

- (a) **"Acceptance Date"** means the date that this Agreement is executed and delivered by the Parties;
- (b) **"Agent"** shall mean Colliers Macaulay Nicolls Inc.;
- (c) **"Agreement"** means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;
- (d) **"Applicable Laws"** means, with respect to the Purchased Assets or to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event;
- (e) **"Assumed Liabilities"** has the meaning ascribed to it in Section 2.10.
- (f) **"Business Day"** means a day on which banks and the Land Registry Office for the City of Toronto are open for business but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (g) Intentionally deleted.
- (h) **"Claim"** means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;
- (i) **"Closing"** means the successful completion of the Transaction;
- (j) **"Closing Date"** means that date that is six (6) business days immediately following the date upon which the Approval and Vesting Order is granted.
- (k) Intentionally Deleted
- (l) **"Court"** means the Court defined in the first recital of this Agreement;
- (m) Intentionally deleted.
 - (n) **"Data Room"** means the electronic data room established by or on behalf of the Vendor containing documents related to the Purchased Assets for review by the Purchaser;

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- (p) Intentionally deleted.
- (q) **"Debtor or Debtors"** means all or any one of Kings Townhomes Limited (formerly Conacher Kingston Holdings Inc.) and 5004591 Ontario Inc.;
- (r) **"Deposit"** has the meaning ascribed to it in Section 2.5;
- (s) **"Encumbrance"** means any mortgage, charge, pledge, hypothecation, security interest, trust, deemed trust (statutory or otherwise) assignment, lien (statutory or otherwise), Claim, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;
- (t) **"Environmental Condition"** has the meaning ascribed to it in Section 2.2(a).
- (u) **"Environmental Laws"** means all Applicable Laws concerning pollution or protection of the natural environment or otherwise relating to the environment or health or safety matters, including Applicable Laws pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of Hazardous Materials, and (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Hazardous Materials including without limiting the generality of the foregoing the following any written policies and guidelines and directives, administrative rulings or interpretations, that are in effect and applicable to the Vendor or the Property on the Closing Date, as well as the common law and any judicial or administrative order, consent decree or judgment that is in effect and applicable to the Vendor or the Property on the Closing Date, that relates to pollution or the protection of the environment, including, without limitation, the *Atomic Energy Control Act* (Canada), the *Canadian Environmental Protection Act* (Canada), the *Pest Control Products Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Environmental Assessment Act* (Ontario), the *Ontario Water Resources Act* (Ontario) and the *Occupational Health & Safety Act* (Ontario), and the regulations and guidelines promulgated pursuant thereto or issued by any Government Authority in respect thereof, and equivalent or similar local and provincial ordinances and statutory programs and the regulations and guidelines promulgated pursuant thereto.
- (v) **"Ereg"** has the meaning ascribed to it in Section 5.7;
- (w) **"ETA"** means the *Excise Tax Act* (Canada), as it may be amended from time to time;

- (x) **"Excluded Assets"** means the assets, if any, listed in Schedule "C";
- (y) **"Final Order"** means, in respect of any order, such order after i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such order, final determination of such appeal or application by the applicable court or appellate tribunal;
- (z) **"Governmental Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction or one or both of the Parties and shall include a board, commission, courts, bureau, agency or any quasi-governmental or private body exercising any regulatory authority including an association of insurance underwriters;
- (aa) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authority and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health or safety matters;
- (bb) **"HST"** means all goods and services taxes and harmonized sales tax payable under the ETA;
- (cc) **"Land Transfer Tax"** means all the taxes payable under the *Land Transfer Tax Act* (Ontario) and any other applicable provincial or municipal land transfer tax legislation, including all registration fees, license fees, and other like charges payable upon a transfer of real property, together with interest, penalties and additions thereto;
- (dd) **"Leases"** means any leases with any tenants relating to the Property;
- (ee) Intentionally deleted.
- (ff) **"Liabilities"** means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, liquidated or unliquidated under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes

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- (gg) **"Parties"** means the Vendor, the Purchaser and any other Person who may become a party to this Agreement. **"Party"** means any one of the foregoing;
- (hh) **"Permits"** means all permits, licenses and applications that may have been issued or applied for in the name of the Debtor and/or the Vendor in connection with the servicing and/or development of the Property;
- (ii) **"Permitted Encumbrances"** means those Encumbrances listed in Schedule "B" attached hereto;
- (jj) **"Person"** means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
- (kk) **"Plans"** means all plans and documentation in the possession or control of the Vendor relevant to the development of the Property including, without limitation, any project documents, engineering drawings, architectural plans and working drawings, landscaping plans, reports, project documents other documentation prepared to illustrate or define a particular aspect of the development of the Property, in each instance, to the extent forming part of the Data Room created by the Vendor in respect of the Transaction;
- (l) **"Property"** means the real property described in Schedule "A" attached hereto;
- (mm) **"Property Documents"** means the documents in the Data Room;
- (nn) **"Purchaser Closing Conditions"** has the meaning ascribed to it in Section 4.1;
- (oo) **"Purchase Price"** shall have the meaning ascribed to it in Section 2.4. For greater certainty, the Purchase Price shall be exclusive of Transfer Taxes and any other taxes payable as a result of or in connection with the Transaction;
- (pp) **"Purchaser's Solicitors"** means the law firm of Paul F. Rooney Professional Corporation;
- (qq) **"Purchased Assets"** means those assets being the lands which are the subject of this Agreement;
- (rr) **"Receiver"** has the meaning described thereto in the Recitals;

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- (ss) **"Reports"** means collectively any written reports or documents received or obtained by the Receiver from any third party regarding any aspect of the Property;
- (tt) **"Rights"** has the meaning ascribed to it in Section 2.13;
- (uu) Intentionally deleted;
- (vv) Intentionally deleted.
- (ww) Intentionally deleted;
- (xx) Intentionally deleted;
- (yy) **"Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;
- (zz) **"Transfer Taxes"** means all HST, Land Transfer Tax, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated together with interest, penalties and additional amounts imposed with respect thereto;
- (aaa) Intentionally deleted.
- (bbb) **"Vendor Closing Conditions"** has the meaning ascribed to it in Section 4.3;
- (ccc) **"Vendor's Solicitor"** means the law firm of Garfinkle Biderman LLP;
- (ddd) **"Approval and Vesting Order"** means the order of the Court approving the sale by the Receiver to the Purchaser of the Purchased Assets and vesting all rights, title and interest of the Purchased Assets in favour of the Purchaser free and clear of all Encumbrances (other than Permitted Encumbrances) (in a form to be agreed upon by the parties);
- (eee) **"Vesting Order Motion"** means a motion by the Receiver seeking the granting of the Approval and Vesting Order; and
- (fff) **"Work Orders"** means any work orders, deficiency notices, outstanding building permits, orders, or requirements to comply with any Applicable Laws or issued by any Governmental Authorities.

1.2. Interpretation Not Affected by Headings, etc.

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

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this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof

1.3. Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4. Schedules

The following Schedules are incorporated in and form part of this Agreement;

- Schedule "A" Property
- Schedule "B" Permitted Encumbrances
- Schedule "C" Excluded Assets
- Schedule "D" Intentionally deleted

SECTION 2 - SALE AND PURCHASE AND ASSIGNMENT

2.1. Sale and Purchase of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Liabilities, all in accordance with and pursuant to the terms hereof and the Approval and Vesting Order. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets.

2.2. "As is, Where is"

The Purchaser acknowledges and agrees that:

- (a) the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning,



permitted uses, permits, compliance with Applicable Laws of Government Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof, any non-compliance with Environmental Laws including any adverse matters contained in the Reports (the "**Environmental Condition**"), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for 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 hereto and are hereby waived by the Purchaser. The descriptions of the Purchased Assets set out in this Agreement or in the Property Documents are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Purchaser further acknowledges that the Property Documents and all other written and oral information (including, without limitation, any analyses, financial information and projections, compilations, studies and the Plans) obtained by the Purchaser from the Vendor or the Agent with respect to the Purchased Assets or otherwise relating to the Transaction has been provided for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

- (b) notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding Work Orders, and the Purchaser shall accept the title to the Property subject to the Permitted Encumbrances and the Environmental Condition.
- (c) the various parties who prepared the Property Documents may have restricted the use thereof to the Debtor only, in their respective retainers with the Debtor and any purported conveyance of any of the Property Documents by the Vendor to the Purchaser may be subject to such limitations.
- (d) Without limiting the generality of this Section 2.2, the Purchaser acknowledges and agrees that the parties have expressly agreed to exclude from this Agreement all express or implied representations and warranties with respect to the following matters:
 - (i) the compliance of the Property with Applicable Laws, by-laws or regulations including without limitation, municipal zoning by-laws and regulations;
 - (ii) any easements, rights of way, instruments, documents, agreements or other registered or unregistered interest in the Property which impacts the

- use, enjoyment, income or development opportunities connected with the Property;
- (iii) that the present use or any future use of the Purchased Assets intended by the Purchaser is or will be lawful or permitted;
 - (iv) the execution, good standing, validity, binding effect or enforceability of the Permitted Encumbrances;
 - (v) that the Vendor has any right, title or interest in any goodwill associated with the Purchased Assets, or the use of any name associated with the operation of the Purchased Assets;
 - (vi) the description, title, condition, value, state of repair and fitness for any purpose of the Purchased Assets; and
 - (vii) the compliance of the Property with Environmental Laws, Reports or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Property, or otherwise with respect to the environmental condition of the Property;
- (e) the Property Documents and any assets lists, information packages and other material concerning the Purchased Assets or the sale thereof provided by or on behalf of the Vendor and the Agent have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in such material) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, no conditions, warranty or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning such descriptions;
 - (f) the Vendor is entering into this Agreement solely in its capacity as Receiver of the Property pursuant to the Appointment Order and not in its personal or other capacity and the Vendor and its agents (including the Vendor's Solicitors), officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith;
 - (g) save as to any valid objection to title made in respect of matters arising after the Acceptance Date, the Purchaser shall be conclusively deemed to have accepted the title to the Property and to have accepted the Property subject to the Permitted Encumbrances and the Environmental Condition and subject to all Applicable Laws, by-laws and regulations affecting its use. If any valid objection to title expressly permitted herein is made by the Purchaser prior to the Closing Date, which the Vendor is unwilling or unable to remove, remedy, or satisfy and which the Purchaser will not waive or is not satisfied by title insurance, then the Receiver may terminate this Agreement by notice to the Purchaser, whereupon, except as herein expressly set forth, the Deposit without interest accrued thereon shall be forthwith returned to the Purchaser in accordance with and subject to the

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terms in Section 2.5 and 2.12 each of the Purchaser and the Receiver shall be released from all obligations under this Agreement;

- (h) the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except such of the foregoing as are in the possession or control of the Receiver;
- (i) the Purchaser acknowledges that, the Vendor has provided the Purchaser access to the Data Room and that the Purchaser has had sufficient opportunity to review, and has satisfied itself with respect to, the Property Documents. If for any reason the transaction is not completed, the Purchaser shall forthwith return the Property Documents, and delete any electronic copies of them in its possession or control. The Vendor makes no representation or warranty, express or implied, as to the accuracy or completeness of any information contained in any of the Property Documents; and

in entering into this Agreement, the Purchaser has relied and will rely entirely and solely upon its own inspections and investigations with respect to the Property and the Purchased Assets, including the physical condition and the Environmental Condition of the Purchased Assets including compliance with Applicable Laws and has relied solely upon its own judgement resulting from doing so and has not relied and will not rely on any information, written or oral, furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor including the Agent, including with respect to value of the Purchased Assets, the development potential of the Property, adequacy, marketability, quantity, location, condition, quality, fitness or state of repair. The information in the Data Room and description of the Purchased Assets in any marketing material, listing information, and any like material delivered or made available by the Vendor and/or the Agent, the Vendor's agents or any other party on its behalf to the Purchaser or its representatives are believed to be correct, but if any misstatement, error, inaccuracy or omission (collectively the "Inaccuracies") is found in the them, the Purchaser shall not be entitled to any abatement, damages, reimbursement, costs or to termination of this Agreement as a result of them and the Purchaser releases the Vendor and its agents from any Claims the Purchaser had, has or may have as a result of such Inaccuracies.

2.3. Permitted Encumbrances

The Purchaser acknowledges that the Vendor is selling the Purchased Assets subject to the Assumed Liabilities and that the Vendor undertakes no obligation to discharge the Permitted Encumbrances on Closing or thereafter.

2.4. Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "**Purchase Price**") shall be an amount of ~~\$2,000,000.00~~, allocated as set out in paragraph 2.7.

\$3,300,000.00

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2.5. Deposit

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330,000.00
The Parties acknowledge and agree that the sum of ~~\$800,000.00~~, being ten (10%) percent of the Purchase Price (the "Deposit") will be delivered by the Purchaser to the Vendor's solicitor in trust within 24 hours of acceptance of an executed copy of the Agreement by the Purchaser and the Vendor. The Deposit shall be held in a non-interest bearing account of a Canadian chartered bank or trust company, in trust and to be disbursed in accordance with the following provisions:

- (a) if the purchase and sale of the Purchased Assets is completed on the Closing Date, then the Deposit shall be released from trust and applied towards payment of the Purchase Price;
- (b) if the purchase and sale of the Purchased Assets is not completed on the Closing Date for any reason other than the default of the Purchaser hereunder, then the Deposit shall, subject to any Claim by the Vendor for damages under Section 2.12(d) herein, be released from trust and paid to the Purchaser in full satisfaction of all Claims incurred by the Purchaser as a result of such non-completion; or
- (c) if the purchase and sale of the Purchased Assets is not completed on the Closing Date as a result of the Purchaser's default hereunder, then the Deposit shall be forfeited to the Vendor and released from trust as liquidated damages and not as a penalty and paid to the Vendor without prejudice to the Vendor's rights to reimbursement on account of any Claim of the Vendor against the Purchaser as a result of such failure and the Vendor shall be entitled to pursue all of its rights and remedies against the Purchaser, including the resale of the Purchased Assets. Upon any such resale, the Purchaser shall pay to the Vendor: (i) an amount equal to the amount, if any, by which the Purchase Price under the Agreement exceeds the net purchase price received by the Vendor pursuant to such resale (net of any commissions and costs and expenses incurred to effect the completion of such resale including legal costs on a full indemnity basis), and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of the Transaction or occasioned by the Purchaser's failure to comply with this Agreement.

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows:

- (a) on Closing, the Deposit shall be released from trust and credited against the Purchase Price in accordance with Section 2.5(a); and
- (b) on Closing, the Purchase Price, subject to adjustments and minus the amount paid to the Vendor pursuant to Section 2.6(a), shall be paid to the Vendor or as the Vendor may direct in writing by way of wire transfer using the Large Value Transfer System.

2.7 Intentionally deleted.

2.8 Adjustment of Purchase Price

- (1) The Purchase Price shall be adjusted as of the Closing Date in accordance with the terms of this Agreement for any property taxes (including interest thereon, if applicable), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a Court supervised sale (the "Adjustments"). The Receiver shall prepare a statement of adjustments and deliver same to the Purchaser for its approval by no later than 3 Business Days prior to the Closing Date. If the amount of any Adjustments required to be made pursuant to this Purchase Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor as of the Closing Date based upon the best information available to the Vendor at such time. When such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Vendor and the Purchaser shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the Parties the final cost or amount of an item shall be determined by an accountant or such other financial professional appointed jointly by the Vendor and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the Parties. All re-adjustments shall be requested in a detailed manner on or before the 60th day after the Closing Date, after which time neither party shall have any right to request re-adjustment.
- (2) Other than as provided for in this section 2.8, there shall be no Adjustments to the Purchase Price.

2.9 Excluded Liabilities

Other than the Assumed Liabilities, the Purchaser shall not assume and shall not be liable for any other Liabilities of the Vendor or the Debtor.

2.10 Assumed Liabilities

From and after Closing, the Purchaser shall assume and be liable for the Assumed Liabilities. The Assumed Liabilities shall consist only of the Liabilities incurred under or in respect of:

- (a) Permitted Encumbrances;
- (b) the use of the Purchased Assets from and after the Closing Date to the extent relating to periods from and after the Closing Date; and

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- (c) the Environmental Condition, and any and all Liabilities for the remediation of the soil and groundwater in, on, over, under or flowing through, onto or from the Property or any part thereof.

(the foregoing being the "**Assumed Liabilities**").

2.11 Taxes

In addition to the Purchase Price, the Purchaser or the beneficial owner of the Property if different from the Purchaser shall pay all applicable Transfer Taxes exigible in connection with the purchase and sale of the Purchased Assets, including, without limitation, HST and Land Transfer Tax.

The Purchaser will be an HST registrant and a prescribed recipient under the ETA on or before the Closing Date and will provide its registration number to the Vendor on or before the Closing Date.

The Purchaser shall deliver, prior to Closing, a certificate in form prepared by the Vendor acting reasonably certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the Transaction. The Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration as the case may be, and the Purchaser's HST registration number together and the Purchaser shall indemnify and hold harmless the Vendor from and against any and all Claims, HST, penalties, costs and any interest that may become payable by or assessed against the Vendor for all Transfer Taxes arising out of, related to or connected in any way with the Property or this Transaction. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor at Closing, in addition to the balance due on Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the Transaction.

2.12 Inspections

The Vendor will permit the Purchaser, its consultants, agents and representatives to carry out, at the Purchaser's sole expense and risk, such investigations, soil tests, and environmental audits as the Purchaser, acting reasonably, may deem necessary with respect to the Property, subject to and conditional upon the following terms and conditions:

- (a) any invasive testing shall require the Vendor's written approval prior to such testing;
- (b) the Purchaser shall provide at least two Business Days' notice to the Vendor of any such tests and inspections and the Vendor will be entitled to have a representative present during all such tests and inspections;
- (c) all soil tests or environmental audits shall be coordinated with the Vendor;

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- (d) any damage to the Property caused by such tests and inspections will be promptly repaired by the Purchaser and the Purchaser will indemnify and save the Vendor harmless from all Claims which the Vendor may suffer as a result of the said tests and inspections or any other breach of this Section by the Purchaser; and
- (e) prior to entering the Property to conduct the Purchaser's tests and investigations, the Purchaser shall deliver (or shall cause its representatives completing the Purchaser's investigations on its behalf to deliver) to the Vendor evidence of liability insurance coverage for at least \$2,000,000.

The Purchaser agrees that the Vendor shall be entitled to deduct from the Deposit the amount of any Claims which the Vendor may suffer as a result of a breach of this Section 2.12 by the Purchaser. To the extent that the Purchaser commissions any reports in connection with its tests and investigations of the Property, copies of all such reports shall be delivered to the Vendor at no cost to the Vendor within three (3) Business Days of issuance.

2.13 Non-Transferable and Non-Assignable Purchased Assets

To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any Claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "**Rights**") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent or waiver has been obtained. After Closing and for a period of sixty (60) days following Closing, the Vendor shall:

- (a) maintain its existence and hold the Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;
- (c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (d) enforce, at the reasonable request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser,

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the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the reasonable opinion of the Vendor, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and ensures to the benefit of the Purchaser. To the extent that such approval, consent or waiver has not been obtained by the 60th day following the Closing, such Right shall be deemed to be an excluded Purchased Asset and the Vendor may terminate any agreement pertaining to such Right unless otherwise agreed to by the Parties. The Purchaser shall indemnify and hold the Vendor harmless from and against any Claim under or in respect of such Rights arising because of any action of the Vendor taken in accordance with this Section.

2.14 Intentionally deleted.

2.15 Approval and Vesting Order

- (a) The Receiver and the Purchaser acknowledge that:
 - i. this Agreement is subject to Court approval; and
 - ii. closing of the Transaction is subject to the issuance of the Approval and Vesting Order.
- (b) If this Agreement is accepted by both parties, the Receiver shall use its commercially reasonable efforts to promptly thereafter file and serve the Vesting Order Motion on notice to the necessary parties.
- (c) If the Receiver accepts this Agreement, the Purchaser shall provide all information if any, and take any such actions as may be reasonable requested by the Receiver to assist the Receiver in obtaining the Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction.
- (d) From and after the Acceptance Date, the Receiver shall provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, or the Approval and Vesting Order and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing (provided that the Receiver shall not be obligated to incorporate the comments of the Purchaser and do any such filings).

2.16 Closing Certificate

The parties hereto acknowledge and agree that the Receiver shall be entitled to file with

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the Court a certificate, substantially in the form attached to the Approval and Vesting Order (the "**Closing Certificate**") upon receiving written confirmation from the Purchaser that all conditions to close under this Agreement have been satisfied or waived. The Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

2.17 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to this Agreement, including in its execution, the Receiver has acted and is acting solely in its capacity as Receiver and manager of the Property pursuant to the Appointment Order and not in its personal, corporate or any other capacity and the Receiver and its agents, officers, directors, employees and representatives will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Covenants

The Purchaser covenants and agrees that it will, effective on and after the Closing Date, assume and be fully responsible for:

- (a) all obligations which are to be observed or performed from and after completion of this Transaction under the Permitted Encumbrances; and
- (b) the Assumed Liabilities and any other obligations and liabilities assumed by the Purchaser as provided for by this Agreement.

3.2 Purchaser's Representations and Warranties

The Purchaser represents and warrants to the Vendor, which representation and warranties the Vendor is relying upon, that:

- (a) the Purchaser is and will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the Purchased Assets;
- (b) the Purchaser 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 has been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) no consent or approval of or registration, declaration or filing with any Government Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of

any of its obligations hereunder;

- (d) the Purchaser 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 herein;
- (e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the Transaction and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;
- (f) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as of Closing, duly and validly executed and delivered by the Purchaser and constitute or will, as of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;
- (g) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*;
- (h) The Purchaser has now and will have on the Closing Date the financial resources to complete this transaction in accordance with the terms of this Agreement; and
- (i) the Purchaser is registered or will be registered on Closing under Part IX of the ETA.

3.3 Record of Site Condition in the Environmental Registry

If at any time following Closing the Purchaser, in its sole discretion, elects to file a Record of Site Condition ("RSC") in respect of any Property, then the following clause will be deemed to have formed part of this Agreement as at the time of execution hereof, in respect only of the Property for which the RSC is filed:

"The Purchaser covenants and agrees that following the Closing, it shall file, at its sole cost and expense, a Record of Site Condition in the Environmental Registry as contemplated under s.168.4 of the Environmental Protection Act for the Property."

On Closing, the Purchaser shall deliver an indemnity in favour of the Vendor in which it

agrees to indemnify and save the Vendor harmless from any and all Claims incurred by the Vendor in the event the Purchaser fails to make such filings.

3.4 Receiver's Representations

The Receiver represents and warrants to the Purchaser as follows:

- (a) the Receiver has been duly appointed as the receiver of the Purchased Assets pursuant to the Appointment Order and has full right, power and authority, subject to obtaining the Approval and Vesting Order prior to Closing, to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order; and
- (b) the Receiver is not a non-resident of Canada for purposes of Section 116 of the *Income Tax Act* (Canada).

3.5 Survival of Representations, Warranties and Covenants

The representations, warranties, agreements and covenants made by the Purchaser herein or in any other agreement, certificate or instrument delivered by the Purchaser to the Vendor pursuant to this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor, without limitation.

SECTION 4 - CONDITIONS

4.1 Purchaser Closing Conditions

The obligation of the Purchaser to complete the Transaction is subject to the following conditions precedent being fulfilled or performed at or prior to the Closing Date (the "**Purchaser Closing Conditions**"):

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the documents contemplated in Section 5.3 or elsewhere in this Agreement;
- (c) intentionally deleted;
- (d) the Appointment Order and the Approval and Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction; and

The Purchaser Closing Conditions are for the exclusive benefit of the Purchaser. Any Purchaser Closing Condition may be waived by the Purchaser in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing.

4.2 Purchaser Closing Conditions Not Fulfilled

If any Purchaser Closing Condition has not been fulfilled at or prior to Closing, then the Purchaser in its sole discretion may, either:

- (a) terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from its obligations under this Agreement and the Deposit shall be promptly returned to the Purchaser in accordance with and subject to the provisions of Section 2.5 hereof; or
- (b) waive compliance with any such Purchaser Closing Condition, without prejudice to its right of termination in the event of non-fulfillment of any other Purchaser Closing Condition.

