

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ECN FINANCIAL INC.

Applicant

- and -

**2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY
HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD.,
2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475
ONTARIO INC.**

Respondents

MOTION RECORD
returnable February 26, 2020
(Walpole and Novacare Approval and Vesting Orders)

DATE: February 20, 2020

GOLDMAN SLOAN NASH & HABER LLP
Suite 1600, 480 University Avenue
Toronto, ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO# 46735J)
Tel: 416-597-5017
Email: stam@gsnh.com

Lawyers for the Receiver, KSV Kofman Inc.

TO: THE SERVICE LIST

AND TO: THE PPSA REGISTRANTS SERVICE LIST

AND TO: SAAD LAW PROFESSIONAL CORPORATION
4 Robert Speck Parkway, Suite 1210
Mississauga, ON L4Z 1S1

Peter A. Saad

Email: peter.saad@saadlaw.com

Counsel for the Purchaser, 2258156 Ontario Inc.

AND TO: GATTI LAW PROFESSIONAL CORPORATION
400-267 Pelissier Street
Windsor, ON N9A 4K4

Alfredo R. Gatti

Email: arg@argatti.com

Counsel for the Novacare Landlord, Walker Plaza 1200 Inc.

AND TO: WALKER PLAZA 1200 INC.
1190 Walker Road
Windsor, ON N8Y 2N7

Email: ricalbano@1micgroup.com

s.govas@gmail.com

AND TO: THREE FIRES DEVELOPMENT CORPORATION

Rick Robbins

Email: robbinsr1964@gmail.com

AND TO: MCTAGUE LAW FIRM LLP
455 Pelissier Street
Windsor, ON N9A 6Z9

Jeffrey MacKinnon
Email: jmackinnon@mctaguelaw.com

David Sundin
Email: dsundin@mctaguelaw.com

Counsel for the Family Health West and Family Health East Landlord

AND TO: PHARMACHOICE

Calvin LeRoux
Email: c.leroux@pchcanada.ca

AND TO: MSI SPERGEL INC.
505 Consumers Road, Suite 200
Toronto, ON M2J 4V8

Philip H. Gennis
Email: pgennis@spergel.ca

INDEX

INDEX

Tab No.	Description	Page No.:
1.	Notice of Motion returnable February 26, 2020	001
2.	Second Report of the Receiver, dated February 19, 2020	016
A	Appendix "A" – Receivership Order dated December 4, 2019	031
B	Appendix "B" – Pre-filing Report dated December 3, 2019	055
C	Appendix "C" - Agreement of Purchase and Sale with Amendments (redacted)	066
D	Appendix "D" – Novacare lease (undated)	101
E	Appendix "E" – Co-Tenancy Agreement provided January 11, 2020	127
F	Appendix "F" - Novacare Landlord Correspondence	129
G	Appendix "G" – Forbearance Agreement	135
1	Confidential Appendix "1" – RSP Offer Summary	
2	Confidential Appendix "2" – Issues with Leases	
3	Confidential Appendix "3" – Agreement of Purchase and Sale with Amendments (unredacted)	

3.	Draft Approval and Vesting Order (Walpole)	185
4.	Blackline of Model Order to Draft Approval and Vesting Order (Walpole)	192
5.	Draft Approval and Vesting Order (Novacare)	205
6.	Blackline of Model Order to Draft Approval and Vesting Order (Novacare)	213

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

**NOTICE OF MOTION
returnable February 26, 2020
(Walpole and Novacare Approval and Vesting Orders)**

KSV Kofman Inc. (“KSV”) in its capacity as the Court-appointed receiver (in such capacity, the “Receiver”) of the property, assets and undertaking of 2345760 Ontario Inc. (“2345”), Rando Drugs Ltd. (“Rando”), 2275518 Ontario Inc. (“2275”), M. Blacher Drugs Ltd. (“Blacher”), 2501380 Ontario Inc. (“2501”), 2527218 Ontario Inc. (“2527218”), Dumopharm Inc. (“Dumopharm”) and 2527475 Ontario Inc. (“2527475”) (collectively, the “Company”), will make a motion to a judge of the Commercial List of the Superior Court of Justice at 330 University Avenue, Toronto, ON M5G 1R7 on **Wednesday, February 26, 2020** at 10:00 a.m. or as soon thereafter as the motion can be heard.

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

in writing under subrule 37.12.1(1) because it is made without notice;

in writing as an opposed motion under subrule 37.12.1(4); or

orally.

THE MOTION IS FOR AN ORDER:

- (a) abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;
- (b) authorizing the Receiver to execute the asset purchase agreement dated December 18, 2019 (the “**Original APA**”), as amended on January 31, 2020 (the “**Amendment**” and together with the Original APA, the “**APA**”) between the Receiver and 2258156 Ontario Inc. (the “**Purchaser**”) for substantially all of the business and assets of the Debtors¹;
- (c) approving only the portion of the transactions relating to the sale of the Company’s pharmacies located at 785 Tecumseh Road, Unit 16, Walpole Island (“**Walpole**”) and 3A-1275 Walker Road, Windsor (“**Novacare**”) (the “**Transactions**”);
- (d) vesting the Company’s right, title and interest in and to the Purchased Assets (as defined in the APA) related to or located at Novacare and Walpole in the Purchaser, free and clear of all liens, charges, security interests and encumbrances, other than the Permitted Encumbrances;
- (e) assigning the Novacare Lease (defined below) to the Purchaser free and clear of any and all liens, charges, security interests and encumbrances including any interest of CEDV (defined below);
- (f) authorizing the Receiver to enter into any other ancillary documents and agreements required to complete the Transactions;
- (g) approving the second report of the Receiver dated February 19, 2020 (the “**Second Report**”) and the activities of the Receiver set out therein;
- (h) sealing the confidential appendices to the Second Report pending further order of the Court; and

¹ “Debtors” as defined in the APA means Rando Drugs Ltd. and Dumopharm Inc.

- (i) such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) Pursuant to an Order of the Honourable Justice Hailey made December 4, 2019 (the “**Receivership Order**”), KSV was appointed Receiver of the property, assets and undertaking of the Company;
- (b) The Company owns and operates the following four pharmacies (the “**Pharmacies**”) in Southwestern Ontario under the PharmaChoice banner:
- (i) Family Health Pharmacy West, located at 1604 Tecumseh Road West, Windsor (“**Family Health West**”);
 - (ii) Family Health Pharmacy West, located at 6720 Hawthorne Drive, Windsor (“**Family Health East**”);
 - (iii) Walpole; and
 - (iv) Novacare;

The Sale Process

- (c) As discussed in detail in the pre-filing report of KSV dated December 3, 2019, prior to its appointment as Receiver, KSV was retained by the Company to conduct a refinancing and sale process (“**RSP**”) for the Pharmacies;
- (d) As a result of the RSP, several offers were submitted and KSV believed the strongest offer had been submitted by Bidder Two, however, Mr. Diena, the Company’s principal, chose to pursue the offer submitted by Bidder One, which ultimately did not close;
- (e) Upon its appointment, the Receiver re-engaged with parties who had previously submitted the best offers in the RSP, including the Purchaser, who is referred to as “**Bidder Two**” in Confidential Appendix 1 to the Second Report;

- (f) The Purchaser advised that it continued to have an interest, however, due to issues which came to light subsequent to the RSP, the Purchaser advised that it would only continue to have an interest at a lower price than its bid in the RSP and the structure of its bid would also reflect the risk in the transaction;
- (g) Notwithstanding the reduction in the value of the Purchaser's offer, the value of the offer remained attractive. The offer was also attractive because it was not conditional upon financing and the principal of the purchaser owns and operates several pharmacies already;
- (h) The offer was finalized and accepted on December 18, 2019;

The APA

- (i) The APA is structured to allow the Receiver to close the sale of each Pharmacy individually as there are issues unique to the sale of each location;
- (j) The key terms of the APA include:
 - (i) Purchaser: 2258156 Ontario Inc.;
 - (ii) Purchase Price: The purchase price and the allocation of the purchase price among the Pharmacies is included in Confidential Appendix 3 to the Second Report;
 - (iii) Inventory: the Purchaser will pay certain amounts for Inventory upon completion of the sale of each Pharmacy. These amounts are provided in the Confidential Appendix 3, attached to the Second Report;
 - (iv) Assets to be Purchased: All of the Debtors' right, title and interest in and to substantially all of the business, assets and contracts of the Pharmacies, excluding accounts receivable, cash and cash equivalents, intercompany receivables, deposits, HST receivables, tax refunds, claims, insurance or insurance claims, and any contracts not specifically included in the Contracts;

- (v) “As is, where is”: the agreement is consistent with standard insolvency transactions, i.e. to be completed on an “as is, where is” basis with minimal representations, warranties and conditions;
- (k) The Purchaser and the Walpole landlord are finalizing the terms of a new lease which should be completed by the return of this motion;
- (l) Landlord approval has not been obtained for the Novacare location and as discussed below, the Receiver is seeking approval to assign this lease to the Purchaser;
- (m) The Transactions remain subject to regulatory conditions, however, approval of the Transactions including, finalizing issues relating to the leases is crucial prior to the Purchaser being able to satisfy the remaining conditions;
- (n) The Transactions are expected to preserve employment for a substantial number of the Company’s employees on terms similar to those currently in place;
- (o) In addition, the completion of the sales of Walpole and Novacare will reduce receivership costs and professional fees and can be completed outside of the transactions for Family Health East and Family Health West;
- (p) The Receiver does not believe that further time spent marketing the Company’s business and assets will result in a superior transaction;

Novacare Lease

- (q) The Company occupies the Novacare pharmacy pursuant to a lease (together with all renewals, the “**Novacare Lease**”) between Dumopharm, a non-operating entity subject to the Receivership Order, and Walker Plaza 1200 Inc. (the “**Novacare Landlord**”);
- (r) Pursuant to a co-tenancy agreement dated February 12, 2017, CEDV Inc. (“**CEDV**”) was added to the lease as a co-tenant and it is believed that CEDV is owned or controlled by Mr. Diena;

- (s) Mr. Diena has advised the Receiver that CEDV is an entity that financed leasehold improvements for the Novacare location with a loan and that CEDV's addition as a tenant to the lease was obtained in connection with this transaction;
- (t) Mr. Diena also advised that CEDV has not and does not occupy that location;
- (u) The Novacare Lease expired on December 31, 2019 but was renewed by Rando prior to the receivership;
- (v) The Novacare Landlord's counsel has yet to provide a draft renewal but the Company provided the Receiver with an email confirming that it had exercised the renewal and the Company is continuing to occupy the Novacare premises;
- (w) Shortly after entering into the Original APA, the Receiver contacted the Novacare Landlord's counsel, Gatti Law Professional Corporation ("**Gatti**") to discuss assignment of the Novacare Lease to the Purchaser (or the entering into of a new lease);
- (x) Gatti indicated that it was only prepared to enter into a new lease (or assignment) and to deal with the Purchaser if the issues concerning CEDV were addressed with no doubt as to which entity (Dumopharm/CEDV) could deal with the Novacare Lease;
- (y) To provide such certainty and in order to complete a transaction for the Novacare location, Mr. Diena provided a co-tenant acknowledgment on behalf of CEDV on January 11, 2020 (the "**Co-Tenancy Acknowledgment**");
- (z) Gatti did not accept the Co-Tenancy Acknowledgment and advised, notwithstanding the Co-Tenancy Acknowledgment, it would only commence discussions regarding the terms of a new lease after the Receiver obtains a Court order vesting out the interest of CEDV from the Novacare Lease;
- (aa) Given the above, the Receiver is seeking to assign the Company's existing Novacare Lease to the Purchaser which is also acceptable to the Purchaser;

- (bb) The assignment of the Novacare Lease is a key condition for the sale and without the Novacare Lease, the Transaction for that location will not close;

Sealing

- (cc) An unredacted version of the APA, and other confidential appendices, have been filed with the Court on a confidential basis as the availability of this information to other parties may negatively impact any future sale process for the Company's business and assets should the Transactions not close;
- (dd) The information in the confidential appendices also includes confidential information concerning certain of the Company's business and assets that are not related to the Transactions which if made public at this time would put that portion of the APA at risk;
- (ee) As such, the Receiver is requesting that Confidential Appendices 1-3, be sealed pending further Order of this Court;
- (ff) such further and other grounds as counsel may advise and this Court may permit;

Miscellaneous

- (gg) The Receiver's activities as set out in the Second Report are lawful and proper and are consistent with its mandate as Receiver as contemplated by the Receivership Order.

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

- (a) The Second Report; and
- (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATE: February 20, 2020

GOLDMAN SLOAN NASH & HABER LLP

Suite 1600, 480 University Avenue

Toronto, ON M5G 1V2

Fax: 416-597-3370

Jennifer Stam (LSO# 46735J)

Tel: 416-597-5017

Email: stam@gsnh.com

Lawyers for the Receiver, KSV Kofman Inc.

TO: THE SERVICE LIST

AND TO: THE PPSA REGISTRANTS SERVICE LIST

AND TO: SAAD LAW PROFESSIONAL CORPORATION

4 Robert Speck Parkway, Suite 1210

Mississauga, ON L4Z 1S1

Peter A. Saad

Email: peter.saad@saadlaw.com

Counsel for the Purchaser, 2258156 Ontario Inc.

AND TO: GATTI LAW PROFESSIONAL CORPORATION

400-267 Pelissier Street

Windsor, ON N9A 4K4

Alfredo R. Gatti

Email: arg@argatti.com

Counsel for the Novacare Landlord, Walker Plaza 1200 Inc.

AND TO: WALKER PLAZA 1200 INC.

1190 Walker Road

Windsor, ON N8Y 2N7

Email: ricalbano@1micgroup.com

s.govas@gmail.com

AND TO: THREE FIRES DEVELOPMENT CORPORATION

Rick Robbins

Email: robbinsr1964@gmail.com

AND TO: MCTAGUE LAW FIRM LLP

455 Pelissier Street

Windsor, ON N9A 6Z9

Jeffrey MacKinnon

Email: jmackinnon@mctaguelaw.com

David Sundin

Email: dsundin@mctaguelaw.com

Counsel for the Family Health West and Family Health East Landlord

AND TO: PHARMACHOICE

Calvin LeRoux

Email: c.leroux@pchcanada.ca

AND TO: MSI SPERGEL INC.

505 Consumers Road, Suite 200

Toronto, ON M2J 4V8

Philip H. Gennis

Email: pgennis@spergel.ca

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF s. 243 (1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

**2345760 ONTARIO INC., RANDO DRUGS LTD, 2275518 ONTARIO INC., FAMILY HEALTH
PHARMACY WEST INC. (formerly known as M. BLACHER DRUGS LTD.), 2501380 ONTARIO
INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.**

Respondents

SERVICE LIST

<p>MILLER THOMSON LLP Scotia Plaza, 40 King St. W. Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1 Fax: 416.595.8695</p> <p>Craig Mills (LSO#: 40947B) Tel: 416.595.8596 Email: cmills@millერთhompson.com</p> <p>Lawyers for the Applicant</p>	<p>GOLDMAN SLOAN NASH & HABER LLP 480 University Avenue, Suite 1600 Toronto, ON M5G 1V2 Fax: 416.597.3370</p> <p>Jennifer Stam (LSO#: #46735J) Tel: 416.597.5017 Email: stam@gsnh.com</p> <p>Katie Parent Tel: 416.597.3375 Email: parent@gsnh.com</p> <p>Lawyers for the Receiver, KSV Kofman Inc.</p>
--	---

<p>KSV KOFMAN INC. 150 King Street West, Suite 2308 Box 42 Toronto, ON M5H 1J9</p> <p>Bobby Kofman Tel: 416.932.6228 Email: bkofman@ksvadvisory.com</p> <p>Mitch Vininsky Tel: 416.932.6013 Email: mvininsky@ksvadvisory.com</p> <p>Receiver</p>	<p>JEROME H. STANLEIGH Barrister & Solicitor 5255 Yonge Street, Suite 800 Toronto, ON M2N 5P8 Fax: 416.924.2887</p> <p>Jerome H. Stanleigh Tel: 416.924.0515 Email: jerome@stanleigh.com</p> <p>Lawyers for the Respondents</p>
<p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON</p> <p>Diane Winters Tel: 647.256.7459 Email: diane.winters@justice.gc.ca</p> <p>Rakhee Bhandari Tel: 416.952.8563 Email: Rakhee.bhandari@justice.gc.ca</p>	<p>MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 777 Bay Street, 11th Floor Toronto, ON M5G 2C8</p> <p>Kevin O'Hara Tel: 416.327.8463 Email: kevin.ohara@ontario.ca</p>
<p>AIRD & BERLIS LLP Barristers and Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9 Tel: 416.863.1500 Fax: 416.863.1515</p> <p>Kyle B. Plunkett Email: kplunkett@airdberlis.com</p> <p>Shakaira John Email: sjohn@airdberlis.com</p> <p>Lawyers for Toronto-Dominion Bank</p>	

PPSA REGISTRANTS

<p>MICHAEL BLACHER 5151 Riverside Drive East, Unit 1001 Windsor, ON N8S 4R5</p> <p>c/o MCTAGUE LAW FIRM LLP 455 Pelissier Street Windsor, ON N9A 6Z9</p> <p>Jeffrey MacKinnon Email: jmackinnon@mctaguelaw.com</p> <p>David Sundin Email: dsundin@mctaguelaw.com</p>	<p>BLACHER FAMILY BUSINESS TRUST 5151 Riverside Drive East, Suite 1001 Windsor, ON N8S 4R5</p> <p>c/o MCTAGUE LAW FIRM LLP 455 Pelissier Street Windsor, ON N9A 6Z9</p> <p>Jeffrey MacKinnon Email: jmackinnon@mctaguelaw.com</p> <p>David Sundin Email: dsundin@mctaguelaw.com</p>
<p>PETER DUMO 207 Marjorie Street Tecumseh, ON N8N 3Z5 Email: peterdumo@gmail.com</p>	<p>CLARA DUMO 207 Marjorie Street Tecumseh, ON N8N 3Z5</p>
<p>BLUE CHIP LEASING CORPORATION 156 Duncan Mill Road, Unit 16 Toronto, ON M3B 3N2</p>	
<p>CFE FINANCIAL INC. c/o 80 Richmond Street West, Suite 1400 Toronto, ON M5H 2A4</p> <p>Fraser Elliott Email: cfraserelliott@gmail.com</p>	<p>RJE INVESTMENTS INC. 7712 McCrae Station Puslinch, ON N0B 2J0</p> <p>Fraser Elliott Email: cfraserelliott@gmail.com</p>
<p>NATIONAL LEASING GROUP INC. 1525 Buffalo Place Winnipeg, MB R3T 1L9</p>	<p>FORD CREDIT CANADA LIMITED 17187 114 Ave. NW Edmonton, AB T5S 2N5</p>

<p>MCKESSON CANADA CORPORATION 6355 Viscount Road Mississauga, ON L4V 1W2</p> <p>Bernard Lefebvre Email: bernard.lefebvre@mckesson.ca</p>	<p>THINKING CAPITAL 4200 Boul Dorchester, Suite 3 Montreal, QC H3Z 1V4</p>
<p>CIT FINANCIAL LTD. 5035 South Service Road Burlington, ON L7R 4C8</p>	

EMAIL ADDRESS LIST

cmills@millerthomson.com; stam@gsnh.com; parent@gsnh.com; bkofman@ksvadvisory.com;
mvininsky@ksvadvisory.com; jerome@stanleigh.com; diane.winters@justice.gc.ca;
Rakhee.bhandari@justice.gc.ca; kevin.ohara@ontario.ca; kplunkett@airdberlis.com;
sjohn@airdberlis.com

ECN FINANCIAL INC. and 2345760 ONTARIO INC., et al.

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

NOTICE OF MOTION
returnable February 26, 2020
(Walpole and Novacare Approval and Vesting Orders)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO #46735J)
Tel: 416-597-5017
Email: stam@gsnh.com

Lawyers for the Receiver, KSV Kofman Inc.

TAB 2



**Second Report of
KSV Kofman Inc.
as Receiver of
Rando Drugs Ltd.
and Related Companies**

February 19, 2020

Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Restrictions	3
2.0 Background	3
3.0 Sale Process	4
4.0 The APA	5
4.1 Novacare Lease.....	8
4.2 Family Health East and Family Health West Lease	9
4.3 Regulatory Approval.....	9
4.4 Notice to Stakeholders	10
4.5 Recommendation	10
4.6 Sealing.....	11
5.0 Grace Dena	11
6.0 Receiver’s Activities.....	12
7.0 Conclusion and Recommendation	13

Appendices

Appendix	Tab
Receivership Order dated December 4, 2019.....	A
Pre-filing Report dated December 3, 2019.....	B
Agreement of Purchase and Sale with Amendments (redacted)	C
Novacare lease (undated).....	D
Co-Tenancy Agreement provided January 11, 2020	E
Novacare Landlord Correspondence	F
Forbearance Agreement.....	G

Confidential Appendices

RSP Offer Summary	1
Issues with Leases	2
Agreement of Purchase and Sale with Amendments (unredacted)	3



COURT FILE NO.: CV-19-00632106-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ECN FINANCIAL INC.

APPLICANT

- AND -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY
HEALTH PHARMACY WEST INC. FORMERLY KNOWN AS M. BLACHER DRUGS LTD.,
2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. AND 2527475
ONTARIO INC.

RESPONDENTS

SECOND REPORT OF KSV KOFMAN INC.
AS RECEIVER OF THE ASSETS, PROPERTY AND UNDERTAKING OF
RANDO DRUGS LTD. AND RELATED COMPANIES

FEBRUARY 19, 2020

1.0 Introduction

1. This report (the "Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as receiver (the "Receiver") of the property, assets and undertaking of 2345760 Ontario Inc ("2345"), Rando Drugs Ltd. ("Rando"), 2275518 Ontario Inc. ("2275"), M. Blacher Drugs Ltd.¹ ("Blacher"), 2501380 Ontario Inc. ("2501"), 2527218 Ontario Inc. ("2527218"), Dumopharm Inc. ("Dumopharm") and 2527475 Ontario Inc. ("2527475") (collectively, the "Company").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on December 4, 2019 (the "Receivership Order"), KSV was appointed Receiver. A copy of the Receivership Order is attached as Appendix "A".
3. The principal purpose of the receivership proceedings is to allow the Company's four pharmacies (the "Pharmacies") (which are believed to be owned by Rando) and its physiotherapy clinic (which is believed to be owned by 2275 and operates as "Abira") to continue to operate while the Receiver works to complete a sale of some or all of these businesses on a going-concern basis.

¹ Now known as Family Health Pharmacy West Inc. This should not be confused with Family Health Pharmacy West, which is an unincorporated division of Rando.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information regarding the Company;
 - b) summarize the marketing process for the Pharmacies and the Court-approved process pursuant to which the opportunity to acquire the Pharmacies was carried out during these proceedings (the "Sale Process");
 - c) summarize the terms of an asset purchase agreement dated December 18, 2019 (the "Original APA"), as amended on January 31, 2020 (the "Amendment" and together with the Original APA, the "APA"), between the Receiver and 2258156 Ontario Inc. (the "Purchaser") for substantially all the business and assets of the Debtors²;
 - d) set out the reasons that the Receiver is only seeking approval at this time of the sale of the Company's pharmacies located at 785 Tecumseh Road, Unit #16, Walpole Island ("Walpole") and 3A-1275 Walker Road, Windsor ("Novacare");
 - e) summarize the Receiver's rationale for: i) seeking an assignment to the Purchaser of the lease held jointly by Dumopharm and CEDV Inc. ("CEDV"), a company not subject to these receivership proceedings but related to Rando's principal; and ii) vesting out, on closing, any interest in respect of CEDV from the Novacare Lease (as defined in Section 4.1.1 below);
 - f) summarize certain of the buyer's conditions which must be completed in order to close the sale of the pharmacies subject to the APA;
 - g) provide the Receiver's rationale for sealing certain confidential information, including a portion of the APA that does not deal with the sale of the Pharmacies;
 - h) set out the reasons that ECN (as defined below) is seeking to expand the Receivership Order to include Grace Diena, the spouse of the Company's principal; and
 - i) recommend that the Court issue an order:
 - i. approving the execution by the Receiver of the APA;
 - ii. approving only the portion of the transactions in the APA relating to Walpole and Novacare (the "Transactions");
 - iii. assigning the Novacare Lease to the Purchaser free and clear of any interest of CEDV;

² "Debtors" as defined in the APA means Rando and Dumopharm.

- iv. authorizing the Receiver to enter into any other ancillary documents and agreements required to complete the Transactions;
- v. vesting the Debtors' right, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser, free and clear of all liens, charges, security interests and encumbrances, other than the Permitted Encumbrances, for the Novacare and Walpole locations;
- vi. sealing the confidential appendices to this Report on the terms set out below;
- vii. expanding the Receivership Order to include Ms. Diena; and
- viii. approving this Report and the Receiver's activities described herein.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information prepared by the Company, the books and records of the Company and discussions with representatives of the Company. 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 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 KSV in preparing this Report. The Receiver accepts no reliance for any financial disclosure provided in this Report and any party interested in the Company is encouraged to perform its own due diligence.

2.0 Background

1. As of the date of the Receivership Order, 2345 was indebted to ECN Financial Inc. ("ECN") in the amount of approximately \$4.3 million (the "ECN Facility"), plus interest, fees and costs which continue to accrue. Each of Rando, 2275, Blacher, 2501, 2527218, Dumopharm and 2527475 are secured guarantors of 2345's indebtedness under the ECN Facility. As discussed in Section 5 below, Ms. Diena is also a secured guarantor although she presently is not subject to the Receivership Order.
2. The Company owns and operates the following four pharmacies in Southwestern Ontario under the PharmaChoice banner:
 - a) Family Health Pharmacy West, located at 1604 Tecumseh Road West, Windsor ("Family Health West");
 - b) Family Health Pharmacy East, located at 6720 Hawthorne Drive, Windsor ("Family Health East");

- c) Walpole; and
 - d) Novacare.
3. Each pharmacy operates as a separate division of Rando. Dani Diena is the President of Rando and every other Company subject to the Receivership Order. To the Receiver’s knowledge, Mr. Diena is an undischarged bankrupt. Mr. Diena’s trustee, MSI Spergel Inc. (“Spergel”) has not contacted the Receiver since the commencement of these proceedings nor has it taken any positions within these receivership proceedings.
 4. Of the remaining borrowers and guarantors under the ECN Facility, the only other business is carried on by Abira. The Toronto-Dominion Bank (“TD”) and ECN are secured creditors of Abira. Pursuant to a priorities agreement between TD and ECN dated March 4, 2016, Abira’s indebtedness to TD appears to have priority over its indebtedness to ECN, which is pursuant to a secured guarantee. Abira’s indebtedness to TD totalled approximately \$980,000 at the commencement of the receivership proceedings. The Abira business continues to operate.
 5. Additional information about the Company is provided in KSV’s report to Court as proposed receiver dated December 3, 2019 (the “Pre-filing Report”). A copy of the Pre-filing Report is provided in Appendix “B”, without appendices.
 6. The Court materials filed in these proceedings are available on the Receiver’s website at <https://www.ksvadvisory.com/insolvency-cases/case/rando-drugs-ltd>.

3.0 Sale Process

1. As set out in Section 4 of the Pre-filing Report, KSV was retained by the Company on July 31, 2019 to conduct a refinancing and sale process (“RSP”) for the Pharmacies. Several strong offers were submitted in that process. Details of the RSP and a summary of the offers received are provided in Confidential Appendix “1”³. At the time, KSV believed the strongest offer had been submitted by Bidder Two (as referenced in the confidential appendix). Ultimately, Mr. Diena chose to pursue the offer submitted by Bidder One, which was not recommended by KSV and never closed.
2. As set out in the Pre-Filing Report, given the wide canvassing and orderly marketing of the Company already performed by KSV under the RSP, the Receiver intended to re-approach the parties that submitted the best offers in the RSP. The Receiver intended to re-market the business and assets if parties did not express a continuing interest. The Court approved this approach pursuant to the Receivership Order.
3. Upon its appointment, the Receiver contacted the Purchaser. The Purchaser is referred to as “Bidder Two” in Confidential Appendix “1”. As set out above, the Receiver believed Bidder Two’s offer was the strongest submitted in the RSP.

³ This appendix was also included with the Pre-Filing Report.

- 4. The Purchaser advised the Receiver that it continued to have an interest; however, due to issues which came to light subsequent to the RSP that may affect a transaction, the Purchaser advised that it would only continue to have an interest at a lower price than its bid in the RSP. The Purchaser also advised that the structure of its bid would also have to reflect the risks in the transaction. Certain of the issues giving rise to these changes are discussed in Confidential Appendix "2".
- 5. Notwithstanding the reduction in the value of the Purchaser's offer, the Receiver believes that the Purchaser's offer remained attractive for the following reasons:
 - a) it was not subject to a financing condition;
 - b) the Purchaser represented that it had completed substantially all its due diligence;
 - c) the principal of the Purchaser is an experienced pharmacist who operates multiple pharmacies;
 - d) the Purchaser is interested in all four Pharmacies and other assets;
 - e) the total value of the Purchaser's offer exceeds the ECN debt; and
 - f) the issues which caused the Purchaser to reduce the value of its offer would also cause all other bidders to also reduce their offer.
- 6. The Receiver, with the assistance of its counsel, Goldman, Sloan, Nash and Haber LLP ("GSNH"), worked with the Purchaser and its counsel to finalize the terms of the Original APA. The offer was finalized and accepted on December 18, 2019.

4.0 The APA⁴

- 1. The APA is structured to allow the Receiver to close the sale of each Pharmacy individually. This structure was necessary as there are issues unique to the sale of each location.
- 2. The key terms of the APA include:
 - a) Purchaser: 2258156 Ontario Inc.
 - b) Purchase price: The purchase price and the allocation of the purchase price among the Pharmacies is included in Confidential Appendix "3".

⁴ Defined terms in this section of the Report have the meanings provided to them in the APA.

- c) Deposit:
- i. The Purchaser will pay 10% of the Purchase Price (net of the Inventory Amount) (the "Initial Deposit") upon the execution of the Original APA, to be held by the Receiver in trust until Closing. Upon closing, the Initial Deposit will be credited toward the Purchase Price. The Initial Deposit was provided to the Receiver on December 19, 2019;
 - ii. An additional sum of 5% of the Purchase Price (net of the Inventory Amount) (the "Additional Deposit") was to be paid to the Receiver, in trust, upon the earlier of (a) January 31, 2020; and (b) obtaining Landlord Approval (discussed in paragraph "h" below). The deadline to pay the Additional Deposit was extended to March 13, 2020 pursuant to the Amendment.
- d) Assets to be purchased: All of the Debtors' right, title and interest in and to substantially all of the business, assets and contracts of the Pharmacies, excluding accounts receivable, cash and cash equivalents, intercompany receivables, deposits, HST receivables, tax refunds, claims, insurance or insurance claims, and any contracts not specifically included in the Contracts.
- e) Inventory: The Purchaser shall pay the following amounts for Inventory upon completion of the sale of each Pharmacy:
- i. ●% of the cost for generic prescription drugs;
 - ii. ●% of the cost for brand name prescription drugs; and
 - iii. ●% of the cost for all over-the-counter medicine and sundry items.

A redacted version of the APA is provided in Appendix "C". An unredacted version is provided in Confidential Appendix "3". The above amounts are provided in the unredacted APA. The reasons for including certain information in confidential appendices are provided in Section 4.5 below.

The Receiver has also redacted certain sections of the APA which have nothing to do with the Transactions and for which approval is not being sought at this time.

- f) Assumed obligations: All obligations and liabilities of the Company under the Contracts and in respect of the Transferred Employees. Within ten (10) Business Days of the Purchaser advising the Receiver it has obtained a Landlord Approval for a Leased Location, the Purchaser shall provide a list to the Receiver of those employees of the Debtor at the Leased Location it wishes to offer employment. The employees who accept the Purchaser's employment offer shall be referred to as the Transferred Employees.

- g) "As is, where is": The agreement is consistent with standard insolvency transactions, i.e. to be completed on an "as is, where is" basis with minimal representations, warranties and conditions.
- h) Conditions in favour of the Purchaser: The following are the material conditions in favour of the Purchaser:
- i. Landlord Approval – pursuant to the Amendment, on or before March 13, 2020, the Purchaser will have obtained consents by the landlords of the Leased Locations to assignments of the applicable leases, including options to extend for up to 10 years⁵ or new leases for the Leased Locations. In the event that Landlord Approval is obtained for some of the Leased Locations but not all of the Leased Locations, the Parties may, but are not obligated to, close the sale of those Leased Locations for which the Landlord Approval has been received.
 - ii. Ontario College of Pharmacists ("OCP") – on or before February 28, 2020, the Purchaser will have obtained a new certificate of accreditation by the OCP. Pursuant to the Amendment, this has been extended to April 17, 2020.
 - iii. Ontario Drug Benefit Plan ("ODB") - on or before February 28, 2020, the Purchaser will have obtained new billing privileges for all Leased Locations under the ODB with the Ministry of Health (Ontario) and all third-party payors of the Leased Locations. Pursuant to the Amendment, this was extended to April 17, 2020; and
 - iv. Approval and Vesting Order – the obligations of the Receiver and Purchaser to complete the Transactions are subject to an order of the Court on or before March 13, 2020 approving the APA and the Transactions. Pursuant to the Amendment, this was extended to May 8, 2020.
3. As of the date of this Report, the Purchaser and the Walpole landlord are finalizing the terms of a new lease. The Receiver understands that the lease should be completed by the return of this motion.
4. As discussed in Section 4.1 below, Landlord approval has not been obtained for the Novacare location. This lease is to be assigned to the Purchaser.

