada
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Adam M. Slavens (LSO#: 54433J)
Tel: 416.865.7333
Email: aslavens@torys.com

Lawyers for KSV Kofman Inc.,
in its capacity as Court-appointed Receiver