4.3 Vendor Closing Conditions

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Date (the "**Vendor Closing Conditions**"):

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated in Section 5.2 or elsewhere in this Agreement;
- (c) there shall be no litigation or proceedings pending against the Vendor, in respect of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (d) On the Closing Date, the Appointment Order and the Approval and Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition may be waived by the Vendor in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. The Closing of the Transaction shall deem all conditions to be waived or satisfied.

4.4 Vendor Closing Conditions Not Fulfilled

If any Vendor Closing Condition shall not have been fulfilled at or prior to Closing, then the Vendor in its sole subjective discretion may, without limiting any rights or remedies available to the Vendor at law or in equity, either:

- (a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement and, unless the Vendor Closing Condition(s) that was not fulfilled was the Vendor Closing Condition contained in Section 4.3(c) or (d), the Deposit shall be retained by the Vendor in accordance with the provisions of Section 2.5 hereof; or
- (b) waive compliance with any such Vendor Closing Condition without prejudice to its right of termination in the event of non-fulfillment of any other Vendor Closing Condition.

4.5 Approval and Vesting Order

The obligations of the Vendor and the Purchaser hereunder are subject to the mutual condition that the Vesting Order shall have been made by the Court on a date to be determined by the Receiver approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances. The Parties hereto acknowledge that the foregoing condition has been inserted for the mutual benefit of the Parties and is incapable of waiver. In the event that said condition has not been fulfilled by the aforesaid date, the Transaction shall automatically be deemed to be null and void and of no further force and effect as of said date and provided that the Purchaser is not in default of its obligations hereunder, the Deposit shall be promptly returned to the Purchaser in accordance with and subject to the provisions of Section 2.5 hereof. The Parties further acknowledge that the Application to the Court for the Vesting Order will be made as soon as reasonably practical after the binding Agreement is entered into by the Parties.

SECTION 5 - CLOSING

5.1. Closing

The completion of the Transaction shall take place on the Closing Date as specified in this Agreement or as otherwise determined by mutual agreement of the Parties in writing.

The Closing Date shall be subject to the approval of the Vesting Order, and to any approvals required from the City of Toronto pursuant to Instrument AT4601555 and related restrictions having been received. If either of the approval of the Vesting Order or any approvals required from the City of Toronto pursuant to Instrument AT4601555 and related restrictions have not been received by the initial Closing Date, then the Closing Date shall be extended ("Extended Closing Date") for a further period of 60 days. In the event that the approvals have not been received by the Extended Closing Date, then the Purchaser shall have the right to terminate this Agreement in writing to the Vendor

or to the Vendor's Solicitor at his absolute and sole discretion and the Deposit shall be returned to the Purchaser in full without interest or deduction.

5.2. Purchaser's Deliveries on Closing

On or before Closing, the Purchaser shall execute or deliver as applicable, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Purchase Price;
- (b) a certificate, dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser 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;
 - (c) an acknowledgement dated as of the Closing Date, that each of the Purchaser Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
- (d) assignment of the Purchased Assets and assumption of the Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;
- (e) the certificate and indemnity provided for under Section 2.11;
- (f) an undertaking to re-adjust any item on or omitted from the statement of adjustments subject to 60 day limitation period in Section 2.8;
- (g) an environmental release and indemnity indemnifying and holding the Vendor harmless from any and all damages, claims, actions, losses, costs, liabilities or expenses (collectively "**Damages**") suffered or incurred by the Vendor, directly or indirectly, as a result of or in connection with any of the following, and without restricting the generality of the foregoing, which include Damages incurred in addressing an administrative order by a Government Authority or in addressing a notice, investigation or other process which could reasonably be anticipated to result in such an order:
 - (i) the presence, release, or the threat of a release of any Hazardous Materials in, on or under the Property;
 - (ii) the presence of any Hazardous Materials in, on or under properties adjoining or proximate to the Property;
 - (iii) any other environmental matters relating to the Property;
 - (iv) the breach of any Environmental Laws applicable to the Property;
 - (v) the release or threatened release of any Hazardous Materials owned, managed, generated, disposed of, controlled or transported by or on behalf of the Purchaser;

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- (vi) the Environmental Condition; or
- (vii) the Indemnity provided for in Schedule 3.3; and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

5.3 Vendor's Deliveries on Closing

- (a) On or before the Closing, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:
 - (i) statement of adjustments;
 - (ii) an acknowledgement dated as of the Closing Date, that each of the Vendor Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
 - (iii) an assignment of the Purchased Assets and assumption of the Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;
 - (iv) assignment of all Leases;
 - (v) the Approval and Vesting Order; and
 - (vi) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.
- (b) Upon the completion of the deliveries pursuant to Section 5.2 and 5.3(a), the Vendor shall immediately file a certificate with the Court (the **"Receiver's Certificate"**) that the Transaction has been completed and title to the Property shall vest in the Purchaser effective immediately upon the filing with the Court of the Receiver's Certificate and shall deliver to the Purchaser a copy of same.

5.4 Risk

The Purchased Assets shall be and remain at the risk of the Vendor until Closing. From and after Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Purchaser in writing within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Vendor shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the Purchaser and in such event the Parties hereto shall be released from all obligations and liabilities hereunder. If the Vendor shall not elect to terminate this Agreement as set out above, then the Transaction shall be completed in accordance with the terms and conditions hereof and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

5.5 Termination

If either the Vendor or the Purchaser validly terminates this Agreement pursuant to the provisions of Sections 4.2, 4.4, 4.5 or 5.4:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (b) the Purchaser shall have no right to specific performance or any other remedy against, or any right to recover on account of any Claim it may have from, the Vendor.

5.6 Breach by Purchaser

If all of the Purchaser Closing Conditions have been complied with or waived by the Purchaser and the Purchaser fails to comply with the terms of this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In addition, the Purchaser shall pay to the Vendor, on demand, the deficiency, if any, arising upon such resale (after deducting the expenses of resale) together with interest and all other damages or charges occasioned by or resulting from the default by the Purchaser.

5.7 Electronic Registration

In the event that a system for electronic registration ("**Ereg**") is operative and mandatory in the applicable land registry office, the Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor's solicitors, to complete the Transaction using Ereg in accordance with the Law Society of Ontario's (the "**LSO**") guidelines. If Ereg is operative on the Closing Date, (i) the Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the LSO, (ii) the Purchaser's solicitors will enter into the Vendor's solicitors' standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing the Transaction provided same are in accordance with LSO guidelines, and (iii) if the Purchaser's solicitors are unwilling or unable to complete the Transaction using Ereg, then the Purchaser's solicitors must attend at the Vendor's solicitors' office or at another location designated by the Vendor's solicitors at such time on Closing as directed by the Vendor's solicitors to complete the Transaction using Ereg utilizing the Vendor's solicitors' computer facilities, in which event, the Purchaser shall pay to the Vendor's solicitors a reasonable fee therefor.

SECTION 6 - GENERAL

6.1. Further Assurances

Each of the Parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

6.2. Notice

Any notice or other communication under this Agreement shall be in writing and may be

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delivered personally or transmitted by electronic transmission, addressed
in the case of the Purchaser, as follows:

Attention: Simion Kronenfeld

Telephone No: 416-520-7111

Email: simion@ajglgroup.com

and in the case of the Vendor, as follows:

TDB Restructuring Limited, Court-Appointed
Receiver of 5004591 Ontario Inc.
11 King Street West
Suite 700, PO Box 27
Toronto, ON M5H 4C7

Attention: Arif Dhanani
Email: adhanani@tdbadvisory.ca

with a copy to:

Garfinkle Biderman LLP
801-1 Adelaide Street East
Toronto, ON M5C 2V9

Attention: Avrom W. Brown
Email: abrown@garfinkle.com

and a copy to:

Colliers Macaulay Nicolls Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1

Attention: Steve Keyzer
Email: steve.keyzer@colliers.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by electronic transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on that Business Day, and if transmitted by electronic transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

6.3. Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors.

6.4. Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

6.5. Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor; provided the Purchaser may assign its rights and obligations under this Agreement to an "affiliate" of the Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)), provided that the Purchaser remains liable, jointly, with such affiliate for all the obligations of the Purchaser hereunder. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.6. Amendments and Waiver

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Purchaser and the Vendor. The Vendor and the Purchaser may consent to any such amendment at any time prior to the Closing with the prior authorization of their respective boards of directors.

6.7. Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby. Subject to the Approval and Vesting Order being issued by the Court, this Agreement is intended to create binding obligations on the part of the Vendor as set

forth herein and on acceptance by the Purchaser, is intended to create binding obligations on the part of the Purchaser, as set out herein.

6.8. 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 in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

6.9. Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

6.10. Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

6.11. Commission

The Vendor shall be responsible for any commissions to the Agent. Any other commissions payable to any other party shall be the responsibility of the Purchaser.

6.12. Certain Words

In this Agreement, the words "including" and "includes" means "including (or includes) without limitation", and "third party" means any Person who is not a Party.

6.13. Statutory References

All references to any statute is to that statute or regulation as now enacted or as may from time to time be amended, re-enacted or replaced and includes all regulations made thereunder, unless something in the subject matter or context is inconsistent therewith or unless expressly provided otherwise in this Agreement.

6.14. Actions to be Performed on a Business Day

Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following

such day.

6.15. No Registrations

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Property. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Property and the Purchaser shall be deemed to be in default of its obligations hereunder. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property. The Purchaser acknowledges and agrees that until Closing, the Purchaser has no interest in the Property whatsoever, notwithstanding anything to the contrary herein.

6.16. Strict Construction

Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties 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 Agreement.

6.17. No Third Party Beneficiaries

This Agreement shall be binding upon and enure solely to the benefit of each of the Parties hereto and its permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement. Each of the Parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, survive the closing of the Transaction.

6.18. Planning Act

This Agreement is entered into subject to the express conditions that it is to be effective only if the provisions of Section 50 of the *Planning Act* (Ontario) and amendments, are complied with.

6.19. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

6.21 Expenses

Each Party shall be responsible for its own legal and other expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Transaction and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement.

(Remainder of this page intentionally left blank)

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6.22 Announcements

Except as required by law including applicable regulatory and stock exchange requirements, all public announcements concerning the Transaction shall be jointly approved as to form, substance and timing by the Parties after consultation.

The Parties have executed this Agreement by their duly authorized officers.

**TDB RESTRUCTURING LIMITED in its
capacity as Court-Appointed Receiver and not in
its personal capacity**

Per: _____
Name: Arif Dhanani, CPA, CA, CIRP, LIT
Title: Managing Director

1001079582 ONTARIO INC.

PER _____
Name:
Title:

Schedule "A"

Property

PIN No. 10306-0064 (LT) - 2849 Islington Avenue

Part Lot 22 Concession 6 WYS Township of York as in NY735134; Toronto (N York), City of Toronto

PIN No. 10306-0035 (LT) - 2857 Islington Avenue

Part Lot 2 Plan 9059 North York as in 18379983; Toronto (N York), City of Toronto

PIN No. 10306-0034 (LT)- 2855 Islington Avenue

Part Lot 2 Plan 9059 North York as in 18379984; Toronto (N York), City of Toronto

PIN No. 10306-0033 (LT)- 2853 Islington Avenue

Part Lot 1 Plan 9059 North York as in 18221318; Toronto (N York), City of Toronto

PIN No. 10306-0032 (LT)- 2851 Islington Avenue

Part Lot 1 Plan 9059 North York as in TR92058; Toronto (N York), City of Toronto

Schedule "B"**Permitted Encumbrances**

"Permitted Encumbrances" means the following:

1. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act*, R.S.O. 1990, and any amendments thereto or any successor legislation, except paragraph 11;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements or rights of way in favour of any governmental authority or public utility provided that none of the foregoing interfere in any material adverse respect with the current use of the Property;
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due;
5. All agreements and easements, registered or otherwise, for utilities and services for hydro, water, heat, power, sewer, drainage, cable and telephone serving the Property, adjacent or neighbouring properties, provided none of the foregoing interfere in any material adverse respect with the current use of the Property;
6. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property provided that in either case same do not materially adversely impair the use, operation, or marketability of the Property;
7. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
8. Any breaches of any Applicable Laws, including Work Orders;
9. Any subdivision agreements, site plan agreements, developments and any other agreements with the Municipality, Region, publicly regulated utilities or other governmental authorities having jurisdiction;
10. Minor title defects, if any, that do not in the aggregate materially affect the use of the Property for the purposes for which it is used on the date of acceptance of this Agreement;
11. The following specific instruments registered on title against the Property:

Permitted Encumbrances related to the Property
(unaffected by the Approval and Vesting Order)

Reg. Num.	Date	Instrument Type	Parties To
NY524794	November 21, 1967	Agreement	The Corporation of the Borough of North York
NY579166	July 20, 1970	By-law exempting Part Lot Control	
NY593705	May 12, 1971	Agreement	The Borough of North York
NY608306	December 29, 1971	Agreement	The Corporation of the Borough of North York
NY620929	July 28, 1972	Municipal By-law	
NY632269	January 29, 1973	Notice of Airport Zoning Regulations	Department of Transportation
TB379984	December 29, 1986	Statutory Declaration of Anthony Dilena	
TR57844	March 27, 2000	Notice	Her Majesty the Queen in Right of the Department of Transport Canada
AT4601553	June 19, 2017	Section 37 Agreement	City of Toronto
AT4601554	June 19, 2017	Rental Housing Agreement	City of Toronto
AT4601555	June 19, 2017	Restriction preventing any Transfer or Charge of the lands or any part thereof without the prior written consent of the Chief Planner, of the City of Toronto	
AT4867240	May 18, 2018	Site Plan Agreement	City of Toronto

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Schedule "C"

Excluded Assets

This is **Exhibit 6** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

Dale Denis

From: Douglas.Montgomery@paliarerland.com
Sent: December 3, 2024 5:55 PM
To: wgreenspoon@garfinkle.com; dullmann@blaney.com; jwajs@stikeman.com; dmurdoch@stikeman.com; navis@stikeman.com; imarks@robapp.com; mgasch@robapp.com; rtaylor@cmbllaw.ca; jwadden@tyrllp.com; ssherrington@tyrllp.com; jlee@cl-law.ca; ronald@davidzonlaw.com; adhanani@tdbadvisory.ca; btannenbaum@tdbadvisory.ca; smosonyi@robapp.com; peter@himprolaw.com; rsparano@himprolaw.com; jmorley@LN.law; Dale Denis; paul@starkmanlawyers.com; calvin@starkmanlawyers.com; asamat@blaney.com; jkulathungam@teplitskyllp.com; arjun.anand@infinitydevelopment.ca
Cc: Jeff.Larry@paliarerland.com; ryan.shah@paliarerland.com; beatrice.loschiavo@paliarerland.com
Subject: RE: CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al. - CV-23-00701672-00CL [IMAN-PRIMANAGE.FID422513]
Attachments: TDB, Conacher - Supplementary Factum, 03-DEC-2024.pdf

Dear Service List,

Please find attached the Supplementary Factum of the Receiver, served upon you pursuant to the *Rules of Civil Procedure*.

Best Regards,

Douglas

From: Beatrice Loschiavo <beatrice.loschiavo@paliarerland.com>
Sent: December 2, 2024 1:43 PM
To: 'wgreenspoon@garfinkle.com' <wgreenspoon@garfinkle.com>; 'dullmann@blaney.com' <dullmann@blaney.com>; 'jwajs@stikeman.com' <jwajs@stikeman.com>; 'dmurdoch@stikeman.com' <dmurdoch@stikeman.com>; 'navis@stikeman.com' <navis@stikeman.com>; 'imarks@robapp.com' <imarks@robapp.com>; 'mgasch@robapp.com' <mgasch@robapp.com>; 'rtaylor@cmbllaw.ca' <rtaylor@cmbllaw.ca>; 'jwadden@tyrllp.com' <jwadden@tyrllp.com>; 'ssherrington@tyrllp.com' <ssherrington@tyrllp.com>; 'jlee@cl-law.ca' <jlee@cl-law.ca>; 'ronald@davidzonlaw.com' <ronald@davidzonlaw.com>; 'adhanani@tdbadvisory.ca' <adhanani@tdbadvisory.ca>; 'btannenbaum@tdbadvisory.ca' <btannenbaum@tdbadvisory.ca>; 'smosonyi@robapp.com' <smosonyi@robapp.com>; 'peter@himprolaw.com' <peter@himprolaw.com>; 'rsparano@himprolaw.com' <rsparano@himprolaw.com>; 'jmorley@LN.law' <jmorley@LN.law>; 'dale@dilitigation.com' <dale@dilitigation.com>; 'paul@starkmanlawyers.com' <paul@starkmanlawyers.com>; 'calvin@starkmanlawyers.com' <calvin@starkmanlawyers.com>; 'asamat@blaney.com' <asamat@blaney.com>; 'jkulathungam@teplitskyllp.com' <jkulathungam@teplitskyllp.com>; 'arjun.anand@infinitydevelopment.ca' <arjun.anand@infinitydevelopment.ca>
Cc: Jeff Larry <Jeff.Larry@paliarerland.com>; Douglas Montgomery <Douglas.Montgomery@paliarerland.com>; Ryan Shah <ryan.shah@paliarerland.com>
Subject: RE: CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al. - CV-23-00701672-00CL

Dear Service List,

Please see the attached Factum of the Receiver, served upon you in accordance with the *Rules*.

Thanks,

Beatrice

From: Beatrice Loschiavo

Sent: Friday, November 29, 2024 3:02 PM

To: 'wgreenspoon@garfinkle.com' <wgreenspoon@garfinkle.com>; 'dullmann@blaney.com' <dullmann@blaney.com>; 'jwajs@stikeman.com' <jwajs@stikeman.com>; 'dmurdoch@stikeman.com' <dmurdoch@stikeman.com>; 'navis@stikeman.com' <navis@stikeman.com>; 'imarks@robapp.com' <imarks@robapp.com>; 'mgasch@robapp.com' <mgasch@robapp.com>; 'rtaylor@cmbllaw.ca' <rtaylor@cmbllaw.ca>; 'jwadden@tyrllp.com' <jwadden@tyrllp.com>; 'ssherrington@tyrllp.com' <ssherrington@tyrllp.com>; 'jlee@cl-law.ca' <jlee@cl-law.ca>; 'ronald@davidzonlaw.com' <ronald@davidzonlaw.com>; 'adhanani@tdbadvisory.ca' <adhanani@tdbadvisory.ca>; 'btannenbaum@tdbadvisory.ca' <btannenbaum@tdbadvisory.ca>; 'smosonyi@robapp.com' <smosonyi@robapp.com>; 'peter@himprolaw.com' <peter@himprolaw.com>; 'rsparano@himprolaw.com' <rsparano@himprolaw.com>; 'jmorley@LN.law' <jmorley@LN.law>; 'dale@dilitigation.com' <dale@dilitigation.com>; 'paul@starkmanlawyers.com' <paul@starkmanlawyers.com>; 'calvin@starkmanlawyers.com' <calvin@starkmanlawyers.com>; 'asamat@blaney.com' <asamat@blaney.com>; 'jkulathungam@teplitskyllp.com' <jkulathungam@teplitskyllp.com>; 'arjun.anand@infinitydevelopment.ca' <arjun.anand@infinitydevelopment.ca>

Cc: Jeff Larry <Jeff.Larry@paliareroland.com>; Douglas Montgomery <Douglas.Montgomery@paliareroland.com>; Ryan Shah <ryan.shah@paliareroland.com>

Subject: CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al. - CV-23-00701672-00CL [IMAN-PRIMANAGE.FID422513]

Dear Service List,

Please see the attached Supplementary Motion Record of the Receiver, served upon you in accordance with the *Rules*.

Thanks,



Paliare Roland

Beatrice Loschiavo

Legal Assistant to Ken Rosenberg,
Jeffrey Larry and Evan Snyder

P: 416.646.4331

F: 416.646.4301

155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

www.paliareroland.com



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Court File No. CV-23-00701672-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

SUPPLEMENTARY FACTUM OF THE RECEIVER
(Returnable December 4, 2024)

December 3, 2024

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)
Tel: 416.646-4330
jeff.larry@paliareroland.com

Ryan Shah (LSO# 88250C)
Tel: 416.646-6356
ryan.shah@paliareroland.com

**Lawyers for the Receiver, TDB Restructuring
Limited**

TO: Service List

A. Background

1. This is a motion brought by TDB Restructuring Ltd, in its capacity as the Court-appointed receiver (the “**Receiver**”) for the approval of the sale transaction contemplated by an agreement of purchase and sale between the Receiver and Arjun Anand in trust (the “**Purchaser**”) made as of September 26, 2024 (the “**APS**”).

2. The Receiver’s motion to approve the APS is scheduled for December 4, 2024. In connection with that motion, the Receiver filed a factum addressing its recommendation that the APS should be approved (the “**First Factum**”).¹

3. The day before hearing, the Receiver received two additional offers as well as one expression of intent to submit an offer for the purchase of the Toronto Property, each of which was higher than the offer made by the Purchaser.

4. The Receiver has placed these offers before the Court in a Confidential Second Supplement to the Third Report of the Receiver.

5. The additional offers put the following additional issue before the Court: under what circumstances should a court consider or accept a late, but higher offer from an unsuccessful bidder?

¹ Unless otherwise defined, all capitalized terms shall have the meanings ascribed to such terms in the First Factum.

B. *The Consideration of Late but Higher Bids*

6. In an effort to assist the Court on this motion, the Receiver has canvassed the relevant caselaw in circumstances where, as here, a higher offer is presented after the conclusion of the sales process but before the sale approval motion.

7. The case law establishes that where the sales process was fair, the Court will only refuse to approve the existing offer where the new offer is “substantially higher” than the existing offer.

8. In this case, the Receiver is of the view that the high threshold for setting aside the APS is not met.

9. Courts have rarely refused to approve the original offer on the basis that a new offer is “substantially higher”. Ultimately, where the receiver’s process is fair, and its decision to enter into an agreement of purchase and sale was reasonable and sound at the time it was made, courts are generally unwilling to set aside this decision simply because a later, higher bid is made.²

10. Where the difference between the accepted offer and the late, higher offer is not “substantial”, courts generally decline to interfere with the receiver’s sales process. For example:

² *Crown Trust Co. et al. v. Rosenberg et al.*, [1986 CanLII 2760](#) (Ont. Sup. Ct.) citing *Re Selkirk* (1986), 58 C.B.R. (N.S.) 245 (Ont. S.C. Bkcy.).

- (a) In *Re 1730960 Ontario Ltd*, the court held that an 8% difference was insufficient to suggest that the accepted offer was artificially low and should be rejected by the courts.³
- (b) In the CCAA context, Chief Justice Morawetz (as he now is) refused to postpone the approval of an asset purchase agreement where a late entrant made a non-binding offer that was 30% higher than the offer that was subject to approval. Even in that case, Justice Morawetz was satisfied that the higher offer, on its face, did not “lead to an inference that the strategy employed by the Monitor was inadequate, unsuccessful, or improvident, nor the price was unreasonable.”⁴
- (c) Recently, the Saskatchewan Court of Appeal rejected the appeal of a disappointed purchaser who had tendered a \$2.8 million late offer, which was 27.3% higher than the \$2.2 million successful offer approved by the Court. In the Court’s view, accepting a late bid would damage the integrity of the court-mandated sales process, impacting on the ability to secure the highest possible price in other cases.⁵

C. Application to the APS

- 11. Where there is a late but higher offer, the threshold question for the court remains the same: whether the purchase price in the receiver’s recommended agreement of

³ *1730960 Ontario Ltd. (Re)*, [2009 CanLII 37909](#) at [para. 26](#) (Ont. Sup. Ct.).

⁴ *Terrace Bay Pulp Inc., Re*, [2012 ONSC 4247](#) at [para. 54](#).

⁵ *Smith Street Lands Ltd. v KEB Hana Bank of Canada*, [2020 SKCA 41](#) at [paras. 38-41](#).

purchase and sale is “so unreasonably low ... that the receiver was improvident in accepting it.”⁶

12. In this case, the First Factum sets out the comprehensive marketing efforts undertaken by the Receiver. The existence of the other offers confirms the reasonableness of the purchase price, since the late offers are only marginally (6.7%-14.2%) higher. The purchase price in the APS before the court falls squarely within the range of offers received, and importantly, was compliant with the sales process.