⁵ Based on discussions with certain landlords, this term may need to be amended. The Purchaser has advised that there is some flexibility in this regard.

4.1 Novacare Lease

1. Rando occupies the Novacare pharmacy pursuant to a lease (together with all renewals, the "Novacare Lease") between Dumopharm, a non-operating entity subject to the Receivership Order, and Walker Plaza 1200 Inc. (the "Novacare Landlord"). Pursuant to a co-tenancy agreement dated February 12, 2017, CEDV was added to the lease as a co-tenant. CEDV is believed to be owned or controlled by Mr. Diena.
2. A copy of the Novacare Lease (which is undated) is provided in Appendix "D". The Novacare Lease expired on December 31, 2019 but was renewed by Rando prior to the receivership. The Novacare Landlord's counsel has yet to provide a draft renewal but the assignment of the Novacare Lease would include all renewals including the current one. The Company provided the Receiver with an email confirming that it had exercised the renewal. The Company is continuing to occupy the Novacare premises.
3. Mr. Diena advised the Receiver that CEDV is an entity that financed certain leasehold improvements for the Novacare location with a loan from an entity other than ECN and that CEDV's addition as a tenant to the lease was obtained in connection with this transaction. Mr. Diena has advised that CEDV has not and does not occupy that location and that the structure was purely financial in nature.
4. Shortly after entering into the Original APA, the Receiver reached out to the Novacare Landlord's counsel, Gatti Law Professional Corporation ("Gatti"), to discuss assignment of the Novacare Lease to the Purchaser (or the entering into of a new lease). Gatti indicated that it was only prepared to enter into a new lease (or assignment) and deal with the Purchaser if the issues concerning CEDV were addressed with no doubt as to which entity (Dumopharm and/or CEDV) could deal with the Novacare Lease.
5. To provide such certainty to Gatti and in order to complete a transaction for the Novacare location, Mr. Diena provided a co-tenant acknowledgement on behalf of CEDV on January 11, 2020 (the "Co-tenancy Acknowledgement"), attached as Appendix "E", that provides:

"the Co-tenant will consent to any lease assignment recommended by the Receiver as part of a transaction and release any rights it may have as a Co-tenant and/or allow its interest to be vested out by a vesting order".
6. Gatti did not accept the Co-Tenancy Acknowledgment as sufficient evidence that it could discuss the lease assignment or new lease term with the Receiver and/or the Purchaser.
7. A summary of the Receiver's and GSNH's correspondence with the Novacare Landlord and Gatti is as follows:
 - a) on January 2, 2020, Gatti advised the Receiver and GSNH that CEDV's interest in the Novacare lease restricts it from negotiating a new or assigned lease in favour of the Purchaser;

- b) on January 13, 2020, the Receiver and GSNH provided a copy of the Co-tenancy Acknowledgement to Gatti;
 - c) on January 22, 2020, Gatti advised the Receiver that, notwithstanding the Co-Tenancy Acknowledgment, it would only commence discussions regarding the terms of a new lease after the Receiver obtains a Court order vesting out the interest of CEDV from the Novacare lease; and
 - d) on January 24, 2020, Gatti advised the Receiver and GSNH that until such time as the Novacare Landlord has full control of the lease, it will not enter any form of negotiation with the Purchaser.
8. A copy of the Receiver's correspondence with Gatti is provided in Appendix "F".
9. Given the above, the Receiver is seeking to assign the Company's existing Novacare Lease to the Purchaser. This is acceptable to the Purchaser. The Purchaser and the Novacare Landlord can negotiate a new lease thereafter if that is what they decide to do. The Receiver believes this assignment is appropriate for the following reasons:
- a) The Purchaser is a pharmacist operating approximately 30 locations, the majority of which have been operating for ten years and more;
 - b) The Purchaser satisfied due diligence performed by the Walpole landlord;
 - c) The Receiver has no reason to believe the Purchaser cannot or will not perform its obligations under the Novacare Lease;
 - d) Neither the Novacare Landlord nor Gatti have indicated they have any concerns with the Purchaser itself and in fact have indicated they are "happy" to discuss the Novacare location with the Purchaser once the certainty of the tenant/co-tenant arrangement is addressed;
 - e) There are no outstanding monetary defaults under the Novacare Lease of which the Receiver is aware; and
 - f) The assignment of the Novacare Lease is a key condition for that sale – without the Novacare Lease, the Transaction for that location will not close.

4.2 Family Health East and Family Health West Lease

1. The status of these leases is discussed in Confidential Appendix "2".

4.3 Regulatory Approval

1. The sale of any pharmacy in Ontario is conditional on obtaining approval from the OCP and the Ministry of Health, as described above in Section 4.

2. The Receiver has been advised that to obtain approval from the OCP, OCP requires evidence of a new lease, or an assignment of an existing lease. The application for such approval can therefore only be made if this Court approves the Transactions and the Purchaser secures leases for the Novacare and Walpole locations.
3. The Receiver understands that the OCP approval process takes approximately one month.

4.4 Notice to Stakeholders

1. In addition to the parties on the service list, the Receiver intends to provide notice of this motion to:
 - a) all landlords or landlord's counsel;
 - b) PharmaChoice – pursuant to various “membership agreements”, PharmaChoice has a contractual right of first refusal for the sale of the assets or shares of the Debtor. Mr. Diena has advised the Receiver that PharmaChoice has waived its right to exercise its right of first refusal;
 - c) Spergel; and
 - d) All personal property security registrants.

4.5 Recommendation

1. The Receiver recommends that this Court approve the Transactions for the following reasons:
 - a) as detailed in the Pre-filing Report, the RSP carried out by KSV in advance of these proceedings canvassed a large number of parties on an orderly basis over a significant period of time. The process identified several strong offers;
 - b) upon its appointment, the Receiver re-engaged with certain interested parties on the basis set out in the Pre-filing Report. In the Receiver's opinion, the Purchaser submitted the best offer in the RSP;
 - c) ECN, the Company's largest secured creditor, supports the Transactions;
 - d) the value of the offer is significant – the APA needs to be closed in stages due largely to issues related to the Company's leases;
 - e) the Purchaser's Principal is knowledgeable about the pharmacy business. The Receiver understands that he directly or indirectly owns approximately 30 pharmacies and medical centers;
 - f) the reduction in the value of the Transactions versus the offer submitted by the Purchaser in the RSP is justified due to the issues that have been identified since the completion of the RSP;

- g) the Transactions are expected to preserve employment for a substantial number of the Company's employees on terms similar to those currently in place;
 - h) completion of the sale of Walpole and Novacare will reduce receivership costs and professional fees and can be completed outside of the transactions for Family Health East and Family Health West; and
 - i) the Receiver does not believe that further time spent marketing the Company's business and assets will result in a superior transaction.
2. The Receiver also recommends that the Court issue an Order assigning the Novacare lease to the Purchaser as it is integral to completing the sale of that location.

4.6 Sealing

1. The Receiver recommends that the details regarding the marketing process undertaken by KSV in the RSP, the unredacted version of the APA and the confidential appendix related to the two other leases be filed with the Court on a confidential basis and remain sealed pending further order of the Court. The availability of this information to other parties may negatively impact any future sale process for the Company's business and assets if the transactions do not close. The information in the appendices also contains confidential information concerning certain of the Company's business and assets that are not related to the Transactions. The Receiver is concerned that if this information is made public at this time, that portion of the APA may be put at risk. The Receiver does not believe that any stakeholder will be prejudiced if the information is sealed.

5.0 Grace Diena

1. Ms. Diena is a secured guarantor of 2345's indebtedness under the ECN Facility.
2. Pursuant to a forbearance agreement dated July 17, 2019 (the "Forbearance Agreement"), Ms. Diena acknowledged, among other things, the Notices of Intention to Enforce Security issued by ECN pursuant to section 244 of the *Bankruptcy and Insolvency Act* and consented to the appointment of a receiver over the Company and herself. A copy of the Forbearance Agreement is provided in Appendix "G".
3. Ms. Diena is also a guarantor of Abira's indebtedness to TD, which is unsecured. Pursuant to a letter dated February 13, 2020, TD demanded repayment from Ms. Diena of the amounts owing by Abira.
4. ECN has advised the Receiver that it will be bringing a motion to expand the Receivership Order to include Ms. Diena for the purposes of, among other things:
 - seeking a stay of proceedings applying against her;
 - preventing her from disposing, selling or encumbering any of her assets;

- allowing the Receiver to investigate her financial situation, including the assets that she owns or owned, directly or indirectly⁶; and
 - authorizing the Receiver to register the Receivership Order on title to any real property that she owns.
5. If appointed over Ms. Diena, the Receiver would require that within ten business days she disclose all assets she owns and list any assets that she has disposed of within the last five years.
6. The Receiver believes that the relief being sought by ECN is appropriate in light of Ms. Diena's secured guarantee of the amounts owing to ECN, as described in this Report. Accordingly, the Receiver recommends that this Court expand the Receivership Order to include Ms. Diena.

6.0 Receiver's Activities

1. In addition to the activities summarized in this Report, the Receiver's activities since commencement of these proceedings have included:
- Attending at each of the Pharmacies and advising the pharmacists of the Receiver's appointment;
 - Meeting and corresponding regularly with Mr. Diena regarding the operations of the Pharmacies;
 - Corresponding on a near-daily basis with the pharmacists regarding the operation of the Pharmacies;
 - Dealing with the Company's vendors and arranging terms to, among other things, purchase inventory;
 - Assisting the Company to prepare a response to an examination conducted by the OCP;
 - Reviewing daily transaction reports provided by the Pharmacies;
 - Reviewing pharmacist scheduling at the Pharmacies;
 - Dealing with the bi-weekly payroll and contractor payments related to the Pharmacies;
 - Corresponding with the Company's insurance agent regarding the Company's policies;
 - Preparing rolling four-week projected cash flow forecasts;

⁶ This may include the Grace Family Trust (the "Trust"). The Receiver presently has limited information on the ownership and structure of the Trust, including the assets it holds and its beneficiaries.

- Comparing weekly budget-to-actual results;
- Corresponding with Canada Revenue Agency regarding the Company's payroll and sales tax accounts;
- Arranging for the Company's obsolete computers to be replaced at each of the Pharmacies;
- Assisting the Pharmacies to prepare job postings and deal with new hires;
- Attending at Abira's location;
- Reviewing historical financial information related to Abira;
- Meeting with Mr. Diena to discuss recent changes to Abira's business and the loss of certain contracts;
- Dealing with TD concerning the Abira business and receivership;
- Corresponding with the Ministry of Health (Ontario) regarding Abira's account and monthly payments subject to a garnishment order by a judgment creditor;
- Arranging for Abira's judgment creditor to pay to the Receiver certain amounts the judgement creditor received following the date of the Receivership Order;
- Providing updates to ECN on, among other things, the status of these proceedings;
- Preparing the Receiver's First Report dated January 16, 2020;
- Preparing the Receiver's Confidential Update dated January 30, 2020; and
- Preparing this Report.

7.0 Conclusion and Recommendation

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

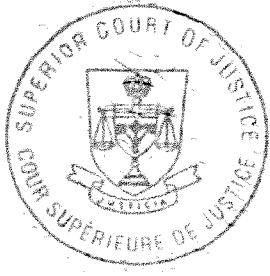
* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
THE PROPERTIES, ASSETS AND UNDERTAKINGS OF
RANDO DRUGS LTD. AND RELATED COMPANIES
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”



Court File No. CV-19-00632106

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 4TH
JUSTICE HAINEY) DAY OF DECEMBER, 2019

BETWEEN

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD, 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KSV Kofman Inc. ("KSV") as receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of 2345760 Ontario Inc., ("234") Rando Drugs Ltd. ("Rando"), 2275518 Ontario Inc. ("227"), Family Health Pharmacy West Inc. Formerly known as M. Blacher Drugs Ltd. ("West Inc."), 2501380 Ontario Inc. ("250"), 2527218 Ontario Inc. ("25272"), Dumopharm Inc. ("Dumopharm") and 2527475 Ontario Inc. ("25274") (together, the



“Debtors”) acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Adam Flomen sworn December 3, 2019, the pre-filing report filed by KSV dated December 3, 2019 (the **“Report”**), and on hearing the submissions of counsel for the Applicant and the Respondent, and on reading the Consent executed by the Defendants to the appointment of a receiver, the Consent executed by KSV to act as the Receiver and the Affidavit of Service of Maureen McLaren sworn December 3, 2019,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record and the Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the **“Property”**).

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage pharmacists, consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors, and to deposit such monies in a separate bank account controlled by the Receiver and pay such disbursements that are necessary for the continued operation of the business of the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including pursuant to the Sale Process (defined below), including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to summarily dispose of Property that is perishable or likely to depreciate rapidly in value;

- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the Receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any licensed insolvency trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to inquire into and report to the Applicant and the Court on the financial condition of the Debtors and the Property and any material adverse developments relating to the financial condition of the Debtors and/or the Property; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;
- (u) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including, but not limited to the Ontario College of Pharmacists, the Ministry of Health and Long-Term Care, the Ontario Drug Benefit Program and any insurance company (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any client records and prescription information ("**Client Records**"), books, documents, securities, contracts, orders, billing privileges, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall, subject to Paragraph 6A herein, provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5A. THIS COURT ORDERS that, should the Receiver deem it necessary to seek from any insurance company or its pharmacy benefits manager personal information regarding persons covered pursuant to benefit plans which might have had claims under such plans relating to the Debtors, such information shall be sought pursuant to a

motion on notice to the insurance company and its pharmacy benefits manager. Such information shall only be released by the insurance company or its pharmacy benefits manager on the agreement of such insurance company or as provided in the Order so obtained.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

6A. THIS COURT ORDERS that in respect to the Client Records, the Receiver shall: (i) take all steps reasonably necessary to maintain the integrity of the confidential aspect of the Client Records; (ii) if necessary, appoint a pharmacist licensed and qualified to practice in the Province of Ontario to act as custodian (the "Custodian") for the Client Records; (iii) not allow anyone other than the Receiver or the Custodian to have access to the Client Records; (iv) allow the Debtors supervised access to the Client Records for any purposes required pursuant to the *Regulated Health Professions Act, 1991*, the *Pharmacy Act, 1991* or any other governing Ontario or Canadian statute, that requires the Debtors, from time to time, to perform certain obligations.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased

premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii)

prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, claims processing services, payment processing services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post

Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

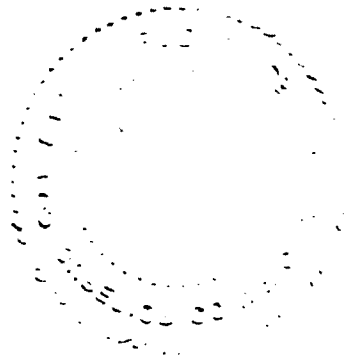
SALE PROCESS

14A. THIS COURT ORDERS that sale process as described in Section 5 of the Report (the "Sale Process") be and is hereby approved provided that the approval of the Sale Process shall not preclude the Receiver from entering into one or more sale transactions without conducting the Sale Process.

14B. THIS COURT ORDERS that Confidential Appendix E to the Report be and is hereby sealed pending further Order of this Court.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such

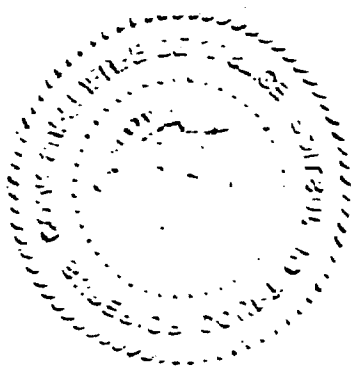


information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

16. THIS COURT ORDERS that, pursuant to section 42 of the Ontario *Personal Health Information Protection Act* ("PHIPA"), the Receiver shall only disclose personal health information to prospective purchasers or bidders who are potential successor(s) to the pharmacy business of the Debtors (the "**Pharmacy**") as Health Information Custodian(s) (as defined in the PHIPA) for the purposes of allowing the potential successor to assess and evaluate the operations of the Pharmacy. Each potential successor to whom such personal health information is disclosed is required in advance of such disclosure to review and sign an acknowledgement of this Order indicating that it agrees to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purposes of the assessment or evaluation, and if such potential successor does not complete a Sale, such potential successor shall return all such information to the Receiver, or in the alternative shall destroy all such information. Such acknowledgement shall be deemed to be an agreement between the Receiver and the potential successor for the purposes of section 42 of PHIPA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other



contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"); provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

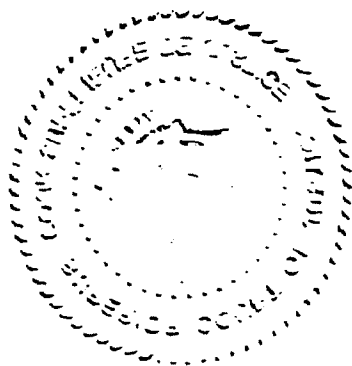
LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its



legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ksvadvisory.com/insolvency-cases/rando/.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day

following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

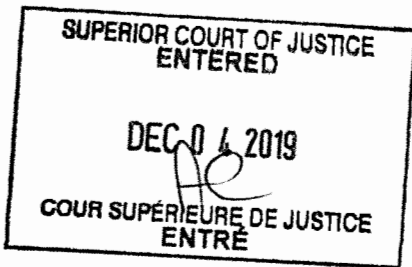
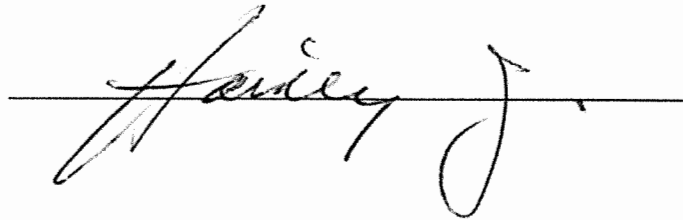
30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. THIS COURT ORDERS that the Receiver, its counsel and counsel for the Applicant are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).



SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Kofman Inc., the Receiver (the "Receiver") of the assets, undertakings and properties 2345760 Ontario Inc., Rando Drugs Ltd., 2275518 Ontario Inc., Family Health Pharmacy West Inc. Formerly known as M. Blacher Drugs Ltd., 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc. and 2527475 Ontario Inc. (collectively the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 4th day of December, 2019 (the "Order") made in an action having Court file number CV-19-00632106, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2019.

KSV Kofman Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per
:

Name:

Title:

ECN FINANCIAL INC.
Applicant

and

2345760 ONTARIO INC., et al.
Respondents

Court File No: CV-19-00632106

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

**ORDER
(APPOINTING RECEIVER)**

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Craig A. Mills LSUC#: 40947B
Tel: 416.595.8596
Email: cmills@millerthomson.com

Fax: 416.595.8695

Solicitors for the Applicant

54

Appendix "B"



ksv advisory inc.

St

**Report of
KSV Kofman Inc.
as Proposed Receiver of Rando Drugs Ltd.
and Related Companies**

December 3, 2019

Contents		Page
1.0	Introduction.....	1
1.1	Purposes of this Report.....	3
1.2	Restrictions	3
2.0	Company Background	3
3.0	ECN and the Forbearance Agreement.....	4
4.0	RSP	4
5.0	Sale Process	6
5.1	Sale Process Recommendation	8
6.0	Conclusion and Recommendation	8

Schedules and Appendices

Appendix		Tab
	Forbearance Agreement.....	A
	Engagement Letter	B
	Consent	C
	Corporate Organizational Chart	D
 Confidential Appendix		 Tab
	RSP Summary.....	1



58

COURT FILE NO.: CV-19-00632106-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF s. 243 (1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

BETWEEN:

ECN FINANCIAL INC.

APPLICANT

- AND -

2345760 ONTARIO INC., RANDO DRUGS LTD., GRACE DIENA, 2275518 ONTARIO INC.,
FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS
LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475
ONTARIO INC.

RESPONDENT

REPORT OF
KSV KOFMAN INC.
AS PROPOSED RECEIVER

DECEMBER 3, 2019

1.0 Introduction

1. This report (the "Report") is filed by KSV Kofman Inc. ("KSV") as proposed receiver and manager of the property, assets and undertaking of 2345760 Ontario Inc ("2345"), Rando Drugs Ltd. ("Rando"), 2275518 Ontario Inc. ("2275"), M. Blacher Drugs Ltd¹. ("Blacher"), 2501380 Ontario Inc. ("2501"), 2527218 Ontario Inc. ("2527218"), Dumopharm Inc. ("Dumopharm") and 2527475 Ontario Inc. ("2527475") (collectively, the "Company"). Although Grace Diena is listed as a respondent above, KSV understands no order is being sought against her at this time.

¹ Now known as Family Health Pharmacy West Inc. This should not be confused with Family Health Pharmacy West, which is an unincorporated division of Rando.

2. As of the date of this Report, 2345 was indebted to ECN Financial Inc. ("ECN") in the amount of approximately \$4.1 million (the "ECN Facility"). Each of Rando, 2275, Blacher, 2501, 2527218, Dumopharm and 2527475 are secured guarantors of 2345's indebtedness under the ECN Facility.
3. Of the borrowers and guarantors under the ECN Facility, the only business is carried on by Rando, which operates four pharmacies in Southwestern Ontario under the PharmaChoice banner (the "Pharmacies"). Each pharmacy is an unincorporated division of Rando.
4. On July 17, 2019, the Company and ECN entered into a Forbearance Agreement (the "Forbearance Agreement"). ECN's application materials will provide further background about the events of default leading up to the entry into the Forbearance Agreement. Specifically, as it pertains to KSV, pursuant to the Forbearance Agreement:
 - a) the Company agreed to retain KSV Advisory Inc.² to act as its advisor (the "Advisor") to conduct a refinancing and sale process for the Pharmacies (the "RSP") [section 5.1(a)]. The Forbearance Agreement originally contemplated the retention of a different advisory firm; however, 2345 and ECN agreed to retain KSV for the mandate;
 - b) the Company agreed that KSV's appointment as Advisor did not preclude it from being appointed as receiver [section 6.2(f)]; and
 - c) the Company consented to the appointment of a receiver which consent was to be held in escrow pending the termination of the Forbearance Agreement or an "intervening event" (as defined therein) [Section 3.2(c) and Schedule G].
5. The Company entered into an engagement letter with KSV dated July 31, 2019 (the "Engagement Letter") appointing it as Advisor as contemplated by the Forbearance Agreement. Pursuant to Section 7 of the Engagement Letter, the Company specifically consented to KSV or its affiliates acting as a court-appointed officer in any formal insolvency proceeding involving the Company.
6. Copies of the Forbearance Agreement and the Engagement Letter are attached as Appendices "A" and "B" respectively.
7. The principal purpose of the receivership proceedings is to allow the Company's business to continue to operate on a going-concern basis while a Court-supervised sale process for the Company's business and assets is carried out by a receiver. In its role as Advisor, KSV has already conducted an extensive RSP with respect to the Pharmacies including preparing teaser letters, confidential information memoranda and the like.

² KSV Kofman Inc. carries out all of KSV's formal insolvency appointments. Consulting services are provided by KSV Advisory Inc.

60

8. KSV has consented to act as receiver. A copy of KSV's consent is attached as Appendix "C". KSV is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"). KSV is not the auditor of the Company. KSV is not subject to any of the restrictions on who may be appointed as receiver set out in section 13.3 of the BIA.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information regarding the Company;
 - b) summarize the RSP carried out by KSV as Advisor;
 - c) summarize the proposed process pursuant to which the Company's business and assets would be marketed for sale by KSV, as receiver, during the receivership proceedings (the "Sale Process"); and
 - d) recommend that the Court issue an order, among other things:
 - i. appointing KSV as receiver and manager of the Company; and
 - ii. approving the Sale Process.

1.2 Restrictions

1. In preparing this Report, KSV has relied upon unaudited financial information prepared by the Company, the books and records of the Company and discussions with representatives of the Company. KSV has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Company's representative's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. KSV accepts no reliance for any financial disclosure provided in this Report and any party interested in the Company is encouraged to perform its own due diligence.

2.0 Company Background

1. The Pharmacies (all of which are owned by Rando) are located in Southwestern, Ontario. Each pharmacy is a separate division of Rando. Dani Diena is the President of Rando and of every other Company subject to the Application. A corporate chart is provided in Appendix "D".
2. The Pharmacies are located at the following addresses:
 - a) Family Health Pharmacy West located at 1604 Tecumseh Road West, Windsor ("Pharmacy West");

- b) Family Health Pharmacy East located at 6720 Hawthorne Drive, Windsor ("Pharmacy East");
 - c) Novacare Pharmacy located at 3A-1275 Walker Road, Windsor; and
 - d) Family Health Pharmacy Walpole located at 785 Tecumseh Road, Walpole Island.
- 2. The Pharmacies largely operate independently, with minimal support from Rando. Rando provides some administrative head office functions for the Pharmacies.
 - 3. Excluding Mr. Diena, Rando has approximately 19 employees and 11 contractors who work in the Pharmacies. The business is also supported by a controller who works at Rando's head office in North York, Ontario. The controller is not exclusively dedicated to Rando's business. Rando's workforce is not unionized, and Rando does not provide a pension plan.

3.0 ECN and the Forbearance Agreement

- 1. ECN is the Company's most significant secured creditor. As at the date of this Report, ECN was owed approximately \$4.1 million. The ECN application materials provide details concerning the defaults under the ECN Facility, the circumstances of the Forbearance Agreement and the subsequent defaults leading to this Application.
- 2. Pursuant to the Forbearance Agreement, the Company was required to retain an advisor to conduct a process that, by November 30, 2019, would result in either:
 - a) an executed and verifiable commitment letter for a refinancing of all the ECN debt with a transaction closing date on or before December 31, 2019; or
 - b) an executed and verifiable agreement of purchase and sale in respect of the Pharmacies in an amount sufficient to pay the ECN Facility in full, with a closing date on or before December 31, 2019.

4.0 RSP

- 1. KSV's mandate, as detailed in the Engagement Letter, was as follows:
 - a) identifying prospective buyers, lenders and/or investors;
 - b) assisting in preparing financial information to support due diligence and drive value;
 - c) preparing marketing materials, in cooperation with the Company, including a teaser (high-level anonymous information), and Confidential Information Memorandum ("CIM") (more in depth based on confidential information);
 - d) preparing instructions to potential interested parties regarding the process (including draft Asset Purchase Agreement ("APA"), sale approval order, etc., as determined to be appropriate in the circumstances);

- e) marketing the Pharmacies;
- f) maintaining the virtual data room (“VDR”), as populated with the assistance of the Company;
- g) reviewing, analyzing, and recommending offers received;
- h) assisting in negotiating, finalizing and closing an offer; and
- i) performing other services as may be informed by the RSP terms agreed between the Company and ECN pursuant to the Forbearance Agreement.

2. The table below summarizes the RSP timelines:

	Date
Commencement of RSP	August 22, 2019
Preliminary Letter of Intent (“LOI”) deadline	September 20, 2019
Final LOI deadline	October 4, 2019
Target closing date deadline	October 18, 2019

- 3. The Engagement Letter permits KSV to report directly to ECN and to act as a court officer in any formal insolvency proceedings involving the Company. At the introductory meeting between representatives of KSV (Robert Kofman and Eli Brenner) and Mr. Diena, Mr. Kofman made specific reference to these provisions of the Engagement Letter.
- 4. The details of the steps taken by KSV in the RSP are outlined on Confidential Appendix “1”. KSV believes that the information set out in the confidential appendix should be sealed pending the earlier of the negotiation of a successful sale transaction or further order of the Court as it could potentially prejudice subsequent negotiations or re-engagement with potential buyers.
- 5. On November 29, 2019, KSV learned that the landlord for Pharmacy East sent a letter to Mr. Diena dated September 25, 2019 purporting to terminate the lease for Pharmacy East effective November 30, 2019. The landlord has since extended the purported termination to December 31, 2019. If this lease is terminated, it will materially affect the value of any transaction for the Pharmacies. The landlord of Pharmacy East is also the landlord of Pharmacy West. KSV was extremely surprised that Mr. Diena did not disclose to it the purported Pharmacy East lease termination at the time it occurred given the materiality of this development on the RSP. If appointed receiver, KSV intends to engage with the Pharmacy East landlord immediately following its appointment.

5.0 Sale Process

1. If appointed Receiver, KSV intends to immediately re-engage with the parties that submitted offers in the RSP. If one or more of those parties continue to have an interest in the opportunity, KSV intends to attempt to complete a binding agreement of purchase and sale with one of those parties as soon as possible. KSV will also engage with parties who expressed an interest in the opportunity during the RSP but opted not to participate in it due to their concerns about the Company's management.
2. KSV intends to have all parties requiring further due diligence sign a new confidentiality agreement, even if it signed one during the RSP process.
3. If re-engaging with the interested parties from the RSP process does not generate, or appears that it will not generate, an acceptable transaction, KSV intends to launch a new sale process commencing forthwith with offers to be submitted on or about January 17, 2020. All new offers will be required to be submitted in the form of a standard asset purchase agreement which will be prepared by the Receiver and made available in the data room. Changes to the agreement will be required to be blacklined or otherwise clearly marked. The proposed timeline is provided in the table below.

Summary of Sale Process (To be commenced after re-engaging with RSP parties.)		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Finalize materials</i>		
Update marketing materials	<ul style="list-style-type: none"> ➤ KSV to update Teaser, CIM, confidentiality agreement ("CA") and VDR used in the RSP. 	Week 1
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ➤ Teaser to be sent to identified prospects, including investors that own similar retail pharmacies; ➤ publication of the acquisition opportunity in <i>The Globe and Mail</i> (National Edition); ➤ telephone canvass of leading prospects; and ➤ meet with and interview bidders. 	Week of December 9 and December 16

64

Summary of Sale Process (To be commenced after re-engaging with RSP parties.)		
Milestone	Description of Activities	Timeline
Stage 2	<ul style="list-style-type: none"> ➤ KSV to provide detailed information to qualified prospects that sign the CA, including the CIM and access to the VDR; ➤ KSV to facilitate diligence by interested parties; ➤ KSV will prepare draft APA. 	Week of January 6
Stage 3	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit APAs or other proposals. 	On or about January 17
<i>Phase 3 – Offer Review and Negotiations</i>		
	<ul style="list-style-type: none"> ➤ 2nd Round Bids and further bidding - Prospective purchasers may be asked to re-submit APAs on one or more occasions. 	Week of January 20
Selection of Successful Bids	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents. 	Week of January 20
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Motion for sale approval and close transaction. 	Approximately mid-February, subject to delays resulting from regulatory approvals/consents

2. Additional attributes of the Sale Process include:
 - a) the business and assets will be marketed on an “as is, where is” basis;
 - b) KSV will have the right to reject all offers, including the highest offer; and
 - c) any transaction will be subject to Court-approval.

3. KSV will also require flexibility in the timelines as regulatory approvals are required when selling pharmacies. KSV does not have the ability to control those timelines.

65

5.1 Sale Process Recommendation

1. KSV recommends that the Court issue an order approving the Sale Process for the following reasons:
 - a) KSV as Advisor has already conducted an extensive marketing of Rando's business and assets. Given the breadth of the RSP and the offers received, KSV is of the view that it may not be necessary to commence a fresh RSP. KSV only intends to conduct such a process if an acceptable transaction cannot be completed, or it appears that one may not be completed, from the bidders who participated in the RSP, or from the parties who were interested in the opportunity but opted not to participate;
 - b) the contemplated Sale Process, if required, is fair, open and transparent and will allow KSV to canvass the market broadly on an orderly basis in order to obtain the highest and best price;
 - c) there will be no delay commencing the Sale Process – KSV has significant knowledge from its role as Advisor and has already prepared marketing materials that can be quickly updated for a fresh RSP, if necessary;
 - d) the Sale Process is flexible and will allow KSV to establish procedures it believes necessary to maximize value; and
 - e) ECN supports the Sale Process.

6.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS PROPOSED RECEIVER OF
THE PROPERTIES, ASSETS AND UNDERTAKINGS OF
RANDO DRUGS LTD. AND RELATED COMPANIES
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix "C"

AGREEMENT OF PURCHASE AND SALE

BETWEEN

**KSV KOFMAN INC., solely in its capacity as
receiver of the property, assets and undertaking of
Rando Drugs Ltd. and related companies
and not in its personal capacity**

– and –

**2258156 ONTARIO INC.
as Buyer**

DECEMBER 18, 2019

US

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is dated as of December 18, 2019

B E T W E E N :

KSV KOFMAN INC., solely in its capacity as receiver of the property, assets and undertaking of Rando Drugs Ltd. and related companies and not in its personal capacity

(the “**Receiver**”)

- and -

2258156 ONTARIO INC., a corporation existing under the laws of Ontario

(the “**Buyer**”)

CONTEXT:

- A. On December 4, 2019, the Ontario Superior Court of Justice (the “**Court**”) granted an order (the “**Appointment Order**”) appointing KSV Kofman Inc. as the Receiver of the property, assets and undertaking of the Debtor (defined below).
- B. Pursuant to the Appointment Order, the Court approved a sale process to be conducted by the Receiver for the sale of the Purchased Assets (defined below).
- C. The Receiver wishes to sell and the Buyer wishes to purchase the Purchased Assets (as defined below) upon and subject to the terms and conditions of this Agreement.