13. Finally, the overriding concern with integrity, fairness and predictability of the court-ordered sales process militate in favour of the approval of the conforming, successful bid. As Justice Cumming pointed out in *Re 1730960 Ontario Ltd*, “[i]t is unfair and objectionable for a party to wait until another bid is made and has been accepted by the Receiver and then to make a bid which is marginally higher and ask the Court to not approve the agreement of purchase and sale resulting from the accepted bid.”⁷

14. Here, the Purchaser has acted in good faith and is a *bona fide* third party purchaser. The existence of marginally higher bids, submitted on the eve of the hearing, are not sufficient to displace the Receiver’s recommendation set out in its Third Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of December, 2024



Jeffrey Larry / Ryan Shah

⁶ *Royal Bank v. Soundair*, 1991 CarswellOnt 205 at para. 30.

⁷ *1730960 Ontario Ltd. (Re)*, [2009 CanLII 37909](#) at [para. 26](#) (Ont. Sup. Ct.).

Court File No.: CV-23-00701672-00CL

**CAMERON STEPHENS MORTGAGE CAPITAL
LTD.**

-and-

CONACHER KINGSTON HOLDINGS INC. et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**SUPPLEMENTARY FACTUM OF THE RECEIVER FOR
(RETURNABLE DECEMBER 4, 2024)**

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330

jeff.larry@paliareroland.com

Ryan Shah (LSO# 88250C)

Tel: 416.646-6356

ryan.shah@paliareroland.com

Lawyers for the Receiver, TDB Restructuring Limited

This is **Exhibit 7** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

Paul F. Rooney
Professional Corporation
Barrister & Solicitor

121 King Street West, Suite 510
Toronto, Ontario
M5H 3T9

Telephone: (647) 981-7838
Email: rooney@paulfrooneyprofcorp.com

BY EMAIL
December 6, 2024

Our File No. 19507

TDB Restructuring Limited,
11 King Street West, Suite 700
Toronto, Ontario M5H 4C7

Attention: Arif Dhanani adhanani@tdbadvisory.ca

AND TO
Garfinkle Biderman LLP
801-1 Adelaide Street East
Toronto, ON M5C 2V9
Attention: Avrom W. Brown abrown@garfinkle.com

AND TO

Colliers Macaulay Nicolls Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1
Attention: Steve Keyzer steve.keyzer@colliers.com

Re: Re: Receivership of properties located at 2857 Islington Avenue, Toronto (the “Islington Properties”) and 311 Conacher Drive, Kingston (the “Kingston Property” and with the Toronto Property, the “Properties”)

This letter is further to my letters to you of December 3 on this topic.

My client is hereby submitting to the Receiver a further revised offer to purchase the Islington Properties, which replaces the previous offers and Agreements. The only revision is as to the price to be paid, which has been increased to \$3,600,000, and the deposit has correspondingly been increased to the amount of \$360,000 as required in your standard form of agreement. The additional \$60,000 of deposit will be provided within 24 hours of acceptance of the Agreement by the Receiver, as described in your standard agreement terms. Mr. Brown already has my client's bank draft for \$300,000 payable to his firm in trust. There is no due diligence condition, nor other conditions, save for being conditional on the obtaining of the Approval and Vesting Order in favour of this purchaser. This revised offer (signed and initialed by the purchaser) is open for acceptance by the Receiver until such date as the Court determines

whether or not it should be accepted (and if accepted, then until the date the Receiver obtains court approval for the Agreement). It is not necessary that the purchaser have access to the Confidential Data Room for purposes of this offer and Agreement, and so there is also no need for a Confidentiality Agreement regarding the data in the Confidential Data Room. However if for some reason the Receiver shows a need for the Confidentiality Agreement, the purchaser is willing to provide a confidentiality agreement that is appropriate to this context.

The enclosures in my prior letters continue to apply in relation to the revised offer and Agreement.

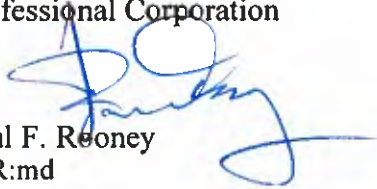
The existence of this revised offer and Agreement should be considered by the Receiver, and also made known to the Court confidentially in relation to the continuation on December 10, 2024 of the December 4 Motion. If the Receiver wishes additional information in respect of this revised Agreement, please let me know. If this revised offer and Agreement is not going to be recommended to the Court by you on December 10, I request that you advise me immediately, because it will affect my client's preparation for the Motion. Please advise me as to the forgoing as soon as possible.

Yours very truly,

Paul F. Rooney
Professional Corporation

per

Paul F. Rooney
PFR:md



E:\Office\Client Matters\Islington\Letter to Receiver with Agreement (2nd revised agmt) doc

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made as of the 4th day of December 2024

BETWEEN:

TDB RESTRUCTURING LIMITED (the "**Receiver**")

in its capacity as Court-Appointed Receiver over the lands and premises set out on Schedule "A" attached hereto and not in its personal or corporate capacity

(the "**Vendor**")

and

1001079582 ONTARIO INC., a corporation formed pursuant to the laws of Ontario

(the "**Purchaser**")

RECITALS:

- A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 6, 2023, (the "**Appointment Order**") RSM Canada Limited was appointed as Receiver over the lands legally described in Schedule "A" attached hereto, effective December 22, 2023;
- B. Pursuant to the Substitution Order of the Ontario Court of Justice (Commercial List) dated March 1, 2024, (the "**Substitution Order**") the Receiver's name was substituted in the place of the name of RSM Canada Limited;
- C. The Vendor desires to sell and the Purchaser desires to purchase the Purchased Assets, as more particularly set out herein, subject to the terms and conditions hereof.

NOW THEREFORE in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Parties covenant and agree as follows:

SECTION 1 - INTERPRETATION

1.1. Definitions

In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- (a) **"Acceptance Date"** means the date that this Agreement is executed and delivered by the Parties;
- (b) **"Agent"** shall mean Colliers Macaulay Nicolls Inc.;
- (c) **"Agreement"** means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;
- (d) **"Applicable Laws"** means, with respect to the Purchased Assets or to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event;
- (e) **"Assumed Liabilities"** has the meaning ascribed to it in Section 2.10.
- (f) **"Business Day"** means a day on which banks and the Land Registry Office for the City of Toronto are open for business but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (g) Intentionally deleted.
- (h) **"Claim"** means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;
- (i) **"Closing"** means the successful completion of the Transaction;
- (j) **"Closing Date"** means that date that is six (6) business days immediately following the date upon which the Approval and Vesting Order is granted.
- (k) Intentionally Deleted
- (l) **"Court"** means the Court defined in the first recital of this Agreement;
- (m) Intentionally deleted.
 - (n) **"Data Room"** means the electronic data room established by or on behalf of the Vendor containing documents related to the Purchased Assets for review by the Purchaser;

2A

(o) Intenti
onally
deleted.

- (p) Intentionally deleted.
- (q) **"Debtor or Debtors"** means all or any one of Kings Townhomes Limited (formerly Conacher Kingston Holdings Inc.) and 5004591 Ontario Inc.;
- (r) **"Deposit"** has the meaning ascribed to it in Section 2.5;
- (s) **"Encumbrance"** means any mortgage, charge, pledge, hypothecation, security interest, trust, deemed trust (statutory or otherwise) assignment, lien (statutory or otherwise), Claim, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;
- (t) **"Environmental Condition"** has the meaning ascribed to it in Section 2.2(a).
- (u) **"Environmental Laws"** means all Applicable Laws concerning pollution or protection of the natural environment or otherwise relating to the environment or health or safety matters, including Applicable Laws pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of Hazardous Materials, and (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Hazardous Materials including without limiting the generality of the foregoing the following any written policies and guidelines and directives, administrative rulings or interpretations, that are in effect and applicable to the Vendor or the Property on the Closing Date, as well as the common law and any judicial or administrative order, consent decree or judgment that is in effect and applicable to the Vendor or the Property on the Closing Date, that relates to pollution or the protection of the environment, including, without limitation, the *Atomic Energy Control Act* (Canada), the *Canadian Environmental Protection Act* (Canada), the *Pest Control Products Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Environmental Assessment Act* (Ontario), the *Ontario Water Resources Act* (Ontario) and the *Occupational Health & Safety Act* (Ontario), and the regulations and guidelines promulgated pursuant thereto or issued by any Government Authority in respect thereof, and equivalent or similar local and provincial ordinances and statutory programs and the regulations and guidelines promulgated pursuant thereto.
- (v) **"Ereg"** has the meaning ascribed to it in Section 5.7;
- (w) **"ETA"** means the *Excise Tax Act* (Canada), as it may be amended from time to time;

- (x) **"Excluded Assets"** means the assets, if any, listed in Schedule "C";
- (y) **"Final Order"** means, in respect of any order, such order after i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such order, final determination of such appeal or application by the applicable court or appellate tribunal;
- (z) **"Governmental Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction or one or both of the Parties and shall include a board, commission, courts, bureau, agency or any quasi-governmental or private body exercising any regulatory authority including an association of insurance underwriters;
- (aa) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authority and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health or safety matters;
- (bb) **"HST"** means all goods and services taxes and harmonized sales tax payable under the ETA;
- (cc) **"Land Transfer Tax"** means all the taxes payable under the *Land Transfer Tax Act* (Ontario) and any other applicable provincial or municipal land transfer tax legislation, including all registration fees, license fees, and other like charges payable upon a transfer of real property, together with interest, penalties and additions thereto;
- (dd) **"Leases"** means any leases with any tenants relating to the Property;
- (ee) Intentionally deleted.
- (ff) **"Liabilities"** means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, liquidated or unliquidated under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes

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- (gg) **"Parties"** means the Vendor, the Purchaser and any other Person who may become a party to this Agreement. **"Party"** means any one of the foregoing;
- (hh) **"Permits"** means all permits, licenses and applications that may have been issued or applied for in the name of the Debtor and/or the Vendor in connection with the servicing and/or development of the Property;
- (ii) **"Permitted Encumbrances"** means those Encumbrances listed in Schedule "B" attached hereto;
- (jj) **"Person"** means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
- (kk) **"Plans"** means all plans and documentation in the possession or control of the Vendor relevant to the development of the Property including, without limitation, any project documents, engineering drawings, architectural plans and working drawings, landscaping plans, reports, project documents other documentation prepared to illustrate or define a particular aspect of the development of the Property, in each instance, to the extent forming part of the Data Room created by the Vendor in respect of the Transaction;
- (l) **"Property"** means the real property described in Schedule "A" attached hereto;
- (mm) **"Property Documents"** means the documents in the Data Room;
- (nn) **"Purchaser Closing Conditions"** has the meaning ascribed to it in Section 4.1;
- (oo) **"Purchase Price"** shall have the meaning ascribed to it in Section 2.4. For greater certainty, the Purchase Price shall be exclusive of Transfer Taxes and any other taxes payable as a result of or in connection with the Transaction;
- (pp) **"Purchaser's Solicitors"** means the law firm of Paul F. Rooney Professional Corporation;
- (qq) **"Purchased Assets"** means those assets being the lands which are the subject of this Agreement;
- (rr) **"Receiver"** has the meaning described thereto in the Recitals;

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- (ss) **"Reports"** means collectively any written reports or documents received or obtained by the Receiver from any third party regarding any aspect of the Property;
- (tt) **"Rights"** has the meaning ascribed to it in Section 2.13;
- (uu) Intentionally deleted;
- (vv) Intentionally deleted.
- (ww) Intentionally deleted;
- (xx) Intentionally deleted;
- (yy) **"Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;
- (zz) **"Transfer Taxes"** means all HST, Land Transfer Tax, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated together with interest, penalties and additional amounts imposed with respect thereto;
- (aaa) Intentionally deleted.
- (bbb) **"Vendor Closing Conditions"** has the meaning ascribed to it in Section 4.3;
- (ccc) **"Vendor's Solicitor"** means the law firm of Garfinkle Biderman LLP;
- (ddd) **"Approval and Vesting Order"** means the order of the Court approving the sale by the Receiver to the Purchaser of the Purchased Assets and vesting all rights, title and interest of the Purchased Assets in favour of the Purchaser free and clear of all Encumbrances (other than Permitted Encumbrances) (in a form to be agreed upon by the parties);
- (eee) **"Vesting Order Motion"** means a motion by the Receiver seeking the granting of the Approval and Vesting Order; and
- (fff) **"Work Orders"** means any work orders, deficiency notices, outstanding building permits, orders, or requirements to comply with any Applicable Laws or issued by any Governmental Authorities.

1.2. Interpretation Not Affected by Headings, etc.

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

this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof

1.3. Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4. Schedules

The following Schedules are incorporated in and form part of this Agreement;

- Schedule "A" Property
- Schedule "B" Permitted Encumbrances
- Schedule "C" Excluded Assets
- Schedule "D" Intentionally deleted

SECTION 2 - SALE AND PURCHASE AND ASSIGNMENT

2.1. Sale and Purchase of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Liabilities, all in accordance with and pursuant to the terms hereof and the Approval and Vesting Order. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets.

2.2. "As is, Where is"

The Purchaser acknowledges and agrees that:

- (a) the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning,



permitted uses, permits, compliance with Applicable Laws of Government Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof, any non-compliance with Environmental Laws including any adverse matters contained in the Reports (the "**Environmental Condition**"), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for 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 hereto and are hereby waived by the Purchaser. The descriptions of the Purchased Assets set out in this Agreement or in the Property Documents are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Purchaser further acknowledges that the Property Documents and all other written and oral information (including, without limitation, any analyses, financial information and projections, compilations, studies and the Plans) obtained by the Purchaser from the Vendor or the Agent with respect to the Purchased Assets or otherwise relating to the Transaction has been provided for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

- (b) notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding Work Orders, and the Purchaser shall accept the title to the Property subject to the Permitted Encumbrances and the Environmental Condition.
- (c) the various parties who prepared the Property Documents may have restricted the use thereof to the Debtor only, in their respective retainers with the Debtor and any purported conveyance of any of the Property Documents by the Vendor to the Purchaser may be subject to such limitations.
- (d) Without limiting the generality of this Section 2.2, the Purchaser acknowledges and agrees that the parties have expressly agreed to exclude from this Agreement all express or implied representations and warranties with respect to the following matters:
 - (i) the compliance of the Property with Applicable Laws, by-laws or regulations including without limitation, municipal zoning by-laws and regulations;
 - (ii) any easements, rights of way, instruments, documents, agreements or other registered or unregistered interest in the Property which impacts the

- use, enjoyment, income or development opportunities connected with the Property;
- (iii) that the present use or any future use of the Purchased Assets intended by the Purchaser is or will be lawful or permitted;
 - (iv) the execution, good standing, validity, binding effect or enforceability of the Permitted Encumbrances;
 - (v) that the Vendor has any right, title or interest in any goodwill associated with the Purchased Assets, or the use of any name associated with the operation of the Purchased Assets;
 - (vi) the description, title, condition, value, state of repair and fitness for any purpose of the Purchased Assets; and
 - (vii) the compliance of the Property with Environmental Laws, Reports or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Property, or otherwise with respect to the environmental condition of the Property;
- (e) the Property Documents and any assets lists, information packages and other material concerning the Purchased Assets or the sale thereof provided by or on behalf of the Vendor and the Agent have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in such material) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, no conditions, warranty or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning such descriptions;
- (f) the Vendor is entering into this Agreement solely in its capacity as Receiver of the Property pursuant to the Appointment Order and not in its personal or other capacity and the Vendor and its agents (including the Vendor's Solicitors), officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith;
- (g) save as to any valid objection to title made in respect of matters arising after the Acceptance Date, the Purchaser shall be conclusively deemed to have accepted the title to the Property and to have accepted the Property subject to the Permitted Encumbrances and the Environmental Condition and subject to all Applicable Laws, by-laws and regulations affecting its use. If any valid objection to title expressly permitted herein is made by the Purchaser prior to the Closing Date, which the Vendor is unwilling or unable to remove, remedy, or satisfy and which the Purchaser will not waive or is not satisfied by title insurance, then the Receiver may terminate this Agreement by notice to the Purchaser, whereupon, except as herein expressly set forth, the Deposit without interest accrued thereon shall be forthwith returned to the Purchaser in accordance with and subject to the

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terms in Section 2.5 and 2.12 each of the Purchaser and the Receiver shall be released from all obligations under this Agreement;

- (h) the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except such of the foregoing as are in the possession or control of the Receiver;
- (i) the Purchaser acknowledges that, the Vendor has provided the Purchaser access to the Data Room and that the Purchaser has had sufficient opportunity to review, and has satisfied itself with respect to, the Property Documents. If for any reason the transaction is not completed, the Purchaser shall forthwith return the Property Documents, and delete any electronic copies of them in its possession or control. The Vendor makes no representation or warranty, express or implied, as to the accuracy or completeness of any information contained in any of the Property Documents; and

in entering into this Agreement, the Purchaser has relied and will rely entirely and solely upon its own inspections and investigations with respect to the Property and the Purchased Assets, including the physical condition and the Environmental Condition of the Purchased Assets including compliance with Applicable Laws and has relied solely upon its own judgement resulting from doing so and has not relied and will not rely on any information, written or oral, furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor including the Agent, including with respect to value of the Purchased Assets, the development potential of the Property, adequacy, marketability, quantity, location, condition, quality, fitness or state of repair. The information in the Data Room and description of the Purchased Assets in any marketing material, listing information, and any like material delivered or made available by the Vendor and/or the Agent, the Vendor's agents or any other party on its behalf to the Purchaser or its representatives are believed to be correct, but if any misstatement, error, inaccuracy or omission (collectively the "Inaccuracies") is found in the them, the Purchaser shall not be entitled to any abatement, damages, reimbursement, costs or to termination of this Agreement as a result of them and the Purchaser releases the Vendor and its agents from any Claims the Purchaser had, has or may have as a result of such Inaccuracies.

2.3 Permitted Encumbrances

The Purchaser acknowledges that the Vendor is selling the Purchased Assets subject to the Assumed Liabilities and that the Vendor undertakes no obligation to discharge the Permitted Encumbrances on Closing or thereafter.

2.4 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "Purchase Price") shall be an amount of ~~\$2,000,000.00~~, allocated as set out in paragraph 2.7.

\$3,600,000.00

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2.5. Deposit

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360,000.00

The Parties acknowledge and agree that the sum of ~~\$600,000.00~~, being ten (10%) percent of the Purchase Price (the "Deposit") will be delivered by the Purchaser to the Vendor's solicitor in trust within 24 hours of acceptance of an executed copy of the Agreement by the Purchaser and the Vendor. The Deposit shall be held in a non-interest bearing account of a Canadian chartered bank or trust company, in trust and to be disbursed in accordance with the following provisions:

- (a) if the purchase and sale of the Purchased Assets is completed on the Closing Date, then the Deposit shall be released from trust and applied towards payment of the Purchase Price;
- (b) If the purchase and sale of the Purchased Assets is not completed on the Closing Date for any reason other than the default of the Purchaser hereunder, then the Deposit shall, subject to any Claim by the Vendor for damages under Section 2.12(d) herein, be released from trust and paid to the Purchaser in full satisfaction of all Claims incurred by the Purchaser as a result of such non-completion; or
- (c) If the purchase and sale of the Purchased Assets is not completed on the Closing Date as a result of the Purchaser's default hereunder, then the Deposit shall be forfeited to the Vendor and released from trust as liquidated damages and not as a penalty and paid to the Vendor without prejudice to the Vendor's rights to reimbursement on account of any Claim of the Vendor against the Purchaser as a result of such failure and the Vendor shall be entitled to pursue all of its rights and remedies against the Purchaser, including the resale of the Purchased Assets. Upon any such resale, the Purchaser shall pay to the Vendor: (i) an amount equal to the amount, if any, by which the Purchase Price under the Agreement exceeds the net purchase price received by the Vendor pursuant to such resale (net of any commissions and costs and expenses incurred to effect the completion of such resale including legal costs on a full indemnity basis), and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of the Transaction or occasioned by the Purchaser's failure to comply with this Agreement.

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows:

- (a) on Closing, the Deposit shall be released from trust and credited against the Purchase Price in accordance with Section 2.5(a); and
- (b) on Closing, the Purchase Price, subject to adjustments and minus the amount paid to the Vendor pursuant to Section 2.6(a), shall be paid to the Vendor or as the Vendor may direct in writing by way of wire transfer using the Large Value Transfer System.

2.7 Intentionally deleted.

2.8 Adjustment of Purchase Price

- (1) The Purchase Price shall be adjusted as of the Closing Date in accordance with the terms of this Agreement for any property taxes (including interest thereon, if applicable), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a Court supervised sale (the "Adjustments"). The Receiver shall prepare a statement of adjustments and deliver same to the Purchaser for its approval by no later than 3 Business Days prior to the Closing Date. If the amount of any Adjustments required to be made pursuant to this Purchase Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor as of the Closing Date based upon the best information available to the Vendor at such time. When such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Vendor and the Purchaser shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the Parties the final cost or amount of an item shall be determined by an accountant or such other financial professional appointed jointly by the Vendor and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the Parties. All re-adjustments shall be requested in a detailed manner on or before the 60th day after the Closing Date, after which time neither party shall have any right to request re-adjustment.
- (2) Other than as provided for in this section 2.8, there shall be no Adjustments to the Purchase Price.

2.9 Excluded Liabilities

Other than the Assumed Liabilities, the Purchaser shall not assume and shall not be liable for any other Liabilities of the Vendor or the Debtor.

2.10 Assumed Liabilities

From and after Closing, the Purchaser shall assume and be liable for the Assumed Liabilities. The Assumed Liabilities shall consist only of the Liabilities incurred under or in respect of:

- (a) Permitted Encumbrances;
- (b) the use of the Purchased Assets from and after the Closing Date to the extent relating to periods from and after the Closing Date; and

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- (c) the Environmental Condition, and any and all Liabilities for the remediation of the soil and groundwater in, on, over, under or flowing through, onto or from the Property or any part thereof.

(the foregoing being the "Assumed Liabilities").

2.11 Taxes

In addition to the Purchase Price, the Purchaser or the beneficial owner of the Property if different from the Purchaser shall pay all applicable Transfer Taxes exigible in connection with the purchase and sale of the Purchased Assets, including, without limitation, HST and Land Transfer Tax.

The Purchaser will be an HST registrant and a prescribed recipient under the ETA on or before the Closing Date and will provide its registration number to the Vendor on or before the Closing Date.

The Purchaser shall deliver, prior to Closing, a certificate in form prepared by the Vendor acting reasonably certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the Transaction. The Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration as the case may be, and the Purchaser's HST registration number together and the Purchaser shall indemnify and hold harmless the Vendor from and against any and all Claims, HST, penalties, costs and any interest that may become payable by or assessed against the Vendor for all Transfer Taxes arising out of, related to or connected in any way with the Property or this Transaction. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor at Closing, in addition to the balance due on Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the Transaction.

2.12 Inspections

The Vendor will permit the Purchaser, its consultants, agents and representatives to carry out, at the Purchaser's sole expense and risk, such investigations, soil tests, and environmental audits as the Purchaser, acting reasonably, may deem necessary with respect to the Property, subject to and conditional upon the following terms and conditions:

- (a) any invasive testing shall require the Vendor's written approval prior to such testing;
- (b) the Purchaser shall provide at least two Business Days' notice to the Vendor of any such tests and inspections and the Vendor will be entitled to have a representative present during all such tests and inspections;
- (c) all soil tests or environmental audits shall be coordinated with the Vendor;

- (d) any damage to the Property caused by such tests and inspections will be promptly repaired by the Purchaser and the Purchaser will indemnify and save the Vendor harmless from all Claims which the Vendor may suffer as a result of the said tests and inspections or any other breach of this Section by the Purchaser; and
- (e) prior to entering the Property to conduct the Purchaser's tests and investigations, the Purchaser shall deliver (or shall cause its representatives completing the Purchaser's investigations on its behalf to deliver) to the Vendor evidence of liability insurance coverage for at least \$2,000,000.

The Purchaser agrees that the Vendor shall be entitled to deduct from the Deposit the amount of any Claims which the Vendor may suffer as a result of a breach of this Section 2.12 by the Purchaser. To the extent that the Purchaser commissions any reports in connection with its tests and investigations of the Property, copies of all such reports shall be delivered to the Vendor at no cost to the Vendor within three (3) Business Days of issuance.

2.13 Non-Transferable and Non-Assignable Purchased Assets

To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any Claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "Rights") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent or waiver has been obtained. After Closing and for a period of sixty (60) days following Closing, the Vendor shall:

- (a) maintain its existence and hold the Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;
- (c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (d) enforce, at the reasonable request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser,

the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the reasonable opinion of the Vendor, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and ensures to the benefit of the Purchaser. To the extent that such approval, consent or waiver has not been obtained by the 60th day following the Closing, such Right shall be deemed to be an excluded Purchased Asset and the Vendor may terminate any agreement pertaining to such Right unless otherwise agreed to by the Parties. The Purchaser shall indemnify and hold the Vendor harmless from and against any Claim under or in respect of such Rights arising because of any action of the Vendor taken in accordance with this Section.

2.14 Intentionally deleted.

2.15 Approval and Vesting Order

- (a) The Receiver and the Purchaser acknowledge that:
 - i. this Agreement is subject to Court approval; and
 - ii. closing of the Transaction is subject to the issuance of the Approval and Vesting Order.
- (b) If this Agreement is accepted by both parties, the Receiver shall use its commercially reasonable efforts to promptly thereafter file and serve the Vesting Order Motion on notice to the necessary parties.
- (c) If the Receiver accepts this Agreement, the Purchaser shall provide all information if any, and take any such actions as may be reasonable requested by the Receiver to assist the Receiver in obtaining the Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction.
- (d) From and after the Acceptance Date, the Receiver shall provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, or the Approval and Vesting Order and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing (provided that the Receiver shall not be obligated to incorporate the comments of the Purchaser and do any such filings).

2.16 Closing Certificate

The parties hereto acknowledge and agree that the Receiver shall be entitled to file with

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the Court a certificate, substantially in the form attached to the Approval and Vesting Order (the "**Closing Certificate**") upon receiving written confirmation from the Purchaser that all conditions to close under this Agreement have been satisfied or waived. The Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

2.17 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to this Agreement, including in its execution, the Receiver has acted and is acting solely in its capacity as Receiver and manager of the Property pursuant to the Appointment Order and not in its personal, corporate or any other capacity and the Receiver and its agents, officers, directors, employees and representatives will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Covenants

The Purchaser covenants and agrees that it will, effective on and after the Closing Date, assume and be fully responsible for:

- (a) all obligations which are to be observed or performed from and after completion of this Transaction under the Permitted Encumbrances; and
- (b) the Assumed Liabilities and any other obligations and liabilities assumed by the Purchaser as provided for by this Agreement.

3.2 Purchaser's Representations and Warranties

The Purchaser represents and warrants to the Vendor, which representation and warranties the Vendor is relying upon, that:

- (a) the Purchaser is and will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the Purchased Assets;
- (b) the Purchaser 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 has been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) no consent or approval of or registration, declaration or filing with any Government Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of

any of its obligations hereunder;

- (d) the Purchaser 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 herein;
- (e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the Transaction and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;
- (f) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as of Closing, duly and validly executed and delivered by the Purchaser and constitute or will, as of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;
- (g) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*;
- (h) The Purchaser has now and will have on the Closing Date the financial resources to complete this transaction in accordance with the terms of this Agreement; and
- (i) the Purchaser is registered or will be registered on Closing under Part IX of the ETA.

3.3 Record of Site Condition in the Environmental Registry

If at any time following Closing the Purchaser, in its sole discretion, elects to file a Record of Site Condition ("RSC") in respect of any Property, then the following clause will be deemed to have formed part of this Agreement as at the time of execution hereof, in respect only of the Property for which the RSC is filed:

"The Purchaser covenants and agrees that following the Closing, it shall file, at its sole cost and expense, a Record of Site Condition in the Environmental Registry as contemplated under s.168.4 of the Environmental Protection Act for the Property."

On Closing, the Purchaser shall deliver an indemnity in favour of the Vendor in which it

agrees to indemnify and save the Vendor harmless from any and all Claims incurred by the Vendor in the event the Purchaser fails to make such filings.

3.4 Receiver's Representations

The Receiver represents and warrants to the Purchaser as follows:

- (a) the Receiver has been duly appointed as the receiver of the Purchased Assets pursuant to the Appointment Order and has full right, power and authority, subject to obtaining the Approval and Vesting Order prior to Closing, to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order; and
- (b) the Receiver is not a non-resident of Canada for purposes of Section 116 of the *Income Tax Act* (Canada).

3.5 Survival of Representations, Warranties and Covenants

The representations, warranties, agreements and covenants made by the Purchaser herein or in any other agreement, certificate or instrument delivered by the Purchaser to the Vendor pursuant to this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor, without limitation.

SECTION 4 - CONDITIONS

4.1 Purchaser Closing Conditions

The obligation of the Purchaser to complete the Transaction is subject to the following conditions precedent being fulfilled or performed at or prior to the Closing Date (the "**Purchaser Closing Conditions**"):

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the documents contemplated in Section 5.3 or elsewhere in this Agreement;
- (c) intentionally deleted;
- (d) the Appointment Order and the Approval and Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction; and

The Purchaser Closing Conditions are for the exclusive benefit of the Purchaser. Any Purchaser Closing Condition may be waived by the Purchaser in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing.

4.2 Purchaser Closing Conditions Not Fulfilled

If any Purchaser Closing Condition has not been fulfilled at or prior to Closing, then the Purchaser in its sole discretion may, either:

- (a) terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from its obligations under this Agreement and the Deposit shall be promptly returned to the Purchaser in accordance with and subject to the provisions of Section 2.5 hereof; or
- (b) waive compliance with any such Purchaser Closing Condition, without prejudice to its right of termination in the event of non-fulfillment of any other Purchaser Closing Condition.

4.3 Vendor Closing Conditions

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Date (the "**Vendor Closing Conditions**"):

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated in Section 5.2 or elsewhere in this Agreement;
- (c) there shall be no litigation or proceedings pending against the Vendor, in respect of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (d) On the Closing Date, the Appointment Order and the Approval and Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition may be waived by the Vendor in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. The Closing of the Transaction shall deem all conditions to be waived or satisfied.

4.4 Vendor Closing Conditions Not Fulfilled

If any Vendor Closing Condition shall not have been fulfilled at or prior to Closing, then the Vendor in its sole subjective discretion may, without limiting any rights or remedies available to the Vendor at law or in equity, either:

- (a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement and, unless the Vendor Closing Condition(s) that was not fulfilled was the Vendor Closing Condition contained in Section 4.3(c) or (d), the Deposit shall be retained by the Vendor in accordance with the provisions of Section 2.5 hereof; or
- (b) waive compliance with any such Vendor Closing Condition without prejudice to its right of termination in the event of non-fulfillment of any other Vendor Closing Condition.

4.5 Approval and Vesting Order

The obligations of the Vendor and the Purchaser hereunder are subject to the mutual condition that the Vesting Order shall have been made by the Court on a date to be determined by the Receiver approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances. The Parties hereto acknowledge that the foregoing condition has been inserted for the mutual benefit of the Parties and is incapable of waiver. In the event that said condition has not been fulfilled by the aforesaid date, the Transaction shall automatically be deemed to be null and void and of no further force and effect as of said date and provided that the Purchaser is not in default of its obligations hereunder, the Deposit shall be promptly returned to the Purchaser in accordance with and subject to the provisions of Section 2.5 hereof. The Parties further acknowledge that the Application to the Court for the Vesting Order will be made as soon as reasonably practical after the binding Agreement is entered into by the Parties.

SECTION 5 - CLOSING

5.1. Closing

The completion of the Transaction shall take place on the Closing Date as specified in this Agreement or as otherwise determined by mutual agreement of the Parties in writing.

The Closing Date shall be subject to the approval of the Vesting Order, and to any approvals required from the City of Toronto pursuant to Instrument AT4601555 and related restrictions having been received. If either of the approval of the Vesting Order or any approvals required from the City of Toronto pursuant to Instrument AT4601555 and related restrictions have not been received by the initial Closing Date, then the Closing Date shall be extended ("Extended Closing Date") for a further period of 60 days. In the event that the approvals have not been received by the Extended Closing Date, then the Purchaser shall have the right to terminate this Agreement in writing to the Vendor

or to the Vendor's Solicitor at his absolute and sole discretion and the Deposit shall be returned to the Purchaser in full without interest or deduction.

5.2. Purchaser's Deliveries on Closing

On or before Closing, the Purchaser shall execute or deliver as applicable, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Purchase Price;
- (b) a certificate, dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser 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;
 - (c) an acknowledgement dated as of the Closing Date, that each of the Purchaser Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
- (d) assignment of the Purchased Assets and assumption of the Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;
- (e) the certificate and indemnity provided for under Section 2.11;
- (f) an undertaking to re-adjust any item on or omitted from the statement of adjustments subject to 60 day limitation period in Section 2.8;
- (g) an environmental release and indemnity indemnifying and holding the Vendor harmless from any and all damages, claims, actions, losses, costs, liabilities or expenses (collectively "Damages") suffered or incurred by the Vendor, directly or indirectly, as a result of or in connection with any of the following, and without restricting the generality of the foregoing, which include Damages incurred in addressing an administrative order by a Government Authority or in addressing a notice, investigation or other process which could reasonably be anticipated to result in such an order:
 - (i) the presence, release, or the threat of a release of any Hazardous Materials in, on or under the Property;
 - (ii) the presence of any Hazardous Materials in, on or under properties adjoining or proximate to the Property;
 - (iii) any other environmental matters relating to the Property;
 - (iv) the breach of any Environmental Laws applicable to the Property;
 - (v) the release or threatened release of any Hazardous Materials owned, managed, generated, disposed of, controlled or transported by or on behalf of the Purchaser;

- (vi) the Environmental Condition; or
- (vii) the Indemnity provided for in Schedule 3.3; and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

5.3 Vendor's Deliveries on Closing

- (a) On or before the Closing, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:
 - (i) statement of adjustments;
 - (ii) an acknowledgement dated as of the Closing Date, that each of the Vendor Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
 - (iii) an assignment of the Purchased Assets and assumption of the Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;
 - (iv) assignment of all Leases;
 - (v) the Approval and Vesting Order; and
 - (vi) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.
- (b) Upon the completion of the deliveries pursuant to Section 5.2 and 5.3(a), the Vendor shall immediately file a certificate with the Court (the "**Receiver's Certificate**") that the Transaction has been completed and title to the Property shall vest in the Purchaser effective immediately upon the filing with the Court of the Receiver's Certificate and shall deliver to the Purchaser a copy of same.

5.4 Risk

The Purchased Assets shall be and remain at the risk of the Vendor until Closing. From and after Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Purchaser in writing within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Vendor shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the Purchaser and in such event the Parties hereto shall be released from all obligations and liabilities hereunder. If the Vendor shall not elect to terminate this Agreement as set out above, then the Transaction shall be completed in accordance with the terms and conditions hereof and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

5.5 Termination

If either the Vendor or the Purchaser validly terminates this Agreement pursuant to the provisions of Sections 4.2, 4.4, 4.5 or 5.4:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (b) the Purchaser shall have no right to specific performance or any other remedy against, or any right to recover on account of any Claim it may have from, the Vendor.

5.6 Breach by Purchaser

If all of the Purchaser Closing Conditions have been complied with or waived by the Purchaser and the Purchaser fails to comply with the terms of this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In addition, the Purchaser shall pay to the Vendor, on demand, the deficiency, if any, arising upon such resale (after deducting the expenses of resale) together with interest and all other damages or charges occasioned by or resulting from the default by the Purchaser.

5.7 Electronic Registration

In the event that a system for electronic registration ("Ereg") is operative and mandatory in the applicable land registry office, the Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor's solicitors, to complete the Transaction using Ereg in accordance with the Law Society of Ontario's (the "LSO") guidelines. If Ereg is operative on the Closing Date, (i) the Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the LSO, (ii) the Purchaser's solicitors will enter into the Vendor's solicitors' standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing the Transaction provided same are in accordance with LSO guidelines, and (iii) if the Purchaser's solicitors are unwilling or unable to complete the Transaction using Ereg, then the Purchaser's solicitors must attend at the Vendor's solicitors' office or at another location designated by the Vendor's solicitors at such time on Closing as directed by the Vendor's solicitors to complete the Transaction using Ereg utilizing the Vendor's solicitors' computer facilities, in which event, the Purchaser shall pay to the Vendor's solicitors a reasonable fee therefor.

SECTION 6 - GENERAL

6.1. Further Assurances

Each of the Parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

6.2. Notice

Any notice or other communication under this Agreement shall be in writing and may be

delivered personally or transmitted by electronic transmission, addressed
in the case of the Purchaser, as follows:

Attention: Simion Kronenfeld

Telephone No: 416-520-7111

Email: simion@ajglgroup.com

and in the case of the Vendor, as follows:

TDB Restructuring Limited, Court-Appointed
Receiver of 5004591 Ontario Inc.
11 King Street West
Suite 700, PO Box 27
Toronto, ON M5H 4C7

Attention: Arif Dhanani

Email: adhanani@tdbadvisory.ca

with a copy to:

Garfinkle Biderman LLP
801-1 Adelaide Street East
Toronto, ON M5C 2V9

Attention: Avrom W. Brown

Email: abrown@garfinkle.com

and a copy to:

Colliers Macaulay Nicolls Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1

Attention: Steve Keyzer

Email: steve.keyzer@colliers.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by electronic transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on that Business Day, and if transmitted by electronic transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

6.3. Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors.

6.4. Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

6.5. Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor; provided the Purchaser may assign its rights and obligations under this Agreement to an "affiliate" of the Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)), provided that the Purchaser remains liable, jointly, with such affiliate for all the obligations of the Purchaser hereunder. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.6. Amendments and Waiver

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Purchaser and the Vendor. The Vendor and the Purchaser may consent to any such amendment at any time prior to the Closing with the prior authorization of their respective boards of directors.

6.7. Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby. Subject to the Approval and Vesting Order being issued by the Court, this Agreement is intended to create binding obligations on the part of the Vendor as set

forth herein and on acceptance by the Purchaser, is intended to create binding obligations on the part of the Purchaser, as set out herein.

6.8. 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 in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

6.9. Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

6.10. Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

6.11. Commission

The Vendor shall be responsible for any commissions to the Agent. Any other commissions payable to any other party shall be the responsibility of the Purchaser.

6.12. Certain Words

In this Agreement, the words "including" and "includes" means "including (or includes) without limitation", and "third party" means any Person who is not a Party.

6.13. Statutory References

All references to any statute is to that statute or regulation as now enacted or as may from time to time be amended, re-enacted or replaced and includes all regulations made thereunder, unless something in the subject matter or context is inconsistent therewith or unless expressly provided otherwise in this Agreement.

6.14. Actions to be Performed on a Business Day

Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following

such day.

6.15. No Registrations

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Property. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Property and the Purchaser shall be deemed to be in default of its obligations hereunder. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property. The Purchaser acknowledges and agrees that until Closing, the Purchaser has no interest in the Property whatsoever, notwithstanding anything to the contrary herein.

6.16. Strict Construction

Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties 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 Agreement.

6.17. No Third Party Beneficiaries

This Agreement shall be binding upon and enure solely to the benefit of each of the Parties hereto and its permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement. Each of the Parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, survive the closing of the Transaction.

6.18. Planning Act

This Agreement is entered into subject to the express conditions that it is to be effective only if the provisions of Section 50 of the *Planning Act* (Ontario) and amendments, are complied with.

6.19. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

6.21 Expenses

Each Party shall be responsible for its own legal and other expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Transaction and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement.

(Remainder of this page intentionally left blank)

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6.22 Announcements

Except as required by law including applicable regulatory and stock exchange requirements, all public announcements concerning the Transaction shall be jointly approved as to form, substance and timing by the Parties after consultation.

The Parties have executed this Agreement by their duly authorized officers.

**TDB RESTRUCTURING LIMITED in its
capacity as Court-Appointed Receiver and not in
its personal capacity**

Per: _____
Name: Arif Dhanani, CPA, CA, CIRP, LIT
Title: Managing Director

1001079582 ONTARIO INC.

PER _____
Name:
Title:

Schedule "A"

Property

PIN No. 10306-0064 (LT) - 2849 Islington Avenue

Part Lot 22 Concession 6 WYS Township of York as in NY735134; Toronto (N York), City of Toronto

PIN No. 10306-0035 (LT) - 2857 Islington Avenue

Part Lot 2 Plan 9059 North York as in 18379983; Toronto (N York), City of Toronto

PIN No. 10306-0034 (LT)- 2855 Islington Avenue

Part Lot 2 Plan 9059 North York as in 18379984; Toronto (N York), City of Toronto

PIN No. 10306-0033 (LT)- 2853 Islington Avenue

Part Lot 1 Plan 9059 North York as in 18221318; Toronto (N York), City of Toronto

PIN No. 10306-0032 (LT)- 2851 Islington Avenue

Part Lot 1 Plan 9059 North York as in TR92058; Toronto (N York), City of Toronto

Schedule "B"

Permitted Encumbrances

"Permitted Encumbrances" means the following:

1. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act*, R.S.O. 1990, and any amendments thereto or any successor legislation, except paragraph 11;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements or rights of way in favour of any governmental authority or public utility provided that none of the foregoing interfere in any material adverse respect with the current use of the Property;
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due;
5. All agreements and easements, registered or otherwise, for utilities and services for hydro, water, heat, power, sewer, drainage, cable and telephone serving the Property, adjacent or neighbouring properties, provided none of the foregoing interfere in any material adverse respect with the current use of the Property;
6. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property provided that in either case same do not materially adversely impair the use, operation, or marketability of the Property;
7. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
8. Any breaches of any Applicable Laws, including Work Orders;
9. Any subdivision agreements, site plan agreements, developments and any other agreements with the Municipality, Region, publicly regulated utilities or other governmental authorities having jurisdiction;
10. Minor title defects, if any, that do not in the aggregate materially affect the use of the Property for the purposes for which it is used on the date of acceptance of this Agreement;
11. The following specific instruments registered on title against the Property:

Permitted Encumbrances related to the Property
(unaffected by the Approval and Vesting Order)

Reg. Num.	Date	Instrument Type	Parties To
NY524794	November 21, 1967	Agreement	The Corporation of the Borough of North York
NY579166	July 20, 1970	By-law exempting Part Lot Control	
NY593705	May 12, 1971	Agreement	The Borough of North York
NY608306	December 29, 1971	Agreement	The Corporation of the Borough of North York
NY620929	July 28, 1972	Municipal By-law	
NY632269	January 29, 1973	Notice of Airport Zoning Regulations	Department of Transportation
TB379984	December 29, 1986	Statutory Declaration of Anthony Dilena	
TR57844	March 27, 2000	Notice	Her Majesty the Queen in Right of the Department of Transport Canada
AT4601553	June 19, 2017	Section 37 Agreement	City of Toronto
AT4601554	June 19, 2017	Rental Housing Agreement	City of Toronto
AT4601555	June 19, 2017	Restriction preventing any Transfer or Charge of the lands or any part thereof without the prior written consent of the Chief Planner, of the City of Toronto	
AT4867240	May 18, 2018	Site Plan Agreement	City of Toronto

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Schedule "C"

Excluded Assets

This is **Exhibit 8** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

Dale Denis

From: ryan.shah@paliarerland.com
Sent: December 7, 2024 2:29 PM
To: Jeff.Larry@paliarerland.com; ryan.shah@paliarerland.com;
wgreenspoon@garfinkle.com; dullmann@blaney.com; jwajs@stikeman.com;
dmurdoch@stikeman.com; navis@stikeman.com; imarks@robapp.com;
mgasch@robapp.com; rtaylor@cmbllaw.ca; jwadden@tyrllp.com;
ssherrington@tyrllp.com; jlee@cl-law.ca; ronald@davidzonlaw.com;
adhanani@tdbadvisory.ca; btannenbaum@tdbadvisory.ca; smosonyi@robapp.com;
peter@himprolaw.com; rsparano@himprolaw.com; jmorley@LN.law; Dale Denis;
paul@starkmanlawyers.com; calvin@starkmanlawyers.com; asamat@blaney.com;
jkulathungam@teplitskyllp.com; rooney@paulfrooneyprofcorp.com
Cc: Candace.Baumtrog@Paliarerland.com
Subject: CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS
INC. et al. - CV-23-00701672-00CL
Attachments: Third Supplement to the Third Report of the Receiver-Receiver-TDB 07-DEC-2024.pdf

Service list:

I am attaching the third supplement to the third report of the Receiver in connection with the above noted matter.
This is served on you pursuant to the *Rules of Civil Procedure*.

Regards,



Ryan Shah
Associate

Phone: 647-865-4702

Email: ryan.shah@paliarerland.com

155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

paliarerland.com

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any use, disclosure, dissemination, distribution or copying of any portion of this message or any attachment is strictly prohibited.



TDB Restructuring Limited
Licensed Insolvency Trustee

11 King St. W, Suite 700
Toronto, ON M5H 4C7

info@tdbadvisory.ca

416-575-4440

416-915-6228

tdbadvisory.ca

IN THE MATTER OF THE RECEIVERSHIP OF
311 CONACHER DRIVE, KINGSTON, ONTARIO AND
2849, 2851, 2853, 2855 AND 2857 ISLINGTON AVENUE, TORONTO, ONTARIO

THIRD SUPPLEMENT TO THE THIRD REPORT OF THE RECEIVER

DECEMBER 7, 2024

Court File No. CV-23-00701672-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC.

Respondents

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1.0 INTRODUCTION

1. TDB Restructuring Limited (the “**Receiver**”), in its capacity as receiver over the real property known municipally as 311 Conacher Drive, Kingston Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”), filed its Third Report to the Court dated November 25, 2024 (the “**Third Report**”) in connection with a motion by the Receiver seeking, inter alia, an order approving the sale of the Toronto Property.
2. The Receiver filed its supplement to the Third Report to the Court dated November 28, 2024 (the “**Supplement to the Third Report**”).
3. The Receiver filed its confidential second supplement to the Third Report to the Court dated December 3, 2024 (the “**Confidential Second Supplement to the Third Report**”).

1.1 Purpose of Report

4. The purpose of this third supplement to the Third Report (the “**Third Supplement to the Third Report**”), is to:
 - (a) provide the Court with the Receiver’s comments and observations and information in relation to:
 - i. materials filed with the Court from various parties and specifically:
 1. the affidavit of Jamie Erlick sworn December 3, 2024 (the “**Erlick Affidavit**”);
 2. the affidavit of Simion Kronenfeld sworn December 3, 2024 (the “**Kronenfeld Affidavit**”; and
 3. an email from Mr. Dale Denis dated December 5, 2024 in which he indicates that the Kronenfeld Affidavit will be revised to reflect the additional costs to renovate the houses based on an individual’s attendance at the Toronto Property (the “**Kronenfeld Email**”).

4. an email exchange between counsel for the Receiver and Mr. Dale Dennis regarding the attendance at the Toronto Property by an individual on December 5, 2024, who conducted an inspection as referenced in Mr. Dale Denis' email of December 5, 2024 (the "**Inspection Email Exchange**");
 - ii. a further offer received by the Receiver on December 6, 2024.
- (b) seek an Order of the Court approving the Third Supplement to the Third Report and the Receiver's conduct and activities described therein.
5. The Third Supplement to the Third Report should be read in conjunction with the Third Report and the Supplement to the Third Report, including the Terms of Reference set out therein.
6. Unless otherwise defined, the defined terms in the Third Supplement to the Third Report have the same definitions as set out in the Third Report and the Supplement to the Third Report.