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 hereby acknowledged by the Parties (as defined below), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement the following terms have the following meanings:

- 1.1.1 “**Agreement**” means this agreement of purchase and sale, including all Schedules and Exhibits, as it may be supplemented, amended, restated or replaced from time to time by written agreement between the Parties.

- 1.1.2 “**Applicable Law**” means, at any time, with respect to any Person, property, transaction or event, all applicable laws, statutes, regulations, treaties, judgments and decrees and (whether or not having the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, order and policies of any Governmental Authority having authority over that Person, property, transaction or event.
- 1.1.3 “**Appointment Order**” has the meaning given to it in the Recitals.
- 1.1.4 “**Approval and Vesting Order**” has the meaning given in Section 6.3.1.
- 1.1.5 “**Assumed Obligations**” means all obligations and liabilities of the Debtor under the Contracts and in respect of the Transferred Employees.
- 1.1.6 “**Books and Records**” means all business and financial records and files of the Business including patient files, in hard and soft copy, including the general ledger and accounting records relating to the Business, marketing materials, market research, all customer lists and lists of suppliers, customer records and databases, leases, sub-leases and leasing records, Contracts records, information relating to any tax imposed on the Purchased Assets, patient records, prescription information, and all of the right, interest and benefit, if any, thereunder and to and in the domain names, telephone numbers and facsimile numbers used by the Debtor in the conduct of the Business; provided, however, that the Receiver may retain copies of all books and records included in the Purchased Assets to the extent necessary or useful for the administration of the receivership proceedings or any other proceedings in respect of any of the Debtor or the filing of any tax return or compliance with any Applicable Law or the terms of this Agreement or related to the Excluded Assets.
- 1.1.7 “**Business**” means each of the pharmacy Stores business of the Debtor.
- 1.1.8 “**Business Day**” means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario, and also excluding any day on which the principal chartered banks located in the City of Toronto are not open for business during normal banking hours.
- 1.1.9 “**Canadian Dollars**” or “**CAD \$**” each means the currency of Canada which, as at the time of payment or determination, is legal tender in Canada for the payment or determination of public or private debts.
- 1.1.10 “**Closing**” means the successful completion of the Transaction.
- 1.1.11 “**Closing Date**” means March 31, 2020 or such earlier date as the Parties may agree in writing.
- 1.1.12 “**Communication**” means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a Party.

- 1.1.13 **“Confidentiality Agreements”** means the confidentiality agreements entered into between the Receiver (or its affiliate) and the Buyer dated as of August 28, 2019 and December 4, 2019, as each may be amended, restated, amended and restated, modified, supplemented or replaced from time to time.
- 1.1.14 **“Contracts”** means the agreements and licenses identified by the Buyer to be included as Purchased Assets no later than January 31, 2020 or such later date as the Receiver may agree to.
- 1.1.15 **“Court”** means the Ontario Superior Court of Justice (Commercial List).
- 1.1.16 **“Debtor”** means Rando Drugs Ltd.
- 1.1.17 **“Deposit”** has the meaning given to it in Section 2.8.2.
- 1.1.18 **“Excluded Assets”** means any assets of the Debtor not included as part of this Transaction including, without limitation, [REDACTED], any accounts receivable and cash or cash equivalents, intercompany receivables, deposits, HST receivables, tax refunds, claims, insurance or insurance claims under any of the Debtor’s insurance policies, any contracts not included in the Contracts.
- 1.1.19 **“Family Health East”** means the Debtor’s store located at 6720 Hawthorne Drive, Windsor, ON N8T 1J9.
- 1.1.20 **“Family Health West”** means the Debtor’s store located at 1604 Tecumseh Road West, Windsor, ON N9B 1T8.
- 1.1.21 **“Fixed Assets”** means all fixed assets, machinery, equipment, computers, furniture, furnishings and vehicles owned by the Debtor and currently located at the Leased Locations other than any Excluded Assets.
- 1.1.22 **“Governmental Authority”** means any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of the foregoing exercising or entitled or purporting to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory or taxing authority or power of any nature; or any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.
- 1.1.23 **“Information”** has the meaning given to that term in the Confidentiality Agreements.
- 1.1.24 **“Initial Deposit”** has the meaning given in Section 2.8.1.
- 1.1.25 **“Inventory”** means the inventory, including without limitation all generic and brand name prescription drugs, over the counter drugs and other sundries sold at the Leased

Locations, which have been acquired from licensed providers registered under the laws of Canada.

- 1.1.26 **“Inventory Amount”** has the meaning given to it in Section 2.7.
- 1.1.27 **“Landlord Approvals”** has the meaning given to it in Section 6.1.2.
- 1.1.28 **“Leased Locations”** means the Debtor’s leased locations for Family Health East, Family Health West, Novacare and Walpole or any one or more of them.
- 1.1.29 **“Location Allocations”** has the meaning given to it in Section 2.6.
- 1.1.30 **“Novacare”** means the Debtor’s store located at 3A-1275 Walker Rd., Windsor, ON N8Y 2N9.
- 1.1.31 **“Purchased Assets”** has the meaning given to it in Section 2.1.
- 1.1.32 **“Parties”** means the Receiver and the Buyer, and **“Party”** means either one of them.
- 1.1.33 **“Permitted Encumbrances”** means:
 - 1.1.33.1 unregistered liens for municipal taxes, assessments or similar charges incurred by the Debtor in the ordinary course of its business that are not yet due and payable or, if due and payable, are to be adjusted between the Receiver and the Buyer on Closing;
 - 1.1.33.2 inchoate mechanic’s, construction and carrier’s liens and other similar liens arising by operation of law or statute in the ordinary course of the Debtor’s business for obligations which are not delinquent and will be paid or discharged in the ordinary course of the Debtor’s business.
- 1.1.34 **“Person”** means an individual, body corporate, sole proprietorship, partnership or trust or unincorporated association, unincorporated syndicate, unincorporated organization, or another entity, and a natural person, acting in his or her individual capacity or in his or her capacity as executor, trustee, administrator or legal representative, and any Governmental Authority.
- 1.1.35 **[REDACTED]**
- 1.1.36 **[REDACTED]**
- 1.1.37 **“Purchase Price”** means has the meaning given to it in Section 2.6.
- 1.1.38 **“Purchased Assets”** means the Debtor’s right, title and interest in and to:

- 1.1.38.1 all machinery, equipment, furniture, furnishings, computers, accessories and supplies of the Business;
- 1.1.38.2 all patient records;
- 1.1.38.3 Contracts;
- 1.1.38.4 Books and Records;
- 1.1.38.5 all Inventory;
- 1.1.38.6 all leasehold improvements;
- 1.1.38.7 all goodwill of the Leased Locations including all trade-marks, trade names whether registered or unregistered, copyright, artwork, designs, licenses, customer lists and records, prescription files, software, franchises and processes used in connection with the Business together with the exclusive right of the Purchaser to represent itself as carrying on business in succession to the Debtor, and including the continuous right to use the business name currently in place at the Leased Locations;
- 1.1.38.8 the full benefit of all unfilled orders received by the Debtor in connection with the Business and all other contracts, engagements, and commitments to which the Receiver and the Business are entitled, including the full benefit of all forward commitments by the Debtor and the Business for supplies or materials;
- 1.1.38.9 the exclusive right to the continuing use of the Debtor's existing telephone and facsimile numbers and any domain and internet websites and email addresses; and
- 1.1.38.10 the benefit of all warranties and warranty rights (implied, express or otherwise) against manufacturers or sellers which apply to any of the assets being purchased hereunder.
- 1.1.39 **"Receiver"** has the meaning given to it in the Introduction.
- 1.1.40 **"Receiver's Certificate"** means the Receiver's Certificate attached to the Approval and Vesting Order to be delivered as evidence of Closing.
- 1.1.41 [REDACTED].
- 1.1.42 **"Stores"** means the pharmacy stores located at the Leased Locations.
- 1.1.43 **"Time of Closing"** means the time on which the Transaction or Transactions closes on the Closing Date or such other time on the Closing Date as the Parties may mutually agree.

1.1.44 **“Transaction”** means the transaction or transactions of purchase and sale contemplated by this Agreement.

1.1.45 **“Transferred Employees”** has the meaning given to it in Section 4.1.

1.1.46 **“Walpole”** means the Debtor’s store located at 785 Tecumseh Road #16, Walpole Island, N8A 4K9.

1.2 Entire Agreement

This Agreement, together with the agreements and other documents to be delivered pursuant to this Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, other than the provisions of the Confidentiality Agreements, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement or the other agreements and documents delivered pursuant to this Agreement. This Agreement may not be amended or modified in any respect, except by written instrument signed by the Parties.

1.3 Time of Day

Unless otherwise specified, references to time of day or date mean the local time or date in the City of Toronto, Province of Ontario.

1.4 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.5 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.

1.6 Certain Rules of Interpretation

1.6.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.

1.6.2 The division of this Agreement into Articles and Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

- 1.6.3 References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- 1.6.4 Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- 1.6.5 Unless otherwise specified, any reference in this Agreement to any statute includes all regulations made under or in connection with that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced.
- 1.6.6 Whenever an amount of money is referred to in this Agreement, that amount will, unless otherwise expressly stated, be in Canadian Dollars.

1.7 Schedules and Exhibits

The following is a list of Schedules and Exhibits:

Schedule	Subject Matter	Section Reference
A.	Allocation of Purchase Price	2.10
Exhibit 1	Approval and Vesting Order	6.3.1

**ARTICLE 2
SALE AND PURCHASE AND ASSIGNMENT**

2.1 Sale and Purchase of Assets

Subject to the terms and conditions of this Agreement, and relying upon the representations and warranties herein, at the Closing Time upon the Closing Date, the Receiver hereby agrees to sell, assign, convey and transfer to the Buyer and the Buyer hereby agrees to purchase all right, title and interest of the Debtor in and to all of the Purchased Assets.

The Buyer acknowledges that it is not purchasing any other assets, property or undertaking of the Debtor other than the Purchased Assets including, without limitation, the Excluded Assets.

2.2 Assignment and Assumption of Contracts

Subject to the conditions and terms of this Agreement, the Receiver will assign to the Buyer all of the Debtor's rights, benefits and interests in and to the Contracts and the Buyer will assume the Assumed Obligations. This Agreement and any document delivered under this Agreement will not

constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Buyer under this Agreement which is not assignable without the consent of a third party if that consent has not been obtained and that assignment or attempted assignment would constitute a breach of such Contract or, in the alternative, if an order of the Court authorizing and approving the assignment of the Contracts to the Buyer has not been obtained.

The Buyer covenants and agrees to use its best efforts to obtain all necessary consents, to its sole and unfettered satisfaction, including, in particular, obtaining all necessary Landlord Approvals and any and all regulatory approvals as quickly as possible after the execution of this Agreement but in any event no later than the dates provided for in Sections 6.1.2 and 6.1.3.

2.3 Assumed Obligations

In connection with its acquisition of the Purchased Assets, the Buyer will assume the Assumed Obligations, on Closing. On Closing, to the extent necessary, the Buyer will enter into an assumption agreement in form and substance satisfactory to the Receiver. The Buyer agrees to pay all necessary costs for curing any defaults, paying any arrears, or performing any obligations under or with respect to the assignment of Contracts and Assumed Obligations.

2.4 Excluded Obligations

Other than the Assumed Obligations, the Buyer will not assume and will not be liable for any other liabilities or obligations of the Debtor.

2.5 "As is, Where is"

The Buyer acknowledges that the Receiver is selling the Purchased Assets on an "as is, where is" basis as they exist on the Closing Date, and that as of the Closing Date, the Receiver will have no further liability to the Buyer. The Buyer further acknowledges that it has entered into this Agreement on the basis that the Receiver does not guarantee title to the Purchased Assets and that the Buyer has conducted any inspections of the condition of and title to the Purchased Assets that it deemed appropriate, and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality, assignability or in respect of any other matter or thing concerning the Purchased Assets or the right of the Receiver to sell them, save as expressly represented or warranted 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* (Ontario) or similar legislation do not apply to this transaction of purchase and sale and have been waived by the Buyer. The description of the Purchased Assets contained in the Schedules is for purposes of identification only. No representation, warranty or condition has or will be given by the Receiver concerning the completeness or accuracy of those descriptions.

2.6 Purchase Price

Subject to adjustments, the purchase price for the Purchased Assets shall be [REDACTED] broken down as follows ("**Location Allocations**"):

[REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]

PLUS the Inventory Amount (the “Purchase Price”).

2.7 Inventory

The Buyer shall pay the following amounts for Inventory (the “Inventory Amount”):

[REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED] [REDACTED].

2.8 Payment of the Purchase Price

The Buyer will pay the Purchase Price to the Receiver as follows:

- 2.8.1 the sum of \$[REDACTED], representing [REDACTED]% of the Purchase Price (net of the Inventory Amount), the receipt of which the Receiver acknowledges, will be paid by the Buyer upon execution of this Agreement as a deposit (the “Initial Deposit”) to be held by the Receiver in trust until the Closing and will be credited toward the Purchase Price upon Closing;
- 2.8.2 an additional sum of \$[REDACTED], representing [REDACTED] of the Purchase Price (net of the Inventory Amount), which shall be paid by the Buyer upon the earlier of (a) January 31, 2020 and (b) obtaining Landlord Approvals, unless the Buyer advises the Receiver it no longer intends to pursue a Closing for a particular Leased Location, as an additional deposit (the “Additional Deposit” and together with the Initial Deposit, the “Deposit”) to be held by the Receiver in trust until the Closing and will be credited toward the Purchase Price upon Closing; and
- 2.8.3 with respect to the Closing of any or all Leased Locations, the balance of the Location Allocation and Inventory Amount will be paid on Closing after applying that portion of the Deposit that is [REDACTED]% of the Location Allocation and the remainder of the Deposit shall continue to be held by the Receiver in accordance with the terms of this Agreement.

The Receiver agrees to cause the Deposit to be placed into a non-interest bearing account or certificate of deposit. All amounts payable to the Receiver shall be by way of wire transfer (to a bank account specified by the Receiver) or such other form of deposit as is acceptable to the

Receiver. The Buyer acknowledges and agrees that the Deposit is non-refundable except as provided under Section 7.7.

2.9 Calculation of the Inventory Amount

2.9.1 The Buyer agrees that Inventory Amount shall be calculated based on an inventory count as existing at one (1) Business Day prior to the Closing Date and adjusted by no later than fifteen (15) days following closing for sales and receipts of Inventory, if any, between the date of the inventory count and the Closing Date.

2.9.2 In arriving at the Inventory valuation, the Receiver agrees to use the services of a qualified independent inventory counting firm, acceptable to the Buyer acting reasonably.

2.9.3 It is expressly acknowledged and agreed that both the Receiver and the Buyer are entitled to participate in the Inventory valuation conducted by such independent inventory counting firm, provided that the cost of the firm shall be shared equally by the Receiver and the Buyer.

2.10 Allocation of Purchase Price

The Purchase Price will be allocated among the Purchased Assets in accordance with Schedule B.

2.11 Taxes

2.11.1 The Buyer will pay upon Closing, in addition to the Purchase Price, all applicable federal and provincial taxes eligible in connection with the purchase and sale of the Purchased Assets, including harmonized sales tax and any other provincial sales tax, and shall provide the Receiver with proof of payment of such taxes. Alternatively, where applicable, the Buyer will have the option to furnish the Receiver with appropriate exemption certificates.

2.11.2 The Buyer agrees to indemnify and save the Receiver harmless from and against all claims and demands for payment of all applicable taxes in connection with this Agreement and the Transaction, including penalties and interest and any liability or costs incurred as a result of any failure to pay those taxes when due.

ARTICLE 3

[REDACTED]

[REDACTED]

[REDACTED]

The Buyer shall assume and be responsible for all liabilities and obligations with respect to the Transferred Employees following the Closing Date, including, but not limited to, any required notice of termination, termination or severance pay (required under Applicable Law or under any Contract), employment insurance, workplace safety and insurance/workers' compensation, Canada Pension Plan, salary or wages, vacation pay, overtime pay, payroll or employer health Taxes, commissions, bonuses or vacation entitlements and accruals. The Buyer shall also assume and be responsible for any vacation pay or wage liability with respect to the Transferred Employees, whether accruing or arising prior to or following the Closing Date.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Buyer's Representations and Warranties

The Buyer represents and warrants to the Receiver that:

- 5.1.1 the Buyer is a corporation duly incorporated, organized and subsisting under the laws of the Province of Ontario;
- 5.1.2 the Buyer has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations and 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 Buyer;
- 5.1.3 the Buyer is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained in this Agreement;
- 5.1.4 to the best of the Buyer's knowledge, no actions or proceedings are pending or have been threatened to restrain or prohibit the completion of the Transaction;
- 5.1.5 this Agreement and each of the other documents contemplated under this Agreement to which the Buyer is or will be a Party have been or will be, as at the Time of Closing, duly and validly executed and delivered by the Buyer and constitutes or will, as at the Time of Closing, constitute legal, valid and binding obligations of the Buyer, as the case may be, enforceable in accordance with their terms;
- 5.1.6 the Buyer is not a non-Canadian person as defined in the *Investment Canada Act*; and
- 5.1.7 the Buyer is or will be registered under Part IX of the *Excise Tax Act* (Canada) on or before the Time of Closing.

5.2 Receiver's Representations and Warranties

The Receiver represents and warrants to the Buyer that:

- 5.2.1 the Receiver has the right to enter into this Agreement and complete the Transaction;
- 5.2.2 the Receiver is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada);
- 5.2.3 the Receiver has done no act to encumber the Purchased Assets other than allowing charges created pursuant to Permitted Encumbrances to exist or be formed in the ordinary course;
- 5.2.4 the Receiver has not previously sold or done any act to encumber the Purchased Assets; and
- 5.2.5 to the best of the Receiver's knowledge, no actions or proceedings are pending and none have been threatened to restrain or prohibit the completion of the Transaction.

ARTICLE 6 CONDITIONS

6.1 Conditions in favour of the Buyer

The obligation of the Buyer to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or prior to the Time of Closing:

- 6.1.1 all representations and warranties of the Receiver contained in this Agreement will be true as of the Closing Date with the same effect as though made on and as of that date;
- 6.1.2 on or before January 31, 2020, the Buyer will have obtained consents by the landlords of the Leased Locations to assignment of the applicable leases including options to extend for up to 10 years or new leases for the Leased Locations ("**Landlord Approvals**") to the Buyer's sole and unfettered satisfaction. Landlord Approvals for all Leased Locations is a requirement for the Buyer;
- 6.1.3 on or before February 28, 2020, the Buyer will have obtained a new certificate of accreditation by the Ontario College of Pharmacists for the Leased Locations;
- 6.1.4 on or before January 31, 2020, the Buyer shall have had access to the Purchased Assets in accordance with the provisions of Section 7.5 to review and conduct its due diligence investigation, including but not limited to financial review, of the Purchased Assets to its sole and unfettered satisfaction;
- 6.1.5 on or before January 31, 2020, the Buyer shall have had access in accordance with the provisions of Section 7.5 to observe the operations during business hours to the Buyer's sole and unfettered satisfaction;

- 6.1.6 on or before February 28, 2020, the Buyer will have obtained new billing privileges for all Leased Locations under the Ontario Drug Benefit Plan with the Ministry of Health (Ontario) and all third party payors of the Leased Locations;
- 6.1.7 on or before February 28, 2020, the Buyer will have obtained new wholesale accounts to purchase Inventory after the Closing Date;
- 6.1.8 no action or proceedings will be pending or threatened to restrain or prohibit the completion of the Transaction contemplated by this Agreement;
- 6.1.9 the Receiver will have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date;
- 6.1.10 the Receiver shall provide confirmation that effective on closing the Purchased Assets are not subject to any banner agreement or future purchasing obligations;
- 6.1.11 upon waiver of the conditions above, the Receiver and the Buyer will work together to allow the Business to operate in the normal course until the Closing Date to ensure the preservation of the Purchased Assets; and
- 6.1.12 no material loss or damage to the Purchased Assets when taken as a whole will have occurred on or before the Closing Date.

The foregoing conditions are for the exclusive benefit of the Buyer. Any condition may be waived by the Buyer in whole or in part. Any such waiver will be binding on the Buyer only if made in writing.

6.2 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 prior to the Time of Closing:

- 6.2.1 all representations and warranties of the Buyer contained in this Agreement will be true as of the Closing Date with the same effect as though made on and as of that date;
- 6.2.2 no action or proceedings will be pending or threatened to restrain or prohibit the completion of the Transaction contemplated by this Agreement;
- 6.2.3 the Landlord Approvals and certificate of accreditation by the Ontario College of Pharmacists shall have been obtained by the Buyer by the dates set out in Sections 6.1.2 and 6.1.3 above;
- 6.2.4 the Buyer will have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date; and
- 6.2.5 no material loss or damage to the Purchased Assets when taken as a whole will have occurred on or before the Closing Date.

The foregoing conditions are for the exclusive benefit of the Receiver. Any condition may be waived by the Receiver in whole or in part. Any such waiver will be binding on the Receiver only if made in writing.

6.3 Conditions—Approval and Vesting Order

The obligations of the Receiver and Buyer to complete the Transaction are subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- 6.3.1 an order will have been made by the Court on or before March 13, 2020 approving this Agreement and the Transaction and vesting in the Buyer all the right, title and interest of the Debtor in the Purchased Assets free and clear of all liens, security interests and other encumbrances, such order to be substantially in the form of the order attached as Exhibit 1 (the “**Approval and Vesting Order**”); and
- 6.3.2 the Approval and Vesting Order will not have been stayed, varied or vacated and no order will have been issued and no action or proceeding will be pending to restrain or prohibit the completion of the Transaction.

For greater certainty, the Receiver shall have no obligation to bring a motion or motions for the Approval and Vesting Order until such time as the conditions in Section 6.1.2 and 6.1.3 have been satisfied by the Buyer for any of the Leased Locations. The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Receiver and the Buyer.

6.4 Non-Satisfaction of Conditions

Subject to the right of the Buyer to request an extension in Section 7.8, if any condition set out in this Article is not satisfied or performed prior to the time specified therefor, a Party for whose benefit the condition is inserted may in writing:

- 6.4.1 waive compliance with the condition in whole or in part in its sole discretion by written notice to the other Party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part;
- 6.4.2 without limiting the generality of the Section 6.4.1, in the event that the consents or new leases are obtained for some but not all Leased Locations as provided for in Section 6.1.2 and 6.2.3, the Parties may but are not obliged to close the sale of those Leased Locations only for the Location Allocation for the Leased Locations set out in Section 2.6 plus the applicable Inventory Amount; or
- 6.4.3 elect on written notice to the other Party to terminate this Agreement before Closing.

ARTICLE 7 CLOSING

7.1 Closing

The completion of the Transaction will take place on the Closing Date at the Time of Closing or as otherwise determined by mutual agreement of the Parties in writing. If an in person closing is required it will take place at the offices of Goldman Sloan Nash & Haber LLP or as otherwise mutually agreed by the Parties.

7.2 Buyer's Deliveries on Closing

At or before the Time of Closing, the Buyer will execute and deliver to the Debtor the following, each of which will be in form and substance satisfactory to the Debtor, acting reasonably:

- 7.2.1 payment of the balance of the Purchase Price as contemplated in Section 2.8.3;
- 7.2.2 one or more bills of sale;
- 7.2.3 a certificate dated the Closing Date, confirming that all of the representations and warranties of the Buyer contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- 7.2.4 a certificate dated the Closing Date, confirming that each of the conditions precedent in Section 6.1 of this Agreement have been fulfilled, performed or waived as of the Closing Date and all other confirmations required by the Receiver's Certificate;
- 7.2.5 if necessary, payment or evidence of payment of applicable taxes or, if applicable, appropriate tax exemption certificates in accordance with Section 2.11;
- 7.2.6 an assumption agreement as contemplated by Section 2.2 and 2.3; and
- 7.2.7 any other documentation as is referred in this Agreement or as the Receiver may reasonably require to give effect to this Agreement or required by Applicable Law or any Governmental Authority.

7.3 Receiver's Deliveries on Closing

At or before the Time of Closing, the Receiver will execute and deliver to the Buyer the following, each of which will be in form and substance satisfactory to the Buyer, acting reasonably:

- 7.3.1 One or more bills of sale;
- 7.3.2 the Approval and Vesting Order;

- 7.3.3 a certificate dated the Closing Date confirming that all of the representations and warranties of the Receiver contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- 7.3.4 a certificate dated the Closing Date confirming that each of the conditions precedent in Section 6.2 of this Agreement have been fulfilled, performed or waived as of the Closing Date; and
- 7.3.5 any other documentation as is referred in this Agreement or as the Buyer may reasonably require to give effect to this Agreement.

7.4 Possession of Assets

The Receiver and/or the Debtor will remain in possession of the Purchased Assets until the Time of Closing. On Closing of one or more of the Leased Locations, the Buyer will take possession of the Purchased Assets (or portion thereof it is purchasing) where situate at the Time of Closing. The Buyer acknowledges that the Receiver has no obligation to deliver physical possession of the Purchased Assets to the Buyer. In no event will the Purchased Assets be sold, assigned, transferred or set over to the Buyer until the Buyer has satisfied all delivery requirements outlined in Section 7.2.

7.5 Access to Assets

- 7.5.1 The Buyer may have reasonable access to the Purchased Assets including to the Leased Locations, employees and Books and Records during normal business hours prior to the Time of Closing for the purpose of enabling the Buyer to conduct any inspections of the Purchased Assets as it deems appropriate. Those inspections will only be conducted in the presence of a representative of the Receiver if so required at the discretion of the Receiver. For greater certainty, all communications and approvals to obtain access shall go through the Receiver, in advance.
- 7.5.2 The Buyer agrees to indemnify and save the Receiver harmless from and against all claims, demands, losses, damages, actions and costs incurred or arising from or in any way directly related to the inspection of the Purchased Assets or the attendance of the Buyer, its employees contractors or agents.

7.6 Risk

The Purchased Assets will be and remain at the risk of the Receiver until Closing and at the risk of the Buyer from and after Closing. If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire or other casualty, then, at its option, the Buyer may decline to complete the Transaction. This option will be exercised by way of written notification, in accordance with Section 8.6, within 10 days after notification to the Buyer by the Receiver of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 days of the Closing Date) in which event this Agreement will be terminated automatically and the Buyer will be entitled only to a return of the Deposit paid under Section 2.8.1

85

but without any other compensation. If the Buyer does not exercise this option, it will complete the Transaction and will be entitled to an assignment of the proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, as determined by the Receiver in its sole opinion, acting reasonably, the Buyer will complete the Transaction and will be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured or, otherwise, to an agreed abatement.

7.7 Termination

If either the Receiver or the Buyer validly terminates this Agreement under the provisions of Sections 6.4 or 7.6:

- 7.7.1 all the obligations of both the Receiver and Buyer under this Agreement will be at an end; and
- 7.7.2 neither Party will have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other.

The Deposit will be forfeited to the Receiver unless termination results from the Buyer not waiving the conditions set out in Section 6.1 or the Receiver not satisfying the conditions in Sections 6.2.3 or 6.3 in which case the Deposit shall be refunded to the Buyer upon termination of the Agreement.

7.8 Closing of the Transaction

For greater certainty, in the event that the Parties agree to proceed with the Closing of some but not all of the Leased Locations in accordance with Section 6.4.2, then this Agreement shall be interpreted in a manner consistent with that fashion provided that so long as the Buyer intends to pursue Transactions for the remaining Leased Locations, the Receiver shall always hold a Deposit equal to ■% of the Location Allocations for pending Closings. The Parties agree upon request from the Buyer in writing, the Receiver shall agree to extend the Closing Date for any Leased Locations for which the Buyer has received Landlord Approval to allow the Buyer to satisfy the balance of the conditions in Section 6.1 provided that the Receiver shall not be obligated to extend the deadline for the Buyer to satisfy such conditions beyond March 31, 2020.

7.9 Structure of Transaction

The Parties agree that in the event that in the discretion of the Receiver, any or all of this Transaction may be structured through a proposal made by the Receiver to the creditors of the Debtor so long as the financial obligation of the Buyer with respect to the Deposit and the Purchase Price and the conditions set out in Article 6 shall continue to apply.

7.10 Breach by Buyer

If the Buyer fails to comply with its obligations under this Agreement, the Receiver may by notice to the Buyer elect to treat this Agreement as having been repudiated by the Buyer. In that event, other than as provided for in Section 7.7, the Deposit and any other payments made by the Buyer will be forfeited to the Receiver on account of its liquidated damages, and the Purchased Assets may be resold by the Receiver. In addition, the Buyer will pay to the Receiver, on demand, the deficiency, if any, arising upon such resale (after deducting the Deposit, the Interest on the Deposit and the expenses of resale) together with interest and all other damages or charges occasioned by or resulting from the default by the Buyer.

ARTICLE 8 GENERAL

8.1 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered by the Receiver in connection with this Transaction or this Agreement, the provisions of this Agreement will prevail to the extent of that conflict or inconsistency.

8.2 Commission

The Buyer acknowledges that it has not entered into any agreement with any party resulting in an obligation by the Receiver to pay agent fees, broker fees, commissions or other amount payable on the Purchase Price or otherwise in connection with the Transaction, and the Buyer agrees to indemnify the Receiver against any claim for compensation or commission by any third party or agent retained by the Buyer in connection with, or in contemplation of, the Transaction.

8.3 Confidentiality

All information exchanged between the Receiver and the Buyer in connection with the Transaction will be considered Information. For certainty, the Confidentiality Agreements will continue to be in effect until Closing. Any publicity relating to the Transaction and the manner of releasing any information regarding the Transaction will be mutually agreed upon by the Receiver and the Buyer, both Parties acting reasonably provided that the Receiver shall be entitled to disclose information regarding the Transaction for the purpose of seeking the Approval and Vesting Order.

8.4 Costs and Expenses

Except as otherwise specified in this Agreement, all costs and expenses (including the fees and disbursements of accountants, legal counsel and other professional advisers) incurred in connection with this Agreement and the completion of the Transaction are to be paid by the Party incurring those costs and expenses.

8.5 Time of Essence

Time is of the essence in all respects of this Agreement.

8.6 Notices

Any Communication must be in writing and either:

- 8.6.1 personally delivered;
- 8.6.2 sent by prepaid registered mail; or
- 8.6.3 sent by email or functionally equivalent electronic means of communication, charges (if any) prepaid.

Any Communication must be sent to the intended recipient at its address as follows:

to the Receiver at:

KSV Kofman Inc. in its capacity as receiver of
the property, assets and undertaking of
Rando Drugs Ltd., et. al.
150 King Street West
Suite 2308, Box 42
Toronto, Ontario, M5H 1J9

Attention: Bobby Kofman/ Eli Brenner
Email: bkofman@ksvadvisory.com/ ebrenner@ksvadvisory.com

with a copy to:

Goldman Sloan Nash & Haber LLP
480 University Ave., Suite 1600
Toronto, ON M5G 1V2

Attention: Jennifer Stam
Email: stam@gsnh.com

to the Buyer at:

Hesham Abdel Sayed
1619 Dundas Street
London, ON M5W 4P5
Email: heshamabdelsayed@gmail.com

with a copy to:

Saad Law Professional Corporation

4 Robert Speck Parkway, Suite 1210
Mississauga, Ontario L4Z 1S1

Attention: Peter Saad
Email: peter.saad@saadlaw.com

or at any other address that any Party may from time to time advise the other by Communication given in accordance with this Section 8.6. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given and received on the next Business Day. Any Communication transmitted by PDF or other form of electronic communication will be deemed to have been given and received on the day on which it was transmitted (but if the Communication is transmitted on a day which is not a Business Day or after 3:00 p.m. (local time in the City of Toronto, Province of Ontario), the Communication will be deemed to have been received on the next Business Day). Any Communication given by registered mail will be deemed to have been received on the fifth (5th) Business Day after which it is so mailed. If a strike or lockout of postal employees is then in effect, or generally known to be impending, every Communication must be effected by personal delivery or by PDF or other form of electronic communication.

8.7 Further Assurances

Each Party will, at the requesting Party's cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the other Party to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide all assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies.

8.8 Amendment and Waiver

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

8.9 Submission to Jurisdiction

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by applicable law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter

have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that Province or that the subject matter of this Agreement may not be enforced in the courts and irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 8.9, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

8.10 Capacity of Receiver

The Buyer acknowledges and agrees that the Receiver is entering into this Agreement solely in its capacity as court-appointed receiver pursuant to the Appointment Order and not in its personal capacity and in no circumstance shall have any personal liability hereunder.

8.11 Assignment and Enurement

Neither this Agreement nor any right or obligation under this Agreement may be assigned by either Party without the prior consent of the other Party. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns. Notwithstanding the foregoing, the Buyer may assign each of Family Health East, Family Health West, Novacare and Walpole to designated affiliates provided notice if given to the Receiver in advance of the motion for the Approval and Vesting Order.

8.12 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect: the legality, validity or enforceability of the remaining provisions of this Agreement; or the legality, validity or enforceability of that provision in any other jurisdiction.