2.0 THE PROPERTY WAS MARKETED APPROPRIATELY

7. Mr. Erlick appears to suggest that the Toronto Property ought to have been marketed as five separate lots rather than as a whole.
8. At the outset of the sales process, the Receiver, in consultation with its agent Colliers, considered the highest and best use for the Toronto Property and in reliance on Colliers' expertise, determined that an 'en bloc' sale was most appropriate. The Receiver (and Colliers) maintain that this was the best way to market the Toronto Property.
9. In support of Mr. Erlick's bald contention otherwise, at paragraphs 10 – 17 of the Erlick Affidavit, a copy of which is attached hereto as **Appendix "A"**, Mr. Erlick states, among other things, that:
 - (a) a minimal amount of work would be needed to make each of the 5 houses comprising the Toronto Property liveable;

- (b) the Properties were marketed exclusively as a bulk sale, despite their apparent suitability for individual sale in the strong Toronto residential market and that the Properties might have been sold for undervalue;
 - (c) by grouping the Properties into a single sale, the Receiver limited the pool of prospective buyers to investors and developers;
 - (d) in Mr. Erlick's opinion, individually, he believes the floor price for each individual unit to be at least \$800,000, or a total of \$4,000,000;
 - (e) based on Mr. Erlick's analysis of market conditions, the Properties' characteristics, and recent comparable sales data, selling the units individually would have: (1) maximized exposure to the more competitive individual market, (2) attracted end-user buyers willing to pay premiums for ready-to-occupy homes (with minimal work required to make the Properties liveable), and (3) would demonstrate the aggregate minimum sale price of all the properties combined; and
 - (f) with respect to efforts to target developers, in Mr. Erlick's view an exposure time of four weeks to relist the Properties for sale is not sufficient.
10. Mr. Erlick's statement that a minimal amount of work would be required to make each of the 5 houses liveable is completely erroneous given that the dwellings are dilapidated and totally uninhabitable. Attached hereto as **Appendix "B"** are photographs of the condition of the interior of the 5 houses which make clear that a significant amount of work will be required simply to make the houses habitable (let alone desirable for a sale). The condition of the dwellings, and the cost to make them habitable, is discussed in greater detail below.
11. Upon reviewing the Erlick Affidavit, the Receiver contacted Colliers with a request for it to comment on the market conditions, target market and other comments made by Mr. Erlick to which a real estate expert's views would be most valuable. Colliers provided the Receiver with a report (the "**Colliers Report**"), a copy of which is attached hereto as **Appendix "C"**, which sets out, among other things, that:

- (a) Colliers confirmed its initial recommendation to the Receiver (as set out in its listing proposal) that the Property be sold 'en bloc' as, in Colliers' view, the highest and best use for the Property was as a combined development site. Colliers also has serious doubts that the individual lots would sell for \$800,000 per lot;
- (b) Colliers determined at the time of the initial listing that fully-renovated semi-detached homes in the immediate area had sold recently between approximately \$980,000 and \$1,050,000. That said, the transactions Colliers identified were not on Islington Avenue which is a busy street; accordingly, the comparable properties were superior to the Toronto Property. Colliers also reviewed older detached houses, as well as partially-renovated and renovated detached houses that sold in the immediate area (off Islington Avenue) and they all sold between \$950,000 and \$1,325,000. Finally, new and '0-5' year old custom built semi-detached and detached homes in the area sold for between \$1,545,000 and \$1,840,000;
- (c) given the end sale prices of renovated homes in the area (i.e. between \$950,000 - \$1,325,000 for more desirable locations off Islington Avenue, with the high end being achievable for detached homes), it is unlikely that a builder would incur the risk of acquiring the individual lots for \$800,000 per lot when considering all of the hard and soft costs and other contingencies and risks inherent in undertaking a substantial renovation; and
- (d) in Colliers' view, a total demolition of the homes, as an alternative to renovation, would be even more costly and less attractive to a potential buyer. A builder would need to build large homes (of between 2,500 and 3,500 square feet), with finished basements, in order to sell for between \$1,545,000 and \$1,840,000. The cost of this construction alone would be approximately \$600,000 - \$750,000 (based on the lowest end of the cost range per square foot provided by Altus' 2024 Canadian Cost Guide) plus soft costs. Accounting for an appropriate risk-adjusted profit margin, a builder would have to purchase each lot for significantly less than \$800,000 per lot and would likely be a riskier, less profitable venture than fully renovating the existing homes.

12. Finally, as the Court is aware, the duration of the Receiver's initial sale period was 10-weeks and its subsequent re-marketing of the Toronto Property was 4-weeks for a total of 14 weeks. Further details of the Receiver and Colliers' efforts in respect of the sale of the Toronto Property can be found in the First Report and the Third Report and are not repeated herein. Mr. Erlick's comment regarding the insufficiency of a 4-week sale period to market the Toronto Property is inaccurate.

3.0 KRONENFELD AFFIDAVIT AND KRONENFELD EMAIL

13. A copy of the Kronenfeld Affidavit and Kronenfeld Email are attached hereto as **Appendix "D"** and **Appendix "E"**, respectively. The Receiver's comments and observations in respect of same is set out below.
14. At paragraph 5, Kronenfeld asserts that the Receiver's motion record and supplementary was short served. This is not accurate. The Receiver's motion record, as confirmed in the Kronenfeld Affidavit, was served on November 25, 2024, which is 10 days prior to the date of the December 4, 2024 hearing.
15. Kronenfeld also complains that he was only advised on November 29, 2024 that the Kingston Property did not close. First, this is not relevant to the sale approval motion for the Toronto Property. Second, and in any event, the Receiver only found out that the purchaser of the Kingston Property could not close on November 27, 2024. Immediately after finding this out, the Receiver and its counsel prepared and served the Receiver's Supplement to the Third Report and supplementary motion record on November 29, 2024.
16. Kronenfeld also suggests at paragraph 8 of his affidavit that the marketing of the Toronto Property should be paused until the Kingston Property sale closed or was otherwise terminated. This matter was already addressed in the Court's Endorsement dated October 9, 2024 (the "**October 9th Endorsement**") at paragraph 28, where the Court states "First, as noted, there is no dispute about the validity of Cameron Stephens' charges over the properties, nor that Cameron Stephens is the first mortgagee in each case. The Receiver points to authority for the proposition that, even if the doctrine of marshalling is applicable, a fundamental principle of the doctrine is that "nothing will be done to interfere with the paramount

right of the first mortgagee to pursue his remedy against either of the two estates.” (807933 Ontario Inc. v. Allison (Trustee of) (1995) 22 O.R. (3d) 102 (Gen. Div.), appeal dismissed (1998) 38 O.R. (3d) 337 (C.A.).” A copy of the October 9th Endorsement is attached hereto as **Appendix “F”**.

17. Paragraph 9 of the Kronenfeld Affidavit sets out that Mr. Kronenfeld was not provided with any notice that the Receiver was evaluating and entertaining offers and evaluating same for acceptance.
18. AJGL could have participated in the Receiver’s sales process at any time by contacting the Receiver or Colliers, but chose not to do so until the eve of the December 4, 2024 hearing, which is approximately 10-weeks past the Receiver’s offer deadline of September 26, 2024 for submission of offers in connection with the remarketing of the Toronto Property.
19. At paragraph 15 of the Kronenfeld Affidavit, Mr. Kronenfeld states his concern that the Receiver’s sale to the Toronto Purchaser may very well be improvident. In the Kronenfeld Email, Mr. Denis states that his client estimates the costs to renovate the Toronto Property will be \$500,000 in aggregate.
20. To evaluate the state of the buildings at the Toronto Property, the Receiver retained Pronto General Contracting (“**Pronto**”), a general contractor that has been in business for over 30 years. After its detailed inspections of the Toronto Property over the course of the time the Toronto Property has been in the Receiver’s possession, Pronto has advised the Receiver that in order for the 5 houses comprising the Toronto Property to be lived in, they will require:
 - (a) new kitchens;
 - (b) new bathrooms;
 - (c) new plumbing;
 - (d) new furnaces;
 - (e) new electrical wiring (or possibly try to use/fix the existing wiring);

- (f) landscaping; and
 - (g) certain homes require mould remediation/removal.
21. In addition, Pronto advised that although it did not test the structural integrity of the houses, there may well be structural issues that require attention, which would add to the costs. Pronto's estimate of the average cost per house to rectify the deficiencies, replace equipment and remediate the houses is \$250,000 - \$275,000 (excluding softs costs). Although Colliers, in the Colliers Report, states that it has serious doubts that the individual lots would sell for \$800,000 per lot for the reasons set out therein, even if the "floor price" of the houses was \$4,000,000 (\$800,000 x 5), the aggregate costs to renovate the houses, before soft costs and profit, would range between \$1,250,000 to \$1,375,000 with the net proceeds for the entire Property ranging between \$2,625,000 and \$2,750,000 or between \$525,000 to \$550,000 per house.

4.0 ATTENDANCE TO INSPECT THE TORONTO PROPERTY

22. The Inspection Email Exchange, a copy of which is attached hereto as **Appendix "G"**, sets out, among other things, that an individual ("**Sal**") attended at the Toronto Property to conduct an inspection of the 5 houses comprising the Toronto Property and followed the direction of an individual who was on site who Sal assumed was a representative of the Receiver.
23. Pronto attended at the Toronto Property on December 5, 2024 at the Receiver's direction to obtain fresh photographs of the interior of the 5 houses comprising the Toronto Property. At the conclusion of Pronto's attendance, Pronto noticed that a truck was parked on the curb on the east side of Islington Avenue just south of Milady Rd., adjacent to the Toronto Property.
24. Pronto re-entered the Toronto Property and saw an individual with a screw gun walking around. Pronto advised the Receiver of the following interaction between Pronto and Sal:
- (a) Pronto questioned the individual, who identified himself as Sal, about his authorization to be on the Toronto Property. Sal indicated that he had the

Receiver's authorization to be on the property and when Pronto asked him who from the Receiver gave him authorization, Sal indicated that it was Simion;

- (b) Pronto attempted to call the Receiver, but could not get a hold of same at the time;
 - (c) Pronto advised Sal that it did not know who Simion was and that Sal should leave on the basis that he did not have the Receiver's authorization to be on the Toronto Property; and
 - (d) Sal refused to leave the Toronto Property claiming that he had the Receiver's authorization to be there and continued with his inspection.
25. Notwithstanding counsel to the Receiver's email to Mr. Denis asking who is Sal and what is his relationship to Mr. Kronenfeld, no response has been received to this enquiry.
26. The Receiver was not advised in advance and had no knowledge of Sal's attendance at the Toronto Property and did not authorize same. On the basis that the Toronto Property is in the possession and control of the Receiver, attending at the Toronto Property without the Receiver's express authorization constitutes trespass.
27. More significantly, it appears that Mr. Erlick has never even visited the Toronto Property notwithstanding his evidence about its condition and cost to repair.

5.0 FURTHER OFFER RECEIVED

28. On December 6, 2024, the Receiver received a further offer (the "**Further Offer**") from a potential purchaser. A copy of the Further Offer with correspondence from counsel to the potential purchaser will be filed with the Court as **Confidential Appendix 1** to the Third Report.
29. The salient terms of the Further Offer are set out below, without details of the purchase price or deposit paid.

- (a) the only condition to the offer is that the Receiver obtain an approval and vesting order (“**AVO**”) in favour of the purchaser;
- (b) the purchaser does not require any due diligence or access to any of the documentation relating to the Toronto Property;
- (c) closing is to occur 6 business days after obtaining an AVO.

6.0 CONCLUSION AND RECOMMENDATION

6.1 Conclusion

- 30. While the Receiver recognizes that it is required to attempt to maximize realizations for the benefit of creditors, the Receiver continues to have concerns about the integrity of the sales process if it were to allow bids made on the eve of the sale approval motion (10 weeks after the bid deadline), and thereafter, to be considered and/or accepted.
- 31. This is particularly true given that in the Receiver’s view, the latest bid (which is now the bidder’s third bid since the eve of the sale approval motion) still does not suggest to the Receiver that the offer that is before the court for approval is unreasonable or improvident.

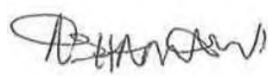
6.2 Recommendation

- 32. The Receiver’s recommendation remains that the Court should approve and authorize the sale of the Toronto Property to the Toronto Purchaser and issue the AVO requested by the Receiver in favour of the Toronto Purchaser.

All of which is respectfully submitted to this Court as of this 7th day of December, 2024.

TDB RESTRUCTURING LIMITED, solely in its capacity as
Receiver of 311 Conacher Drive and 2849, 2851, 2853, 2855 and 2857
Islington Avenue and not in its personal or corporate capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT
Managing Director

This is **Exhibit 9** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Commissioner for taking Affidavits (or as may be)

Dale Denis

- B) Because the listing of the Properties is not contained in the TREB residential data base, an agent searching TREB for a residential property would not obtain, as a search result, a listing of the Properties;
- C) Colliers did not market the individual homes at all;
- D) Colliers did not prepare or distribute the type of listing which is always utilized when a broker/agent is offering an individual home for sale;
- E) Although Colliers was clear in its marketing material (for the offering of the Property as development lands) that the Property contained “four semi detached homes and a detached home”, the marketing material was marketing material for the sale of only the combined development lands, and was not marketing material for the sale of individual homes;
- F) Because of the content of the Colliers, MLS and realtor.ca listings, if a buyer of residential property or their agent reviewed these listings, the content of same would not have caused them to believe that the individual homes were being offered for sale or lead them to inquire if that was the case.

ORDER REQUESTED

79. Therefore, the applicant, AJGL Group, Inc., seeks the following relief from the Court on this motion:

- (a) an Order of the Court stating that the agreement of purchase and sale submitted by the Toronto Purchaser, is not approved by the Court, and that instead the agreement to purchase the Islington

Property as submitted to the Receiver by email by 100 Inc. on December 6, 2024 at 1.43 p.m. (the “100 Inc. Agreement”), is approved by the Court, and shall forthwith be accepted, executed, and delivered by the Receiver to 100 Inc., and that the Receiver shall forthwith proceed to comply with and complete the terms and provisions of the 100 Inc. Agreement.

(b) in the alternative to subparagraph (a) above, an Order of the Court stating that the agreement of purchase and sale submitted by the Toronto Purchaser, is not approved by the Court, and that instead the Receiver shall make known to all interested persons who have submitted offers or bids for the Islington Property to date, including 100 Inc., that all such persons shall have a final opportunity to submit a final bid for such purchase price as each person shall determine for themselves, which may be the same as, less than, or higher than the amount in any of their previous bids, all such final bids to be received by the Receiver no later than 5 p.m. on December 18, 2024. And following the receipt by the Receiver of such final bids, the Receiver shall determine which of such final bids the Receiver intends to recommend to the Court for acceptance and approval. The Receiver shall then schedule a motion on notice to be heard by this Court for approval of such agreement and for approval of a form of vesting order, and also such other matters requiring Court approval as may be appropriate for purposes of finalizing, and then completing the sale transaction pursuant to the particular final bid, provided same is ultimately approved by the Court.

c) in addition to subparagraph (a) and subparagraph (b) above, or also if the Court determines not to give any order substantially in accordance with either of subparagraph (a) or subparagraph (b)

above, AJGL Group Inc. seeks a revision to the form of Approval & Vesting Order to be used for any sale of the Islington Property, as requested by the Receiver in the within motion, such revision to consist of the addition of a paragraph to protect the rights of subrogation and other rights of any one or more of AJGL Group Inc., and 5004591 Ontario Inc, immediately following Paragraph 5 of the Receiver's draft Approval & Vesting Order, in the following form:

“THIS COURT ORDERS THAT the distribution to Cameron Stephens Mortgage Capital Ltd. (as contemplated as part of the Toronto Distribution) is without prejudice to any arguments, positions, claims, rights or entitlements that any person may now have, or could have or has made to date or may hereafter decide to make in relation to either Property, and without limiting the generality of the foregoing, does not prejudice any claims or rights that any person has or may have under the foregoing general wording as well as (i) to claim to subrogate to any of the security or loan debt held by Cameron Stephens, or in relation to duties and obligations relating thereto or claims under Section 2 of the Mercantile Law Amendment Act or otherwise, (ii) to claims relating to rights arising from Section 2 of the Mortgages Act, (iii) to claim contribution and indemnity from any person (other than, for certainty, against the Receiver); and (iv) to assert any marshalling arguments provided that, for certainty, no party may make any claim against any recipient on account of proceeds received from the Interim Distribution.”

80. **ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 9th day of December, 2024

A handwritten signature in black ink, appearing to be 'J. Dale', is written above a horizontal line.

This is **Exhibit 10** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Commissioner for taking Affidavits (or as may be)

Dale Denis



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00701672-00CL DATE: DECEMBER 10, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al**

BEFORE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Larry Ryan Shah	Lawyers for the Receiver, TDB Restructuring Limited	jeff.larry@paliareroland.com ryan.shah@paliareroland.com
Arif Dhanani Bryan Tannenbaum	The Receivers	adhanani@tdbadvisory.ca btannenbaum@tdbadvisory.ca
Wendy Greenspoon-Soer	Lawyers for the Applicants, Cameron Stephens Mortgage Capital Ltd.	wgreenspoon@garfinkle.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Jonathan Kulathungam	Lawyers for the Toronto Purchaser	jkulathungam@teplitskyllp.com
Raffaele Sparano	Lawyers for Yury Boltyansky and 2462686 Ontario Inc.	rsparano@himprolaw.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Ryan Taylor Michael Byers	Lawyers for Issam A. Saad and 2858087 Ontario Inc.	rtaylor@cmblaw.ca mbyers@cmblaw.ca
Dale Denis	counsel for AJGL Group Inc. and 1001079582 Ontario Inc	dale@dilitigation.com
Samuel Mosonyi	Lawyers for Elena Terpselas, Estate Trustee of Nicholas Kyriacopoulos, deceased	smosonyi@robapp.com
Paul F. Rooney	Lawyers for AJGL Group Inc.	rooney@paulfrooneyprofcorp.com
Anisha Samat	Lawyers for 2083053 Ontario Inc.	asamat@blaney.com
Nicholas Avis	Lawyer for the Creditor, R. Barbaro	navis@stikeman.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

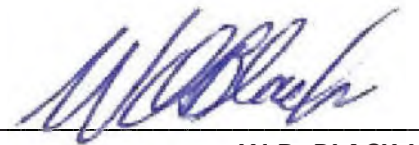
- [1] These parties were before me last week, on December 4, 2024. At that time, as my brief endorsement of that day reflects, there had been considerable activity in the hours leading up to the time appointed for the hearing, including new last-minute offers to purchase the “Toronto Property” that was the subject of the appointment.
- [2] In the circumstances, I directed that the parties should have an opportunity to exchange their materials and submissions in a slightly less compressed fashion, and that we would reconvene today (December 10, 2024).
- [3] Since the parties were before me last week, there has been one significant development. That is, 1001079582 Ontario Inc (“100”), a would-be purchaser of the Toronto Property delivered a further offer on Saturday December 6, 2024, (the “Third Offer”) at a higher price than its two previous offers.
- [4] On December 4, and until the arrival of this latest offer, the Receiver’s position had been, even-handedly but firmly, to the effect that the prior offers from 100, although higher than the offer/price (the “subject offer” or the “subject price”) in the transaction for which the Receiver was seeking approval (the “subject transaction”), was not “substantially higher” than that price so as to raise concerns about the providence of the proposed sale.
- [5] In its supplementary factum for purposes of the December 4 hearing, the Receiver had reviewed certain caselaw in which late offers ranging from 8% to 30% higher than the offers subject to approval in those cases had not led to a conclusion that the subject price was unreasonable, or that the process undertaken to obtain the subject price was unreasonable or flawed.
- [6] In the circumstances of last week, in reliance on those cases, the Receiver’s position was that it had run a comprehensive marketing effort, that the (existing) purchaser (the “subject purchaser”), had “acted in good faith” and was a “*bona fide* third party purchaser” and that the “existence of marginally higher bids, submitted on the eve of the hearing, are not sufficient to displace the Receiver’s recommendation set out in its Third Report.”
- [7] That recommendation, stressing the “overriding concern with integrity, fairness and predictability of the court-ordered sales process,” was that the court should approve the conforming, successful (subject) bid. The Receiver reminded the court of the words of Cumming J. in *1730960 Ontario Ltd. (Re)*, in which His Honour said “[i]t is unfair and objectionable for a party to wait until another bid is made and has been accepted by the Receiver and then to make a bid that is marginally higher and ask the Court to not approve the agreement of purchase and sale resulting from the accepted bid.”
- [8] The Third Offer, however, is 37% higher than the subject price.
- [9] While the Receiver, quite appropriately, stands by its submissions about the integrity of the process, and the worrisome precedent associated with giving effect to an offer received very late in the process (and in the face of the subject offer that the Receiver has accepted and recommended), the Receiver also clearly recognizes that at a certain level, a late-breaking offer can and perhaps must be considered simply by dint of its value.
- [10] It is apparent that the Receiver allows that the Third Offer may be in that category. Before me today Receiver’s counsel submitted that, albeit the Receiver’s first position remains that the proposed subject

transaction should be approved, it now says that, as a second possibility, if the court is persuaded that 37% is a sufficiently higher price to qualify as “substantially higher” such that that the subject price risks improvidence, then the Receiver suggests a further “auction” process whereby the bidders are asked to submit their best offers by a specified date in the near term.

- [11] In determining what to do in these circumstances, I first observe that I regard the circumstances as unique, likely singular, and unlikely to be replicated in future (or certainly not often).
- [12] In that regard, I heard submissions from counsel for the purchaser whose offer is the subject of the approval motion, pointing to the specter of the unpredictable free-for-all that will ensue if I fail to approve the subject transaction and countenance 11th hour offers like the Third Offer.
- [13] I do not regard that as a high risk, let alone an inevitable consequence. Again I find that the circumstances before me are unique and unlikely to be regularly repeated.
- [14] I should note that, on the other side of the fence, I also reject certain submissions on behalf of 100’s bid, offered to suggest that in fact the equities here favour my approval of – or at least a re-opening of the process to recognize and make room for consideration of – the Third Offer.
- [15] Those submissions include the assertion that 100 stands in the shoes of a beneficial owner of the Toronto Property, and that its offer is akin to a redemption.
- [16] The ownership argument is based on the fact that AJGL Group Inc. (“AJGL”) is the beneficial owner of the shares of 5004591 Ontario Inc. and beneficial owner of 2849, 2851, 2853, 2855, and 2857 Islington Avenue in Toronto, being the Toronto Property.
- [17] It is clear that AJGL assembled the five properties making up the Toronto Property and developed them over a number of years, ultimately obtaining planning approval for a 110-unit mid-rise condo building which Colliers (engaged by the Receiver) marketed for sale in the receivership.
- [18] It is as a result of that ownership and that “sweat equity” that AJGL, via 100 (hereafter AJGL and 100 will be referred to from time to time collectively as “AJGL”), seeks “to acquire ownership back from the Receiver by submitting the highest bid.” AJGL submits that, as such, its position is “analogous to that of a mortgagor seeking to redeem a mortgage.”
- [19] AJGL argues that this ownership interest puts it in a unique position, different than the competing bidder in all of the cases on which the Receiver relies in its argument. It says that whereas the cases in the Receiver’s factum involve “disinterested third-parties as bidders” AGJL is instead a “beneficial owner of the [Toronto] Property seeking to have its equitable right to redeem the [Toronto] Property recognized and protected by the Court.”
- [20] I do not accept that AJGL is akin to a beneficial owner seeking to redeem.
- [21] A redemption of the mortgage financing here would require payment of roughly four times the amount of the Third Offer. So, while the Third Offer is potentially propitious, and while the past ownership stake may mean that acquiring the Toronto Property has unique value for AJGL, the Third Offer is not fairly characterized as being in the nature of a redemption.