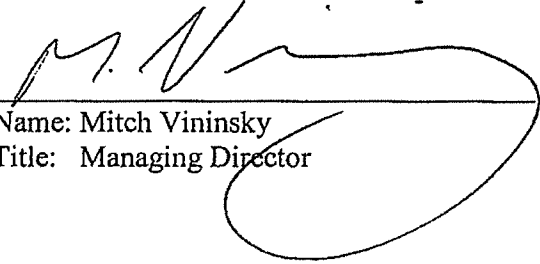
8.13 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Each of the Parties has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

**KSV KOFMAN INC., solely in its capacity as
Receiver of the property, assets and undertaking
of RANDO DRUGS LTD. and related companies
and not in its personal capacity**

Per 
Name: Mitch Vininsky
Title: Managing Director

2258156 ONTARIO INC.

Per _____
Name: Hesham Abdel Sayed
Title: President

Each of the Parties has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

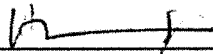
**KSV KOFMAN INC., solely in its capacity as
Receiver of the property, assets and undertaking
of RANDO DRUGS LTD. and related companies
and not in its personal capacity**

Per

Name: Bobby Kofman
Title: President

2258156 ONTARIO INC.

Per



Name: Hesham Abdel Sayed
Title: President

SCHEDULE A – ALLOCATION OF PURCHASE PRICE

Buyer to propose initial proposal for allocation of purchase price prior to Closing

EXHIBIT 1 – APPROVAL AND VESTING ORDER

Attached.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEEKDAY, THE #
)
JUSTICE HAINEY) DAY OF MONTH, 2020
)

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc. (“KSV”) in its capacity as the Court-appointed receiver (in such capacity, the “Receiver”) of the property, assets and undertaking of Rando Drugs Ltd. (the “Debtor”) for an order approving the sale transaction (the “Transaction”) contemplated by an agreement of purchase and sale (the “Sale Agreement”) between the Receiver and [NAME OF PURCHASER] (the “Purchaser”) dated [DATE] and appended to the First Report of the Receiver dated [DATE] (the “First Report”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “Purchased Assets”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver and those other parties present no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] 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.

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 of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, 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, 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 December 4, 2019; (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 [B] hereto (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **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.

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

5. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

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 Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, 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

97

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-19-00632106

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Hailey of the Ontario Superior Court of Justice (the “Court”) dated December 4, 2019, KSV Kofman Inc. was appointed as the receiver (in such capacity, the “Receiver”) of the property, assets and undertaking of Rando Drugs Ltd. (the “Debtor”) and related companies.

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the “Sale Agreement”) between the Receiver and [NAME OF PURCHASER] (the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, 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 section • of 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.

C. 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 section • of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV KOFMAN INC., in its capacity as
Receiver, of the property, assets and
undertaking of Rando Drugs Ltd. and not in
its personal capacity**

Per: _____

Name:

Title:

ECN FINANCIAL INC. and

2345760 ONTARIO INC., et al.

Court File No.: CV-19-00632106-00CL

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced **TORONTO**

APPROVAL OF VESTING ORDER

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO #46735J)
Tel: 416-597-5017
Email: stam@gsnh.com

Lawyers for the Receiver, KSV Kofman Inc.

Appendix "D"

LEASE

BETWEEN:

WALKER PLAZA 1200 INC.

LANDLORD

- and -

DUMOPHARM INC.

TENANT

-and-

PETER DUMO

INDEMNIFIER

TABLE OF CONTENTS

TITLE	PAGE NO.
ARTICLE ONE (1) – GRANT AND TERM	
1.1 Leased Premises	1
1.2 Rentable Area of the Leased Premises	1
1.3 Commencement and Ending Date of the Term	1
1.3A Possession	1
ARTICLE TWO (2) – RENT	
2.1 Minimum Rent	1
2.2 Prepaid Rent	2
2.3 Lease Year	2
2.4 Additional Rent	2
2.5 Where Payments to be Made	2
2.6 Minimum Rent and Additional Rent Past Due	3
ARTICLE THREE (3) – SECURITY DEPOSIT	
3.1 Security Deposit	3
ARTICLE FOUR (4) – TAXES	
4.1 Taxes – Definition	3
4.2 Taxes Payable by the Landlord	3
4.3 Taxes Payable by the Tenant	4
ARTICLE FIVE (5) – PARKING FACILITIES AND THE COMMON AREAS AND FACILITIES	
5.1 Common Areas and Facilities	4
5.2 Control by the Landlord	4
5.3 Licence	4
ARTICLE SIX (6) – COST OF MAINTENANCE AND OPERATION OF THE SITE	
6.1 Proportionate Share - Definition	4
6.2 Operating Costs – Definition	4

6.3 *Payment of Operating Costs*

6.4 *Tenant to Pay Utilities*

6.5 *Separate Meters*

6.6 *Heating and Air Conditioning*

6.7 *Environmental Audit*

ARTICLE SEVEN (7) - MAINTENANCE, REPAIRS AND ALTERATIONS

7.1 *Maintenance and Repairs by Tenant*

7.1.1 *Maintenance and Repairs by Landlord*

7.2 *Improvement, Alterations, Partitions*

7.3 *Tenant's Refusal to Repair*

7.4 *Entry by Landlord*

7.5 *Leave Premises in Good Repair*

7.6 *Damage to Leased Premises*

7.7 *Overloading*

7.8 *Tenant not to Overload Facilities*

7.9 *Plumbing Facilities*

7.10 *Refuse*

7.11 *Tenant Shall Discharge all Liens*

7.12 *Inspect Premises*

7.13 *Sign Policy*

ARTICLE EIGHT (8) - USE OF LEASED PREMISES

8.1 *Use of Premises*

8.2 *Compliance with Laws, etc.*

8.3 *Nuisance*

8.4 *Prohibited Use*

8.5 *Continuous Use*

8.6 *Exclusive Use*

ARTICLE NINE (9) - INSURANCE

9.1 *Tenant's Payments*

9.2 *Tenant's Insurance*

9.3 *Increase in Insurance Premiums*

9.4 *Cancellation of Insurance*

9.5 *Loss or Damage*

9.6 *Indemnification of Landlord*

9.7 *Waiver of Subrogation*

ARTICLE TEN (10) - DAMAGE, DESTRUCTION AND EXPROPRIATION

10.1 *Repair*

10.2 *Destruction of Building*

10.3 *Common Areas Repair by Landlord*

10.4 *Expropriation*

ARTICLE ELEVEN (11) - ASSIGNMENT AND SUBLETTING

11.1 *Assignment and Subletting*

11.2 *Consent May be Withheld*

11.3 *Conditions of Consent*

11.4 *Tenant to Remain Liable*

11.5 *Changes in Control*

11.6 *Landlord's Costs*

11.7 *Assignment by Landlord*

11.8 *Limitation of Landlord's Liability*

ARTICLE TWELVE (12) - STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

12.1 *Status Statement*

Premises set out in the following table. Minimum Rent is payable in advance in equal consecutive instalments on the 1st day of each calendar month of each year of the Term, in the monthly amounts set out in the following table and will be prorated on a daily basis for any fractional portion of a month at the beginning or end of the Term. The table is as follows:

PERIOD OF TIME	ANNUAL RENT	MINIMUM MONTHLY RENT	MINIMUM RENT PER SQUARE FOOT
January 1, 2015 to December 31, 2019	\$18,553.25	\$1,546.10	\$10.65

The Tenant shall provide the Landlord with twelve (12) post-dated cheques representing the monthly payment of Minimum Rent on the Commencement Date and on the 1st day of each and every succeeding year during the Term.

2.2 Prepaid Rent. The Landlord acknowledges that the Landlord has not been provided with any prepaid rent.

2.3 Lease Year. "Lease Year" means each successive period of twelve calendar months during the Term ending:

- (i) if the Term commences on the first day of a calendar month, on an anniversary of the last day of the calendar month preceding the calendar month in which the Term commences; and
- (ii) if the Term commences other than on the first day of the calendar month, on an anniversary of the last day of the calendar month preceding the calendar month in which the Term commences (so as to exclude in such case in the first Lease Year and the first month of such Lease Year the broken portion of the calendar month between the last day of the calendar month preceding the month in which the Term commences and the commencement of the Term);

provided that if and whenever the Landlord deems it necessary for the Landlord's accounting purposes, the Landlord may at any time and from time to time by written notice to the Tenant specify an annual date upon which each subsequent Lease Year is to commence, and in such event the then current Lease Year (the "Short Lease Year") shall terminate on the day preceding the commencement of such new Lease Year, and any appropriate adjustments shall be made in respect of any Lease Year which is as a result less than twelve (12) calendar months.

2.4 Additional Rent. The Tenant shall pay as Additional Rent, exclusive of payment of Minimum Rent, all sums of money or charges required to be paid by the Tenant under this Lease (herein called "Additional Rent") whether or not the same are designated "Additional Rent" or whether or not the same are payable to the Landlord or otherwise, and all such sums are payable in lawful money of Canada without deduction, abatement, set-off or compensation whatsoever. Additional Rent is due and payable with the next monthly instalment of Minimum Rent unless otherwise provided, but in any event is not payable as part of Minimum Rent. Additional Rent may be estimated by the Landlord, from time to time, and such estimated amount is payable in monthly instalments, in advance, with annual adjustments and all Additional Rent is deemed to be accruing due on a day-to-day basis. In determining any Additional Rent required to be paid by the Tenant under this Lease which is to be based upon calculations referable to the Leased Premises, the calculations of the Landlord shall be final and binding.

2.5 Where Payments to be Made. All payments required to be made by the Tenant under or in respect of this Lease shall be made to the Landlord at the Landlord's office at 1190 Walker Road, Windsor, Ontario, or to such agent or agents of the Landlord or at such other place as the Landlord shall hereafter from time to time direct in writing to the Tenant. At the request of the Landlord, the Tenant shall deliver on the Commencement Date (and on each anniversary date thereof until the end of the Term) twelve (12) postdated cheques for Minimum Rent and Additional Rent due hereunder.

104

solely responsible for the cost of heating, ventilating and air-conditioning, which costs shall include, without being limited to, fuel, water electricity, supplies (including those occasioned by everyday wear and tear) general maintenance, repairs and replacements, including major repairs and replacements, to the plant and equipment supplying or distributing such heat, ventilation or air-conditioning. [The Tenant shall deliver to the Landlord a copy of its preventative maintenance contract for the heating, ventilating and air-conditioning equipment on the commencement of the Term and before every renewal of such contract.

6.7 Environmental Audit

- (a) In this Lease:
- (i) "Environmental Audit" shall mean a complete review of the Leased Premises and the environmental practices of the Tenant thereon by the Landlord, its employees or agents and shall include such visual inspections, interviews with the Tenant, its employees, servants, or agents, and such soil, air or other tests as the Landlord shall, in its sole discretion, deem to be necessary;
 - (ii) "Hazardous Substance" shall mean any substance or its by-product that requires special precautions in its storage, collection, transportation, treatment or disposal to prevent damage to persons or property and includes explosive, flammable, volatile, radioactive, toxic and pathological waste; and
 - (iii) "Property of the Landlord" shall include any real property owned by the Landlord or any associate of the Landlord, as that term is defined in the *Business Corporations Act, 1982, R.S.O. 1990, c. B-16, as amended.*
- (b) The Landlord shall have the right to conduct an Environmental Audit of the Leased Premises and the Land at any time and from time to time throughout the Term.
- (c) In the event that the Environmental Audit reveals that the Tenant is storing, handling, transporting, manufacturing, processing, treating, disposing or otherwise dealing with (hereinafter collectively "handling") any Hazardous Substance in a manner unsatisfactory to the Landlord in accordance with first class environmental protection practices the Landlord shall give the Tenant thirty (30) days within which to amend its manner of handling such Hazardous Substances to comply with first class environmental protection practices and the manner in which the Landlord indicates such substances must be handled. The Tenant shall further forthwith carry out such procedures as are, in the sole opinion of the Landlord, necessary to correct any damage which may have been done to any Property of the Landlord or to forestall any damage to any Property of the Landlord which in the opinion of the Landlord may be created by the unsatisfactory handling with such Hazardous Substances.
- (d) In the event that the Tenant shall be in default of the provisions hereof and shall fail to amend its practices or take such corrective measures as are required pursuant to subparagraph (c) hereof within the aforesaid thirty (30) day period the Landlord shall have the right to enter upon the Leased Premises and carry out such procedures as are, in the sole opinion of the Landlord, necessary to correct any damage which may have been done to any Property of the Landlord, or to forestall any damage to any Property of the Landlord which in the opinion of the Landlord may be created by the unsatisfactory handling of such Hazardous Substances and the Tenant shall pay to the Landlord on demand, as additional rent, all costs and expenses of carrying out such procedures. Further, in addition to and without limiting any other remedies available to the Landlord, the Landlord may, on seven (7) days notice, terminate this Lease.
- (e) The Tenant shall pay to the Landlord as Additional Rent, forthwith upon demand, the cost of any Environmental Audit conducted by the Landlord together with the costs, if any, to carry out such procedures required to correct any damage, or forestall any potential damage to the Property of the Landlord due to the unsatisfactory handling of such Hazardous Substances by the Tenant.
- (f) The Tenant shall promptly comply with and conform to the requirements of all applicable statutes, laws, by-laws, regulations, ordinances and orders of any governmental or quasi-governmental body having jurisdiction thereover with respect to the production or odours or other emissions into the air in or surrounding the Leased Premises, or any part thereof.
- (g) In the event that the Landlord, acting reasonably, shall deem any odour or emission to be an obnoxious odour (the "Obnoxious Odour") and shall so notify the Tenant, the Tenant shall forthwith take all necessary actions to eliminate the Obnoxious Odour or to reduce the level thereof to a level acceptable to the Landlord. If the Tenant shall fail to so eliminate the Obnoxious Odour or to reduce the level thereof as aforesaid, then, in addition to and without limiting any other rights or remedies of the Landlord hereunder, the Landlord may upon five (5) days notice to the Tenant,

itself take such actions as it deems necessary to eliminate the Obnoxious Odour or to reduce the level thereof. If the Landlord shall have taken such actions the Tenant shall forthwith pay to the Landlord, as Additional Rent, upon demand all costs incurred by the Landlord together with an amount equal to fifteen percent (15%) thereof as an administrative and supervisory fee.

ARTICLE SEVEN—MAINTENANCE, REPAIRS AND ALTERATIONS

7.1 Maintenance and Repairs by Tenant. The Tenant at its own expense, shall maintain and keep the Leased Premises and every part thereof in good order and condition. The Tenant shall also, at its own cost, promptly make all needed repairs including without limitation, major structural repairs, to the Leased Premises. Any replacements, including but not limited to, replacements and repairs to and of the roof and all electrical, plumbing, climate control systems, machinery and equipment in and to the Leased Premises, all entrances, glass, show window mouldings, store fronts, partitions, doors and any and all other fixtures, equipment and appurtenances, that are part of the Leased Premises (reasonable wear and tear, and damage by fire, lightning, and tempest only excepted) shall be made by the Tenant, at its own cost, using new materials and in good and workmanlike manner. The Tenant shall keep the Leased Premises well painted, clean and in such condition as a careful owner would do.

If all or any part of the Leased Premises or any equipment, machinery or facilities contained therein, or the roof or outside walls of the Leased Premises or any other structural portions thereof require repair or become damaged or destroyed for any reason whatsoever, the Tenant shall using new materials, at its own cost and expense, forthwith repair and/or replace same, with such repairs and/or replacements to be performed in a good and workmanlike manner that a prudent owner would in similar circumstances. If the Tenant fails, refuses or is unable to repair and/or make the necessary replacements to the Leased Premises as aforesaid, the Landlord may make such repairs and/or replacements with the cost of the resulting repairs, replacements or alterations (if necessary) plus a further fifteen percent (15%) of the cost thereof representing the Landlord's Administration Fee, shall be borne by the Tenant who shall pay the same to the Landlord as Additional Rent forthwith upon presentation of an account of such expenses incurred by the Landlord.

The Tenant agrees to deliver to the Landlord on demand mechanical fitness reports regarding the heating, ventilation and air conditioning system installed in, on or kept at the Leased Premises.

7.1.1 Maintenance and Repair by Landlord. Notwithstanding anything to the contrary herein the Landlord shall maintain, at its sole cost and expense, the exterior and structural components of the Leased Premises, including but not limited to exterior walls, floor slab, foundation and utility services extending to the service connection within the Leased Premises. The Landlord will also be responsible for all repairs and replacements of the HVAC equipment servicing the Leased Premises.

7.2 Improvements, Alterations, Partitions

- (a) If the Tenant during the Term desires to affix, install or erect partitions, counters or fixtures in any part of the Leased Premises, it may do so at its own expense at any time and from time to time, provided that the Tenant's rights to make such alterations to the Leased Premises shall be subject to the following conditions:
- (i) before undertaking any such alterations, the Tenant shall submit to the Landlord a plan showing the proposed alterations and shall obtain the written approval and consent of Landlord to the same and such approval and consent shall not be unreasonably withheld;
 - (ii) all such alterations shall conform to all building by-laws, if any, then in force affecting the Leased Premises, the Building and the lands described in Schedule "A" annexed hereto and such alterations or improvements shall be completed in a good and workmanlike manner using, at all times, new materials; and
 - (iii) such alterations will not be of such kind or extent as to in any manner weaken the structure of the Building after the alterations are completed or reduce the value of the Walker Plaza, and such alterations shall be completed as soon as is reasonably possible.
- (b) All alterations, decorations, additions and improvements made by Tenant, or made by Landlord on Tenant's behalf (other than Tenant's trade fixtures) shall become the property of Landlord upon the end of the Term without compensation therefor to Tenant. Such alterations, decorations, additions or improvements shall not be removed from the Leased Premises either during or at the expiration of the Term or sooner determination of the Lease except that:
- (i) Tenant may at the end of the Term, if not in default, remove its trade fixtures at its own cost;

- (ii) Tenant shall, at the end of the Term, at its own cost remove such of its leasehold improvements and fixtures as Landlord may require to be removed; and
- (iii) Tenant may remove its trade fixtures during the Term in the usual and normal course of its business or if such trade fixtures have become excess for Tenant's purpose or Tenant is substituting therefor new and similar trade fixtures, provided Tenant is not in default and provided Tenant first notifies Landlord thereof.

The Tenant shall, in the case of every such removal, either during or at the end of the Term, make good any damage caused to the Leased Premises and the Walker Plaza by the installation and removal of any such alteration, decoration, addition or improvement. The provisions of this Section 7.2 shall survive the termination of the Lease.

7.3 Tenant's Refusal to Repair. If the Tenant refuses or neglects to repair as required pursuant to this Article Seven and to the reasonable satisfaction of the Landlord, the Landlord may make such repairs without liability to the Tenant for any loss or damage that may accrue to the Tenant's merchandise, fixtures, other property or business by reason thereof, and upon completion of such repairs, the Tenant shall pay to the Landlord, as Additional Rent and upon presentation of bills therefor, the Landlord's cost for making such repairs plus an administrative fee of fifteen percent (15%) thereof. The Tenant agrees that the making of any repairs by the Landlord pursuant to this Section 7.3 is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease.

7.4 Entry by Landlord. The Tenant covenants that it shall be lawful for the Landlord and its agent(s) at all reasonable times during the Term and upon twenty-four hours (24) telephonic notice to enter the Leased Premises to inspect the condition thereof. Where an inspection reveals that repairs are necessary, the Landlord shall give to the Tenant notice in writing, and immediately thereafter the Tenant will forthwith proceed to make all necessary repairs in a good and workmanlike manner, using at all times new materials, and to the satisfaction of the Landlord, so as to complete same within the reasonable time or times provided for in the notice delivered by the Landlord as aforesaid. The failure by the Landlord to give notice shall not relieve the Tenant from any of its obligations to repair in accordance with the provisions hereof.

The Tenant also acknowledges and agrees that it shall be lawful for the Landlord and its agents to enter the Leased Premises during the Term without notice if the Landlord perceives there is an emergency and immediate entry to the Leased Premises is imperative.

7.5 Leave Premises in Good Repair. Subject to Sub-section 7.2(b) hereof, the Tenant will, at the expiration or sooner termination of the Term or any renewals thereof peaceably surrender and yield up unto the Landlord the Leased Premises with all improvements, erections and appurtenances other than the Tenant's trade fixtures which at any time or times during the Term shall be made, placed or erected therein or thereon, in good and substantial repair and condition, reasonable wear and tear and damage by fire, lightning and tempest only excepted, and the Tenant shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for payment of rent and shall inform the Landlord of all combinations on locks, safes and vaults, if any, in the Leased Premises. The Tenant shall, however, if requested by the Landlord remove all improvements, erections, alterations, fixtures or other appurtenances made, placed or erected at any time or times during the Term in or on the Leased Premises, at the sole cost and expense of the Tenant, and shall repair all damage to the Leased Premises caused by their installation and/or removal. The Tenant's obligation to observe and perform this covenant shall survive the expiration or sooner determination of the Term or any renewal thereof.

7.6 Damage to Leased Premises. The Tenant shall, in the event of any damage to the Leased premises by any cause or causes, give notice in writing to the Landlord of such damage forthwith upon the same becoming known to the Tenant. The Tenant shall give Landlord prompt notice of any defect to plumbing, climate control apparatus, electrical equipment and wires and any other defect in the Leased Premises and anything connected therewith. Notwithstanding anything to the contrary contained herein, the Tenant shall not be relieved of its repair and replacement obligations as set forth in Section 7.1 hereof.

7.7 Overloading. The Tenant will not bring upon the Leased Premises or any part thereof any machinery, equipment, article or thing that by reason of its weight, size or use might damage the floors of the Leased Premises and if any damage is caused to the Leased Premises by any machinery, equipment, article or thing or by overloading or by any act, neglect or misuse on the part of the Tenant or any of its servants, agents, or employees or any persons having business with the Tenant, the Tenant will forthwith repair the same using, at all times, new materials or pay to the Landlord the cost of making good the same, together with fifteen percent (15%) Administration Fee as Additional Rent, forthwith upon demand.

7.8 Tenant not to Overload Facilities. The Tenant will not install any equipment which would exceed or overload the capacity of the utility facilities in the Leased Premises and agrees that if any equipment installed by the Tenant shall require additional utility facilities, same shall be installed if available, at the Tenant's sole cost and expense in accordance with plans and specifications to be approved by the Landlord, and if installed by the Landlord the Tenant shall pay an additional fifteen percent (15%) Administration Fee as Additional Rent, forthwith upon demand.

7.9 Plumbing Facilities. The plumbing facilities in the Leased Premises shall not be used for any other purpose than that for which they are constructed.

7.10 Refuse. The Tenant will keep the Leased Premises and its surrounding area and every part thereof in a clean and tidy condition and will not permit waste paper, garbage, ashes or waste or objectionable material to accumulate thereon.

7.11 Tenant Shall Discharge All Liens. The Tenant shall promptly pay all its contractors and materialmen and shall do any and all things necessary to minimize the possibility of a lien attaching to the Leased Premises or to any or part of the Walker Plaza and should any such lien be made or filed, the Tenant shall discharge the same forthwith at the Tenant's expense. In the event the Tenant shall fail to cause any such lien to be discharged as aforesaid, then, in addition to any other right or remedy of the Landlord, the Landlord may, but it shall not be so obligated, discharge same by paying the amount claimed to be due, together with interest costs and other amounts required to so discharge and vacate the said lien into Court or directly to any such lien claimant and the amount so paid by the Landlord and all costs and expenses including solicitor's fees (on a solicitor and his client basis) incurred herein for the discharge of such lien shall be due and payable by the Tenant to the Landlord as Additional Rent on demand.

7.12 Inspect Premises. During the Term any person or persons may inspect the Leased Premises and all parts thereof upon twenty-four (24) hours telephonic notice at all reasonable times, on producing a written order to that effect signed by the Landlord or its agents for the purpose related to the obligations or responsibilities of either party under the Lease.

7.13 Sign Policy. The Tenant shall, in accordance with the Landlord's design criteria and at its sole expense be permitted to erect a sign on the exterior of the Leased Premises in conformity with the signs erected by the other tenants of the plaza. In addition, the Tenant shall have the opportunity, if there is space available to access and use the double-sided panel (2' X 8') on the pylon sign erected on the Walker Plaza. The cost of the installations and maintenance of the panels shall be the sole responsibility of the Tenant and always subject to Landlord's approval, not to be unreasonably withheld.

ARTICLE EIGHT — USE OF LEASED PREMISES

8.1 Use of Premises. The Tenant shall use and occupy the Leased Premises as a pharmacy with a "front shop" and for no other purpose; provided the Tenant, in the use and occupation of the Leased Premises and in the prosecution or conduct of any business therein, shall comply with all requirements of all laws, orders, by-laws, ordinances, rules and regulations of any federal, provincial or municipal authorities and with any direction or certificate of occupancy issued pursuant to any law or by any public officer or officers. The Tenant covenants that it will not use or permit to be used any part of the Leased Premises for any dangerous, noxious or offensive trade or business, and will not cause or maintain any nuisance in, at or on the Leased Premises, or cause or permit the Leased Premises to be used for the purpose of any bankrupt, liquidation or auction sale and the Tenant shall commence its business on the Commencement Date and operate its business in a diligent, active and continuous manner in the whole of the Leased Premises throughout the Term of this Lease.

8.2 Compliance with Laws, etc. The Tenant shall promptly comply with all requirements of all applicable statutes, laws, by-laws, rules, regulations, ordinances and orders from time to time in force during the Term hereof, whether municipal, parliamentary or otherwise, including all lawful requirements of the local board of health, police and fire departments and municipal authorities and with every applicable regulation, order and requirement of the Insurers' Advisory Organization of Canada, or anybody having a similar function, or of any liability or fire insurance company by which the Landlord and Tenant or either of them may be insured at any time during the Term hereof.

The Tenant shall also be responsible for, at its own cost and expenses, of obtaining an Occupancy Permit (if required) for the Leased Premises.

8.3 Nuisance. The Tenant will not do or omit to do or permit to be done or omit anything upon or in respect of the Leased Premises, the Building or the lands described in Schedule "A" annexed hereto, the doing or omission of which as the case may be shall be or result in a nuisance or menace to the Landlord or to the other tenants of the Walker Plaza and no machinery shall be used or placed on or in, as the case may be, the Leased Premises, the Building or the Walker Plaza, which shall cause any undue vibration in or to the Leased Premises, the Building or the Walker Plaza, and if the Landlord or any other occupants of the Building or any of the Buildings on the Walker Plaza shall complain that any machinery, equipment or vehicles or operation thereof in or on the Leased Premises, the Building or Lands, is a nuisance to it or them, as the case may be, upon receiving

notice thereof, the Tenant will immediately cease such nuisance. No loudspeakers, television, radio, phonograph, sound system or other device shall be used in a manner so as to be heard or seen, outside of the Leased Premises without the prior written approval of the Landlord, such approval not to be unreasonably withheld.

8.4 Prohibited Use. The Leased Premises shall not be used in any manner which obstructs any part of the Building, the Walker Plaza or the Common Areas and Facilities nor for any purpose except that permitted by Section 8.1

8.5 Continuous Use. The Tenant shall conduct its business in and use the whole of the Leased Premises continuously and actively throughout the Term, including maintaining an adequate staff to properly serve all of its clients and customers and in so doing shall keep the Leased Premises open for business during the normal hours of business generally observed by other pharmacies within the City of Windsor.

8.6 Exclusive Use. Provided that the Tenant is not in default under the Lease, the Landlord shall not during the Term lease any portion of the Walker Plaza to another tenant (whether individual, firm, partnership or corporation) which engages in the business of a pharmacy, drug or vitamin supplement store but excluding therefrom the business operations of Luigi Albano, a chiropractor who is incidental to his business sells herbal remedies.

ARTICLE NINE — INSURANCE

9.1 Tenant's Payments. The Tenant shall pay its Proportionate Share of the cost of insuring as more particularly set forth in Section 6.2 hereof.

9.2 Tenant's Insurance

- (a) The Tenant covenants and agrees at its own cost and expense to take out and keep in full force and effect and in the names of the Tenant, the Landlord and any mortgagee, chargee, or debenture holder that the Landlord, may advise as their respective interests may appear, the following insurance:
- (i) insurance upon property of every description and kind owned by the Tenant, or for which the Tenant is legally liable or installed by or on behalf of the Tenant and which is located within the lands described in Schedule "A" annexed hereto, the Building and Leased Premises including, without limitation, stock-in-trade, furniture, fittings, installations, alterations, additions, partitions, fixtures and anything in the nature of a leasehold improvement in an amount of not less than one hundred percent (100%) of the full replacement cost thereof, with minimum coverage against at least, the perils of fire, and standard extended coverage including sprinkler leakages (where applicable), earthquake, flood and collapse. In the event that there is a dispute as to the amount which comprises full replacement cost, the decision of the Landlord or any mortgagee shall be conclusive;
 - (ii) Tenant's legal liability insurance for the full replacement cost of the Leased Premises, including loss of use thereof;
 - (iii) property damage and public liability insurance including personal liability, contractual liability, non-owned automobile liability and owner's and contractors' protective insurance coverage with respect to the Leased Premises, and the Tenant's use of the Common Areas and Facilities, coverage to include the business operations conducted by the Tenant and any other person on the Leased Premises. Such policies shall be written on a comprehensive basis with limits of not less than Two Million (\$2,000,000.00) for bodily injury to any one or more persons, or property damage, and such higher limits as the Landlord or any mortgagee reasonably requires from time to time, and all such policies shall contain a cross-liability clause;
 - (iv) broad form blanket repair and replacement coverage on boilers, pressure vessels, air-conditioning equipment and miscellaneous apparatus;
 - (v) business interruption insurance in such amount as will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Leased Premises as a result of such perils; and
 - (vi) any other form or forms of insurance as the Tenant or the Landlord or any mortgagee reasonably requires from time to time in form, in amounts and for

kept or stored on the Leased Premises shall be so kept or stored at the risk of the Tenant only and the Tenant shall indemnify and save harmless from any claims arising out of any damages to the same including, without limitation, any subrogation claims by the Tenant's insurers. The contents of this section shall survive the termination or surrender of this Lease notwithstanding anything in this Lease to the contrary.

9.6 Indemnification of Landlord. Notwithstanding any other terms, covenants and conditions contained in this Lease, the Tenant shall indemnify the Landlord and save it harmless from and against any and all loss (including loss of all Minimum Rent and Additional Rent payable by the Tenant pursuant to this Lease, to the extent that such Minimum Rent and Additional Rent are not otherwise collected under any policy of insurance maintained pursuant to this Lease), claims, actions, damages, liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease or any occurrence in, upon, or at the Leased Premises or the occupancy or use by the Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises by the Tenant. If the Landlord shall be made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect, indemnify and hold the Landlord harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with such litigation. The Tenant shall also pay all costs, expenses and legal fees (on a solicitor and client basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions of this Lease, unless a Court shall decide otherwise. The contents of this section shall survive the termination or surrender of this Lease notwithstanding anything in this Lease to the contrary.

9.7 Waiver of Subrogation. In those instances under the provisions of this Lease either the Landlord or the Tenant is obligated to obtain and maintain insurance coverage each shall use its best efforts to obtain a waiver of subrogation from any such insurers for the benefit of either the Landlord or the Tenant, as the case may be.

ARTICLE TEN — DAMAGE, DESTRUCTION AND EXPROPRIATION

10.1 Repair. In the event the Leased Premises shall at any time be destroyed or damaged (including smoke damage), as a result of fire, the elements, unavoidable accident or other casualty insured against by the Landlord and not caused by the Tenant, this Lease shall continue in full force and effect and the Landlord shall, provided the Tenant has maintained insurance as hereinbefore provided, and subject to the provisions of Subsection 10.2(b) hereof, commence diligently to reconstruct, rebuild or repair the Leased Premises to the extent only of the Landlord's repair obligations under the Lease (the "Landlord's Obligation") which in no event shall include repairs and replacements with respect to the Tenant's leasehold improvements. If as a result of such occurrence, the Leased Premises shall be rendered untenable only in part, Minimum Rent (but not Additional Rent) shall be abated proportionately to the portion of the Leased Premises rendered untenable until such time as the Landlord has completed the Landlord's Obligation. If the Leased Premises shall be rendered wholly untenable by reason of such occurrence, Minimum Rent (but not Additional Rent) shall abate entirely until the Leased Premises have been restored and rendered tenable by the Landlord, to the extent of the Landlord's Obligation. If as a result of such occurrence, the Leased Premises are not rendered untenable in whole or in part, the Lease shall continue in full force and effect, the rental and other payments payable by the Tenant shall not terminate, be reduced or abate. Upon the Tenant being notified in writing by the Landlord that the Landlord's work of reconstruction, rebuilding or repairs as aforesaid, has been substantially completed, the Tenant shall forthwith complete all work required to restore the Tenant's leasehold improvements and all work required to fully restore the Leased Premises for business fully fixtured, stocked and staffed (in any case, without the benefit of any allowance or payment made by the Landlord to the Tenant in connection with the Tenant's initial construction of the Leased Premises). The Tenant shall complete its work and open for business within thirty (30) days after notice that the Landlord's Obligation is substantially completed or within such shorter period as is reasonably determined by the Landlord given the nature of the Tenant's work. Notwithstanding anything to the contrary contained in the Lease, by determination of whether or not the Landlord has completed the Landlord's obligation shall be determined by the Landlord's Architect, Engineer, or any other Person designated by the Landlord.

10.2 Destruction of Building.

- (a) Notwithstanding the provisions of Section 10.1 hereof:
- (i) in the event that fifty percent (50%) or more of the area of the Building or the Building itself as determined by the Landlord and the Tenant shall at any time be destroyed or damaged as set out in Subsection 10.02(b) hereof (whether or not the Leased Premises are damaged), then, and so often as any of such events shall occur, either the Landlord or the Tenant may, at its option, (to be exercised by notice in writing to the Tenant or the Landlord, as the case may be, given within one hundred and twenty (120) days following any such occurrence); or
 - (ii) in the event that the Leased Premises are damaged or destroyed and cannot, in the opinion of the Landlord, be repaired, to the extent of the Landlord's Obligation, within ninety (90) days of such damage and destruction, the

kept or stored on the Leased Premises shall be so kept or stored at the risk of the Tenant only and the Tenant shall indemnify and save harmless from any claims arising out of any damages to the same including, without limitation, any subrogation claims by the Tenant's insurers. The contents of this section shall survive the termination or surrender of this Lease notwithstanding anything in this Lease to the contrary.

9.6 Indemnification of Landlord. Notwithstanding any other terms, covenants and conditions contained in this Lease, the Tenant shall indemnify the Landlord and save it harmless from and against any and all loss (including loss of all Minimum Rent and Additional Rent payable by the Tenant pursuant to this Lease, to the extent that such Minimum Rent and Additional Rent are not otherwise collected under any policy of insurance maintained pursuant to this Lease), claims, actions, damages, liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease or any occurrence in, upon, or at the Leased Premises or the occupancy or use by the Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises by the Tenant. If the Landlord shall be made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect, indemnify and hold the Landlord harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with such litigation. The Tenant shall also pay all costs, expenses and legal fees (on a solicitor and client basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions of this Lease, unless a Court shall decide otherwise. The contents of this section shall survive the termination or surrender of this Lease notwithstanding anything in this Lease to the contrary.

9.7 Waiver of Subrogation. In those instances under the provisions of this Lease either the Landlord or the Tenant is obligated to obtain and maintain insurance coverage each shall use its best efforts to obtain a waiver of subrogation from any such insurers for the benefit of either the Landlord or the Tenant, as the case may be.

ARTICLE TEN — DAMAGE, DESTRUCTION AND EXPROPRIATION

10.1 Repair. In the event the Leased Premises shall at any time be destroyed or damaged (including smoke damage), as a result of fire, the elements, unavoidable accident or other casualty insured against by the Landlord and not caused by the Tenant, this Lease shall continue in full force and effect and the Landlord shall, provided the Tenant has maintained insurance as hereinbefore provided, and subject to the provisions of Subsection 10.2(b) hereof, commence diligently to reconstruct, rebuild or repair the Leased Premises to the extent only of the Landlord's repair obligations under the Lease (the "Landlord's Obligation") which in no event shall include repairs and replacements with respect to the Tenant's leasehold improvements. If as a result of such occurrence, the Leased Premises shall be rendered untenantable only in part, Minimum Rent (but not Additional Rent) shall be abated proportionately to the portion of the Leased Premises rendered untenantable until such time as the Landlord has completed the Landlord's Obligation. If the Leased Premises shall be rendered wholly untenantable by reason of such occurrence, Minimum Rent (but not Additional Rent) shall abate entirely until the Leased Premises have been restored and rendered tenantable by the Landlord, to the extent of the Landlord's Obligation. If as a result of such occurrence, the Leased Premises are not rendered untenantable in whole or in part, the Lease shall continue in full force and effect, the rental and other payments payable by the Tenant shall not terminate, be reduced or abate. Upon the Tenant being notified in writing by the Landlord that the Landlord's work of reconstruction, rebuilding or repairs as aforesaid, has been substantially completed, the Tenant shall forthwith complete all work required to restore the Tenant's leasehold improvements and all work required to fully restore the Leased Premises for business fully fixtured, stocked and staffed (in any case, without the benefit of any allowance or payment made by the Landlord to the Tenant in connection with the Tenant's initial construction of the Leased Premises). The Tenant shall complete its work and open for business within thirty (30) days after notice that the Landlord's Obligation is substantially completed or within such shorter period as is reasonably determined by the Landlord given the nature of the Tenant's work. Notwithstanding anything to the contrary contained in the Lease, by determination of whether or not the Landlord has completed the Landlord's obligation shall be determined by the Landlord's Architect, Engineer, or any other Person designated by the Landlord.

10.2 Destruction of Building.

- (a) Notwithstanding the provisions of Section 10.1 hereof:
- (i) in the event that fifty percent (50%) or more of the area of the Building or the Building itself as determined by the Landlord and the Tenant shall at any time be destroyed or damaged as set out in Subsection 10.02(b) hereof (whether or not the Leased Premises are damaged), then, and so often as any of such events shall occur, either the Landlord or the Tenant may, at its option, (to be exercised by notice in writing to the Tenant or the Landlord, as the case may be, given within one hundred and twenty (120) days following any such occurrence); or
 - (ii) in the event that the Leased Premises are damaged or destroyed and cannot, in the opinion of the Landlord, be repaired, to the extent of the Landlord's Obligation, within ninety (90) days of such damage and destruction, the

Landlord or the Tenant may, at its option, (to be exercised by notice in writing to the Tenant, given within thirty (30) days following any such occurrence),

elect to cancel or terminate this Lease and in the case of such election, the Term of this Lease and the tenancy hereby created shall expire by lapse of time upon the thirtieth (30th) day after such notice is given, and the Tenant shall, within such thirty (30) day period, vacate the Leased Premises and surrender the same to the Landlord with the Landlord having the right to re-enter and/or repossess the Leased Premises discharged of this Lease and to remove all persons and property therefrom. Minimum Rent and Additional Rent shall be due and payable without reductions or abatement subsequent to the destruction and damage and until the date of termination, unless the Leased Premises shall have been damaged or destroyed as well, in which event the provisions of Section 10.1 shall be applicable.

- (b) In the event that less than fifty percent (50%) of the area of the Building as determined by the Landlord, acting reasonably, shall at any time be destroyed or damaged (including smoke damage) as a result of fire, the elements, unavoidable accident or other casualty, whether or not the Leased Premises are affected by such occurrence, or in the event that more than fifty percent (50%) of the Building is so damaged or destroyed as determined by the Landlord, acting reasonably, but the Landlord shall not exercise its option to terminate this Lease as set out in Subsection 10.02(a) hereof, then and so often as such event shall occur, the Lease shall continue in full force and effect, the rental, including Minimum Rent, shall be calculated in accordance with the provisions of Section 10.01 hereof, and other amounts hereby reserved shall not abate, and the Landlord shall commence diligently to reconstruct, rebuild or repair the Building following such destruction or damage, but only to the extent of the Landlord's responsibilities pursuant to the terms of the various leases of premises in the Building and exclusive of any tenant's responsibilities set out therein.
- (c) In the event the Landlord shall elect to repair, reconstruct or rebuild the Building or any part or parts thereof, the Landlord may use plans and specifications and working drawings other than those used in the original construction of same.

10.3 Common Areas Repair By Landlord. If the Common Areas and Facilities or any portion thereof is damaged or destroyed by any casualty whatsoever, the Landlord shall repair or rebuild the Common Areas and Facilities with all reasonable speed.

10.4 Expropriation

- (a) Both the Landlord and the Tenant agree to co-operate with each other in respect of any expropriation of all or any part of the Leased Premises or any other part of the Walker Plaza so that each may receive the maximum award in the case of any expropriation to which they are respectively entitled at law.
- (b) If at any time during the Term:
 - (i) more than fifty percent (50%) of the total Rentable Area of the Building; or
 - (ii) more than fifty percent (50%) of the area of the Common Areas and Facilities;

is acquired or expropriated by any lawful expropriating authority, or if reasonable access to the Leased Premises is materially affected by any such acquisition or expropriation, then in any of such events, at the option of the Landlord, this Lease shall cease and terminate as of the date of the interest acquired or expropriated vesting in such expropriating authority and the Tenant shall have no claim against the Landlord for the value of any unexpired Term or for damages or for any reason whatsoever. If the Landlord does not so elect to cancel this Lease by notice as aforesaid, this Lease shall continue in full force and effect without reduction or abatement of Minimum Rent or Additional Rent provided that if any part of the Leased Premises is expropriated and as a result thereof, the Rentable Area of the Leased Premises is reduced, then the Rentable Area of the Leased Premises shall be adjusted to take into account any such reduction in area, and the Minimum Rent or Additional Rent payable by the Tenant shall be adjusted accordingly.

- (c) The decision of the Landlord's Architect, Engineer or other person designated by the Landlord as to the percentage of the Leased Premises, Rental Area of the Building and/or Lands expropriated or taken shall be final and binding upon the parties hereto.

ARTICLE ELEVEN — ASSIGNMENT AND SUBLETTING

11.1 Assignment and Subletting. The Tenant shall not grant any concession or enter into any licence or franchise to use the Leased Premises or any part thereof. The Tenant shall not assign this

Lease in whole or in part nor sublet the whole or any part of the Leased Premises nor part with possession or control of the Leased Premises nor share possession thereof nor permit the occupancy of the whole or a part of the Leased Premises by any other person nor mortgage or encumber this Lease or the Leased Premises, (any of which are herein called a "transfer") except in each instance with the prior written consent of the Landlord which, subject as hereinafter provided, shall not be unreasonably withheld; provided that the Tenant shall deliver to the Landlord its written request for consent to such transfer together with a copy of the proposed transfer document and shall provide the Landlord with full particulars of the proposed transfer including all of its terms and copies of any offers, draft agreements or other documents which contain the terms of the transaction together with such information as the Landlord may reasonably require with respect to the business and financial responsibility and standing of the proposed transferee.

11.2 Consent May be Withheld. Notwithstanding anything contained in legislation, law or statute as the same may be amended from time to time, the Landlord shall not be deemed to be unreasonable in withholding its consent under Section 11.1 and may arbitrarily withhold such consent unless the proposed assignee, sublessee or other transferee shall have agreed with the Landlord to assume and perform each of the covenants, obligations and agreements of the Tenant in this Lease, or if in the discretion of the Landlord such assignment, subletting or parting with possession by the Tenant might unreasonably interfere with the merchandising balance of the Building and/or the lands described in Schedule "A" annexed hereto or might adversely affect the character or nature of the Building and/or the lands described in Schedule "A" annexed hereto.

11.3 Conditions of Consent. In the event that the Tenant receives consent under Section 11.1, such consent shall be subject to the condition that the fixed annual Minimum Rent payable by any such assignee, subtenant or occupant thereafter shall be no less than the average annual rent (including fixed annual Minimum Rent) paid by the Tenant for the two (2) full twelve (12) month Rental Years immediately preceding such assignment, subletting or parting with or sharing possession (or the annual combined fixed annual Minimum Rent since the commencement date of the Term of the Lease if the Tenant at the time of the assignment, subletting or parting with or sharing possession has been occupying the Leased Premises less than two (2) full twelve (12) month Rental Years). All of the other terms, covenants and conditions of this Lease shall remain as herein specified, including without limitation, the provisions of Section 11.4 relating to the continuing liability of the Tenant.

11.4 Tenant to Remain Liable. If the financial strength of the proposed assignee is less than the financial strength of the Tenant, no assignment, sublease or other disposition by the Tenant of this Lease or of any interest under this Lease, shall release or relieve the Tenant from the performance of all of its covenants, obligations and agreements under this Lease and the Tenant shall continue to be bound by this Lease; and the onus shall rest with the Tenant to satisfy the Landlord of the financial strength of each of the Tenant and the assignee. In the event this Lease is disclaimed or terminated by any trustee in bankruptcy of any assignee of this Lease, the original Tenant named in this Lease, upon notice from the Landlord given within thirty (30) days of such disclaimer or termination, shall enter into a lease with the Landlord upon the same terms and conditions as contained herein except for the duration of term, which shall expire on the date this Lease would have expired save for such disclaimer or termination.

11.5 Changes in Control. If at any time on or after the execution of this Lease the Tenant is a corporation and any portion or all of the shares or voting rights of shareholders of the Tenant or of a Related Corporation, as that term is defined in the Income Tax Act of Canada, from time to time, are transferred by sale, assignment, bequest, inheritance, trust settlement, operation of law or other disposition or are issued by subscription or allotment or are cancelled or redeemed, so as to result in any change in the holding of effective voting or other control of the Tenant or of a Related Corporation from that which existed on the date of execution of this Lease or the date on which the Tenant became a corporation, if later, such change shall be deemed to be an assignment of this Lease and all of the other sections of this Article Eleven shall be applicable thereto *mutatis mutandis*. Upon the request of the Landlord from time to time, the Tenant shall make available to the Landlord all books and records relating to the ownership or control of the Tenant. This provision shall not apply if at the time of any such change in control the Tenant is a public corporation whose shares are traded and listed on any recognized security exchange in Canada.

11.6 Landlord's Costs. Prior to the Landlord delivering any requested consent, the Tenant shall reimburse to the Landlord all reasonable costs (including legal fees in connection with advice or documentation) incurred by the Landlord in connection with each request by the Tenant for consent under Section 11.1.

11.7 Assignment by Landlord. The Landlord declares that it may assign its rights under this Lease to a lender as security for a loan to the Landlord and in the event that such an assignment is given and executed by the Landlord and notification thereof is given to the Tenant by or on behalf of the Landlord, it is expressly agreed between the Landlord and the Tenant that this Lease shall not be cancelled or modified for any reason whatsoever except as provided for, anticipated or permitted by the terms of this Lease or by law, without the consent in writing of such lending institution.

The Tenant covenants and agrees with the Landlord that it will, if and whenever reasonably required

by the Landlord, consent to and become a party to any instrument relating to this Lease which may be required by or on behalf of any purchaser, bank or mortgagee of the Walker Plaza, from time to time provided always that the rights of the Tenant as hereinbefore set out be not altered or varied by the terms of such instrument or document.

11.8 Limitation of Landlord's Liability. The term "Landlord" as used in this Lease so far as covenants or obligations on the part of the Landlord are concerned shall be limited to mean and include only the owner or owners at the time in question of the Leased Premises, and in the event of any transfer or transfers of ownership, the Landlord herein named, and in case of any subsequent transfers or conveyances, the then vendor or transferor, shall be automatically freed and relieved from and after the date of such transfer or conveyance, of all personal liability as respects the performance of any covenants or obligations on the part of the Landlord contained in this Lease thereafter to be performed, it being intended hereby that the covenants and obligations contained in this Lease on the part of the Landlord shall, subject as aforesaid, be binding on the Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership.

ARTICLE TWELVE—STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

12.1 Status Statement. Within ten (10) days after written request therefor by the Landlord, or in the event that upon any sale, assignment, lease or mortgage of the Leased Premises, the Building or the lands described in Schedule "A" annexed hereto or any part thereof by the Landlord, a status statement shall be required from the Tenant, the Tenant hereby agrees to deliver in the form supplied by the Landlord a certificate to any proposed mortgagee or purchaser or to the Landlord, stating (if such be the case) that:

- (a) this Lease is unmodified and in full force and effect (or if there have been any modifications, that this Lease is in full force and effect as modified and identify the modification agreements, if any), or if this Lease is not in full force and effect, the certificate shall so state;
- (b) the date of the commencement of the Term;
- (c) the date to which the rent has been paid under this Lease including prepaid Minimum Rent; and
- (d) whether or not there is any existing default by the Tenant in the payment of any rent or other sum of money under this Lease, and whether or not there is any other existing default by either party under this Lease with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof.

12.1A Statement by Landlord. Within ten (10) days after written request therefor by the Tenant, a status statement shall be required from the Landlord, the Landlord hereby agrees to deliver in the form supplied by the Tenant a certificate stating (if such be the case) that:

- (a) this Lease is unmodified and in full force and effect (or if there have been any modifications, that this Lease is in full force and effect as modified and identify the modification agreements, if any), or if this Lease is not in full force and effect, the certificate shall so state;
- (b) the date of the commencement of the Term;
- (c) the date to which the rent has been paid under this Lease including prepaid Minimum Rent; and
- (d) whether or not there is any existing default by the Tenant in the payment of any rent or other sum of money under this Lease, and whether or not there is any other existing default by either party under this Lease with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof.

12.2 Subordination. This Lease and all of the rights of the Tenant hereunder are and shall at all times be, subject and subordinate to any and all mortgages, trust deeds or the charge or lien resulting from any other method of financing or refinancing or any renewals or extensions thereof, now or hereafter in force against the Walker Plaza and improvements comprising the Walker Plaza, and upon the request of the Landlord, the Tenant will subordinate this Lease and all of its rights hereunder in such form or forms as the Landlord may require to any such mortgage or mortgages, trust deeds or the charge or lien resulting from any other method of financing or re-financing and to all advances made or hereafter to be made upon the security thereof, and will, if requested, attorn to the holder thereof. The Landlord shall provide the Tenant with written confirmation from any such mortgagee that no subordination by the Tenant shall have the effect of permitting the holder of any mortgage or charge or other security to disturb the occupation and possession by the Tenant of the

Leased Premises, so long as the Tenant shall perform all of the terms, covenants, conditions, agreements and provisos contained in this Lease and so long as the Tenant executes contemporaneously, a document of attornment required by any such mortgagee or other encumbrancer.

12.3 Attorney. The Tenant shall, upon request of the Landlord or a mortgagee or any other person having an interest in the Walker Plaza execute promptly such instruments or certificates to carry out the intent of Sections 12.1 and 12.2 as requested by the Landlord, provided that, in the case of a request for the Tenant to subordinate this Lease to any mortgage or mortgages as noted in Section 12.2 above, the Tenant has received the written confirmation from the subject mortgagee as set out in the said Section 12.2. If ten (10) days after the date of a request by the Landlord to execute any such instruments or certificates the Tenant has not executed the same, the Tenant hereby irrevocably and unconditionally appoints the Landlord as the Tenant's attorney with full power and authority to execute and deliver in the name of the Tenant any such instruments or certificates.

ARTICLE THIRTEEN — DEFAULT

13.1 No Exceptions for Distress. Notwithstanding the benefit of any present or future statute taking away or limiting the Landlord's right of distress, none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term shall be exempt from levy by distress for rent in arrears, and that upon any claim being made for such exemption by the Tenant upon distress being made by the Landlord, this covenant and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods or chattels; the Tenant waiving as it hereby does all and every benefit that could or might have accrued to it by any present or future statute but for this covenant; provided that the Landlord at the request of the Tenant shall postpone and subordinate its right of distress in favour of a chartered bank or similar type commercial lender.

13.2 Lien on Trade Fixtures. If the Tenant at the expiration or earlier termination of this Lease shall be in default under any covenant or agreement contained herein, the Landlord shall have a lien on all stock-in-trade, inventory, fixtures, equipment and facilities of the Tenant as security against loss or damage resulting from any such default by the Tenant, and the said stock-in-trade, inventory, fixtures, equipment or facilities shall not be removed by the Tenant until such default is cured or as otherwise directed by the Landlord.

13.3 Right to Re-Enter. In the event that:

- (a) the Tenant fails to pay any Minimum Rent, Additional Rent or other sums due hereunder on the day or dates appointed for the payment thereof, and does not remit such payment within ten (10) days of receipt of written notice from the Landlord demanding the payment thereof; or
- (b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant (provided the Landlord first gives the Tenant thirty (30) days written notice or no notice in case of a real or apprehended emergency of any such failure to perform) and the Tenant within such period of thirty (30) days fails to cure or takes reasonable steps to cure any such failure to perform; or
- (c) the Tenant or any person occupying the Leased Premises or any part thereof or any licensee, concessionaire or franchisee operating a business in the Leased Premises becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; or
- (d) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property, occupant's or licensee's property; or
- (e) any steps are taken or any action or proceedings are instituted by the Tenant or by any other party including without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding-up or liquidation of the Tenant or its assets; or
- (f) the Tenant makes a sale in bulk (other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting hereunder and pursuant to the *Bulk Sales Act*, R.S.O. 1990, c. B.14; or
- (g) the Tenant abandons or attempts to abandon the Leased Premises or the Leased Premises become and remain vacant for a period of five (5) consecutive days; or
- (h) the Tenant assigns, transfers, encumbers, sublets or permits the occupation or use or the parting with or sharing possession of all or any part of the Leased Premises by anyone except in a manner permitted by this Lease; or

- (i) this Lease or any of the Tenant's assets are taken under any writ of execution;
- (j) the Tenant, following the delivery of five (5) days notice by the Landlord in each instance, is late in the payment of Minimum Rent, Additional Rent or any other sum due hereunder on three (3) separate occasions during any twelve month period; or
- (k) re-entry is permitted under any other terms of this Lease;

then the Landlord, in addition to any other rights or remedies it has pursuant to this Lease, or by law, has to the extent permitted by law, the immediate right of re-entry in the name of the whole, upon and in the Leased Premises or any part thereof and may expel all persons and remove all property from the Leased Premises and such property may be removed and sold or disposed of by the Landlord as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. Upon such re-entry, the Landlord shall be entitled to have again, repossess and enjoy, as of its former estate, the Leased Premises.

13.4 Right to Relet. If the Landlord elects to re-enter the Leased Premises as provided in this Lease or if it takes possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as are necessary in order to relet the Leased Premises, or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rent and upon such other terms, covenants and conditions as the Landlord in its sole and reasonable discretion considers advisable. Upon each such reletting all rent received by the Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of such reletting including brokerage fees and solicitor's fees and of costs of such alterations and repairs; third, to the payment of Minimum Rent, Additional Rent, and other monies payable under this Lease which are due and unpaid hereunder; and the residue, if any, shall be held by the Landlord and applied in payment of future rent as the same becomes due and payable hereunder. If such rent received from such reletting during any month is less than that to be paid during that month by the Tenant hereunder, the Tenant shall pay any such deficiency which shall be calculated and paid monthly in advance on or before the first day of each and every month. No such re-entry or taking possession of the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to the Tenant. Notwithstanding any such reletting without termination the Landlord may at any time thereafter elect to terminate this Lease for such previous breach. The Landlord, at any time, may recover from the Tenant all damages it incurs by reason of such breach including the cost of recovering the Leased Premises, solicitor's fees (on a solicitor and his client basis) and including the worth at the time of such termination of the excess, if any, of the amount of rent required to be paid pursuant to this Lease for the remainder of the stated Term over the then reasonable rental value of the Leased Premises for the remainder of the stated Term, all of which amounts shall be immediately due and payable by the Tenant to the Landlord. In any of the events referred to in Section 13.3 in addition to any and all other rights, including the rights referred to in this Section 13.4 and in Section 13.3 hereof, the full amount of the current month's instalment of Minimum Rent and the aggregate of the monthly contributions towards taxes, the Tenant's Proportionate Share of Operating Costs, Additional Rent and any other payments required to be made monthly hereunder, together with the next three (3) months instalments of Minimum Rent, Additional Rent and such aggregate payments for the next three (3) months, (next three (3) all be deemed to be accruing due on a day-to-day basis) shall immediately become due and payable as accelerated rent, and the Landlord may immediately distrain for the same, together with any arrears then unpaid.

13.5 Expenses. If legal action is brought for recovery of possession of the Leased Premises, for the recovery of Minimum Rent, Additional Rent or any other amount due under this Lease or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed and a breach is established, the Tenant shall pay to the Landlord all expenses incurred therefor, including legal fees (on a solicitor and his client basis) unless a court shall otherwise award.

13.6 Removal of Goods. In the event of removal by the Tenant of the goods and chattels of the Tenant from off the Leased Premises, the Landlord may follow the same for thirty (30) days.

13.7 Bankruptcy or Receivership The Tenant covenants and agrees that if any of the goods and chattels of the Tenant on the Leased Premises shall, at any time during the said Term, be seized or taken in execution or attachment by a creditor of the Tenant, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale or become bankrupt or insolvent, or if the Tenant shall take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors or if as private or duly Court appointed Receiver, Receiver-Manager-Agent is appointed to take Receiver-Manager or Tenant's property or assets or if any order shall be made for possession of the winding up of the Tenant, then and in every such case the then current month's Minimum Rent and the next ensuing three (3) months' Minimum Rent shall immediately become due and be paid and the Landlord may re-enter and take possession of the Leased Premises were holding over after

the expiration of the said Term and the said Term shall, at the option of the Landlord, forthwith become forfeited and determined, and in every one of the cases above such accelerated rent shall be recoverable by the Landlord in the same manner as the rent hereby reserved and as if the rent were in arrears and the said option shall be deemed to have been exercised if the Landlord or its agents have given notice to the Tenant as provided for herein.

13.8 Remedies Cumulative. Notwithstanding any other provision of this Lease, the Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease, by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative, and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or the general law.

ARTICLE FOURTEEN — ACCESS BY THE LANDLORD

14.1 Right of Entry. The Landlord or the Landlord's agents shall have the right upon twenty-four (24) hours telephonic notice to enter the Leased Premises at all times to examine the same, and to show them to prospective purchasers, lessees or mortgagees, and to make such repairs, alterations, improvements or additions to the Leased Premises as the Landlord may deem necessary or desirable, and the Landlord shall have the right to make changes and additions to the pipes, conduits and ducts in the Leased Premises, and the Landlord shall be allowed to take all material into and upon the Leased Premises that may be required therefor without the same constituting an eviction of the Tenant in whole or in part and the rent reserved under this Lease shall not abate while said repairs, alterations, improvements or additions are being made by reason of loss or interruption of business of the Tenant or otherwise, provided that none of such events materially impairs the use of the Leased Premises by the Tenant. During the six (6) months prior to the expiration of the Term or any renewal term, the Landlord may exhibit the Leased Premises to prospective tenants or purchasers, and place upon the Leased Premises the usual notices "To Let" or "For Sale" which notices the Tenant shall permit to remain thereon without molestation. If the Tenant shall not be personally present to open and permit an entry into the Leased Premises at any time, when for any reason an entry therein shall be necessary or permissible, the Landlord or the Landlord's agents may enter, or may forcibly enter same without rendering the Landlord or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon the Landlord any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Leased Premises, or any part thereof, except as otherwise herein specifically provided.

14.2 Excavation. If an excavation shall be made upon land adjacent to the Leased Premises, or shall be authorized to be made, the Tenant shall forward to the person causing or authorized to cause such excavation, licence to enter upon the Leased Premises for the purpose of doing such work as the Landlord shall deem necessary to preserve the wall or the building of which the Leased Premises form a part from injury or damage and to support the same by proper foundations, without any claim for damages or indemnification against the Landlord or diminution or abatement of any rent reserved under this Lease.

ARTICLE FIFTEEN — HOLDING OVER, SUCCESSORS

15.1 Holding Over. If the Tenant remains in possession of the Leased Premises after the end of the Term or any extension thereof without having executed and delivered a new lease or an agreement extending the Term which has also been executed by the Landlord, there is no tacit renewal or extension of this Lease or the Term hereby granted notwithstanding any statutory provisions or legal presumption to the contrary and the Tenant shall be deemed to be occupying the Lease Premises as a tenant from month to month at a monthly Minimum Rent payable in advance on the first day of each month equal to two hundred percent (200%) of the monthly amount of Minimum Rent payable during the last month of the Term, and otherwise, upon the same terms, covenants and conditions as are set forth in this Lease (including the payment of all Additional Rent), so far as these are applicable to a monthly tenancy.

15.2 Successors. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the respective heirs, executors, administrators, successors and assigns of the said parties; and if there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein contained. No rights, however, shall enure to the benefit of any assignee of the Tenant unless the assignment to such assignee has been approved by the Landlord in writing as provided for in Section 11.1.

ARTICLE SIXTEEN — LANDLORD'S COVENANTS AND OBLIGATIONS

Provided that the Tenant has paid all Minimum Rent, Additional Rent and all other charges payable pursuant to this Lease and has complied with all of the terms, covenants and conditions of this Lease, the Landlord covenants and agrees to and with the Tenant as follows:

16.1 Quiet Enjoyment. For quiet enjoyment;

16.2 Maintenance of Common Areas. Subject always to the provisions of Section 6.3 to maintain and keep in good repair the Walker Plaza and the Common Areas and Facilities;

16.3 Insurance. Subject always to the provisions of Section 6.3 and Article Nine, to maintain in full force and effect during the Term hazard insurance and liability insurance on the lands described in Schedule "A" annexed hereto and Building with responsible insurance companies in an amount such as would be carried by a prudent owner of a similar building.

16.4 Right of First Refusal. In the event that during the Term, or any Extended Term thereof, the Landlord shall receive an Offer to Lease any portion of Building which abut the Leased Premises (the "Abutting Area") which the Landlord is prepared to accept, the Landlord shall forthwith transmit a copy of the said Offer to Lease the Abutting Area to the Tenant, together with a second Offer to Lease, whereby the Landlord will offer to lease the Abutting Area to the Tenant under the same terms and conditions as contained in the original Offer to Lease received by the Landlord. The said second Offer to Lease shall provide the Tenant with a period of not less than ten (10) days to accept the Landlord's Offer to Lease. In the event that the Tenant refuses to accept the Landlord's Offer to Lease, the Landlord shall be at liberty to lease the Abutting Area to the Offeror submitting the original Offer to Lease to the Landlord and the Tenant's right of first refusal as contained herein shall be forthwith extinguished insofar as it extends to the Abutting Area.

ARTICLE SEVENTEEN — MISCELLANEOUS

17.1 Rules and Regulations. The Tenant and its employees and all persons visiting or doing business with them, on the Leased Premises shall be bound by and shall observe and perform any reasonable rules and regulations made by the Landlord of which notice in writing shall be given to the Tenant and all such rules and regulations shall be deemed to be incorporated in and form part of this Lease, subject to the Landlord's right to reasonably amend such rules and regulations from time to time upon reasonable notice to the Tenant.

17.2 Force Majeure. Notwithstanding anything to the contrary contained in this Lease, if the Landlord or the Tenant is delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of being unable to obtain materials, goods, equipment, services or labour; power failure; riots, insurrection, sabotage, rebellion, war, act of God, or by reason of any Statute, law or Order in Council, or any regulation or Order passed or made pursuant thereto, or by reason of the Order or Direction of any Administrator, Comptroller, Board, Governmental Department or Office, or other authority required thereby, or by reason of any other cause beyond its control, whether of the foregoing character or not, the Landlord or the Tenant, as the case may be, shall be relieved from the fulfilment of such obligation and the Tenant or the Landlord respectively shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned. This section shall not apply to the payment of Minimum Rent or Additional Rent by the Tenant.

17.3 Notices. Any notice, request or demand herein provided for or given hereunder if given by the Tenant to the Landlord shall be sufficiently given if delivered or if mailed by registered mail in the city where the Leased Premises are located, postage prepaid, addressed to the Landlord at:

1190 Walker Road
Windsor, ON
N8Y 2N7

Any notice herein provided for or given hereunder if given by the Landlord to Tenant shall be sufficiently given if delivered or mailed to Tenant at the Leased Premises.

Any notice mailed as aforesaid shall be conclusively deemed to have been given on the third business day following the day on which such notice is mailed as aforesaid. Either the Landlord or Tenant may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the giving of such notice provided such new address is within the province of Ontario the address therein specified shall be deemed to be the address of such party for the giving of such notices thereafter. In the event of a mail strike or other interruption in the delivery of mail, all notices, requests or demands shall be hand delivered or by telegram.

17.4 Waiver of Breach. The waiver by the Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term covenant or condition herein contained. The subsequent acceptance of Minimum Rent or Additional Rent hereunder by the Landlord shall not be deemed to be a waiver of any preceding breach by the Tenant of any term, covenant or condition of this Lease, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such Minimum Rent or Additional Rent. No covenant, term or condition of this Lease shall be deemed to have been waived by the Landlord unless such waiver is in writing and signed by the Landlord.

17.5 Net Lease. The Tenant acknowledges and agrees that it is intended that this Lease is a completely carefree net lease to the Landlord, except as expressly herein set out, that the Landlord

is not responsible during the Term or any renewals thereof for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises except as expressly herein set out.

17.6 Accord and Satisfaction. No payment by the Tenant or receipt by the Landlord of a lesser amount than the monthly Minimum Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Minimum Rent nor shall any endorsement or statement or any cheque or any letter accompanying any cheque or payment as Minimum Rent be deemed an accord and satisfaction, and the Landlord may accept such cheque or payment without prejudice to the Landlord's right to recover the balance of such Minimum Rent or pursue any other remedy in this Lease provided.

17.7 Entire Agreement. This Lease and the schedules and riders, if any, attached hereto and forming a part hereof, together with the rules and regulations promulgated by the Landlord, from time to time, set forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or the Tenant unless in writing and signed by each of them.

17.8 Captions and Section Numbers. The captions, and paragraph numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit construe or describe the scope or intent of such paragraph of this Lease, nor in any way affect this Lease.

17.9 Extended Meanings and Interpretation. The word "Tenant" shall be deemed to include the word "lessee" and shall mean each and every person or party mentioned as a Tenant herein, be the same one or more; and if there shall be more than one Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. Any reference to "Tenant" shall include, where the context allows, the servants, employees, agents, and invitees of the Tenant and all others over whom the Tenant exercises control. Wherever the word "Landlord" is used in this Lease, it shall be deemed to include the word "lessor" and to include the Landlord and its duly authorized representatives. The words "hereof", "herein", "hereunder" and similar expressions used in any section or subsection relate to the whole of this Lease, and not to that section or that subsection only, unless otherwise expressly provided.

The use of the neuter singular pronoun to refer to the Landlord or the Tenant shall be deemed a proper reference even though the Landlord or the Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. Each party hereto acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Lease, and the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Lease.

17.10 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

17.11 Registration. The Tenant shall not register this Lease without the written consent of the Landlord. However, upon the request of either party hereto, the other party shall join in the execution of a memorandum or so-called "short form" of this Lease for the purposes of registration. Said memorandum or short form of this Lease shall only describe the parties the Leased Premises and the Term of this Lease, and shall be prepared by the Tenant's solicitors, shall be subject to the approval of the Landlord and its solicitors and shall be registered at the Tenant's expense.