- [22] I am prepared to give modest credence to AJGL's related argument that, inasmuch as the subject purchaser would be aware of the former owner's interest, and aware that the former owner may seek to reclaim ownership, the subject purchaser's argument that a late-breaking offer from the former owner is not within the reasonable expectation of the subject purchaser may be somewhat attenuated.
- [23] In addition, recognizing that it could be criticized for "lying in the weeds," AJGL offers an explanation for not submitting a bid before the bid deadline. It says that it believed that the Kingston Property (also a part of the receivership, and for which a sale that was approved earlier this fall did not close) would be sold first, and that there would be sufficient proceeds from that sale that the Toronto Property would not ultimately be sold. AJGL says that this was its business judgment, which proved to be incorrect, but that its decision was taken in good faith, and not with a view to "waiting in the wings."
- [24] While I do not dismiss this explanation out of hand, for the most part, like AJGL's past ownership interest and its claim to an entitlement to an equitable claim, I view the purported excuse for the late offer as largely irrelevant.
- [25] I also reject AJGL's assertions that Colliers, in particular, on which the Receiver relied for advice and guidance with respect to the sale process, failed to provide proper advice, and failed in particular to ensure that the Toronto Property was exposed to the residential market in addition to that for developers, such that the sale and marketing effort was flawed.
- [26] I understand the impetus for AJGL making these arguments, but, as with the over-reaching claims about AJGL's purported rights to equitable redemption, I find these arguments insubstantial and unpersuasive, and again for the most part frankly irrelevant.
- [27] What is relevant, and the consideration that concerns and compels me, is the sheer size of the Third Offer.
- [28] Not surprisingly, in light of the 37% larger amount of the Third Offer, it has attracted the support of various parties with a potential stake in the proceeds. Ms. Greenspoon-Soer for the applicant Cameron Stephens Mortgage Capital Ltd., Mr. Taylor for 2858087 Ontario Inc. and Issam A. Saad, creditors of relevant entities, and Mr. Mosonyi on behalf of the estate trustee of the late Nicholas Kyriacopoulos each indicate, albeit for slightly different reasons, that their respective clients favour recognition of the Third Offer, and a process to include AJGL/100 with a view to maximizing the return for the Toronto Property, rather than approval of the subject transaction.
- [29] As noted, despite its appropriately stated concerns about the integrity of the process, the 37% delta between the Third Offer and the subject price caused the Receiver to suggest, as an alternative to approval of the subject offer, a further process to ensure that the value of the Third Offer is captured and maximized.
- [30] In the unique circumstances as described, I find that this is the preferable approach.
- [31] I do so without suggesting that the subject purchaser acted in anything other than good faith.
- [32] I do so, also, with an appreciation of the need to preserve the integrity and predictability of the marketing and sale process within receiverships, and the reasonable expectation in the vast majority of cases that the process will yield a value-maximizing result that should not be subverted by late-breaking offers.

- [33] As noted, I do not find that there are any flaws with the sale and marketing process undertaken here; to the contrary I find that the conduct of the Receiver, and those involved in the process, including Collier, was unassailable.
- [34] Nonetheless I find that the magnitude by which the Third Offer exceeds the subject price does in fact qualify as “substantially higher,” and that it is not appropriate or in the interests of a majority of stakeholders to leave that much money “on the table.”
- [35] As such, and subject to input from the Receiver about any fine-tuning required, I am ordering the process (the “Proposed Auction Process”), set out in paragraph 79(b) of AJGL’s Aide Memoire, save and except that the deadline for further bids should be 5:00 p.m. on December 16 (rather than December 18 as suggested in that paragraph). To be clear, as will be evident, the subject purchaser is able to participate in this further process, and so is not precluded from making a further bid to purchase the Toronto Property.
- [36] In the course of its submissions, acknowledging the regrettable lateness of its bids (including the Third Offer) AJGL offered that, if the subject purchaser does not remain the successful bidder following the Proposed Auction Process, AJGL will reimburse the subject purchaser for its reasonable legal costs associated with the process to date. I find that to be a fair proposal, and direct AJGL to do so if we end up in that scenario.
- [37] AJGL requested the right, which I allowed, to file further written submissions after the time allotted for the hearing had elapsed. The further submissions, which I have reviewed, ask that the vesting order that will be required for the sale of the Toronto Property include a particular provision.
- [38] At the time that I granted AJGL the right to file the supplementary written submission, I also confirmed that the Receiver would have an opportunity to respond, also in writing. At the time of preparing this endorsement I have not yet received the Receiver’s position.
- [39] Inasmuch as the issue with respect to the insertion or not of that clause at issue relates to an approval of a transaction not yet in place, and inasmuch as there is some urgency to deal with the process for selling the Toronto Property, I will defer my consideration and determination of the issue regarding the proposed insertion of the clause until such time as I hear from the Receiver as to its position.



W.D. BLACK J.

RELEASED: DECEMBER 10, 2024

This is **Exhibit 11** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

From: Holiff, Alex <Alex.Holiff@colliers.com>
Sent: December 11, 2024 3:14 PM
To: Dale Denis
Cc: Arif Dhanani; Keyzer, Steve
Subject: Final Bid Opportunity - 2849-2857 Islington Avenue, Toronto

Importance: High

Good afternoon Dale,

Please be advised that all interested parties who had previously submitted offers or bids for 2849-2857 Islington Avenue, Toronto (hereinafter the “Property”) as part of the Property’s Receivership sale process are being notified that they shall have a final opportunity to submit a final bid for such Property at a purchase price that may be the same as, less than, or higher than the amount of any of their previous bids, **provided such bid is received by the Receiver no later than 5:00 pm on December 16th, 2024.** Any offer or bid should be addressed to Arif Dhanani and sent to adhanani@tdbadvisory.ca. Please also include alex.holiff@colliers.com and steve.keyzer@colliers.com on any offer submitted.

We are reaching out to you, as Colliers does not have direct contact information for anyone at AJGL Group Inc. and/or 1001079582 Ontario Inc.

Thank you,

Alex Holiff, MBA

Vice President, Sales Representative

Alex.Holiff@colliers.com | [View my profile](#)

Direct: +1 416 620 2803 | Mobile: +1 647 620 5373

181 Bay Street, Suite 1400 | Toronto, ON M5J 2V1 | Canada

    collierscanada.com | [View Privacy Policy](#)



This is **Exhibit 12** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

From: rooney@paulfrooneyprofcorp.com <rooney@paulfrooneyprofcorp.com>
Sent: December 16, 2024 4:27 PM
To: adhanani@tdbadvisory.ca
Cc: 'Avrom Brown' <abrown@garfinkle.com>; steve.keyzer@colliers.com; Jeff.Larry@paliareroland.com
Subject: RE: Potential Sale by Receiver of lands on Islington Avenue

Gentlemen,

Please see attached my correspondence of today, with attached revised Purchase Agreement, in relation to the above topic. It is being sent to you the recipients because you are the recipients that you have advised that Agreements should be sent to. And, given Mr. Dhanani's comment/request, I have also added Mr. Larry, however Mr. Denis will be dealing more generally with advising other relevant parties.

Yours very truly,

Paul F. Rooney

Paul F. Rooney Professional Corporation
Barrister & Solicitor,
121 King Street West, Suite 510
Toronto, ON M5H 3T9

Direct Line: 647-981-7838
Email: rooney@paulfrooneyprofcorp.com

This message is solicitor-client privileged and contains confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error, please notify us immediately by telephone and delete the message without making a copy.

From: Paul Rooney <rooney@paulfrooneyprofcorp.com>
Sent: December 6, 2024 1:43 PM
To: adhanani@tdbadvisory.ca

Cc: Avrom Brown <abrown@garfinkle.com>; steve.keyzer@colliers.com; Jeff.Larry@paliarerland.com

Subject: Re: Potential Sale by Receiver of lands on Islington Avenue

Gentlemen,

Please see attached my correspondence of today, with attached revised Purchase Agreement, deposit, and proof of available funds to close, in relation to the above topic. It is being sent to you the recipients because you are the recipients that you have advised that Agreements should be sent to. Given Mr. Dhanani's last comment/request, I have also added Mr. Larry, however Mr. Denis will be dealing more generally with advising other relevant parties.

Yours very truly,
Paul F. Rooney

Paul F. Rooney Professional Corporation
Barrister & Solicitor
121 King Street West, Suite 510
Toronto, ON M5H 3T9

Direct Line: 647-981-7838
Email: rooney@paulfrooneyprofcorp.com

This message is solicitor-client privileged and contains confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error, please notify us immediately by telephone and delete the message without making a copy.

On Tue, Dec 3, 2024 at 8:47 PM <rooney@paulfrooneyprofcorp.com> wrote:

Gentlemen,

Further to my earlier correspondence of today, please see attached my additional correspondence, with attached revised Purchase Agreement, in relation to the above topic.

Yours very truly,

Paul F. Rooney

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From: rooney@paulfrooneyprofcorp.com <rooney@paulfrooneyprofcorp.com>

Sent: December 3, 2024 1:07 PM

To: adhanani@tdbadvisory.ca

Cc: 'Avrom Brown' <abrown@GARFINKLE.com>; steve.keyzer@colliers.com

Subject: Potential Sale by Receiver of lands on Islington Avenue

Gentlemen,

Please see attached my correspondence of today, with attached Purchase Agreement, deposit, and proof of available funds to close, in relation to the above topic.

Yours very truly,

Paul F. Rooney

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Barrister & Solicitor,

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121 King Street West, Suite 510
Toronto, Ontario
M5H 3T9

Telephone: (647) 981-7838
Email: rooney@paulfrooneyprofcorp.com

BY EMAIL
December 16, 2024

Our File No. 19507

TDB Restructuring Limited,
11 King Street West, Suite 700
Toronto, Ontario M5H 4C7

Attention: Arif Dhanani adhanani@tdbadvisory.ca

AND TO
Garfinkle Biderman LLP
801-1 Adelaide Street East
Toronto, ON M5C 2V9
Attention: Avrom W. Brown abrown@garfinkle.com

AND TO

Colliers Macaulay Nicolls Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1
Attention: Steve Keyzer steve.keyzer@colliers.com

Re: Re: Receivership of properties located at 2857 Islington Avenue, Toronto (the “Islington Properties”) and 311 Conacher Drive, Kingston (the “Kingston Property” and with the Toronto Property, the “Properties”)

This letter is further to my letters to you of December 3, 6 and 13 on this topic.

Pursuant to the Endorsement of Justice Black, dated December 10, 2024, and in particular Paragraph 35 thereof, my client is hereby submitting to the Receiver a further revised offer to purchase the Islington Properties, which replaces the previous offers and Agreements. The only revision is as to the price to be paid, which has been increased to \$3,801,000, and the deposit has correspondingly been increased to the amount of \$380,100 as required in your standard form of agreement. The additional \$80,100 of deposit will be provided within 24 hours of acceptance of the Agreement by the Receiver, as described in your standard agreement terms. Mr. Brown already has my client’s bank draft for \$300,000 payable to his firm in trust. There is no due diligence condition, nor other conditions, save for being conditional on the obtaining of the Approval and Vesting Order in favour of this purchaser. This revised offer (signed and

initialed by the purchaser) is open for acceptance by the Receiver until such date as the Court determines whether or not it should be accepted (and if accepted, then until the date the Receiver obtains court approval for the Agreement). It is not necessary that the purchaser have access to the Confidential Data Room for purposes of this offer and Agreement, and so there is also no need for a Confidentiality Agreement regarding the data in the Confidential Data Room. However if for some reason the Receiver shows a need for the Confidentiality Agreement, the purchaser is willing to provide a confidentiality agreement that is appropriate to this context.

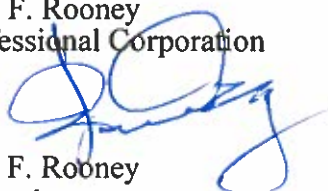
The enclosures in my prior letters, and the Confirmation I previously provided regarding having \$3,300,000 of funds in my trust account for this transaction, continue to apply in relation to the revised offer and Agreement.

The existence of this revised offer and Agreement should be considered by the Receiver, and also made known to the Court confidentially in relation to carrying out and completing the Proposed Auction Process as described in Paragraph 35 of the Endorsement. 1001079582 Ontario Inc. requests that the Receiver recommend its revised Agreement to the Court for acceptance and approval. If the Receiver wishes additional information in respect of this revised Agreement, please let me know. If this revised offer and Agreement is not going to be recommended to the Court by you, I request that you advise me as soon as possible.

Yours very truly,

Paul F. Rooney
Professional Corporation

per



Paul F. Rooney
PFR:md

E:\Office\Client Matters\Islington\Letter to Receiver with Agreement (4th revised agmt) doc

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made as of the 16th day of December 2024.

BETWEEN:

TDB RESTRUCTURING LIMITED (the "**Receiver**")

in its capacity as Court-Appointed Receiver over the lands and premises set out on Schedule "A" attached hereto and not in its personal or corporate capacity

(the "**Vendor**")

and

1001079582 ONTARIO INC., a corporation formed pursuant to the laws of Ontario

(the "**Purchaser**")

RECITALS:

- A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 6, 2023, (the "**Appointment Order**") RSM Canada Limited was appointed as Receiver over the lands legally described in Schedule "A" attached hereto, effective December 22, 2023;
- B. Pursuant to the Substitution Order of the Ontario Court of Justice (Commercial List) dated March 1, 2024, (the "**Substitution Order**") the Receiver's name was substituted in the place of the name of RSM Canada Limited;
- C. The Vendor desires to sell and the Purchaser desires to purchase the Purchased Assets, as more particularly set out herein, subject to the terms and conditions hereof.

NOW THEREFORE in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Parties covenant and agree as follows:

SECTION 1 - INTERPRETATION

1.1. Definitions

In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- (a) **"Acceptance Date"** means the date that this Agreement is executed and delivered by the Parties;
- (b) **"Agent"** shall mean Colliers Macaulay Nicolls Inc.;
- (c) **"Agreement"** means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;
- (d) **"Applicable Laws"** means, with respect to the Purchased Assets or to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event;
- (e) **"Assumed Liabilities"** has the meaning ascribed to it in Section 2.10.
- (f) **"Business Day"** means a day on which banks and the Land Registry Office for the City of Toronto are open for business but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (g) Intentionally deleted.
- (h) **"Claim"** means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;
- (i) **"Closing"** means the successful completion of the Transaction;
- (j) **"Closing Date"** means that date that is six (6) business days immediately following the date upon which the Approval and Vesting Order is granted.
- (k) Intentionally Deleted
- (l) **"Court"** means the Court defined in the first recital of this Agreement;
- (m) Intentionally deleted.
 - (n) **"Data Room"** means the electronic data room established by or on behalf of the Vendor containing documents related to the Purchased Assets for review by the Purchaser;

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(o) Intenti
onally
deleted.

- (p) Intentionally deleted.
- (q) **"Debtor or Debtors"** means all or any one of Kings Townhomes Limited (formerly Conacher Kingston Holdings Inc.) and 5004591 Ontario Inc.;
- (r) **"Deposit"** has the meaning ascribed to it in Section 2.5;
- (s) **"Encumbrance"** means any mortgage, charge, pledge, hypothecation, security interest, trust, deemed trust (statutory or otherwise) assignment, lien (statutory or otherwise), Claim, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;
- (t) **"Environmental Condition"** has the meaning ascribed to it in Section 2.2(a).
- (u) **"Environmental Laws"** means all Applicable Laws concerning pollution or protection of the natural environment or otherwise relating to the environment or health or safety matters, including Applicable Laws pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of Hazardous Materials, and (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Hazardous Materials including without limiting the generality of the foregoing the following any written policies and guidelines and directives, administrative rulings or interpretations, that are in effect and applicable to the Vendor or the Property on the Closing Date, as well as the common law and any judicial or administrative order, consent decree or judgment that is in effect and applicable to the Vendor or the Property on the Closing Date, that relates to pollution or the protection of the environment, including, without limitation, the *Atomic Energy Control Act* (Canada), the *Canadian Environmental Protection Act* (Canada), the *Pest Control Products Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Environmental Assessment Act* (Ontario), the *Ontario Water Resources Act* (Ontario) and the *Occupational Health & Safety Act* (Ontario), and the regulations and guidelines promulgated pursuant thereto or issued by any Government Authority in respect thereof, and equivalent or similar local and provincial ordinances and statutory programs and the regulations and guidelines promulgated pursuant thereto.
- (v) **"Ereg"** has the meaning ascribed to it in Section 5.7;
- (w) **"ETA"** means the *Excise Tax Act* (Canada), as it may be amended from time to time;

- (x) **"Excluded Assets"** means the assets, if any, listed in Schedule "C";
- (y) **"Final Order"** means, in respect of any order, such order after i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such order, final determination of such appeal or application by the applicable court or appeal tribunal;
- (z) **"Governmental Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction or one or both of the Parties and shall include a board, commission, courts, bureau, agency or any quasi-governmental or private body exercising any regulatory authority including an association of insurance underwriters;
- (aa) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authority and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health or safety matters;
- (bb) **"HST"** means all goods and services taxes and harmonized sales tax payable under the ETA;
- (cc) **"Land Transfer Tax"** means all the taxes payable under the *Land Transfer Tax Act* (Ontario) and any other applicable provincial or municipal land transfer tax legislation, including all registration fees, license fees, and other like charges payable upon a transfer of real property, together with interest, penalties and additions thereto;
- (dd) **"Leases"** means any leases with any tenants relating to the Property;
- (ee) Intentionally deleted.
- (ff) **"Liabilities"** means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, liquidated or unliquidated under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes

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- (gg) **"Parties"** means the Vendor, the Purchaser and any other Person who may become a party to this Agreement. **"Party"** means any one of the foregoing;
- (hh) **"Permits"** means all permits, licenses and applications that may have been issued or applied for in the name of the Debtor and/or the Vendor in connection with the servicing and/or development of the Property;
- (ii) **"Permitted Encumbrances"** means those Encumbrances listed in Schedule "B" attached hereto;
- (jj) **"Person"** means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
- (kk) **"Plans"** means all plans and documentation in the possession or control of the Vendor relevant to the development of the Property including, without limitation, any project documents, engineering drawings, architectural plans and working drawings, landscaping plans, reports, project documents other documentation prepared to illustrate or define a particular aspect of the development of the Property, in each instance, to the extent forming part of the Data Room created by the Vendor in respect of the Transaction;
- (l) **"Property"** means the real property described in Schedule "A" attached hereto;
- (mm) **"Property Documents"** means the documents in the Data Room;
- (nn) **"Purchaser Closing Conditions"** has the meaning ascribed to it in Section 4.1;
- (oo) **"Purchase Price"** shall have the meaning ascribed to it in Section 2.4. For greater certainty, the Purchase Price shall be exclusive of Transfer Taxes and any other taxes payable as a result of or in connection with the Transaction;
- (pp) **"Purchaser's Solicitors"** means the law firm of Paul F. Rooney Professional Corporation;
- (qq) **"Purchased Assets"** means those assets being the lands which are the subject of this Agreement;
- (rr) **"Receiver"** has the meaning described thereto in the Recitals;



- (ss) **"Reports"** means collectively any written reports or documents received or obtained by the Receiver from any third party regarding any aspect of the Property;
- (tt) **"Rights"** has the meaning ascribed to it in Section 2.13;
- (uu) Intentionally deleted;
- (vv) Intentionally deleted.
- (ww) Intentionally deleted;
- (xx) Intentionally deleted;
- (yy) **"Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;
- (zz) **"Transfer Taxes"** means all HST, Land Transfer Tax, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated together with interest, penalties and additional amounts imposed with respect thereto;
- (aaa) Intentionally deleted.
- (bbb) **"Vendor Closing Conditions"** has the meaning ascribed to it in Section 4.3;
- (ccc) **"Vendor's Solicitor"** means the law firm of Garfinkle Biderman LLP;
- (ddd) **"Approval and Vesting Order"** means the order of the Court approving the sale by the Receiver to the Purchaser of the Purchased Assets and vesting all rights, title and interest of the Purchased Assets in favour of the Purchaser free and clear of all Encumbrances (other than Permitted Encumbrances) (in a form to be agreed upon by the parties);
- (eee) **"Vesting Order Motion"** means a motion by the Receiver seeking the granting of the Approval and Vesting Order; and
- (fff) **"Work Orders"** means any work orders, deficiency notices, outstanding building permits, orders, or requirements to comply with any Applicable Laws or issued by any Governmental Authorities.

1.2. Interpretation Not Affected by Headings, etc.

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

this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof

1.3. Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4. Schedules

The following Schedules are incorporated in and form part of this Agreement;

- Schedule "A" Property
- Schedule "B" Permitted Encumbrances
- Schedule "C" Excluded Assets
- Schedule "D" Intentionally deleted

SECTION 2 - SALE AND PURCHASE AND ASSIGNMENT

2.1. Sale and Purchase of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Liabilities, all in accordance with and pursuant to the terms hereof and the Approval and Vesting Order. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets.

2.2. "As is, Where is"

The Purchaser acknowledges and agrees that:

- (a) the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning,

permitted uses, permits, compliance with Applicable Laws of Government Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof, any non-compliance with Environmental Laws including any adverse matters contained in the Reports (the "**Environmental Condition**"), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for 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 hereto and are hereby waived by the Purchaser. The descriptions of the Purchased Assets set out in this Agreement or in the Property Documents are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Purchaser further acknowledges that the Property Documents and all other written and oral information (including, without limitation, any analyses, financial information and projections, compilations, studies and the Plans) obtained by the Purchaser from the Vendor or the Agent with respect to the Purchased Assets or otherwise relating to the Transaction has been provided for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

- (b) notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding Work Orders, and the Purchaser shall accept the title to the Property subject to the Permitted Encumbrances and the Environmental Condition.
- (c) the various parties who prepared the Property Documents may have restricted the use thereof to the Debtor only, in their respective retainers with the Debtor and any purported conveyance of any of the Property Documents by the Vendor to the Purchaser may be subject to such limitations.
- (d) Without limiting the generality of this Section 2.2, the Purchaser acknowledges and agrees that the parties have expressly agreed to exclude from this Agreement all express or implied representations and warranties with respect to the following matters:
 - (i) the compliance of the Property with Applicable Laws, by-laws or regulations including without limitation, municipal zoning by-laws and regulations;
 - (ii) any easements, rights of way, instruments, documents, agreements or other registered or unregistered interest in the Property which impacts the

- use, enjoyment, income or development opportunities connected with the Property;
- (iii) that the present use or any future use of the Purchased Assets intended by the Purchaser is or will be lawful or permitted;
 - (iv) the execution, good standing, validity, binding effect or enforceability of the Permitted Encumbrances;
 - (v) that the Vendor has any right, title or interest in any goodwill associated with the Purchased Assets, or the use of any name associated with the operation of the Purchased Assets;
 - (vi) the description, title, condition, value, state of repair and fitness for any purpose of the Purchased Assets; and
 - (vii) the compliance of the Property with Environmental Laws, Reports or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Property, or otherwise with respect to the environmental condition of the Property;
- (e) the Property Documents and any assets lists, information packages and other material concerning the Purchased Assets or the sale thereof provided by or on behalf of the Vendor and the Agent have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in such material) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, no conditions, warranty or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning such descriptions;
- (f) the Vendor is entering into this Agreement solely in its capacity as Receiver of the Property pursuant to the Appointment Order and not in its personal or other capacity and the Vendor and its agents (including the Vendor's Solicitors), officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith;
- (g) save as to any valid objection to title made in respect of matters arising after the Acceptance Date, the Purchaser shall be conclusively deemed to have accepted the title to the Property and to have accepted the Property subject to the Permitted Encumbrances and the Environmental Condition and subject to all Applicable Laws, by-laws and regulations affecting its use. If any valid objection to title expressly permitted herein is made by the Purchaser prior to the Closing Date, which the Vendor is unwilling or unable to remove, remedy, or satisfy and which the Purchaser will not waive or is not satisfied by title insurance, then the Receiver may terminate this Agreement by notice to the Purchaser, whereupon, except as herein expressly set forth, the Deposit without interest accrued thereon shall be forthwith returned to the Purchaser in accordance with and subject to the

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terms in Section 2.5 and 2.12 each of the Purchaser and the Receiver shall be released from all obligations under this Agreement.

- (h) the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except such of the foregoing as are in the possession or control of the Receiver;
- (i) the Purchaser acknowledges that, the Vendor has provided the Purchaser access to the Data Room and that the Purchaser has had sufficient opportunity to review, and has satisfied itself with respect to, the Property Documents. If for any reason the transaction is not completed, the Purchaser shall forthwith return the Property Documents, and delete any electronic copies of them in its possession or control. The Vendor makes no representation or warranty, express or implied, as to the accuracy or completeness of any information contained in any of the Property Documents; and

in entering into this Agreement, the Purchaser has relied and will rely entirely and solely upon its own inspections and investigations with respect to the Property and the Purchased Assets, including the physical condition and the Environmental Condition of the Purchased Assets including compliance with Applicable Laws and has relied solely upon its own judgement resulting from doing so and has not relied and will not rely on any information, written or oral, furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor including the Agent, including with respect to value of the Purchased Assets, the development potential of the Property, adequacy, marketability, quantity, location, condition, quality, fitness or state of repair. The information in the Data Room and description of the Purchased Assets in any marketing material, listing information, and any like material delivered or made available by the Vendor and/or the Agent, the Vendor's agents or any other party on its behalf to the Purchaser or its representatives are believed to be correct, but if any misstatement, error, inaccuracy or omission (collectively the "Inaccuracies") is found in them, the Purchaser shall not be entitled to any abatement, damages, reimbursement, costs or to termination of this Agreement as a result of them and the Purchaser releases the Vendor and its agents from any Claims the Purchaser had, has or may have as a result of such inaccuracies.