17.12 Obligations as Covenants. Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant is considered to be a covenant for all purposes.

17.13 Governing Law. This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario.

17.14 Time of the Essence. Time shall be of the essence of this Lease and of every part hereof.

17.15 Goods and Services Tax. Tenant shall pay an amount equal to any and all taxes, rates, duties, levies, fees, charges, and assessments whatsoever, whether or not in existence at the Lease

Commencement Date, assessed, charged, imposed, levied or rated by any taxing authority, whether federal, provincial, municipal or otherwise, on or against Landlord or Tenant, with respect to the rent payable by Tenant to Landlord under this Lease or the rental of sign space under this Lease or the provision or supply of any goods, services or utilities whatsoever by Landlord to Tenant under this Lease, whether any such tax, rate, duty, levy, fee, charge or assessment is called or characterized as a sales, use, consumption, value-added, business transfer or goods and services tax or otherwise (collectively, "G.S.T."). If the applicable legislation requires that any G. S. T. is to be collected by the Landlord, the amount of the G.S.T. so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation and shall be paid by the Tenant to the Landlord at the same time as the Minimum Rent is payable, or at such other time or times as the applicable legislation may from time to time require.

ARTICLE EIGHTEEN — OPTION TO EXTEND

18.1 Option to Extend. The Tenant shall have the right to extend the Term of the Lease for three (3) successive periods of five (5) years each (each which is hereinafter referred to as the "First Extended Term", the "Second Extended Term" and the "Third Extended Term"), subject to the following terms and conditions:

- (a) The Tenant is not in substantial or material default with any of the Tenant's obligations as contained in the Lease or the First Extended Term and Second Extended Term, as the case may be;
- (b) The Tenant has given the Landlord written notice of its intention to exercise the option to extend the Term at least ninety (90) days prior to the expiry of the initial Term, the first Extended Term or Second Extended Term, as the case may be;
- (c) The tenancy of the Tenant in the Leased Premises shall be on the same terms and conditions as are contained in the within Lease, except that the Minimum Rent during each of the Extended Terms shall be negotiated and agreed to by the Landlord and the Tenant no later than forty-five (45) days prior to the commencement of such Extended Term. The Minimum Rent during each Extended Term shall be the fair market rate thereof.

In the event that the Tenant and the Landlord cannot agree upon the Minimum Rent for any of the Extended Terms, then the disagreement shall be referred to a single arbitrator, if the parties to the dispute agree upon one, otherwise, to three arbitrators, one to be appointed by each of the parties to the dispute and a third to be appointed by the first named arbitrators, in writing, before they enter upon the business of the disputes if either of the parties to the dispute shall refuse to or neglect to appoint an arbitrator within ten (10) days after the other party to the dispute shall have appointed an arbitrator and shall have served a written notice upon the first mentioned party requiring such party to make such appointment, then such arbitrator shall be appointed by a Judge of the Ontario Court (General Division) upon application thereto. The award and determination which shall be made by the said arbitrators, or the majority of them, shall be a condition precedent to any party hereto instituting any legal action or suits; provided further that should the representatives appointed by each of the parties to the dispute be unable to agree upon another arbitrator, then the other arbitrator shall be appointed by a Judge of the Ontario Court (General Division) upon application thereto. The provisions of this Section shall be deemed to be a submission to arbitration within the provisions of the *Arbitrations Act*, S.A. 1991, c. A.17 and any statutory modification or re-enactment thereof, provided that any limitation on the remuneration of the arbitrators imposed by such legislation shall not be applicable. No appeal to the arbitrators shall be made by the parties hereto. If the Term or any Extended Term has expired and the Landlord and Tenant are proceeding to arbitrate the Minimum Rent for the subsequent Extended Term, then until such arbitration becomes final and binding, the Minimum Rent to be paid by the Tenant shall be that paid by the Tenant for the immediately preceding year of the initial Term, first Extended Term, second Extended Term or Third Extended Term, as the case may be subject to adjustment after the conclusion of the arbitration proceedings. In determining the award the arbitrator shall have no regard to the Tenant's business.

- (d) The Tenant shall have no further right to extend the Term.

ARTICLE NINETEEN -- TENANT'S OBLIGATION TO REMIT

19.1 Tenant's Obligation to Remit.

- (a) The Tenant hereby agrees and covenants with the Landlord that at all times during the Term and any extension or renewal of the Lease that the Tenant shall:
 - (i) make the due and punctual payment of all taxes, customs, duties, rates, levies, assessments, reassessments and other charges, together with all penalties, interest and fines with respect thereto (the "Statutory Remittances"), imposed upon the Tenant during the term of the Lease and

any extension or renewal thereof, by any Federal or Provincial governmental agency, authority, board, bureau or commission ("Statutory Agencies") and which Statutory Agencies shall include the Ministry of Revenue acting under the provisions of the *Ontario Retail Sales Tax Act*, Canada Customs and Revenue Agency acting pursuant to the *Excise Tax Act* of Canada, and;

- (ii) indemnify and save the Landlord harmless from any loss of rent or costs or expenses incurred by the Landlord arising from or occasioned by the failure or default by the Tenant to pay the aforesaid Statutory Remittances. An amount paid by the Landlord to any Statutory Agency shall be recoverable by the Landlord from the Tenant as Additional Rent.
- (b) The Tenant does hereby grant the Tenant's consent, to any Statutory Agency or other person having information relating to the Statutory Remittances to release such information to the Landlord as may be from time to time requested by the Landlord from any such Statutory Agency. The Tenant further agrees to provide the Landlord with signed third party authorizations containing the appropriate business number license number assigned to the Tenant by the Statutory Agency in support of the Landlord's quest to obtain such information.

ARTICLE TWENTY (20) — INDEMNITY

20.1 Indemnity of Landlord.

- (a) In consideration of the Landlord leasing the Leased Premises to the Tenant, the sum of five (\$5) dollars paid by the Landlord to the Indemnifiers and other good and valuable consideration (the receipt and sufficiency whereof is hereby acknowledged) each of the Indemnifiers hereby jointly and severally covenant and agree with the Landlord as follows:
- (i) to make the due and punctual payment of all rent, monies and charges expressed to be payable under the Lease during the term of the Lease;
 - (ii) to effect prompt and complete performance of all and singular the terms, covenants, conditions and provisions in the Lease contained on the part of the Tenant to be kept, observed and performed during the term of the Lease;
 - (iii) to indemnify and save harmless the Landlord from any loss, costs or damages (including legal fees and disbursements) arising out of any failure or default by the Tenant to pay the rent, monies and charges of the failure to or failure of the Tenant to perform any of the covenants, terms, conditions and provisions of the Lease on the part of the Tenant to be kept, observed and performed;
- (b) This Indemnity is absolute and unconditional and the obligations of the Indemnifiers shall not be released, discharged, mitigated, impaired or affected by:
- (i) any extensions of time, indulgences or modifications which the Landlord may grant or make with the Tenant or one of the Indemnifiers and not the Indemnifiers in respect of the performance of any of the obligations of the Tenant under any one or more of the provisions of the Lease;
 - (ii) any waiver by or failure of the Landlord to enforce any of the terms, covenants, conditions and provisions of the Lease;
 - (iii) any assignment of the Lease by the Tenant or by any Trustee, Receiver or Liquidator; or
 - (iv) a consent which the Landlord may give to any such Assignment;
- (c) Each of the Indemnifiers hereby expressly waives notice of the acceptance or non-acceptance and all notice from the Landlord of non-performance, non-payment or non-observance on the part of the Tenant of the terms, covenants, conditions and provisions of the Lease;
- (d) In the event of a default under the Lease, each of the Indemnifiers waive any right to require the Landlord to:
- (i) proceed against the Tenant or pursue any rights or remedies with respect to the Lease;
 - (ii) proceed against or exhaust any security of the Tenant held by the Landlord; or
 - (iii) pursue any other remedy whatsoever in the Landlord's power;

- (e) The Landlord shall have the right to enforce this indemnity regardless of the acceptance of additional security from the Tenant and regardless of the release or discharge of the Tenant by the Landlord or by others or by operation of any law;
- (f) Without limiting the generality of the foregoing, the liability of the Indemnifiers under this Indemnity shall not be deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of the Tenant in any receivership, bankruptcy, winding-up or other creditors proceeding or the rejection, disaffirmance or disclaimer of the Lease in any proceeding. The liability of the Indemnifiers shall not be affected by any repossession of the Leased Premises by the Landlord, provided, however, that the net payments received by the Landlord after deducting all costs and expenses of repossessing and/or reletting the same shall be credited from time to time by the Landlord to the accounts of the Indemnifiers and the Indemnifiers shall pay any balance owing to the Landlord from time to time immediately upon ascertainment;
- (g) No action or proceeding brought or instituted under this indemnity and no recovery in pursuance hereof shall be a bar or defence to any further action or proceeding which may be brought under this indemnity by reason of any further default or defaults hereunder and/or in the performance and observance of the terms, covenants, conditions and provisions of the Lease;
- (h) All of the terms, agreements and conditions of this indemnity shall extend to and be binding upon the Indemnifiers and their heirs, executors, administrators and assigns and shall enure to the benefit of and may be enforced by the Landlord, their heirs, executors, administrators, successors and assigns, and the holder of any mortgage to which the Lease is or may become subject and subordinate; and
- (i) All representations, warranties, covenants, agreements and obligations of the indemnifiers herein are made jointly and severally by the Indemnifiers.

IN WITNESS WHEREOF the Landlord and Tenant have hereunto affixed their respective corporate hands and seals by a signing officer(s) duly authorized in such behalf on the date first above written.

SIGNED,
SEALED AND DELIVERED

in the presence of

 Witness

 Witness

 Witness

 Witness

 Witness

WALKER PLAZA 1200 INC.

Per: *S. Govas*
 SPYRIDON GOVAS, PRESIDENT
 I have authority to bind the Corporation

DUMOPHARM INC.

Per: *P. Dumo*
 PETER DUMO, PRESIDENT
 I have authority to bind the Corporation

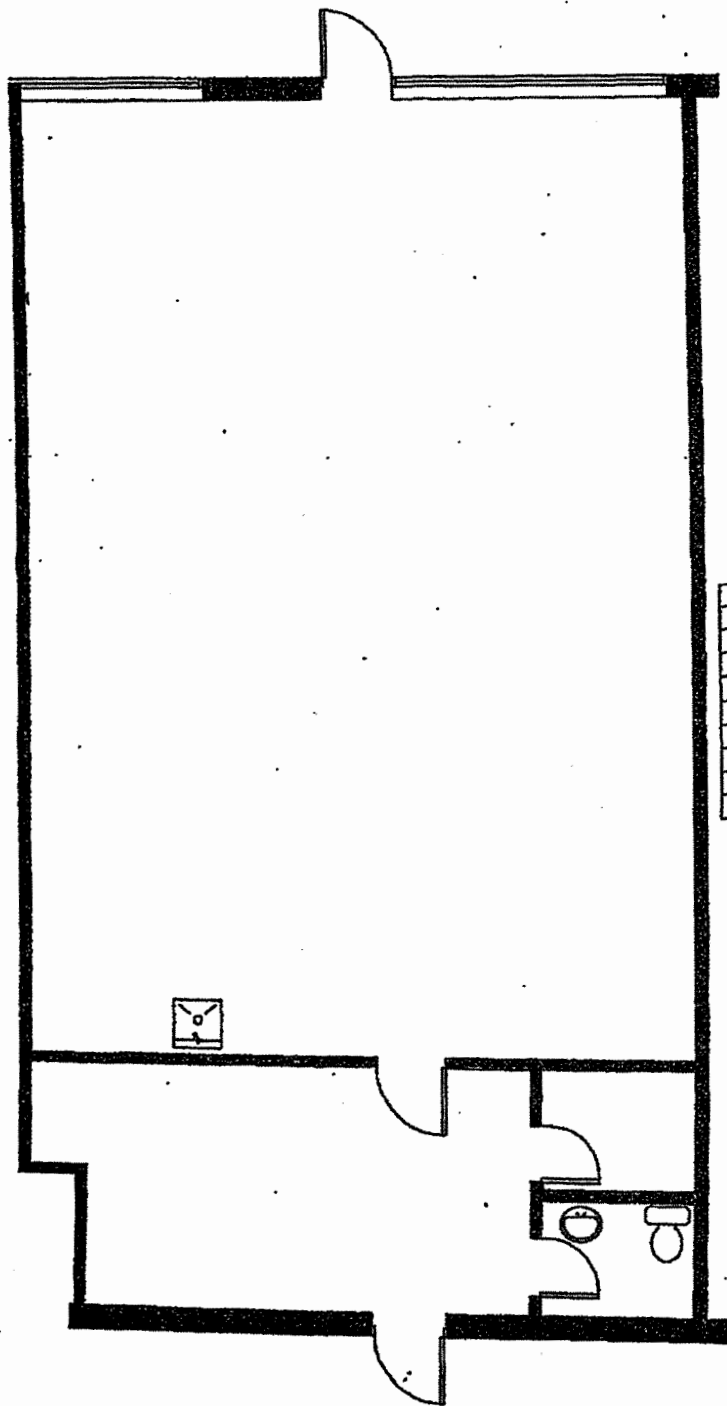
123

SCHEDULE "A"

PT LT 96 Concession 1, Walkerville designated as PT 1 on Plan 12R5833; Windsor

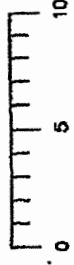
V:\95\DATA\WORK\CLIENT\W\Walker Plaza 1200 Incl\Demo\Pharm Inc. Lease - Unit 3\Lease Unit 3.fm

124

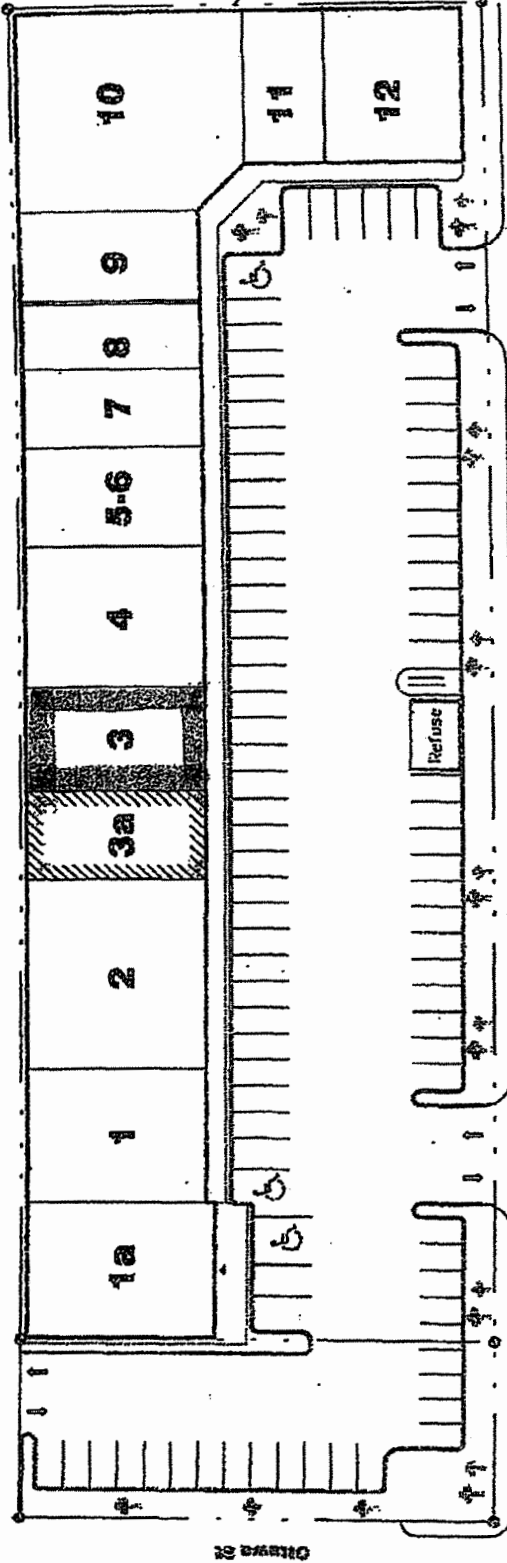


Handwritten signature or initials

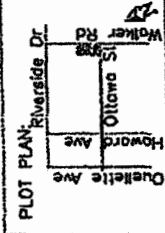
<p>Walker Plaza Inc [Redacted] c/o 1190 Walker Rd Windsor, ON N8Y 2N7 ph: (519) 252-8888 fax: (519) 236-3609 rfc@bona1micgroup.com</p>	<p>PROJECT: Proposed Pharmacy DumaPharm Inc. 1275 Walker Rd, Suite 3a Windsor, ON</p>	<p>DRAWING TITLE: SPACE PLAN</p>	<p>PLOT PLAN: Riverside Dr Walker Ottawa St Howard Ave Ouellette Ave</p>	<p>SCALE: as shown DATE: Nov 12, 2008 DRAWN BY: RA CHECKED BY: SG DRAWING NO: A1 of 1</p>
--	--	--	---	--



Schedule "B"



SCALE: as shown
 DATE: Nov 12, 2008
 DRAWN BY: RA
 CHECKED BY: SG
 DRAWING NO: S1



DRAWING TITLE:

KEY PLAN

PROJECT:

PHARMACY

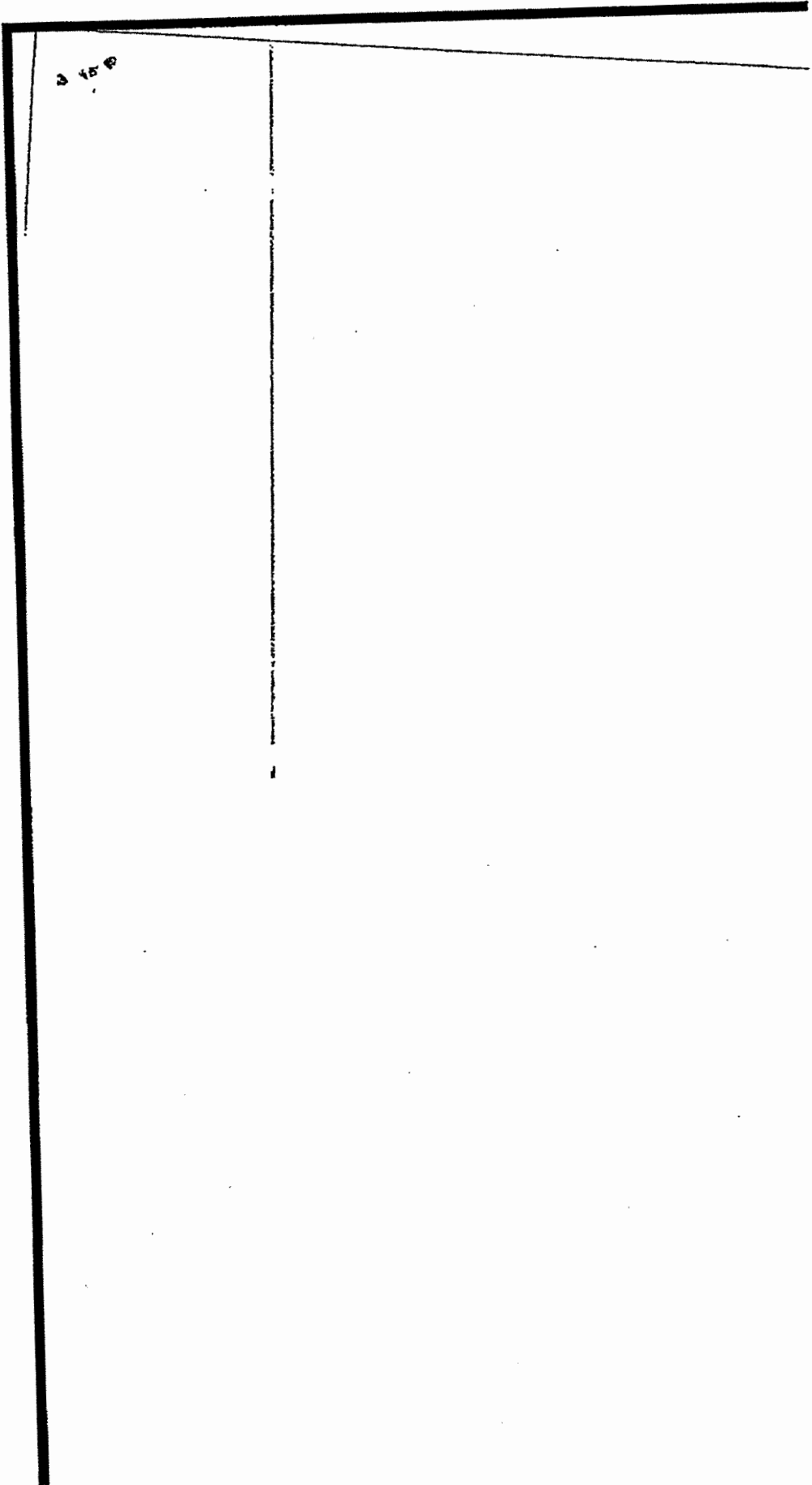
1275 Walker Rd
Windsor, ON

Walker Plaza Inc

c/o 1180 Walker Rd
Windsor, ON
NBY 2N7

ph: (519) 252-8888
fx: (519) 256-3609

ricabone@imicgroup.com



Appendix "E"

Co-Tenant Acknowledgment
(Novacare)

TO: **KSV KOFMAN INC.** in its capacity as receiver (the “**Receiver**”) of the property, assets and undertaking of Rando Drugs Ltd., 2345760 Ontario Inc., 2275518 Ontario Inc., Family Health Pharmacy West Inc (formerly known as M. Blacher Drugs Ltd.), 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc. (“**Dumopharm**”) and 2527475 Ontario Inc.

WHEREAS Dumopharm is the tenant pursuant to a lease (the “**Lease**”) with Walker Plaza 1200 Inc. for the premises located at 3A-1275 Walker Road, Windsor, Ontario (the “**Novacare Pharmacy**”);

AND WHEREAS CEDV Inc. (the “**Co-Tenant**”) is a co-tenant under the Lease pursuant to a co-tenancy agreement dated as of February 12, 2017;

AND WHEREAS the Receiver was appointed as Receiver over the assets of, among others, Dumopharm pursuant to an Order dated December 4, 2019;

AND WHEREAS the Receiver is selling the Novacare Pharmacy;

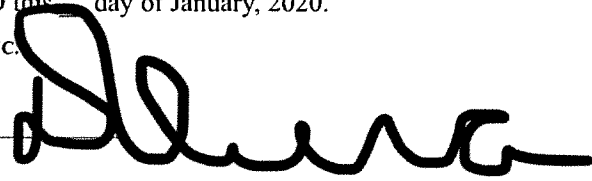
The Co-Tenant wishes to confirm its intent to cooperate with the transition of the Lease and hereby acknowledges and agrees to the following:

- a. the Co-Tenant will consent to any lease assignments recommended by the Receiver as part of a transaction and release any rights it may have as a Co-Tenant and/or allow its interest to be vested out by a vesting order; and
- b. the value of the Co-Tenant’s interest in the proceeds of sale from the above-mentioned pharmacy is an allocation issue that will be determined in consultation with the Receiver or pursuant to an order of the Court.

DATED this _____ day of January, 2020.

CEDV INC.

Per: _____



Co-Tenant Acknowledgement
(Walpole)

TO: **KSV KOFMAN INC.** in its capacity as receiver (the “**Receiver**”) of the property, assets and undertaking of Rando Drugs Ltd. (“**Rando**”), 2345760 Ontario Inc., 2275518 Ontario Inc., Family Health Pharmacy West Inc (formerly known as M. Blacher Drugs Ltd.), 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc. and 2527475 Ontario Inc.

Appendix "F"

130

Mitch Vininsky

From: Jennifer Stam <stam@gsnh.com>
Sent: February 18, 2020 2:59 PM
To: Mitch Vininsky
Subject: FW: Novocare Pharmacy

From: GATTI LAW PROFESSIONAL CORPORATION <di@argatti.com>
Sent: January 24, 2020 11:37 AM
To: Jennifer Stam <stam@gsnh.com>
Cc: Ric Albano <ricalbano@1micgroup.com>; s.govas@gmail.com
Subject: RE: Novocare Pharmacy

Jennifer,

The Landlord advises that until such time as the Landlord has control of one hundred percent (100%) of the Leased Premises any discussion with a proposed buyer, at this time, is premature.

Pacis Vobiscum



ALFREDO R. GATTI
Gatti Law Professional Corporation*
400-267 Pelissier, Windsor, ON, N9A 4K4
Phone: +1 (519) 258-1010 **Fax:** +1 (519) 258-0163
Email: arg@argatti.com

ARG/dh

*Practicing independently in association with Willis Business Law

.....
Confidentiality Warning: This message and any attachments are intended only for the use of the intended recipient(s), and are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank you.

From: Jennifer Stam <stam@gsnh.com>
Sent: Wednesday, January 22, 2020 1:05 PM
To: GATTI LAW PROFESSIONAL CORPORATION <di@argatti.com>
Cc: Eli Brenner <ebrenner@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>
Subject: RE: Novocare Pharmacy

Thank you for your email. The chronology of the transaction is that the buyer needs to clear its conditions including with respect to lease assignments prior to the Receiver proceeding to court to obtain a vesting order. We understand

131

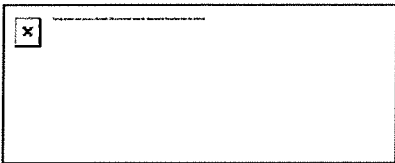
your client needs certainty that CEDV will have no ongoing interest in the lease – we are happy for any new lease or lease assignment to be negotiated with the buyer be conditional upon the Court issuing a vesting order vesting out the co-tenancy interest or CEDV and/or CEDV otherwise being divested of its interest as a co-tenant.

Regardless, the productive route is for the business people to meet and I understand that they are scheduled to do so at 3pm. I hope this meeting can occur. Your client has an obligation not to unreasonably withhold its consent to the assignment and we are all hopeful a deal may be reached. However, absent that we will consider all of our legal rights which include our ability to proceed with an assignment of the lease under the Bankruptcy and Insolvency Act and/or Commercial Tenancies Act.

This is not our or the buyer’s preference and hope that productive conversations can be commenced during the already scheduled 3pm call today.

Thanks.

JENNIFER STAM



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct 416.597.5017 | Fax 416.597.3370 | stam@gsnh.com | www.gsnh.com

Assistant | Devka Sakhrani | 416.597.9922 ext. 370 | sakhrani@gsnh.com

We're social, follow us:

Proud member of



NOTICE OF CONFIDENTIALITY: This email and any attachment contain information which is privileged and confidential. It is intended only for the use of the individual to whom it is addressed. If you are not the intended recipient or the person responsible for delivering this document to the intended recipient, you are hereby advised that any disclosure, reproduction, distribution or other use of this email is strictly forbidden. If you have received this email by error, please notify us immediately by telephone or email and confirm that you have destroyed the original transmission and any copies that have been made. Thank you for your cooperation. Should you not wish to receive commercial electronic messages from GSNH, please [unsubscribe](#).

From: GATTI LAW PROFESSIONAL CORPORATION <di@argatti.com>
Sent: January 22, 2020 12:36 PM
To: Jennifer Stam <stam@gsnh.com>
Cc: Ric Albano <ricalbano@1micgroup.com>; s.govas@gmail.com
Subject: RE: Novocare Pharmacy

Jennifer,

I acknowledge receipt and thank you for the Co-Tenant Acknowledgment which you provided to me.

I note that the Acknowledgment is directed to the Receiver and not to the Landlord, and, at best only expresses the present intention of CEDV Inc.

I indicated to you, from my previous correspondence, that the Leased Premises are held under a lease wherein both Dumopharm and CEDV Inc., are reflected as tenants. In order to gain control of one hundred percent (100%) of the leasehold interest a surrender of the Lease to the Landlord or production of an Order of the Court vesting the interest of CEDV Inc., in the Lease in favour of either the Landlord or the Receiver must be first obtained.

Once CEDV Inc., has been divested of its interest in the Lease the Landlord will be happy to discuss the future of the Leased Premises with either or both the Receiver and Mr. Abdelsayed.

132



Pacis Vobiscum

ALFREDO R. GATTI
Gatti Law Professional Corporation*
400-267 Pelissier, Windsor, ON, N9A 4K4
Phone: +1 (519) 258-1010 Fax: +1 (519) 258-0163
Email: arg@argatti.com

ARG/dh

*Practicing independently in association with Willis Business Law

.....
Confidentiality Warning: This message and any attachments are intended only for the use of the intended recipient(s), and are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank you.

From: Jennifer Stam <stam@gsnh.com>
Sent: Wednesday, January 15, 2020 10:48 AM
To: GATTI LAW PROFESSIONAL CORPORATION <di@argatti.com>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Eli Brenner <ebrenner@ksvadvisory.com>
Subject: RE: Novocare Pharmacy

AI
As a follow up to my below email, given the resolution of the concern, the receiver plans to reach out to the landlord to discuss assignment and next steps. Thanks.

JENNIFER STAM

	Suite 1600 480 University Avenue Toronto ON M5G 1V2 Direct 416.597.5017 Fax 416.597.3370 stam@gsnh.com www.gsnh.com Assistant Devka Sakhrani 416.597.9922 ext. 370 sakhrani@gsnh.com
Proud member of	

We're social, follow us:

NOTICE OF CONFIDENTIALITY: This email and any attachment contain information which is privileged and confidential. It is intended only for the use of the individual to whom it is addressed. If you are not the intended recipient or the person responsible for delivering this document to the intended recipient, you are hereby advised that any disclosure, reproduction, distribution or other use of this email is strictly forbidden. If you have received this email by error, please notify us immediately by telephone or email and confirm that you have destroyed the original transmission and any copies that have been made. Thank you for your cooperation. Should you not wish to receive commercial electronic messages from GSNH, please [unsubscribe](#).

From: Jennifer Stam
Sent: January 13, 2020 10:46 AM
To: GATTI LAW PROFESSIONAL CORPORATION <di@argatti.com>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Eli Brenner <ebrenner@ksvadvisory.com>
Subject: RE: Novocare Pharmacy

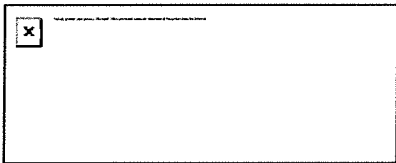
Dear Al

As we discussed on at the beginning of January, the Receiver has entered into an agreement of purchase and sale to sell, among other things, the Dumopharm pharmacy. The current owner and tenant are in receivership. As I explained, our view is that the co-tenancy arrangement as done for financing purposes – the co-tenant, as far as we know is not in occupation of nor does it have any business to be carried out at the location. The interest of the co-tenant will be eliminated on closing. As I explained, there are a number of legal ways to accomplish that, namely either through a vesting out of its interest, disclaimer or otherwise. However to provide the greatest certainty that this is the case we have obtained the confirmation in this regard from the co-tenant. The signed acknowledgment is attached.

We trust this answers any questions you have and that your client will proceed to enter into good faith discussions with the purchaser with respect to its consent to the assignment of its lease.

Thanks.

JENNIFER STAM

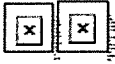


Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2
Direct 416 597 5017 | Fax 416 597 3370 | stam@gsnh.com | www.gsnh.com
Assistant | Devka Sakhrani | 416 597 9922 ext. 370 | sakhrani@gsnh.com

Proud member of



We're social, follow us:



NOTICE OF CONFIDENTIALITY: This email and any attachment contain information which is privileged and confidential. It is intended only for the use of the individual to whom it is addressed. If you are not the intended recipient or the person responsible for delivering this document to the intended recipient, you are hereby advised that any disclosure, reproduction, distribution or other use of this email is strictly forbidden. If you have received this email by error, please notify us immediately by telephone or email and confirm that you have destroyed the original transmission and any copies that have been made. Thank you for your cooperation. Should you not wish to receive commercial electronic messages from GSNH, please [unsubscribe](#).

From: GATTI LAW PROFESSIONAL CORPORATION <di@argatti.com>
Sent: January 2, 2020 3:30 PM
To: Jennifer Stam <stam@gsnh.com>
Cc: Ric Albano <ricalbano@1micgroup.com>; s.govas@gmail.com
Subject: Novocare Pharmacy

Jennifer,

Do you always hang up on people if you disagree with the position they are taking?

You are requesting the Landlord to concern itself with a proposed buyer who has the intention of purchasing what was Dumopharm Inc.'s interest in the Lease held by the Landlord for the premises consisting of Unit 3, 1275 Walker Road, Windsor, Ontario. In response to that I tried to indicate to you that the Lease provides for two (2) tenants, one of which is Dumopharm Inc., (I believe now in receivership) and CEDV Inc., a co-tenant. I tried to make this point in my email to your Eli Brenner of December 23, 2019.

Before the Landlord can consider any action to be taken with respect to a buyer, the Landlord must be appraised of,

- (a) the Receiver's position with respect to Dumopharm Inc.'s interest in the Lease, and
- (b) the position to be taken by CEDV Inc., the other tenant named in the Lease.

134

Happy New Year, awaiting your response, and

Pacis Vobiscum



ALFREDO R. GATTI

Gatti Law Professional Corporation*

400-267 Pelissier, Windsor, ON, N9A 4K4

Phone: +1 (519) 258-1010

Fax: +1 (519) 258-0163

Email: arg@argatti.com

ARG/dh

bf: January 15, 2019

*Practicing independently in association with Willis Business Law

.....
Confidentiality Warning: This message and any attachments are intended only for the use of the intended recipient(s), and are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank you.

Appendix "G"

FORBEARANCE AGREEMENT

THIS AGREEMENT is made as of this 17 day of July, 2019.

BETWEEN:

ECN FINANCIAL INC.

(hereinafter referred to as the "Lender")

- and -

2345760 ONTARIO INC.

(hereinafter referred to as the "Borrower")

- and -

GRACE DIENA, 2275518 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., M. BLACHER DRUGS LTD. now known as FAMILY HEALTH PHARMACY WEST INC., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. AND 2527475 ONTARIO INC.

(collectively referred to hereafter as the "Guarantors")

RECITALS:

WHEREAS the Lender was formerly known as Element Financial Inc. and is the successor in interest to Element Financial Corporation.

AND WHEREAS the Borrower is indebted to the Lender with regard to amounts owing pursuant to five (5) Promissory Notes described in **Schedule A** (collectively, the "**Promissory Notes**") in the aggregate amount of \$4,321,226.47 as at July 15, 2019, inclusive of principal and accrued interest (the "**Indebtedness**").

AND WHEREAS as security for the Indebtedness and for other monies advanced and for all other present and future indebtedness, fees, expenses and other liabilities due by the Borrower to the Lender (collectively, the "**Obligations**"), the Borrower executed the General Security Agreements and Pledge Agreements described in **Schedule A** (the "**Borrower's Security**"), pursuant to which it granted security in favour of the Lender.

AND WHEREAS the Guarantors executed guarantees (collectively, the "**Guarantees**") in which they jointly and severally guaranteed the Obligations and executed the General Security Agreements and Pledge Agreements described in **Schedule A** (collectively, the "**Guarantors' Security**" and, with the Borrower's Security, collectively referred to as the "**Security**") pursuant to which they granted security in favour of the Lender.

AND WHEREAS the maturity dates under the Promissory Notes bearing Contract Nos. BA07475A-001 and BA07475A-002 (the "**Matured Contracts**") occurred on March 15, 2018, and the final balloon payments that were to have been paid under each (\$730,615.47 and

\$553,896.01, respectively, for a total of \$1,284,511.48) (collectively, the "Balloon Payments") are outstanding and have not been paid by the Obligors.

AND WHEREAS the failure to pay any Obligations when due, including, but not limited to the Balloon Payments, constitutes an event of default under all of the Promissory Notes and the Security.

AND WHEREAS, in light of these continuing events of default (collectively, the "Defaults"), the Lender issued demand letters to the Borrower and the Guarantors on June 15, 2018, October 18, 2018 and May 17, 2019 in which it demanded payment of the Obligations. The Lender has also issued Notices of Intention to Enforce Security dated October 18, 2018 and May 17, 2019 (collectively, the "NITES").

AND WHEREAS the Borrower and the Guarantors have advised the Lender that they are currently unable to repay the Obligations.

AND WHEREAS the Borrower had advised the Lender that Rando Drugs Ltd. ("Rando"), one of the Guarantors, had entered into an agreement of purchase and sale dated June 23, 2018 relating to the sale of four (4) pharmacies (the details of which are listed in **Schedule B**) (collectively, the "Pharmacies") in the amount of \$8,000,000 (the "Rando APS"), which was to close on or about August 15, 2018.

AND WHEREAS the purchase price under the Rando APS was subsequently amended to \$8,200,000 and the closing date was extended on several occasions to April 30, 2019.

AND WHEREAS the Borrower subsequently advised the Lender on May 7, 2019 that the Rando APS did not close.

AND WHEREAS the Borrower has indicated to the Lender that it is continuing to pursue other opportunities to sell the Pharmacies and/or related assets, including, but not limited to the assets of Rando and/or the Borrower (the "Pharmacies and Related Assets") and, alternatively, to pursue various refinancing alternatives;

AND WHEREAS the Borrower and the Guarantors have requested that the Lender forbear from enforcing its remedies under the Security; and

AND WHEREAS the Lender has agreed to provide the Borrower and the Guarantors with additional time to repay the Obligations, subject to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual covenants of the parties hereto as herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereby agree as follows:

138

**ARTICLE 1
INTERPRETATION**

1.1 Gender and Number

Words importing the singular include the plural and vice versa and words importing gender include all genders.

1.2 Severability

Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement.

1.3 Headings

The division of this Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.5 Attornment

The parties hereto irrevocably submit and attorn to the exclusive jurisdiction of the courts of the Province of Ontario for all matters arising out of or in connection with this Agreement, the Promissory Notes, the Guarantees and the Security.

**ARTICLE 2
ACKNOWLEDGEMENTS IN RESPECT OF CERTAIN EVENTS OF DEFAULT**

2.1 Acknowledgement of Defaults

Each of the Borrower and the Guarantors (collectively, the "Obligors") hereby acknowledge and agree that: (a) the facts set out in the Recitals to this Agreement are accurate; (b) the Promissory Notes, the Security and the Guarantees are valid and jointly and severally enforceable in accordance with their terms and remain in full force and effect; (c) multiple events of default have occurred and are continuing pursuant to the provisions of the Promissory Notes, the Guarantees and the Security (any and all such defaults as may be existing and known to Lender as of the date hereof being referred to as the "Existing Defaults"); (d) the Lender has issued demand letters in respect of the Existing Defaults dated June 15, 2018, October 18, 2018, May 17, 2019 and the NITES to the Obligors; (e) the Lender is, by reason of the Existing Defaults (each being sufficient reason), entitled to exercise its rights and remedies under the Promissory Notes, the Guarantees and the Security without further notice, except as expressly provided in this Agreement; (f) the Existing Defaults have occurred and are continuing as of the date of this Agreement (g) the amount of the Indebtedness is correctly stated; (h) they have and

shall raise no defences, counterclaims or rights of set-off in respect to the Existing Defaults or their respective joint and several liability to pay the Obligations; (i) except as expressly provided in this Agreement, the Lender has not made any promises, nor has it taken any action or omitted to take any action, that would constitute a waiver of its rights to enforce the Promissory Notes, the Guarantees and the Security and pursue its remedies in respect of the Obligations without notice, or that would estop it from so doing; (j) they have not transferred any of their property, whether real or personal, in whole or in part, to any other person or entity which, if such transfer were known to the Lender, might reasonably be expected to deter the Lender from entering into this Agreement; and (k) no other person, other than the Obligors, has any legal or beneficial interest in any of the property secured by the Obligors in favour of the Lender.

The Obligors further acknowledge that as of the date hereof, the Lender has not waived, and does not intend to waive, such Existing Defaults, and nothing contained herein or the transactions contemplated hereby shall be deemed to constitute any such waiver.

**ARTICLE 3
CONDITIONS PRECEDENT**

3.1 Effectiveness of Agreement

This Agreement shall become effective upon the date (the "**Agreement Effective Date**") upon which the Lender is in receipt of a fully executed copy of this Agreement, fully executed by each of the Obligors.

3.2 Conditions Precedent to the Effectiveness of the Forbearance

The Lender's agreement to forbear shall only become effective on the date (the "**Forbearance Effective Date**") upon which the Lender is in receipt of all of the following items:

- (a) a fully executed irrevocable direction in the form attached as **Schedule E** as required under section 5.5(l) of this Agreement;
- (b) certificates of insurance in respect to each of the Pharmacies confirming that: (i) a policy of insurance (the "**Policy**") as required under the terms of the Security remains in full force and effect; and (ii) the Lender is named as an additional insured and as a first loss payee under the Policy. In addition, a copy of the Policy for each of the Pharmacies shall be provided; and
- (c) a consent executed by the Obligors to an order appointing a court-appointed receiver over the assets and property of the Obligors ("**Consent Receivership Order**") in the form attached hereto as **Schedule "G"**, which shall be held in escrow until the termination of this Agreement or the occurrence of an Intervening Event, as defined below.

140

ARTICLE 4 FORBEARANCE

4.1 Forbearance

In reliance upon the representations, warranties and covenants of the Obligors contained in this Agreement and in the Promissory Notes, Guarantees and Security and subject to the terms and conditions of this Agreement and the terms and conditions the Promissory Notes, the Guarantees and the Security, as modified hereby, and any documents executed in connection herewith, the Lender agrees, subject to Section 3.2 and this Section 4.1, to forbear from exercising its rights and remedies under the Promissory Notes, the Guarantees, the Security and under applicable law in respect of or arising out of any Existing Default for the period commencing on the Forbearance Effective Date and ending on the earliest of:

- (a) November 30, 2019, unless, prior to this date, the Obligors present evidence of:
 - (i) an executed and verifiable commitment letter for a refinancing of all Obligations due and owing, which transaction will close on or before December 31, 2019; or
 - (ii) an executed and verifiable agreement of purchase and sale in respect to the Pharmacies in an amount sufficient to pay the Obligations in full with a closing date on or before December 31, 2019.

Upon receipt of either of the transactional documents as noted in Section 4.1(a) above, the Lender will advise the Obligors in writing whether it, in its sole discretion, will agree to extend the Forbearance Period to December 31, 2019;

- (b) the date upon which the Obligations are paid in full; or
- (c) the occurrence of any Intervening Event as hereinafter defined,
(the "Forbearance Period").
- (d) Upon the expiration or termination of the Forbearance Period, the agreement of the Lender to forbear shall automatically and without further action terminate and be of no further force and effect, it being expressly agreed that the effect of such termination will be to permit the Lender to exercise its rights and remedies without limitation, including taking steps to issue the Consent Receivership Order granted in accordance with this Agreement.

4.2 No Other Waivers; Reservation of Rights

- (a) The Lender has not waived, and is not by this Agreement waiving, and has no intention of waiving, any Event of Default, each of which are continuing on the

141

date hereof, or any Intervening Event which may occur after the date hereof (whether the same as or similar to the Existing Defaults or otherwise).

- (b) Subject to Section 4.1 of this Agreement, the Lender reserves the right, in its sole discretion only, to exercise any or all of its rights or remedies under any of the Promissory Notes, the Security and the Guarantees or other applicable law as a result of any Event of Default, each of which is continuing on the date hereof or any Intervening Event which may occur after the date hereof, and the Lender has not waived any such rights or remedies, and nothing in this Agreement and no delay on the part of the Lender in exercising any such rights or remedies, shall be construed as a waiver of any such rights or remedies.

4.3 Tolling

- (a) As of the date hereof and continuing until the expiry of or termination of the Forbearance Period, as applicable, the Lender and the Obligors hereby agree to toll and suspend the running of the applicable statutes of limitations, laches and other doctrines related to the passage of time in relation to the Obligations, the Promissory Notes, the Security and the Guarantees and any entitlements arising from the Obligations, the Promissory Notes, the Security and the Guarantees and any related matters, and each of the parties confirms that this Agreement is intended to be an agreement to suspend or extend the basic limitation period, provided by section 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched B. (the "**Limitations Act**") as well as the ultimate limitation period provided by section 15 of the *Limitations Act* in accordance with the provisions of section 22(2) of the *Limitations Act* and as a business agreement in accordance with the provisions of section 22(5) of the *Limitations Act* and any contractual time limitations on the commencement of proceedings, any claims or defences based upon such application of statute of limitations, contractual limitations or any time-related doctrine including waiver, estoppel or laches;
- (b) The tolling provisions of this Agreement will terminate upon any of its parties providing the others with 60 days' prior written notice of an intention to terminate the tolling provisions hereof, and upon the expiry of such 60 days' notice, any time provided for under the statute of limitations, laches, or any other doctrine related to the passage of time in relation to the Obligations, the Promissory Notes, the Security and the Guarantees or any claims thereunder, will recommence running as of such date, and for greater certainty the time during which the parties agree to the suspension of the limitation period pursuant to the tolling provisions of this Agreement shall not be included in the computation of any limitation period.

ARTICLE 5
ADDITIONAL OBLIGATIONS OF THE OBLIGORS DURING FORBEARANCE PERIOD

5.1 Appointment of Refinancing and Sale Advisor

- (a) the Obligors shall agree to engage KPMG as sole and exclusive refinancing and sales advisor (the "**Refinancing and Sales Advisor**") on behalf of the Obligors for the purposes of developing, administering and conducting a refinancing or sale process (the "**RSP**"), with the assistance of the Obligors, in respect to the Pharmacies and Related Assets on the principal terms and conditions ("**Terms and Conditions**") attached at **Schedule C**, and in accordance with the timeline (the "**Timeline**") attached at **Schedule D**.
- (b) The Obligors agree that, throughout the RSP, they will:
 - (i) fully cooperate with KPMG, including providing unfettered access to all Pharmacies and Related Assets and all requested information pertaining thereto, including, but not limited to, the books and records of the Obligors, lease agreements pertaining to each of the Pharmacies and adjudication reports, in order to assist with the RSP for the purposes of concluding a transaction, either by way of refinancing arrangements or a sale of the Pharmacies ("**RSP Transaction**");
 - (ii) adhere to and abide by the Terms and Conditions and the Timeline;
 - (iii) be solely responsible for KPMG's fees, including the timely payment of any required retainer and periodically submitted invoices for services rendered in respect to the monitoring and the RSP.
- (c) For clarity, the Obligors acknowledge that KPMG will act solely as Refinancing and Sales Advisor to the Obligors and it will take no part in the management of or have any control over the Obligors' business or affairs, the sole responsibility for which remains with the Obligors. However, KPMG will have the authority to report directly to Lender.

5.2 Payments

The Obligors agree to make the following payments during the Forbearance Period:

- (a) all required payments under the Promissory Notes bearing Contract Nos. BA07475A-003, BA07475A-005 and BA07475A-006 in accordance with their terms (the "**Contract Payments**");
- (b) in respect to the Matured Contracts, the Obligors will deliver monthly payments of \$10,000, which will applied as follows:

143

- (i) firstly, in respect to interest accruing on the Matured Contracts, calculated at the regular rate of interest stipulated in each of the Matured Contracts¹; and
 - (ii) secondly, the remaining balance will be applied to the principal owing under the Matured Contracts;
- (c) payment of the Lender's accrued legal fees in the amount of \$70,707.53, payable within 30 days from the Agreement Effective Date; and
- (d) payment of the Lender's legal fees going forward within 15 days from the date of the monthly statement to be delivered to the Obligors by the Lender.

The Obligors are at liberty to make any additional payments to be applied toward the Obligations at any time. The payments noted in Section 5.2(b) above shall be paid by way of wire transfer payable to "ECN Financial Inc." pursuant to the Lender's wire transfer instructions set forth in **Schedule F**, or such other payment method as may be agreed upon by the Lender.

5.3 Assignment of Lease Agreements

In respect to all real property lease agreements relating to the Pharmacies (the "**Leases**"), the Obligors will use all best efforts to provide the Lender with an assignment of the Leases by way of security, in a form acceptable to the Lender.

5.4 Balance of Obligations

The balance of the Obligations, in addition to any accrued interest and outstanding fees and costs, including, without limiting the generality of the foregoing, all legal fees and disbursements incurred by the Lender in respect of or in any way related to the Promissory Notes, Guarantees and Security or this Agreement, all of which will be due and payable in full and in cash upon the earlier of: (i) the expiry of the Forbearance Period; or (ii) the occurrence of an Intervening Event as provided in Section 7.1 below. ECN will provide an updated calculation of the Obligations upon request.

5.5 Other Obligations

The Obligors agree to:

- (a) conduct and operate their businesses, including the Pharmacies, at all times, in the ordinary course of business;
- (b) commit, at all times, to ensuring that the bank account currently established in respect to the pre-authorized payments in respect to the Promissory Notes will have sufficient funds to cover all anticipated payments during the Forbearance Period;

¹ In respect to Contract No. BA07475A-001, the contract rate of interest is 8.5 % per annum. The contract rate of interest in respect to Contract No. BA07475A-002 is 6.5% per annum. For clarity, the Lender does not waive its right to calculate interest at the default rate should the Obligors default in respect to these payments.

- 144
- (c) provide on-line, read only access to the Lender to all bank accounts of the Obligors;
 - (d) deliver to the Lender in respect to each of the Pharmacies: (i) copies of weekly adjudication reports; and (ii) copies of all submissions by for reimbursement to the Ontario Drug Benefit program and to any insurance companies;
 - (e) assist KPMG in keeping the Lender apprised, either orally or in writing, of all developments relating to the Obligors' efforts to refinance or sell any of the Obligors' assets or businesses on a regular basis, including, but not limited to, when a refinancing proposal sufficient to fully pay the Obligations or an agreement of purchase and sale is entered into by the Obligors in respect to the Pharmacies. The reporting from KPMG and the Obligors shall include, but is not limited to, copies of any financing proposals and/or commitment letters, purchase agreements, statements of adjustment and other associated documents. The Obligors authorize the Refinancing and Sales Advisor to communicate with and provide periodic updates to the Lender and its professional advisors as requested by the Lender;
 - (f) adhere to all existing financial and other covenants in the Promissory Notes, the Guarantees, the Security and this Agreement;
 - (g) keep current at all times, all remittances required to be made by the Obligors for taxes owed to federal, provincial and municipal governments, including, without limitation, realty taxes, business taxes, monies owed in respect of source deductions for contributions pursuant to the *Canada Pension Plan, Employment Insurance Act (Canada) and Income Tax Act (Canada)*, and in respect of Harmonized Sales Tax, Goods and Services Tax and Retail Sales Tax and each of them shall provide, upon the Lender's request thereof, evidence in writing of such payments, satisfactory to the Lender;
 - (h) maintain in full force and effect, adequate insurance coverage, acceptable to the Lender, on all assets owned by them against which the Lender has security, showing the interest of the Lender on the insurance as loss payee/additional insured and providing that the coverage cannot be cancelled by the insurer without at least ten (10) business days' prior written notice to the Lender from the insurer;
 - (i) any financial statements or other financial information required from time to time in respect to the Obligors, within five (5) business days of the Lender's request;
 - (j) permit the Lender and/or its authorized agents to examine the Obligors' and the Pharmacies' books of account and other financial records on the Lender's reasonable request;
 - (k) permit the Lender and/or its authorized agents to inspect, at its discretion, the Pharmacies on a weekly basis; and
 - (l) execute an irrevocable direction (the "**Direction**") in respect to any funds or proceeds generated through a RSP Transaction and any other proceeds arising from the sale of the Obligors' assets and property, attached as **Schedule "E"**.

ARTICLE 6
COVENANTS

6.1 Bankruptcy

The Obligors hereby covenant and agree not to make an assignment in bankruptcy, file a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act* or commence proceedings under the *Companies' Creditors Arrangement Act* at any time during the Forbearance Period.

6.2 Additional Covenants

- (a) The Obligors represent, warrant, covenant and agree that all business in the nature of or related to the business transacted by the Obligors prior to the date hereof, including, without limitation, the Pharmacies, shall continue to be transacted in the nature of and for the account of the Obligors. In particular, no such business or transaction shall be performed in the name of, or recorded or applied for the benefit of any person, firm or corporation other than the Obligors. For greater certainty, this will include a restriction on payment of amounts owing for management fees and similar related party compensation, notwithstanding that such payments may have been made historically. The Obligors acknowledge and agree that they shall deposit all revenues, collections or accounts receivable and any other income generated by the Obligors only to their current bank accounts, The Obligors agree that they shall not, without the prior written consent of the Lender, compromise the amount of any accounts receivable payable to the Obligors or otherwise compromise or reduce any amount owing to any of the Obligors by a third party;
- (b) The Obligors confirm to and in favour of the Lender that all assets secured by the Lender's security are in existence, in the possession and control of the Obligors and have not been transferred, sold, encumbered or impaired in any manner which would deteriorate from or adversely affect the value of same excluding inventory which is being sold in the ordinary course of business;
- (c) The Obligors confirm that the financial and other information in respect to the Obligors provided to the Lender by email on May 22, 2019 is accurate and, in respect to the financial information, has been prepared in accordance with generally accepted accounting principles;
- (d) The Obligors confirm to and in favour of the Lender that the Pharmacies are operating and conduct business in the normal course and are in compliance with all applicable laws and regulations;
- (e) The Obligors confirm to the Lender that all real property lease agreements (the "Pharmacy Leases") in respect to the Pharmacies are in full force and effect, current and are not in default. In particular, no landlord has terminated any of the Pharmacy Leases, exercised rights of distraint or commenced enforcement proceedings;

140

- (f) The Obligors agree that KPMG's appointment as Refinancing and Sales Officer does not preclude it from being appointed as a court-appointed receiver of the assets and property of the Obligors pursuant to the Consent or otherwise;
- (g) The Obligors covenant and agree that, except as expressly permitted in this Agreement, they will not grant any further security on any of their property, assets or undertakings without the prior written consent of the Lender, which may be withheld by the Lender in its sole discretion;
- (h) The Obligors acknowledge and agree that there will be no change of ownership or control of those Obligors consisting as business organizations, unless and until the Obligations have been repaid or with the prior written consent of the Lender, which may be withheld by the Lender in its sole discretion;
- (i) The Obligors may not pay to their shareholders or any party related within the meaning of the *Business Corporations Act* of Ontario, or any shareholders of any related party, any amount outside the ordinary course of business, dividend or any repayment of loan, without the prior written consent of the Lender, which may be withheld by the Lender in its sole discretion;
- (j) The Obligors acknowledge and agree that any existing shareholder loans will not be repaid by the Obligors without the Lender's written consent and the Obligors will not grant any loan to any officer or director of the Obligors or any other related party as defined above until such time as the Obligations are repaid in full and in cash;
- (k) The Obligors represent, warrant, covenant and agree that there are no claims, liens, lawsuits, tax reassessments or other actions in existence or anticipated in respect of the Lender's collateral pursuant to the Security; and
- (l) The Obligors will not loan funds, make equity investments or provide financial assistance to any third party by way of a guarantee, suretyship, or otherwise until such time as the Obligations have been repaid in full and in cash.

ARTICLE 7 INTERVENING EVENTS

7.1 Intervening Events

The Forbearance Period shall forthwith terminate upon the happening of any one of the following events (each an "**Intervening Event**"):

- (a) failure by the Obligors or any of them to comply with the terms and conditions of this Agreement, the Promissory Notes, the Guarantees or the Security and delivery by Lender to the Obligors of written notice of such failure, which default is not cured within two (2) Business Days of such notice, which notice shall be sent to the Obligors' lawyer, Jerome Stanleigh at jerome@stanleigh.com or by fax at 416.924.2887;

147

- (b) Failure by the Obligors or any of them to make any of the payments set out in Sections 5.1(b)(iii) and 5.2 hereof by the dates stipulated in those subsections or as otherwise required;
- (c) Failure by the Obligors or any of them to cooperate with, failing to assist the Refinancing and Sales Advisor in achieving any of the RSP milestones as set out in the Timeline (at Schedule E), make timely payment to KPMG in respect of its invoices for services
- (d) Failure by the Obligors or any of them to produce by no later than October 31, 2019 verifiable commitments with respect to concluding an RSP Transaction in accordance with Section 4.1(a) of this Agreement;
- (e) the occurrence of an Event of Default pursuant to the Promissory Notes, the Guarantees or the Security, other than the Existing Defaults, after the date hereof;
- (f) the Lender becoming aware that any of the representations of the Obligors in this Agreement are or were untrue;
- (g) the Obligors breach any of the covenants set out in this Agreement;
- (h) a judgment, penalty, fine or other monetary obligation being rendered against the Obligors or any of them in excess of \$20,000;
- (i) the Lender's receipt from the Obligors of a written notice of an intention to terminate the tolling provisions pursuant to Section 4.3(b) above;
- (j) the expiry of the Forbearance Period;
- (k) the Lender determining in its absolute discretion that continuing with the forbearance will negatively impact its priority position in respect of the Security or its ability to maximize its realization with respect to any Security;
- (l) any of the Obligors are declared bankrupt, or file for any protection under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*;
- (m) any of the Obligors disposing or attempting to dispose of their property (other than in the ordinary course of business of the Obligors to *bona fide* third parties for good and valuable consideration) without the Lender's prior written consent, which may be withheld at its sole discretion; or
- (n) the collateral secured by the Security is at risk due to lack of adequate insurance or the Lender is not named as the additional insured and first loss payee in respect of the collateral under existing insurance.

ARTICLE 8
GENERAL PROVISIONS

8.1 Effect of this Agreement

Except as modified pursuant hereto, no other changes or modifications to the terms of the Promissory Notes, Guarantees or the Security are implied and in all other respects of the terms of the Promissory Notes, Guarantees and the Security are confirmed.

8.2 Further Assurances

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Agreement all at the expense of the Obligors.

8.3 Binding Effect

This Agreement shall be binding upon and enure to the benefit of all of the parties hereto and their respective successors, permitted assigns, heirs and executors.

8.4 Representation and Warranty

The Obligors further represent and warrant to the Lender that the Obligors:

(a) understand fully the terms of this Agreement and all Schedules to this Agreement and the consequences of the execution and delivery of this Agreement and all Schedules to this Agreement;

(b) have been afforded an opportunity to review and discuss this Agreement and all Schedules thereto (along with all documents executed in connection therewith) with legal counsel and financial advisors; and

(c) have entered into this Agreement and any documents contemplated to be executed and delivered pursuant to this Agreement freely and without threat, duress or other coercion of any kind by the Lender or by any other person.

8.5 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Agreement and such other document.

8.6 Release

The Obligors, upon the execution of this Agreement, hereby irrevocably and absolutely release and discharge the Lender and its affiliates and their respective directors, officers, employees, agents and assigns (the "Released Parties"), from and against any and all claims, liabilities, causes of action (whether at law, in equity or otherwise), set-offs, counterclaims, and damages and demands, whether known or unknown, whether liquidated or unliquidated, matured or unmatured, fixed or contingent, that they may have against the Released Parties or any of them resulting from or related to any act or omission of the Released

148

Parties or any of them or for any other reason whatsoever on or before the date of this Agreement, including, but not limited to, in relation to the Promissory Notes, the Guarantees, the Security, the Existing Defaults, the administration of the Obligors' accounts with the Lender or for another reason whatsoever (collectively, "Claims"). The Obligors further agree that they shall not commence, institute or prosecute any lawsuit, action or other proceeding, whether judicial, administrative or otherwise, to collect or enforce any Claim. The release and covenants set forth in this Section 8.6 shall survive the termination of this Agreement.

8.7 No Novation

This Agreement will not discharge or constitute novation of any debt, obligation, covenant or agreement contained in the Promissory Notes, the Guarantees or the Security, but same shall remain in full force and effect save to the extent same are expressly amended by the provisions of this Agreement.

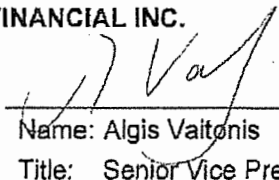
8.8 Execution in Counterparts

This Agreement may be executed and delivered by facsimile or confirmed electronic transmission and in any number of counterparts, each of which when executed and delivered is deemed to be an original, but all of which taken together constitute one and the same instrument.

8.9 No Set-Off, etc.

The Obligors reaffirm that the Promissory Notes, the Guarantees, the Security and the Obligations remain in full force and effect and acknowledge and agree that there is no defence, set-off or counterclaim of any kind, nature or description to their obligations arising under the Promissory Notes, the Guarantees, the Security or the Obligations as a result of the execution of this Agreement or otherwise.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

)
) **ECN FINANCIAL INC.**
)
) Per: 
) Name: Algis Vaitonis
) Title: Senior Vice President
) I have the authority to bind the
) corporation

) FAMILY HEALTH PHARMACY WEST
) INC., formerly known as M. BLACHER
) DRUGS LTD.

) Per: Alena
) Name: D DIENA
) Title: PRESIDENT
) I/We have the authority to bind the
) corporation

) 2527218 ONTARIO INC.

) Per: Alena
) Name: D DIENA
) Title: PRESIDENT
) I/We have the authority to bind the
) corporation

) DUMOPHARM INC.

) Per: Alena
) Name: D DIENA
) Title: PRESIDENT
) I/We have the authority to bind the
) corporation

) 2527475 ONTARIO INC.

) Per: Alena
) Name: D DIENA
) Title: PRESIDENT
) I/We have the authority to bind the
) corporation

153

SCHEDULE A

DETAILS OF PROMISSORY NOTES AND SECURITY AGREEMENTS

Promissory Notes

Debtor Name	Contract	Principal Amount	Date	PN Borrower
2345760 Ontario Inc.	BA07475A-001	\$1,150,000.00	2/25/2013	2345760 Ontario Inc.
2345760 Ontario Inc.	BA07475A-002	\$725,000.00	1/15/2016	2345760 Ontario Inc.
2345760 Ontario Inc.	BA07475A-003	\$1,752,750.00	2/26/2016	2345760 Ontario Inc.
2345760 Ontario Inc.	BA07475A-005	\$180,000.00	9/12/2016	2345760 Ontario Inc.
2345760 Ontario Inc.	BA07475A-006	\$181,500.00	3/31/2017	2345760 Ontario Inc.

Guarantees

Guarantor	Date
Grace Diena	Mar 3/13
2275518 Ontario Inc.	Feb 28/13
Rando Drugs Ltd.	Mar 3/13
2275518 Ontario Inc.	Jan 15/16
Rando Drugs Ltd.	Jan 15/16
Grace Diena	Jan 15/16
2275518 Ontario Inc.	Feb 29/16
Rando Drugs Ltd.	Feb 29/16
M. Blacher Drugs Ltd.	Feb 29/16
2501380 Ontario Inc.	Feb 29/16
Grace Diena	Feb 29/16
2527218 Ontario Inc.	Sept 12/16
Dumopharm Inc.	Sept 12/16
Rando Drugs Ltd.	Sept 12/16
Grace Diena	Sept 12/16
2527475 Ontario Inc.	Sept 12/16

2345760 Ontario Inc.	
2275518 Ontario Inc.	Mar 29/17
Dumopharm Inc.	Mar 29/17
Rando Drugs Ltd.	Mar 27/17
Grace Diena	Mar 27/17

Security Agreements

Name	Date
2345760 Ontario Inc.	Feb 28/13
Grace Diena	Feb 28/13
2275518 Ontario Inc.	Feb 28/13
Rando Drugs Ltd.	Feb 28/13
2345760 Ontario Inc.	Jan 15/16
2275518 Ontario Inc.	Jan 15/16
Rando Drugs Ltd.	Jan 15/16
Grace Diena	Jan 15/16
2345760 Ontario Inc.	Feb 29/16
2275518 Ontario Inc.	Feb 29/16
Rando Drugs Ltd.	Feb 29/16
M. Blacher Drugs Ltd.	Feb 29/16
2501380 Ontario Inc.	Feb 29/16
Grace Diena	Feb 29/16
2527218 Ontario Inc.	Sept 12/16
2345760 Ontario Inc.	Sept 15/16
2275518 Ontario Inc.	Sept 12/16
Dumopharm Inc.	Sept 12/16
Rando Drugs Ltd.	Sept 12/16
Grace Diena	Sept 12/16
2527475 Ontario Inc.	Sept 12/16
2345760 Ontario Inc.	Mar 29/17
2275518 Ontario Inc.	Mar 29/17
Dumopharm Inc.	Mar 29/17
Rando Drugs Ltd.	Mar 29/17
Grace Diena	Mar 29/17

155

Pledge Agreements

Pledgor	Date	Shares Pledged
2345760 Ontario	Jan 15/16	Rando Drugs Ltd.
2345760 Ontario	Feb 29/16	M Blacher Drugs Ltd.
2501380 Ontario	Feb 29/16	M Blacher Drugs Ltd.
2527475 Ontario	Sept 12/16	Dumopharm Inc.