2.3 Permitted Encumbrances

The Purchaser acknowledges that the Vendor is selling the Purchased Assets subject to the Assumed Liabilities and that the Vendor undertakes no obligation to discharge the Permitted Encumbrances on Closing or thereafter.

2.4 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "Purchase Price") shall be an amount of ~~\$2,000,000.00~~, allocated as set out in paragraph 2.7

3,801,000.00

ST

11 ST
\$380,100.00
2.5. Deposit

The Parties acknowledge and agree that the sum of ~~\$600,000.00~~, being ten (10%) percent of the Purchase Price (the "Deposit") will be delivered by the Purchaser to the Vendor's solicitor in trust within 24 hours of acceptance of an executed copy of the Agreement by the Purchaser and the Vendor. The Deposit shall be held in a non-interest bearing account of a Canadian chartered bank or trust company, in trust and to be disbursed in accordance with the following provisions

- (a) If the purchase and sale of the Purchased Assets is completed on the Closing Date, then the Deposit shall be released from trust and applied towards payment of the Purchase Price;
- (b) If the purchase and sale of the Purchased Assets is not completed on the Closing Date for any reason other than the default of the Purchaser hereunder, then the Deposit shall, subject to any Claim by the Vendor for damages under Section 2.12(d) herein, be released from trust and paid to the Purchaser in full satisfaction of all Claims incurred by the Purchaser as a result of such non-completion; or
- (c) If the purchase and sale of the Purchased Assets is not completed on the Closing Date as a result of the Purchaser's default hereunder, then the Deposit shall be forfeited to the Vendor and released from trust as liquidated damages and not as a penalty and paid to the Vendor without prejudice to the Vendor's rights to reimbursement on account of any Claim of the Vendor against the Purchaser as a result of such failure and the Vendor shall be entitled to pursue all of its rights and remedies against the Purchaser, including the resale of the Purchased Assets. Upon any such resale, the Purchaser shall pay to the Vendor: (i) an amount equal to the amount, if any, by which the Purchase Price under the Agreement exceeds the net purchase price received by the Vendor pursuant to such resale (net of any commissions and costs and expenses incurred to effect the completion of such resale including legal costs on a full indemnity basis), and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of the Transaction or occasioned by the Purchaser's failure to comply with this Agreement.

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows

- (a) on Closing, the Deposit shall be released from trust and credited against the Purchase Price in accordance with Section 2.5(a); and
- (b) on Closing, the Purchase Price, subject to adjustments and minus the amount paid to the Vendor pursuant to Section 2.6(a), shall be paid to the Vendor or as the Vendor may direct in writing by way of wire transfer using the Large Value Transfer System.

2.7 Intentionally deleted.

2.8 Adjustment of Purchase Price

(1) The Purchase Price shall be adjusted as of the Closing Date in accordance with the terms of this Agreement for any property taxes (including interest thereon, if applicable), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a Court supervised sale (the "Adjustments"). The Receiver shall prepare a statement of adjustments and deliver same to the Purchaser for its approval by no later than 3 Business Days prior to the Closing Date. If the amount of any Adjustments required to be made pursuant to this Purchase Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor as of the Closing Date based upon the best information available to the Vendor at such time. When such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Vendor and the Purchaser shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the Parties the final cost or amount of an item shall be determined by an accountant or such other financial professional appointed jointly by the Vendor and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the Parties. All re-adjustments shall be requested in a detailed manner on or before the 60th day after the Closing Date, after which time neither party shall have any right to request re-adjustment.

(2) Other than as provided for in this section 2.8, there shall be no Adjustments to the Purchase Price.

2.9 Excluded Liabilities

Other than the Assumed Liabilities, the Purchaser shall not assume and shall not be liable for any other Liabilities of the Vendor or the Debtor.

2.10 Assumed Liabilities

From and after Closing, the Purchaser shall assume and be liable for the Assumed Liabilities. The Assumed Liabilities shall consist only of the Liabilities incurred under or in respect of:

- (a) Permitted Encumbrances;
- (b) the use of the Purchased Assets from and after the Closing Date to the extent relating to periods from and after the Closing Date; and

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- (c) the Environmental Condition, and any and all Liabilities for the remediation of the soil and groundwater in, on, over, under or flowing through, onto or from the Property or any part thereof.

(the foregoing being the "**Assumed Liabilities**").

2.11 Taxes

In addition to the Purchase Price, the Purchaser or the beneficial owner of the Property if different from the Purchaser shall pay all applicable Transfer Taxes exigible in connection with the purchase and sale of the Purchased Assets, including, without limitation, HST and Land Transfer Tax.

The Purchaser will be an HST registrant and a prescribed recipient under the ETA on or before the Closing Date and will provide its registration number to the Vendor on or before the Closing Date.

The Purchaser shall deliver, prior to Closing, a certificate in form prepared by the Vendor acting reasonably certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the Transaction. The Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration as the case may be, and the Purchaser's HST registration number together and the Purchaser shall indemnify and hold harmless the Vendor from and against any and all Claims, HST, penalties, costs and any interest that may become payable by or assessed against the Vendor for all Transfer Taxes arising out of, related to or connected in any way with the Property or this Transaction. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor at Closing, in addition to the balance due on Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the Transaction.

2.12 Inspections

The Vendor will permit the Purchaser, its consultants, agents and representatives to carry out, at the Purchaser's sole expense and risk, such investigations, soil tests, and environmental audits as the Purchaser, acting reasonably, may deem necessary with respect to the Property, subject to and conditional upon the following terms and conditions:

- (a) any invasive testing shall require the Vendor's written approval prior to such testing;
- (b) the Purchaser shall provide at least two Business Days' notice to the Vendor of any such tests and inspections and the Vendor will be entitled to have a representative present during all such tests and inspections;
- (c) all soil tests or environmental audits shall be coordinated with the Vendor;

- (d) any damage to the Property caused by such tests and inspections will be promptly repaired by the Purchaser and the Purchaser will indemnify and save the Vendor harmless from all Claims which the Vendor may suffer as a result of the said tests and inspections or any other breach of this Section by the Purchaser; and
- (e) prior to entering the Property to conduct the Purchaser's tests and investigations, the Purchaser shall deliver (or shall cause its representatives completing the Purchaser's investigations on its behalf to deliver) to the Vendor evidence of liability insurance coverage for at least \$2,000,000.

The Purchaser agrees that the Vendor shall be entitled to deduct from the Deposit the amount of any Claims which the Vendor may suffer as a result of a breach of this Section 2.12 by the Purchaser. To the extent that the Purchaser commissions any reports in connection with its tests and investigations of the Property, copies of all such reports shall be delivered to the Vendor at no cost to the Vendor within three (3) Business Days of issuance.

2.13 Non-Transferable and Non-Assignable Purchased Assets

To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any Claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "Rights") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent or waiver has been obtained. After Closing and for a period of sixty (60) days following Closing, the Vendor shall:

- (a) maintain its existence and hold the Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;
- (c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (d) enforce, at the reasonable request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser,

the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the reasonable opinion of the Vendor, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and ensures to the benefit of the Purchaser. To the extent that such approval, consent or waiver has not been obtained by the 60th day following the Closing, such Right shall be deemed to be an excluded Purchased Asset and the Vendor may terminate any agreement pertaining to such Right unless otherwise agreed to by the Parties. The Purchaser shall indemnify and hold the Vendor harmless from and against any Claim under or in respect of such Rights arising because of any action of the Vendor taken in accordance with this Section.

2.14 Intentionally deleted.

2.15 Approval and Vesting Order

- (a) The Receiver and the Purchaser acknowledge that:
 - i. this Agreement is subject to Court approval; and
 - ii. closing of the Transaction is subject to the issuance of the Approval and Vesting Order.
- (b) If this Agreement is accepted by both parties, the Receiver shall use its commercially reasonable efforts to promptly thereafter file and serve the Vesting Order Motion on notice to the necessary parties.
- (c) If the Receiver accepts this Agreement, the Purchaser shall provide all information if any, and take any such actions as may be reasonable requested by the Receiver to assist the Receiver in obtaining the Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction.
- (d) From and after the Acceptance Date, the Receiver shall provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, or the Approval and Vesting Order and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing (provided that the Receiver shall not be obligated to incorporate the comments of the Purchaser and do any such filings).

2.16 Closing Certificate

The parties hereto acknowledge and agree that the Receiver shall be entitled to file with

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the Court a certificate, substantially in the form attached to the Approval and Vesting Order (the "**Closing Certificate**") upon receiving written confirmation from the Purchaser that all conditions to close under this Agreement have been satisfied or waived. The Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

2.17 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to this Agreement, including in its execution, the Receiver has acted and is acting solely in its capacity as Receiver and manager of the Property pursuant to the Appointment Order and not in its personal, corporate or any other capacity and the Receiver and its agents, officers, directors, employees and representatives will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Covenants

The Purchaser covenants and agrees that it will, effective on and after the Closing Date, assume and be fully responsible for:

- (a) all obligations which are to be observed or performed from and after completion of this Transaction under the Permitted Encumbrances; and
- (b) the Assumed Liabilities and any other obligations and liabilities assumed by the Purchaser as provided for by this Agreement.

3.2 Purchaser's Representations and Warranties

The Purchaser represents and warrants to the Vendor, which representation and warranties the Vendor is relying upon, that:

- (a) the Purchaser is and will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the Purchased Assets;
- (b) the Purchaser 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 has been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) no consent or approval of or registration, declaration or filing with any Government Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of

any of its obligations hereunder;

- (d) the Purchaser 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 herein;
- (e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the Transaction and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;
- (f) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as of Closing, duly and validly executed and delivered by the Purchaser and constitute or will, as of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;
- (g) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*;
- (h) The Purchaser has now and will have on the Closing Date the financial resources to complete this transaction in accordance with the terms of this Agreement; and
- (i) the Purchaser is registered or will be registered on Closing under Part IX of the ETA.

3.3 Record of Site Condition in the Environmental Registry

If at any time following Closing the Purchaser, in its sole discretion, elects to file a Record of Site Condition ("RSC") in respect of any Property, then the following clause will be deemed to have formed part of this Agreement as at the time of execution hereof, in respect only of the Property for which the RSC is filed:

"The Purchaser covenants and agrees that following the Closing, it shall file, at its sole cost and expense, a Record of Site Condition in the Environmental Registry as contemplated under s.168.4 of the Environmental Protection Act for the Property."

On Closing, the Purchaser shall deliver an indemnity in favour of the Vendor in which it

agrees to indemnify and save the Vendor harmless from any and all Claims incurred by the Vendor in the event the Purchaser fails to make such filings.

3.4 Receiver's Representations

The Receiver represents and warrants to the Purchaser as follows:

- (a) the Receiver has been duly appointed as the receiver of the Purchased Assets pursuant to the Appointment Order and has full right, power and authority, subject to obtaining the Approval and Vesting Order prior to Closing, to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order; and
- (b) the Receiver is not a non-resident of Canada for purposes of Section 116 of the *Income Tax Act* (Canada).

3.5 Survival of Representations, Warranties and Covenants

The representations, warranties, agreements and covenants made by the Purchaser herein or in any other agreement, certificate or instrument delivered by the Purchaser to the Vendor pursuant to this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor, without limitation.

SECTION 4 - CONDITIONS

4.1 Purchaser Closing Conditions

The obligation of the Purchaser to complete the Transaction is subject to the following conditions precedent being fulfilled or performed at or prior to the Closing Date (the "**Purchaser Closing Conditions**"):

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the documents contemplated in Section 5.3 or elsewhere in this Agreement;
- (c) intentionally deleted;
- (d) the Appointment Order and the Approval and Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction; and

The Purchaser Closing Conditions are for the exclusive benefit of the Purchaser. Any Purchaser Closing Condition may be waived by the Purchaser in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing.

4.2 Purchaser Closing Conditions Not Fulfilled

If any Purchaser Closing Condition has not been fulfilled at or prior to Closing, then the Purchaser in its sole discretion may, either:

- (a) terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from its obligations under this Agreement and the Deposit shall be promptly returned to the Purchaser in accordance with and subject to the provisions of Section 2.5 hereof; or
- (b) waive compliance with any such Purchaser Closing Condition, without prejudice to its right of termination in the event of non-fulfillment of any other Purchaser Closing Condition.

4.3 Vendor Closing Conditions

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Date (the "**Vendor Closing Conditions**"):

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated in Section 5.2 or elsewhere in this Agreement;
- (c) there shall be no litigation or proceedings pending against the Vendor, in respect of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (d) On the Closing Date, the Appointment Order and the Approval and Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition may be waived by the Vendor in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. The Closing of the Transaction shall deem all conditions to be waived or satisfied.

4.4 Vendor Closing Conditions Not Fulfilled

If any Vendor Closing Condition shall not have been fulfilled at or prior to Closing, then the Vendor in its sole subjective discretion may, without limiting any rights or remedies available to the Vendor at law or in equity, either:

- (a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement and, unless the Vendor Closing Condition(s) that was not fulfilled was the Vendor Closing Condition contained in Section 4.3(c) or (d), the Deposit shall be retained by the Vendor in accordance with the provisions of Section 2.5 hereof; or
- (b) waive compliance with any such Vendor Closing Condition without prejudice to its right of termination in the event of non-fulfillment of any other Vendor Closing Condition.

4.5 Approval and Vesting Order

The obligations of the Vendor and the Purchaser hereunder are subject to the mutual condition that the Vesting Order shall have been made by the Court on a date to be determined by the Receiver approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances. The Parties hereto acknowledge that the foregoing condition has been inserted for the mutual benefit of the Parties and is incapable of waiver. In the event that said condition has not been fulfilled by the aforesaid date, the Transaction shall automatically be deemed to be null and void and of no further force and effect as of said date and provided that the Purchaser is not in default of its obligations hereunder, the Deposit shall be promptly returned to the Purchaser in accordance with and subject to the provisions of Section 2.5 hereof. The Parties further acknowledge that the Application to the Court for the Vesting Order will be made as soon as reasonably practical after the binding Agreement is entered into by the Parties.

SECTION 5 - CLOSING

5.1 Closing

The completion of the Transaction shall take place on the Closing Date as specified in this Agreement or as otherwise determined by mutual agreement of the Parties in writing.

The Closing Date shall be subject to the approval of the Vesting Order, and to any approvals required from the City of Toronto pursuant to Instrument AT4601555 and related restrictions having been received. If either of the approval of the Vesting Order or any approvals required from the City of Toronto pursuant to Instrument AT4601555 and related restrictions have not been received by the initial Closing Date, then the Closing Date shall be extended ("Extended Closing Date") for a further period of 60 days. In the event that the approvals have not been received by the Extended Closing Date, then the Purchaser shall have the right to terminate this Agreement in writing to the Vendor

or to the Vendor's Solicitor at his absolute and sole discretion and the Deposit shall be returned to the Purchaser in full without interest or deduction.

5.2. Purchaser's Deliveries on Closing

On or before Closing, the Purchaser shall execute or deliver as applicable, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Purchase Price;
- (b) a certificate, dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser 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;
 - (c) an acknowledgement dated as of the Closing Date, that each of the Purchaser Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
- (d) assignment of the Purchased Assets and assumption of the Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;
- (e) the certificate and indemnity provided for under Section 2.11;
- (f) an undertaking to re-adjust any item on or omitted from the statement of adjustments subject to 60 day limitation period in Section 2.8;
- (g) an environmental release and indemnity indemnifying and holding the Vendor harmless from any and all damages, claims, actions, losses, costs, liabilities or expenses (collectively "**Damages**") suffered or incurred by the Vendor, directly or indirectly, as a result of or in connection with any of the following, and without restricting the generality of the foregoing, which include Damages incurred in addressing an administrative order by a Government Authority or in addressing a notice, investigation or other process which could reasonably be anticipated to result in such an order:
 - (i) the presence, release, or the threat of a release of any Hazardous Materials in, on or under the Property;
 - (ii) the presence of any Hazardous Materials in, on or under properties adjoining or proximate to the Property;
 - (iii) any other environmental matters relating to the Property;
 - (iv) the breach of any Environmental Laws applicable to the Property;
 - (v) the release or threatened release of any Hazardous Materials owned, managed, generated, disposed of, controlled or transported by or on behalf of the Purchaser;

- (vi) the Environmental Condition; or
- (vii) the Indemnity provided for in Schedule 3.3; and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

5.3 Vendor's Deliveries on Closing

- (a) On or before the Closing, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:
 - (i) statement of adjustments;
 - (ii) an acknowledgement dated as of the Closing Date, that each of the Vendor Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
 - (iii) an assignment of the Purchased Assets and assumption of the Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;
 - (iv) assignment of all Leases;
 - (v) the Approval and Vesting Order; and
 - (vi) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.
- (b) Upon the completion of the deliveries pursuant to Section 5.2 and 5.3(a), the Vendor shall immediately file a certificate with the Court (the **"Receiver's Certificate"**) that the Transaction has been completed and title to the Property shall vest in the Purchaser effective immediately upon the filing with the Court of the Receiver's Certificate and shall deliver to the Purchaser a copy of same.

5.4 Risk

The Purchased Assets shall be and remain at the risk of the Vendor until Closing. From and after Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Purchaser in writing within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Vendor shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the Purchaser and in such event the Parties hereto shall be released from all obligations and liabilities hereunder. If the Vendor shall not elect to terminate this Agreement as set out above, then the Transaction shall be completed in accordance with the terms and conditions hereof and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

5.5 Termination

If either the Vendor or the Purchaser validly terminates this Agreement pursuant to the provisions of Sections 4.2, 4.4, 4.5 or 5.4:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (b) the Purchaser shall have no right to specific performance or any other remedy against, or any right to recover on account of any Claim it may have from, the Vendor.

5.6 Breach by Purchaser

If all of the Purchaser Closing Conditions have been complied with or waived by the Purchaser and the Purchaser fails to comply with the terms of this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In addition, the Purchaser shall pay to the Vendor, on demand, the deficiency, if any, arising upon such resale (after deducting the expenses of resale) together with interest and all other damages or charges occasioned by or resulting from the default by the Purchaser.

5.7 Electronic Registration

In the event that a system for electronic registration ("Ereg") is operative and mandatory in the applicable land registry office, the Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor's solicitors, to complete the Transaction using Ereg in accordance with the Law Society of Ontario's (the "LSO") guidelines. If Ereg is operative on the Closing Date, (i) the Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the LSO, (ii) the Purchaser's solicitors will enter into the Vendor's solicitors' standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing the Transaction provided same are in accordance with LSO guidelines, and (iii) if the Purchaser's solicitors are unwilling or unable to complete the Transaction using Ereg, then the Purchaser's solicitors must attend at the Vendor's solicitors' office or at another location designated by the Vendor's solicitors at such time on Closing as directed by the Vendor's solicitors to complete the Transaction using Ereg utilizing the Vendor's solicitors' computer facilities, in which event, the Purchaser shall pay to the Vendor's solicitors a reasonable fee therefor.

SECTION 6 - GENERAL

6.1. Further Assurances

Each of the Parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

6.2. Notice

Any notice or other communication under this Agreement shall be in writing and may be

delivered personally or transmitted by electronic transmission, addressed
in the case of the Purchaser, as follows:

Attention: Simion Kronenfeld

Telephone No: 416-520-7111

Email: simion@ajglgroup.com

and in the case of the Vendor, as follows:

TDB Restructuring Limited, Court-Appointed
Receiver of 5004591 Ontario Inc.
11 King Street West
Suite 700, PO Box 27
Toronto, ON M5H 4C7

Attention: Arif Dhanani
Email: adhanani@tdbadvisory.ca

with a copy to:

Garfinkle Biderman LLP
801-1 Adelaide Street East
Toronto, ON M5C 2V9

Attention: Avrom W. Brown
Email: abrown@garfinkle.com

and a copy to:

Colliers Macaulay Nicolls Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1

Attention: Steve Keyzer
Email: steve.keyzer@colliers.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by electronic transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on that Business Day, and if transmitted by electronic transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

6.3. Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors.

6.4. Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

6.5. Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor; provided the Purchaser may assign its rights and obligations under this Agreement to an "affiliate" of the Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)), provided that the Purchaser remains liable, jointly, with such affiliate for all the obligations of the Purchaser hereunder. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.6. Amendments and Waiver

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Purchaser and the Vendor. The Vendor and the Purchaser may consent to any such amendment at any time prior to the Closing with the prior authorization of their respective boards of directors.

6.7. Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby. Subject to the Approval and Vesting Order being issued by the Court, this Agreement is intended to create binding obligations on the part of the Vendor as set

forth herein and on acceptance by the Purchaser, is intended to create binding obligations on the part of the Purchaser, as set out herein.

6.8. 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 in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

6.9. Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

6.10. Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

6.11. Commission

The Vendor shall be responsible for any commissions to the Agent. Any other commissions payable to any other party shall be the responsibility of the Purchaser.

6.12. Certain Words

In this Agreement, the words "including" and "includes" means "including (or includes) without limitation", and "third party" means any Person who is not a Party.

6.13. Statutory References

All references to any statute is to that statute or regulation as now enacted or as may from time to time be amended, re-enacted or replaced and includes all regulations made thereunder, unless something in the subject matter or context is inconsistent therewith or unless expressly provided otherwise in this Agreement.

6.14. Actions to be Performed on a Business Day

Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following

such day.

6.15. No Registrations

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Property. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Property and the Purchaser shall be deemed to be in default of its obligations hereunder. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property. The Purchaser acknowledges and agrees that until Closing, the Purchaser has no interest in the Property whatsoever, notwithstanding anything to the contrary herein.

6.16. Strict Construction

Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties 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 Agreement.

6.17. No Third Party Beneficiaries

This Agreement shall be binding upon and enure solely to the benefit of each of the Parties hereto and its permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement. Each of the Parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, survive the closing of the Transaction.

6.18. Planning Act

This Agreement is entered into subject to the express conditions that it is to be effective only if the provisions of Section 50 of the *Planning Act* (Ontario) and amendments, are complied with.

6.19. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

6.21 Expenses

Each Party shall be responsible for its own legal and other expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Transaction and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement.

(Remainder of this page intentionally left blank)

6.22 Announcements

Except as required by law including applicable regulatory and stock exchange requirements, all public announcements concerning the Transaction shall be jointly approved as to form, substance and timing by the Parties after consultation.

The Parties have executed this Agreement by their duly authorized officers.