156

Schedule B

List of Rando Pharmacies

1. **Family Health Pharmacy**
6720 Hawthorne Dr.
Windsor, ON N8T 1J9
2. **Family Health Pharmacy West**
1604 Tecumseh Rd. W
Windsor, ON N9B 1T8
3. **Family Health Pharmacy Novacare**
3A-1275 Walker Rd.
Windsor, ON N8Y 4X9
4. **Family Health Pharmacy Walpole Island**
85 Tecumseh Rd. RR3
Wallaceburg, ON N8A 4K9

157

Schedule C
Summary/Indicative Terms and Conditions (re RSP)

RSP Mandate

- Identify prospective buyers/lenders/investors
- Assist in preparing financial information to support diligence and drive value
- Preparing marketing materials, in cooperation with the Obligors, including a teaser (high-level, anonymous information), and CIM (more in-depth based on confidential information)
- Prepare instructions to potential interested parties regarding the process (including draft APA, sale approval order, etc. as is determined to be appropriate in the circumstances)
- Market the Pharmacies
- Maintain data room, as populated with the assistance of the Obligors
- Review, analysis, and recommendations on offers received
- Assist in negotiating, finalizing, closing offer
- Other as may be informed by the RSP terms agreed to between the Obligors and their Lender, ECN, pursuant to the Forbearance Agreement
-
-

158

**Schedule D
Timeline for RSP**

Preparation of Marketing Materials – 3 weeks from date of RSP Engagement:

- Preparation of refinancing and marketing materials including refinancing and sale process documentation, non-disclosure agreements, teaser, Confidential Information Memoranda, lender list, buyer list, draft asset purchase agreement, data room population

Marketing the business to potential lenders and buyers – 4 weeks from Preparation of Marketing Materials above:

- Commence process of marketing business for refinance or sale

Final LOI Deadlines - 2 weeks from completion of Marketing Activities above:

- Final refinance and/or bid deadlines
- Selection of winning lender or asset purchaser

Closing - 2 weeks from above:

- Preparation of Court materials and approval application if a formal process is required to execute a sale
- Execution of loan and security documents required to refinance

* The above-noted timelines are subject to adjustment at the discretion of the Refinancing and Sales Advisor

159

Schedule E

IRREVOCABLE DIRECTION REGARDING FUNDS

TO: JEROME STANLEIGH, BARRISTER AND SOLICITOR

AND TO: MILLER THOMSON LLP

RE: TRANSACTION(S) IN RESPECT TO THE SALE OF THE PHARMACIES OWNED BY RANDO DRUGS LTD. OR ALTERNATIVELY, REFINANCING THE OBLIGATIONS OF THE OBLIGORS (COLLECTIVELY, THE "TRANSACTIONS")

WHEREAS ECN Financial Inc. (the "Lender") and 2345760 Ontario Inc. (the "Borrower"), Grace Diena, 2275518 Ontario Inc., Rando Drugs Ltd., M. Blacher Drugs Ltd. now known as Family Health Pharmacy West Inc., 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc. and 2527475 Ontario Inc. (collectively, the "Obligors") have executed a Forbearance Agreement dated July --, 2019 ("**Forbearance Agreement**") in respect to certain obligations (the "**Obligations**") owed to the Lender as a result of various Existing Defaults, as particularized in the Forbearance Agreement;

AND WHEREAS, pursuant to the terms of the Forbearance Agreement, the Lender has agreed to forbear for the period stated in the Forbearance Agreement from enforcing the Obligations in return for, among other things, an irrevocable direction being provided with respect to any amounts arising from a RSP Transaction, as described in the Forbearance Agreement;

NOW THEREFORE, IN CONSIDERATION OF the Lender forbearing from enforcing the Obligations for the period stated in the Forbearance Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the undersigned:

The undersigned hereby irrevocably authorize and direct Jerome Stanleigh, in his capacity as the lawyer for the Obligors, or any lawyers appointed to act on behalf of the Obligors in respect to the RSP Transactions, to pay any amounts arising from the RSP Transactions (which, for clarity, includes, but is not limited to, a sale of the Pharmacies or a refinancing of the Obligations) to the Lender in respect to all amounts owing under the Promissory Notes and the Guarantees executed by the Obligors in favour of the Lender and this shall be your good and sufficient authority for so doing.

All capitalized terms used but not otherwise defined in this Direction have the respective meanings defined in the Forbearance Agreement.

DATED this 17th day of July, 2019

[signatures to follow on the following page]

160

2345760 ONTARIO INC.

Per:

Alena

Name: *D DIENA*

Title: *PRESIDENT*

I/We have the authority to bind the corporation

Page 2

RANDO DRUGS LTD.

Per:

Alena

Name: *D DIENA*

Title: *PRESIDENT*

I/We have the authority to bind the corporation

2275518 ONTARIO INC.

Per:

Alena

Name: *D. DIENA*

Title: *PRESIDENT*

I/We have the authority to bind the corporation

2275518 ONTARIO INC.

Per:

Alena

Name:

Title:

I/We have the authority to bind the corporation

Page 2 of 4

1661

2501380 ONTARIO INC.

Per: _____

D. J. IENA

Name: D. J. IENA

Title: PRESIDENT

I/We have the authority to bind the corporation

Page 3

2527218 ONTARIO INC.

Per: _____

D. J. IENA

Name: D. J. IENA

Title: PRESIDENT

I/We have the authority to bind the corporation

2527475 ONTARIO INC.

Per: _____

D. J. IENA

Name: D. J. IENA

Title: PRESIDENT

I/We have the authority to bind the corporation

DUMOPHARM INC.

Per: _____

D. J. IENA

Name: D. J. IENA


Title: PRESIDENT

I/We have the authority to bind the corporation

Page 3 of 4

162


) FAMILY HEALTH PHARMACY WEST
) INC., formerly known as M. BLACHER
) DRUGS LTD.
)
)
)
)
)
)
)
)

Per: 

Name: DIENA

Title: PRESIDENT

I/We have the authority to bind the
corporation



GRACE DIENA

163

**Schedule F
Wire Transfer Information**



EFFECTIVE OCTOBER 3, 2016

Wire instructions for ECN Financial Inc.:

Beneficiary account information:

Bank of Montreal
Bank Code #: 0001
Swift: BOFMCAM2
Account: 0002-1869-653
Transit: 00022
Currency: CAD

Bank address:

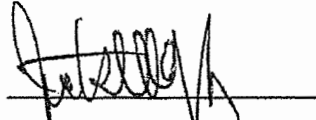
Bank of Montreal
First Canadian Place
100 King Street West, 11th Floor
Toronto, Ontario
M5X 1A3

164

**Schedule G
Consent to Receivership Order**

THE PARTIES LISTED BELOW, by their lawyers, consent to an order appointing a Court-Appointed Receiver in the form attached hereto, and certify that no party to this proceeding is under any legal disability.

Date: July 17, 2019



Jerome H. Stanleigh
Barrister & Solicitor

Lawyer for 2345760 Ontario Inc., 2275518 Ontario Inc., Rando Drugs Ltd., 2275518 Ontario Inc., M. Blacher Drugs Ltd. now known as Family Health Pharmacy West Inc., 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc., 2527475 Ontario Inc. and Grace Dena

Miller Thomson LLP

per: Craig A. Mills

Lawyers for ECN Financial Inc.

165

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE M) ●DAY, THE ____
JUSTICE)
BETWEEN) DAY OF JUNE, 2019

ECN FINANCIAL INC.

Plaintiff

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD, GRACE DIENA, 2275518 ONTARIO INC., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Defendants

ORDER
(appointing Receiver)

THIS MOTION made by the Plaintiff for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KPMG Inc. ("KPMG") as receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of 2345760 Ontario Inc., ("234") Rando Drugs Ltd. ("Rando"), Grace Diena ("Grace"), 2275518 Ontario Inc. ("227"), Family Health Pharmacy West Inc. Formerly known as M. Blacher Drugs Ltd. ("Family Health"), 2501380 Ontario Inc. ("250"), 2527218 Ontario Inc. ("25272"), Dumopharm Inc. ("Dumopharm") And 2527475 Ontario Inc. ("25274") (together, the

166

"Debtors") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Adam Flomen sworn June 10, 2019, and on hearing the submissions of counsel for the Plaintiff, and on reading the consent of KPMG to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KPMG is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent

107

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage pharmacists, consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors, and to deposit such monies in a separate bank account controlled by the Receiver and pay such disbursements that are necessary for the continued operation of the business of the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter

instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to summarily dispose of Property that is perishable or likely to depreciate rapidly in value;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the

Property and the Receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any licensed insolvency trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to inquire into and report to the Plaintiff and the Court on the financial condition of the Debtors and the Property and any material adverse developments relating to the financial condition of the Debtors and/or the Property; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;
- (u) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

170

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including, but not limited to the Ontario College of Pharmacists, the Ministry of Health and Long-Term Care, the Ontario Drug Benefit Program and any insurance company (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any client records and prescription information ("**Client Records**"), books, documents, securities, contracts, orders, billing privileges, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall, subject to Paragraph 6A herein, provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5A. THIS COURT ORDERS that, should the Receiver deem it necessary to seek from any insurance company or its pharmacy benefits manager personal information regarding persons covered pursuant to benefit plans which might have had claims under such plans relating to the Debtors, such information shall be sought pursuant to a

motion on notice to the insurance company and its pharmacy benefits manager. Such information shall only be released by the insurance company or its pharmacy benefits manager on the agreement of such insurance company or as provided in the Order so obtained.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

6A. THIS COURT ORDERS that in respect to the Client Records, the Receiver shall: (i) take all steps reasonably necessary to maintain the integrity of the confidential aspect of the Client Records; (ii) if necessary, appoint a pharmacist licensed and qualified to practice in the Province of Ontario to act as custodian (the "Custodian") for the Client Records; (iii) not allow anyone other than the Receiver or the Custodian to have access to the Client Records; (iv) allow the Debtors supervised access to the Client Records for any purposes required pursuant to the *Regulated Health Professions Act, 1991*, the *Pharmacy Act, 1991* or any other governing Ontario or Canadian statute, that requires the Debtors, from time to time, to perform certain obligations.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased

premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii)

prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, claims processing services, payment processing services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post

174

Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

16. THIS COURT ORDERS that, pursuant to section 42 of the Ontario *Personal Health Information Protection Act* ("**PHIPA**"), the Receiver shall only disclose personal

175

health information to prospective purchasers or bidders who are potential successor(s) to the pharmacy business of the Debtors (the "**Pharmacy**") as Health Information Custodian(s) (as defined in the PHIPA) for the purposes of allowing the potential successor to assess and evaluate the operations of the Pharmacy. Each potential successor to whom such personal health information is disclosed is required in advance of such disclosure to review and sign an acknowledgement of this Order indicating that it agrees to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purposes of the assessment or evaluation, and if such potential successor does not complete a Sale, such potential successor shall return all such information to the Receiver, or in the alternative shall destroy all such information. Such acknowledgement shall be deemed to be an agreement between the Receiver and the potential successor for the purposes of section 42 of PHIPA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

177

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'www.kpmg.com/ca/rando'.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

30. 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.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. THIS COURT ORDERS that the Receiver, its counsel and counsel for the Plaintiff are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other

180

correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KPMG Inc., the Receiver (the "Receiver") of the assets, undertakings and properties 2345760 Ontario Inc., Rando Drugs Ltd., Grace Diena, 2275518 Ontario Inc., Family Health Pharmacy West Inc. Formerly known as M. Blacher Drugs Ltd., 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc. and 2527475 Ontario Inc. (collectively the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated ● day of June, 2019 (the "Order") made in an action having Court file number CV-●, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

182

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2019.

KPMG Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per
:

Name:

Title:

ECN FINANCIAL INC.
Plaintiff

and

2345760 ONTARIO INC., et al.
Defendants

Court File No: CV-●

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

**ORDER
(APPOINTING RECEIVER)**

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Craig A. Mills LSUC#: 40947B
Tel: 416.595.8596
Email: cmills@millerthomson.com
Fax: 416.595.8695

Solicitors for the Plaintiff

ECN FINANCIAL INC.

and

2345760 ONTARIO INC., et al.

Court File No.: CV-19-00632106-00CL

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

**SECOND REPORT OF KSV KOFMAN INC. AS
RECEIVER OF RANDO DRUGS LTD. AND RELATED
COMPANIES, DATED FEBRUARY 19, 2020**

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO #46735J)
Tel: 416-597-5017
Email: stam@gsnh.com

Lawyers for the Receiver, KSV Kofman Inc.

184

TAB 3

185

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 26TH
JUSTICE HAINEY)
DAY OF FEBRUARY, 2020

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

**APPROVAL AND VESTING ORDER
(Walpole)**

THIS MOTION, made by KSV Kofman Inc. ("**KSV**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of the property, assets and undertaking of Rando Drugs Ltd. and the other respondents listed above (collectively, the "**Debtors**") for orders:

- (a) approving the sale transactions for the sale of Novacare and Walpole (as both such terms are defined in the Sale Agreement and referred to herein as the "**Novacare Transaction**" and the "**Walpole Transaction**" respectively) contemplated by an agreement of purchase and sale dated as of December 18, 2019 as amended by an amendment to the agreement of purchase and sale dated as of January 31, 2020 (the

“**Sale Agreement**”) between the Receiver and 2258156 Ontario Inc. (the “**Purchaser**”) and appended to the Second Report of the Receiver dated February ____, 2020 (the “**Second Report**”);

- (b) vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Sale Agreement relating to and/or located at Novacare and Walpole (the “**Novacare Purchased Assets**” and “**Walpole Purchased Assets**” respectively);
- (c) assigning the Novacare Lease (defined below) to the Purchaser;
- (d) sealing the Confidential Appendices (defined below) pending further order of the Court; and
- (e) approving the Receiver’s activities as set out in the Second Report,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver and those other parties present no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transactions are 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 Transactions and for the conveyance of the Walpole Purchased Assets to the Purchaser.

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 “**Walpole Receiver's Certificate**”), any and all of the Debtors’ right, title and interest in and to the Walpole Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, 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, 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 December 4, 2019; and (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; (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Walpole Purchased Assets are hereby expunged and discharged as against the Walpole Purchased Assets.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Walpole Purchased Assets shall stand in the place and stead of the Walpole Purchased Assets, and that from and after the delivery of the Walpole Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Walpole Purchased Assets with the same priority as they had with respect to the Walpole Purchased Assets immediately prior to the sale, as if the Walpole 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.

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

5. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

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
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Walpole Purchased Assets in the Purchaser 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.

189

Schedule A – Form of Receiver’s Certificate

Court File No. CV-19-00632106

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

**RECEIVER’S CERTIFICATE
(Walpole)**

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (the “**Court**”) dated December 4, 2019, KSV Kofman Inc. was appointed as the receiver (in such capacity, the “**Receiver**”) of the property, assets and undertaking of Rando Drugs Ltd. and the other Respondents listed above (the “**Debtors**”).

B. Pursuant to an Order of the Court dated [**DATE**], the Court approved certain transactions contained in an agreement of purchase and sale made as of December 18, 2019 (as amended, the “**Sale Agreement**”) between the Receiver and 2258156 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Walpole Purchased Assets, which vesting is to be effective with respect to the Walpole 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 allocated to the Walpole Purchased Assets; (ii) that the conditions to Closing as set out in section 6 of 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.

C. One of the approved transactions was for the sale of Walpole (as defined in the Sale Agreement).

D. 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 allocated to the Walpole Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing related to the sale of Walpole as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction for the sale of Walpole has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV KOFMAN INC., in its capacity as Receiver, of the property, assets and undertaking of Rando Drugs Ltd. and not in its personal capacity

Per: _____
Name:
Title:

ECN FINANCIAL INC. and

Respondents

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced TORONTO

**APPROVAL OF VESTING ORDER
(Walpole)**

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO #46735J)
Tel: 416-597-5017
Email: stam@gsnh.com

Lawyers for the Receiver, KSV Kofman Inc.

191

TAB 4

192

Court File No. ——— CV-19-00632106-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ——— MR.) WEEKDAY WEDNESDAY, THE #26TH
)
JUSTICE ——— HAINES) DAY OF MONTH FEBRUARY, 20YR 2020

BETWEEN:

~~PLAINTIFF~~

Plaintiff

ECN FINANCIAL INC.

Applicant

- and —

~~DEFENDANT~~

Defendant

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY
HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD.,
2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475
ONTARIO INC.

Respondents

**APPROVAL AND VESTING ORDER
(Walpole)**

THIS MOTION, made by [~~RECEIVER'S NAME~~] KSV Kofman Inc. ("KSV") in its capacity as the Court-appointed receiver (in such capacity, the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor", assets and undertaking of Rando Drugs Ltd. and

the other respondents listed above (collectively, the "Debtors") for an order approving the sale transaction (the "Transaction" orders:

- (a) approving the sale transactions for the sale of Novacare and Walpole (as both such terms are defined in the Sale Agreement and referred to herein as the "Novacare Transaction" and the "Walpole Transaction" respectively) contemplated by an agreement of purchase and sale (the "dated as of December 18, 2019 as amended by an amendment to the agreement of purchase and sale dated as of January 31, 2020 (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER]2258156 Ontario Inc. (the "'Purchaser"') dated [DATE] and appended to the Second Report of the Receiver dated [DATE]February __, 2020 (the "'Second Report"'), and;
- (b) vesting in the Purchaser the Debtor's Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), relating to and/or located at Novacare and Walpole (the "Novacare Purchased Assets" and "Walpole Purchased Assets" respectively);
- (c) assigning the Novacare Lease (defined below) to the Purchaser;
- (d) sealing the Confidential Appendices (defined below) pending further order of the Court; and
- (e) approving the Receiver's activities as set out in the Second Report.

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], and those other parties present no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed[†]:

[†]~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

1. **THIS COURT ORDERS AND DECLARES** that the ~~Transaction is~~Transactions are hereby approved,² and the execution of the Sale Agreement by the Receiver³ 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~~Transactions and for the conveyance of the Walpole Purchased Assets to the Purchaser.
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 "Walpole Receiver's Certificate"), and all of the ~~Debtor's~~Debtors' right, title and interest in and to the Walpole Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~⁴ shall vest absolutely in the Purchaser, 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, 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"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice [NAME] Hainey dated ~~[DATE]~~December 4, 2019; and (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 that all of

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

³ In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

⁴ To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

195

the Encumbrances affecting or relating to the Walpole Purchased Assets are hereby expunged and discharged as against the Walpole Purchased Assets.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified 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.~~

~~3.~~ **4. THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Walpole Purchased Assets shall stand in the place and stead of the Walpole Purchased Assets, and that from and after the delivery of the Walpole Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Walpole Purchased Assets with the same priority as they had with respect to the Walpole Purchased Assets immediately prior to the sale⁸, as if the Walpole 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.

~~4.~~ **5. THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Walpole Receiver's Certificate, forthwith after delivery thereof.

~~5.~~ **6. THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's Debtors' records pertaining to the Debtor's Debtors' past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement.

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Debtors.

6. ~~7.~~ **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 ~~Debtor~~Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Debtors;

the vesting of the Walpole Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Debtors and shall not be void or voidable by creditors of the ~~Debtor~~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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

7. ~~9.~~ **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.

197



198

Schedule A — Form of Receiver’s Certificate

Court File No. CV-19-00632106

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

~~PLAINTIFF~~

Plaintiff

ECN FINANCIAL INC.

Applicant

- and —

~~DEFENDANT~~

Defendant

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

RECEIVER’S CERTIFICATE
(Walpole)

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Mr. Justice Hainey of the Ontario Superior Court of Justice (the “Court”) dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ December 4, 2019, KSV Kofman Inc. was appointed as the receiver (in such capacity, the “Receiver”) of the ~~undertaking, property and assets of [DEBTOR]~~ (the “Debtor”).

199

assets and undertaking of Rando Drugs Ltd. and the other Respondents listed above (the "Debtors").

B. Pursuant to an Order of the Court dated [DATE], the Court approved ~~the~~certain transactions contained in an agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "December 18, 2019 (as amended, the "Sale Agreement"") between the Receiver [Debtor] and [NAME OF PURCHASER] and 2258156 Ontario Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Walpole Purchased Assets, which vesting is to be effective with respect to the Walpole 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~~allocated to the Walpole Purchased Assets; (ii) that the conditions to Closing as set out in section ~~6~~6 of 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.

C. One of the approved transactions was for the sale of Walpole (as defined in the Sale Agreement).

D. 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~~allocated to the Walpole Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing related to the sale of Walpole as set out in section ~~6~~6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction for the sale of Walpole has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

200

~~{NAME OF RECEIVER}~~ KSV KOEMAN
INC., in its capacity as Receiver, of the
~~undertaking, property and, assets of~~
~~{DEBTOR}~~, and undertaking of Rando Drugs
Ltd. and not in its personal capacity

Per: _____

Name:

Title:

~~Schedule B - Purchased Assets~~

~~Schedule C - Claims to be deleted and expunged from title to Real Property~~

**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

ECN FINANCIAL INC. and **2345760 ONTARIO INC. et al.** Court File No.: CV-19-00632106-00CL

Applicant Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

APPROVAL OF VESTING ORDER
(Walpole)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO #46735J)
Tel: 416-597-5017
Email: stam@gsnh.com

Lawyers for the Receiver, KSY Kofman Inc.

Document comparison by Workshare 9.5 on February-19-20 10:58:55 AM

Input:	
Document 1 ID	file://U:\JStam\KSV Kofman Inc re Rando Drugs - 100325-0003\Agreement of Purchase and Sale\Sale Motion (Walpole and Novacare) Draft Materials\Model Order.doc
Description	Model Order
Document 2 ID	file://U:\JStam\KSV Kofman Inc re Rando Drugs - 100325-0003\Agreement of Purchase and Sale\Sale Motion (Walpole and Novacare) Draft Materials\Approval and Vesting Order (Walpole) v.1.docx
Description	Approval and Vesting Order (Walpole) v.1
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
	100

Total changes	254
---------------	-----

TAB 5

205

Court File No. CV-19-00632106-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 26TH
)
JUSTICE HAINEY) DAY OF FEBRUARY, 2020

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

**APPROVAL AND VESTING ORDER
(Novacare)**

THIS MOTION, made by KSV Kofman Inc. ("**KSV**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of the property, assets and undertaking of Rando Drugs Ltd. and the other respondents listed above (collectively, the "**Debtors**") for orders:

- (a) approving the sale transactions for the sale of Walpole and Novacare (as both such terms are defined in the Sale Agreement and referred to herein as the "**Walpole Transaction**" and the "**Novacare Transaction**" respectively) contemplated by an agreement of purchase and sale dated as of December 18, 2019 as amended by an amendment to the agreement of purchase and sale dated as of January 31, 2020 (the

“**Sale Agreement**”) between the Receiver and 2258156 Ontario Inc. (the “**Purchaser**”) and appended to the Second Report of the Receiver dated February ___, 2020 (the “**Second Report**”);

- (b) vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Sale Agreement relating to and/or located at Walpole and Novacare (the “**Walpole Purchased Assets**” and “**Novacare Purchased Assets**” respectively);
- (c) assigning the Novacare Lease (defined below) to the Purchaser;
- (d) sealing the Confidential Appendices (defined below) pending further order of the Court; and
- (e) approving the Receiver’s activities as set out in the Second Report,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver and those other parties present no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transactions are 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 Transactions and for the conveyance of the Novacare Purchased Assets to the Purchaser.

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 “**Novacare Receiver's Certificate**”), any and all of the Debtors’ right, title and interest in and to the Novacare Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, 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, 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 December 4, 2019; and (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; (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Novacare Purchased Assets are hereby expunged and discharged as against the Novacare Purchased Assets.

3. **THIS COURT ORDERS** that, without limiting the generality of paragraph 2 above, upon delivery of the Novacare Receiver’s Certificate (a) all of the rights and obligations of Dumopharm and any other Debtor under the lease dated among Walker Plaza 1200 Inc., Dumopharm Inc. and Peter Dumo together with all amendments and renewals (the “**Novacare Lease**”) shall be assigned to the Purchaser or its designee; and (b) the Debtors’ right, title and interest in the Novacare Lease shall vest absolutely in the Purchaser or its designee free and clear of any Encumbrances including, without limitation, any interest or claim of CEDV Inc. as joint tenant under the Novacare Lease.

4. **THIS COURT ORDERS** that the assignment to the Purchaser of the rights and obligations of the Debtors under the Novacare Lease pursuant to the BIA and this Order is valid and binding upon all counterparties to the Novacare Lease notwithstanding any restriction or prohibition in any such Assigned Contracts relating to the assignment thereof, including any provision requirement consent of any party to the assignment.

5. **THIS COURT ORDERS** that each counterparty to the Novacare Lease is prohibited from exercising any right or remedy under the Novacare Lease by reason of defaults thereunder arising from the assignment of the Novacare Lease, the insolvency of the Debtors, the commencement of the receivership or any failure of the Debtors or CEDV Inc. to perform a non-monetary obligation under the Novacare Lease.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to send a copy of this Order to all counterparties of the Novacare Lease which may be provided to their counsel, Gatti Law Professional Corporation.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Novacare Purchased Assets shall stand in the place and stead of the Novacare Purchased Assets, and that from and after the delivery of the Novacare Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Novacare Purchased Assets with the same priority as they had with respect to the Novacare Purchased Assets immediately prior to the sale, as if the Novacare 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.

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

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

10. **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
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Novacare Purchased Assets in the Purchaser 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.

11. **THIS COURT ORDERS** the Confidential Appendices to the Second Report be and are hereby sealed pending further Order of the Court.

12. **THIS COURT ORDERS** that the Second Report be and is hereby approved and the actions and activities of the Receiver described therein be and they are hereby approved.

13. **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-19-00632106

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

**RECEIVER’S CERTIFICATE
(Novacare)**

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (the “**Court**”) dated December 4, 2019, KSV Kofman Inc. was appointed as the receiver (in such capacity, the “**Receiver**”) of the property, assets and undertaking of Rando Drugs Ltd. and the other Respondents listed above (the “**Debtors**”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved certain transactions contained in an agreement of purchase and sale made as of December 18, 2019 (as amended, the “**Sale Agreement**”) between the Receiver and 2258156 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Novacare Purchased Assets, which vesting is to be effective with respect to the Novacare

211

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 allocated to the Novacare Purchased Assets; (ii) that the conditions to Closing as set out in section 6 of 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.

C. One of the approved transactions was for the sale of Novacare (as defined in the Sale Agreement).

D. 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 allocated to the Novacare Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing related to the sale of Novacare as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction for the sale of Novacare has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV KOFMAN INC., in its capacity as
Receiver, of the property, assets and
undertaking of Rando Drugs Ltd. and not in
its personal capacity**

Per: _____
Name:
Title:

ECN FINANCIAL INC. and

Respondents

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

APPROVAL OF VESTING ORDER
(Novacare)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO #46735J)
Tel: 416-597-5017
Email: stam@gsnh.com

Lawyers for the Receiver, KSV Kofman Inc.

TAB 6

213

Court File No. CV-19-00632106-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEEKDAY WEDNESDAY, THE #26TH
JUSTICE HAINES) DAY OF MONTH FEBRUARY, 20YR 2020

BETWEEN:

~~PLAINTIFF~~

Plaintiff

ECN FINANCIAL INC.

Applicant

- and -

~~DEFENDANT~~

Defendant

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

**APPROVAL AND VESTING ORDER
(Novacare)**

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ KSV Kofman Inc. ("KSV") in its capacity as the Court-appointed receiver (in such capacity, the "Receiver") of the ~~undertaking, property and assets of [DEBTOR]~~ (the "Debtor", assets and undertaking of Rando Drugs Ltd. and

the other respondents listed above (collectively, the "Debtors") for an order approving the sale transaction (the "Transaction" orders:

- (a) approving the sale transactions for the sale of Walpole and Novacare (as both such terms are defined in the Sale Agreement and referred to herein as the "Walpole Transaction" and the "Novacare Transaction" respectively) contemplated by an agreement of purchase and sale (the "dated as of December 18, 2019 as amended by an amendment to the agreement of purchase and sale dated as of January 31, 2020 (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER]2258156 Ontario Inc. (the "Purchaser") dated [DATE] and appended to the Second Report of the Receiver dated [DATE]February __, 2020 (the "Second Report"), and;
- (b) vesting in the Purchaser the Debtor's Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), relating to and/or located at Walpole and Novacare (the "Walpole Purchased Assets" and "Novacare Purchased Assets" respectively);
- (c) assigning the Novacare Lease (defined below) to the Purchaser;
- (d) sealing the Confidential Appendices (defined below) pending further order of the Court; and
- (e) approving the Receiver's activities as set out in the Second Report.

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], and those other parties present no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed[†]:

[†] ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

1. **THIS COURT ORDERS AND DECLARES** that the ~~Transaction is~~Transactions are hereby approved,² and the execution of the Sale Agreement by the Receiver³ 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~~Transactions and for the conveyance of the Novacare Purchased Assets to the Purchaser.
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 "Novacare Receiver's Certificate"), any and all of the ~~Debtor's~~Debtors' right, title and interest in and to the Novacare Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~⁴ shall vest absolutely in the Purchaser, 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, 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"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice [NAME] Hainey dated [DATE]; December 4, 2019; and (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 D⁵) and, for greater certainty, this Court orders that all of

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

³ In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

⁴ To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

the Encumbrances affecting or relating to the Novacare Purchased Assets are hereby expunged and discharged as against the Novacare Purchased Assets.

3. **THIS COURT ORDERS** that ~~upon the registration in the Land Registry Office for the [Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]~~⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified 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, without limiting the generality of paragraph 2 above, upon delivery of the Novacare Receiver's Certificate (a) all of the rights and obligations of Dumopharm and any other Debtor under the lease dated among Walker Plaza 1200 Inc., Dumopharm Inc. and Peter Dumo together with all amendments and renewals (the "Novacare Lease") shall be assigned to the Purchaser or its designee; and (b) the Debtors' right, title and interest in the Novacare Lease shall vest absolutely in the Purchaser or its designee free and clear of any Encumbrances including, without limitation, any interest or claim of CEDV Inc. as joint tenant under the Novacare Lease.

4. **THIS COURT ORDERS** that the assignment to the Purchaser of the rights and obligations of the Debtors under the Novacare Lease pursuant to the BIA and this Order is valid and binding upon all counterparties to the Novacare Lease notwithstanding any restriction or prohibition in any such Assigned Contracts relating to the assignment thereof, including any provision requirement consent of any party to the assignment.

5. **THIS COURT ORDERS** that each counterparty to the Novacare Lease is prohibited from exercising any right or remedy under the Novacare Lease by reason of defaults thereunder arising from the assignment of the Novacare Lease, the insolvency of the Debtors, the commencement of the receivership or any failure of the Debtors or CEDV Inc. to perform a non-monetary obligation under the Novacare Lease.

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to send a copy of this Order to all counterparties of the Novacare Lease which may be provided to their counsel, Gatti Law Professional Corporation.

7. ~~4-~~**THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Novacare Purchased Assets shall stand in the place and stead of the Novacare Purchased Assets, and that from and after the delivery of the Novacare Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Novacare Purchased Assets with the same priority as they had with respect to the Novacare Purchased Assets immediately prior to the sale⁸, as if the Novacare 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.

8. ~~5-~~**THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Novacare Receiver's Certificate, forthwith after delivery thereof.

9. ~~6-~~**THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the ~~Company's Debtors'~~ records pertaining to the ~~Debtor's Debtors'~~ past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor Debtors~~.

10. ~~7-~~**THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

⁷ ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

⁸ ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

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

the vesting of the Novacare Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Debtors and shall not be void or voidable by creditors of the ~~Debtor~~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.

11. ~~8.-THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario)~~the Confidential Appendices to the Second Report be and are hereby sealed pending further Order of the Court.

12. THIS COURT ORDERS that the Second Report be and is hereby approved and the actions and activities of the Receiver described therein be and they are hereby approved.

13. ~~9.-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-19-00632106

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

~~PLAINTIFF~~

Plaintiff

ECN FINANCIAL INC.

Applicant

- and -

~~DEFENDANT~~

Defendant

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

RECEIVER’S CERTIFICATE
(Novacare)

RECITALS

A. Pursuant to an Order of the Honourable [~~NAME OF JUDGE~~] Mr. Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated [~~DATE OF ORDER~~], [~~NAME OF RECEIVER~~] December 4, 2019, KSV Kofman Inc. was appointed as the receiver (in such capacity, the "Receiver") of the undertaking, property and assets of [~~DEBTOR~~] (the "Debtor,"

assets and undertaking of Rando Drugs Ltd. and the other Respondents listed above (the "Debtors").

B. Pursuant to an Order of the Court dated [DATE], the Court approved ~~the~~certain transactions contained in an agreement of purchase and sale made as of [~~DATE OF AGREEMENT~~] (the "December 18, 2019 (as amended, the "Sale Agreement"") between the Receiver [~~Debtor~~] and [~~NAME OF PURCHASER~~] and 2258156 Ontario Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Novacare Purchased Assets, which vesting is to be effective with respect to the Novacare 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~~allocated to the Novacare Purchased Assets; (ii) that the conditions to Closing as set out in section ~~6~~6 of 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.

C. One of the approved transactions was for the sale of Novacare (as defined in the Sale Agreement).

D. 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~~allocated to the Novacare Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing related to the sale of Novacare as set out in section ~~6~~6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction for the sale of Novacare has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

221

~~[NAME OF RECEIVER]~~ **KSV KOFMAN**
INC., in its capacity as Receiver, of the
~~undertaking, property and, assets of~~
~~{DEBTOR}, and undertaking of Rando Drugs~~
Ltd. and not in its personal capacity

Per: _____

Name:

Title:

~~Schedule B—Purchased Assets~~

~~Schedule C—Claims to be deleted and expunged from title to Real Property~~

Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property

(unaffected by the Vesting Order)

ECN FINANCIAL INC.

and

Applicants

2345760 ONTARIO INC., et al.

Respondents

Court File No.: **CY-19-00632106-00CL**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced **TORONTO**

APPROVAL OF VESTING ORDER
(Notarary)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO #46735J)
Tel: 416-597-5017
Email: jstam@gsnh.com

Lawyers for the Receiver, **KSV Kofman Inc.**

223

Document comparison by Workshare 9.5 on February-19-20 10:59:36 AM

Input:	
Document 1 ID	file://U:\JStam\KSV Kofman Inc re Rando Drugs - 100325-0003\Agreement of Purchase and Sale\Sale Motion (Walpole and Novacare) Draft Materials\Model Order.doc
Description	Model Order
Document 2 ID	file://U:\JStam\KSV Kofman Inc re Rando Drugs - 100325-0003\Agreement of Purchase and Sale\Sale Motion (Walpole and Novacare) Draft Materials\Approval and Vesting Order (Novacare) v.2.docx
Description	Approval and Vesting Order (Novacare) v.2
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
	410

Total changes	266
---------------	-----

ECN FINANCIAL INC. and 2345760 ONTARIO INC., et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced TORONTO

MOTION RECORD
returnable February 26, 2020
(Walpole and Novacare Approval and Vesting Orders)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO #46735J)
Tel: 416-597-5017
Email: stam@gsnh.com

Lawyers for the Receiver, KSV Kofman Inc.