**TDB RESTRUCTURING LIMITED in its
capacity as Court-Appointed Receiver and not in
its personal capacity**

Per: _____
Name: Arif Dhanani, CPA, CA, CIRP, LIT
Title: Managing Director

1001079582 ONTARIO INC.

PER _____
Name:
Title:

Schedule "A"

Property

PIN No. 10306-0064 (LT) - 2849 Islington Avenue

Part Lot 22 Concession 6 WYS Township of York as in NY735134; Toronto (N York), City of Toronto

PIN No. 10306-0035 (LT) - 2857 Islington Avenue

Part Lot 2 Plan 9059 North York as in 18379983; Toronto (N York), City of Toronto

PIN No. 10306-0034 (LT)- 2855 Islington Avenue

Part Lot 2 Plan 9059 North York as in 18379984; Toronto (N York), City of Toronto

PIN No. 10306-0033 (LT)- 2853 Islington Avenue

Part Lot 1 Plan 9059 North York as in 18221318; Toronto (N York), City of Toronto

PIN No. 10306-0032 (LT)- 2851 Islington Avenue

Part Lot 1 Plan 9059 North York as in TR92058; Toronto (N York), City of Toronto

Schedule "B"

Permitted Encumbrances

"Permitted Encumbrances" means the following:

1. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act*, R.S.O. 1990, and any amendments thereto or any successor legislation, except paragraph 11;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements or rights of way in favour of any governmental authority or public utility provided that none of the foregoing interfere in any material adverse respect with the current use of the Property;
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due;
5. All agreements and easements, registered or otherwise, for utilities and services for hydro, water, heat, power, sewer, drainage, cable and telephone serving the Property, adjacent or neighbouring properties, provided none of the foregoing interfere in any material adverse respect with the current use of the Property;
6. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property provided that in either case same do not materially adversely impair the use, operation, or marketability of the Property;
7. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
8. Any breaches of any Applicable Laws, including Work Orders;
9. Any subdivision agreements, site plan agreements, developments and any other agreements with the Municipality, Region, publicly regulated utilities or other governmental authorities having jurisdiction;
10. Minor title defects, if any, that do not in the aggregate materially affect the use of the Property for the purposes for which it is used on the date of acceptance of this Agreement;
11. The following specific instruments registered on title against the Property:

Permitted Encumbrances related to the Property
(unaffected by the Approval and Vesting Order)

Reg. Num.	Date	Instrument Type	Parties To
NY524794	November 21, 1967	Agreement	The Corporation of the Borough of North York
NY579166	July 20, 1970	By-law exempting Part Lot Control	
NY593705	May 12, 1971	Agreement	The Borough of North York
NY608306	December 29, 1971	Agreement	The Corporation of the Borough of North York
NY620929	July 28, 1972	Municipal By-law	
NY632269	January 29, 1973	Notice of Airport Zoning Regulations	Department of Transportation
TB379984	December 29, 1986	Statutory Declaration of Anthony Dilena	
TR57844	March 27, 2000	Notice	Her Majesty the Queen in Right of the Department of Transport Canada
AT4601553	June 19, 2017	Section 37 Agreement	City of Toronto
AT4601554	June 19, 2017	Rental Housing Agreement	City of Toronto
AT4601555	June 19, 2017	Restriction preventing any Transfer or Charge of the lands or any part thereof without the prior written consent of the Chief Planner, of the City of Toronto	
AT4867240	May 18, 2018	Site Plan Agreement	City of Toronto

33

Schedule "C"

Excluded Assets

This is **Exhibit 13** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

From: Kathy Ples <kples@teplitskyllp.com>
Sent: December 16, 2024 3:54 PM
To: jeff.larry@paliareroland.com
Cc: Jonathan Kulathungam; ryan.shah@paliareroland.com; wgreenspoon@garfinkle.com; dullmann@blaney.com; jwajs@stikeman.com; dmurdoch@stikeman.com; navis@stikeman.com; imarks@robapp.com; mgasch@robapp.com; rtaylor@cmbllaw.ca; jwadden@tyrllp.com; ssherrington@tyrllp.com; jlee@cl-law.ca; ronald@davidzonlaw.com; adhanani@tdbadvisory.ca; btannenbaum@tdbadvisory.ca; smosonyi@robapp.com; peter@himprolaw.com; rsparano@himprolaw.com; jmorley@LN.law; Dale Denis; paul@starkmanlawyers.com; calvin@starkmanlawyers.com; asamat@blaney.com; rooney@paulfrooneyprofcorp.com
Subject: Arjun Anand in trust for a company to be incorporated (34013) RE: Cameron Stephens v. Conacher Kingston - Court File No. CV-23-00701672-00CL - Notice of Appeal and Certificate Respecting Evidence
Attachments: NOA - Notice of Appeal - Appellant - Arjun Anand in trust for a company to be incorporated (00738162xC0375).PDF; ACRE - Certificate Respecting Evidence - Appellant - Arjun Anand in trust for a company to be incorporated (00738158xC0375).PDF

Dear Counsel:

As you are aware we act as counsel for Arjun Anand, in trust for a corporation to be incorporated.

Enclosed please find and served on you pursuant to the *Rules of Civil Procedure* and the provisions of the *Bankruptcy and Insolvency Act*, a Notice of Appeal and Certificate Respecting Evidence.

We are requesting an expedited appeal date.

Can you please advise whether the Receiver will agree to a suspension of this auction process as per the Order of Justice Black pending a determination of the appeal? My client will not be amending the prior offer which was accepted by the Receiver.

The attached documents with respect to the above-noted matter have also been shared with you on *xchangedocs*, our secure document exchange portal. If you prefer to view or download the document, click on the link below (which will first confirm you – one time only - as the authenticated recipient). This secure document service is provided at no cost to you.

Document Name: ***NOA - Notice of Appeal - Appellant - Arjun Anand in trust for a company to be incorporated (00738162xC0375)***

Document Name: ***ACRE - Certificate Respecting Evidence - Appellant - Arjun Anand in trust for a company to be incorporated (00738158xC0375)***

| [Subscribe and View in xchangedocs](#) |

(If you have any difficulty accessing the documents or registering for the service, kindly contact the Sender, or ACL/xchangedocs Support at support@xchangedocs.ca).

Yours very truly,
TEPLITSKY LLP

Per:

Jonathan Kulathungam

Jonathan Kulathungam

JK/kp

cc: Service List

 Please consider the environment before printing this email

IMPORTANT NOTE:

The following material is intended for use only by the individual or entity to which it is specifically addressed above and should not be read by, or delivered to, any other person. Such material may contain privileged or confidential information, the disclosure or other use of which by other than the intended recipient may result in the breach of certain laws or the infringement of rights of third parties. If you have received this email in error, please notify us immediately by calling our offices (collect if necessary), at (416) 365-9320, so that we can make appropriate arrangements for the return of this email and any confirmation copy which you may receive by mail, at our expense. We thank you in advance for your cooperation and assistance.

Court of Appeal File No.

Court File No. CV-23-00701672-00CL

NOTICE OF APPEAL TO THE COURT OF APPEAL

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC

Respondent

NOTICE OF APPEAL

THE APPELLANT Arjun Anand in trust for a company to be incorporated (the “**Appellant**”) APPEALS to the Court of Appeal from the order and decision of the Honourable Justice Black (“**Motions Judge**”) dated December 10, 2024 (the “**Order**”), made at Toronto, Ontario, pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”).

THE APPELLANT ASKS that that the Order and Decision be set aside and a judgment be granted as follows:

- i. An Order setting aside the Order whereby the Motions Judge refused to approve a firm Agreement of Purchase and sale dated September 26, 2024 (“**APS**”) in respect of the real property municipally known as 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”).

-2-

- ii. An Order granting an approval and vesting order (“AVO”) with respect to the APS between the Receiver and the Appellant, with any necessary extensions of time (the **"Toronto Sales Transaction"**);
- iii. An Order directing the Receiver to proceed with the Toronto Sales Transaction and vesting title to the Toronto Property to the Appellant on the closing of the Toronto Sales Transaction;
- iv. If necessary, an Order declaring that the Appellant has the right to appeal to this Court under section 193 (c) of the BIA, and that there is a stay of proceedings under section 195 of the BIA;
- v. In the alternative, an order granting the Appellant leave to appeal pursuant to section 193(e) of the BIA and an order granting a stay of the Order pending appeal;
- vi. If necessary, an Order for the abridgment of time to serve and file materials for the Notice of Appeal and dispensing with further service thereof;
- vii. An Order expediting the appeal;
- viii. An Order granting the Appellants their costs of this appeal and of the motion before the Motions Judge on a substantial indemnity scale;
- ix. Such further and other relief as the Appellant may request and this Honorable Court may deem just.

-3-

THE GROUNDS OF APPEAL are as follows:

BACKGROUND

1. On December 6, 2023, the RSM Canada Limited was appointed Receiver without security of properties municipally known as 2849, 2851, 2853 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”) pursuant to an order of the Commercial Court (“**Appointment Order**”). On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of RSM Canada Limited as Receiver (the “**Receiver**”).
2. The Appointment Order was sought by the secured lender being Cameron Stephen Mortgage Capital Inc. (the “**Lender**”) pursuant to a mortgage in the amount of \$15,600,000.00 registered on the Toronto Property. The Lender is the only creditor with a registered charge on title to the Toronto Property.

TERMINATED SALE OF THE TORONTO PROPERTY

3. On or about June 12, 2024, the Receiver entered into an Agreement of Purchase and Sale for the Toronto Property (the “**Terminated APS**”) with a third party purchaser (“**Third Party Purchaser**”).
4. On July 24, 2024, the Receiver sought and obtained an order from the court approving the transaction.
5. The Third Party Purchaser sought multiple extensions. After multiple attempts to secure a commitment from the Third Party to close the transaction, the Receiver

-4-

ultimately notified the Third Party on August 27, 2024, that it was terminating the APS due to its failure to close the transaction.

REMARKETING AND SALES PROCESS

6. The Receiver remarketed the Toronto Property which included extensive marketing efforts, as set out in the Third Report prepared by the Receiver dated November 25, 2024 (the **Third Report of the Receiver**). The Receiver and the listing agent being Colliers Macaulay Nicolls Inc. (“**Colliers**”) set out a detailed sales procedure which included:
- (i) Setting a bid deadline of September 26, 2024 at 3:00 p.m. (“**Bid Deadline**”) to receive all bids;
 - (ii) Sending out email “*blast to approximately 3,000 prospective purchasers*”;
 - (iii) Relisting the Toronto Property on the multiple listing service;
 - (iv) Contacting all previous bidders and those who had signed confidential agreements, to advise them that the Toronto Property was being remarketed;
 - (v) Maintaining an electronic data room to provide access to confidential information pertaining to the Toronto Property to parties who had executed a confidentiality agreement.
- (Hereinafter referred to as the “**Sales Process**”)

-5-

7. After its extensive marketing efforts, the Receiver and Colliers received two offers and one letter of intent. A subsequent offer was received after the Bid Deadline on September 28, 2024, which was also considered by the Receiver and Colliers. The Receiver determined that the offer from the Appellant was the highest and best offer.
8. On October 7, 2024, the Receiver executed the APS with the Appellant subject to court approval. The APS was conditional, but the Appellant waived all conditions. Accordingly, the only outstanding matter required to close the transaction was Court approval and issuance of an approval and vesting order vesting the purchased assets in the Appellant.
9. The Appellant complied with the Sales Process and the Bid Deadline. In good faith, the Appellant completed its due diligence and waived all conditions.
10. The motion for the approval and vesting order for the APS was scheduled and was heard by Justice Black on December 10, 2024 (“**Motion**”).

LATE BIDDER AND AVO MOTION

11. On December 6, 2024, 4 days prior to the Motion, 1001079582 Ontario Inc. (“**Late Bidder**”) submitted an offer (“**Late Offer**”) to purchase the Toronto Property. This was over nine weeks after the Bid Deadline. This was after the Receiver had completed the Sales Process and had entered into the APS, and after the Appellant had waived all conditions.

-6-

12. On December 6, 2024, the Late Bidder in essence, went “fishing”. They initially provided a bid which the Receiver said was not “substantially high”.
Unfortunately, despite seeking a sealing order, the purchase price to be paid by the Appellants was indirectly disclosed to the Late Bidder (by the Receiver) (“**Confidential Information**”). This resulted in the Late Bidder making two additional bids each for slightly higher increments with the hope that the Receiver (and the court) would eventually “bite” and would consider the Late Bidder’s offer.
13. This use of the Confidential Information and the abuse of same brings into question the entire process.
14. Despite the Late Bidder not having any standing, the learned Motions Judge permitted the Late Bidder to make submissions and despite rejecting all the arguments of the Late Bidder, accepted the submissions of the Late Bidder to:
 - (i) Re-open the completed Sales Process; and
 - (ii) Convert the Sale Process to an auction.
15. The Motions Judge correctly made the following findings:
 - (i) Rejected the arguments of the Late Bidder that it had an indirect ownership interest, was a beneficial owner and therefore had a right to redeem;

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- (ii) That the integrity of the process must be maintained, and correctly quoted prior well-established jurisprudence as it relates to the integrity of the process;
- (iii) Rejected the Late Bidder's assertions that Colliers failed to provide proper advice and failed to ensure that the Toronto Property was exposed to the residential market;
- (iv) Rejected the Late Bidder's assertions that the Receiver and/or Colliers failed to properly market and sell the Toronto Property;
- (v) His Honour explicitly found that:

"As noted, I do not find that there are any flaws with the sale undertaken here; to the contrary I find that the conduct of the Receiver, and those involved in the process, including Collier, was unassailable" (paragraph 33) [emphasis added].

- (vi) His Honour found that the Appellant acted in "good faith" (paragraph 31)
- (collectively, hereinafter referred to as "**Findings of Fact**").

16. Despite making his Findings of Fact, His Honour went on to state:

"Nonetheless, I find that the magnitude by which the Third Offer exceeds the subject price does in fact qualify as "substantially higher" and that it is not appropriate or in the interest of the majority of the stakeholders to leave that much money "on the table"'"

-8-

17. His Honour did not approve the firm APS which had come to fruition from a robust and “*unassailable*” Sale Process. Rather, the learned Motions Judge re-opened the Sale Process, and implemented an auction process and accepted the Late Bidder suggestion that if, ultimately, the Appellant does not obtain the lands, then the Appellant would be entitled to “*reasonable legal costs associated with the process to date.*”
18. His Honour, in setting aside the already completed Sale Process and re-opening the Sale Process, did so in contrary to well-established case law and, in particular, the principles as set out in *Royal Bank v. SoundAir Corp.*¹
19. There were no “*exceptional circumstances*” which would warrant rejection of the Receiver’s recommendations or the principles in *Royal Bank v. SoundAir Corp.* Yet, the LMJ found “*unique circumstances*” when there were none. As the jurisprudence clearly established, it is not uncommon for the late bidders or owners attempting to redeem at the 11th hour. The courts have consistently maintained that the integrity of the process must be upheld and reject the requests of the late bidders.
20. His Honour categorized the facts as being unique in circumstances where they were not and attempted to circumvent the well-established jurisprudence based on such a finding.

¹ [*Royal Bank of Canada v. Soundair Corp.*](#), 1991 CanLII 2727 (ON CA) [“*SoundAir*”].

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21. Permitting the Late Bidder to vary and set aside the already completed Sale Process, in essence, has created a situation where the Late Bidder has stepped into the shoes of the Receiver and is now dictating the process.
22. The Learned Motions Judge erred in law because he misapplied the test as set out in *SoundAir* as it relates to subsequent late bids. As set out in *SoundAir*, a substantially higher late bid can be considered by the Court but only if it meets the following conjunctive test:
- “...prices in other offers have relevance only if they show that the price contained in the offer accepted by the receiver was so unreasonably low as to demonstrate that the receiver was improvident in accepting it.” [emphasis added]*
23. In other words, there needs to be evidence **and a finding** that:
- (i) The price contained in the offer accepted by the Receiver was “unreasonably low”; **and**
- (ii) The Receiver **was improvident** in accepting the earlier offer.
24. The Motions Judge found that the Third Offer was “*substantially higher*” and he also found that the Receiver’s conduct was “*unassailable.*”
25. Having made the explicit finding of “*unassailable*” conduct on the part of the Receiver, it follows that the Receiver could not have acted improvidently in accepting the APS and the Court could not set aside the already completed Sale Process.

-10-

26. In effect, the Motions Judge permitted the Late Bidder to take advantage of Confidential Information (its knowledge of the sealed purchase price offered by the Appellant). The evidence before the Motions Judge was that:
- (i) Three offers were received on or about the Bid Deadline. The APS was the highest offer. A reasonable inference can be drawn that the true value of the Subject Property was in line with the three offers and the accepted highest offer being that of the Toronto Purchaser.
 - (ii) The Late Bidder using Confidential Information made three bids between December 6th and December 10th, each bid being higher than the previous bid by a few hundred thousand dollars. The Late Bidder kept “*letting out line*” until the Receiver “*bit*”.
27. The Late Bidder improperly used and took advantage of the Confidential Information which constitutes a serious breach of the integrity of the Sales Process.
28. The Court should not condone such wrongful conduct. It brings into question the integrity of the entire process. Permitting the Late Bidder to take advantage and use such Confidential Information leads to a “*mockery of the system*” and will have a chilling effect on future receiverships and more particularly parties’ willingness to participate in a sales process.

-11-

THE BASIS OF THE APPELLATE COURT'S JURISDICTION:

29. The Appellants have an automatic right of appeal to the Ontario Court of Appeal pursuant to subsections 193(c) of the BIA, and there is an automatic stay pending appeal pursuant to section 195 of the BIA.
30. In addition, and/or in the alternative, the Appellant seeks leave to appeal pursuant to subsection 193(e) of the BIA. The appeal raises an issue of general importance to bankruptcy/insolvency practice and the administration of justice.
31. Despite holding that the Receiver's conduct was unassailable (which means he did not act improvidently), the learned motions judge set aside the APS and ordered the Proposed Auction Process. By doing so, he rejected the well-established *Soundair* principles. It is an error of law to ignore the Sale Process, misapply the *Soundair Principles*, and set aside the APS simply due to a later and higher bid. As prior Courts have said, "*to do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement.*"
32. The appeal is *prima facie* meritorious as the Order is contrary to the established law and amounts to an abuse of judicial power. Moreover, there is no evidence that the appeal would not unduly hinder the progress of the bankruptcy / insolvency proceedings or cause any prejudice to any of the majority stakeholders.

-12-

33. To permit the decision to stand would create significant uncertainty in the commercial bar and in particular, as it relates to the conduct of the Receiver. Potential purchasers would be hesitant to negotiate and enter into an agreement of purchase and sale with a court appointed Receiver only to have the potential purchaser's genuine good faith efforts be ignored by a late bidder who took advantage of confidential information and circumvented the Sales Process.
34. The integrity of the court ordered Receiver and Sales Process must be protected. The court has previously consistently favoured an approach that preserves the integrity of the process.
35. Inconsistent interpretation and application of the relevant test will lead to lack of certainty. A dangerous precedent will be set if this decision is permitted to remain. Courts have consistently maintained that the integrity of the Sales Process must be maintained, and the Court will only consider a late bid if the steps taken by the Receiver were improvident. This has now been expanded to permit a late bidder to set aside an "unassailable" sales process merely by improperly making use of Confidential Information and thereby gaining a competitive advantage and making an 11th hour bid. The integrity of the entire court ordered receivership and Sales Process will be brought into disrepute and question.
36. The Appellants are committed to moving this appeal forward expeditiously. By contrast, there is self-evident extreme prejudice to the Appellant if the Proposed Auction Process goes ahead before the Appellant's appeal rights are concluded.

-13-

37. There is an automatic stay pending appeal pursuant to section 195 of the BIA. However, if the Court determines that there is no automatic stay pending appeal despite the granting of leave, the Appellant/Moving Party requests that the Court grants a stay pending appeal pursuant to Rule 63.02(1)(b) of the *Rules of Civil Procedure*, as the appeal will be rendered moot if a stay is not granted.
38. Section 183(2) of the *Bankruptcy and Insolvency Act*.
39. Section 31 and 32 of the *Bankruptcy and Insolvency General Rules*
40. Such other grounds as counsel may submit and this Honorable Court may accept.

December 16, 2024

TEPLITSKY LLP

Barristers
70 Bond Street
Suite 200
Toronto ON M5B 1X3

Jonathan Kulathungam (42049N)
jkulathungam@teplitskyllp.com

Tel : (416) 365-9320
Fax: (416) 365-0695

Lawyers for the Appellant, Toronto
Purchaser, Arjun Anand
in Trust for a Company to be Incorporated

TO: SERVICE LIST

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

-and-

CONACHER KINGSTON HOLDINGS INC. AND 5004591
ONTARIO INC
Respondent

Applicant

Court of Appeal File No.

Court File No. CV-23-00701672-00CL

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPEAL

TEPLITSKY LLP

Barristers
70 Bond Street
Suite 200
Toronto ON M5B 1X3

Jonathan Kulathungam (42049N)
jkulathungam@teplitsky/lp.com

Nipuni Panamaldeniya (77106A)
npanama@teplitsky/lp.com

Tel: (416) 365-9320

Lawyers for the Appellant, Arijun Anand
in Trust for a Company to be Incorporated

Parties served:
Service list

This is **Exhibit 14** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

From: ryan.shah@paliarerland.com
Sent: December 23, 2024 12:47 PM
To: jkulathungam@teplitskyllp.com
Cc: Jeff.Larry@paliarerland.com; ryan.shah@paliarerland.com; wgreenspoon@garfinkle.com; dullmann@blaney.com; jwajs@stikeman.com; dmurdoch@stikeman.com; navis@stikeman.com; imarks@robapp.com; mgasch@robapp.com; rtaylor@cmbllaw.ca; jwadden@tyrllp.com; ssherrington@tyrllp.com; jlee@cl-law.ca; ronald@davidzonlaw.com; adhanani@tdbadvisory.ca; btannenbaum@tdbadvisory.ca; smosonyi@robapp.com; peter@himplolaw.com; rsparano@himplolaw.com; jmorley@LN.law; Dale Denis; paul@starkmanlawyers.com; calvin@starkmanlawyers.com; asamat@blaney.com; rooney@paulfrooneyprofcorp.com; MByers@CMBLaw.ca; Candace.Baumtrog@Paliarerland.com; beatrice.loschiavo@paliarerland.com
Subject: CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. - CV-23-00701672-00CL [IMAN-PRIMANAGE.FID407588]
Attachments: 23-DEC-2024 Ltr to Teplitsky(5636551.1).pdf

Mr. Kulathungam:

Please find attached a letter from Jeffrey Larry of today's date.

Regards,



Ryan Shah
Associate

Phone: 647-865-4702
Email: ryan.shah@paliarerland.com

155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

paliarerland.com

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Paliare Roland

Jeffrey Larry
Paliare Roland Rosenberg Rothstein LLP
155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

jeff.larry@paliareroland.com
T. 416.646.4330 / F. 416.646.4301

File # 102488

December 23, 2024

VIA EMAIL

Jonathan Kulathungam
Teplitsky LLP
70 Bond St, #200
Toronto, Ontario M5B 1X3

Dear Jonathan Kulathungam:

**Re: Receivership of Real Property Municipally Known as 2849, 2851, 2853, 2855 and 2857
Islington Avenue, Toronto, Ontario (the "Toronto Property")**

We are independent counsel to TDB Restructuring Ltd. (the "**Receiver**") in its capacity as Receiver of the Toronto Property, among others.

I reference the notice of appeal (the "**NOA**") filed in respect of Arjun Anand's appeal (the "**Appeal**") of the Order of Justice Black dated December 10, 2024 (the "**Order**") in the above noted matter.

The Receiver is of the view that the Appeal involves property that exceeds \$10,000 in value and, accordingly, Mr. Anand has a right to appeal the Order under section 193(c) of the *Bankruptcy and Insolvency Act* ("**BIA**").

The Receiver's position relies on the decision of the Court of Appeal for Ontario in *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*,¹ where the Court found that an appeal of an order (1) dismissing an approval and vesting order proposed by a court-appointed receiver and (2) permitting the debtor to redeem the subject property, was properly commenced without leave to appeal under section 193(c) of the *BIA*.

¹ 2024 ONCA 584.

Paliare Roland

Accordingly, the Receiver is of the view that the Order is stayed pending the determination of the Appeal, pursuant to section 195 of the *BIA*.

Yours very truly,
Paliare Roland Rosenberg Rothstein LLP

A handwritten signature in black ink, appearing to be 'JLRS', written over a light blue horizontal line.

Jeffrey Larry
JL:RS
c: Service List

Doc 5636551 v1

This is **Exhibit 15** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

From: Sara Collins <scollins@teplitskyllp.com>
Sent: February 12, 2025 10:39 AM
To: JUS-G-MAG-Judicial COA E-file
Cc: dullmann@blaney.com; asamat@blaney.com; jlee@cl-law.ca; MByers@CMBLaw.ca; ronald@davidzonlaw.com; Dale Denis; peter@himprolaw.com; rsparano@himprolaw.com; jmorley@LN.law; jeff.larry@paliareroland.com; ryan.shah@paliareroland.com; rooney@paulfrooneyprofcorp.com; imarks@robapp.com; mgasch@robapp.com; smosonyi@robapp.com; calvin@starkmanlawyers.com; paul@starkmanlawyers.com; dmurdoch@stikeman.com; jwajs@stikeman.com; navis@stikeman.com; Jason Wadden; Shimon Sherrington; adhanani@tdbadvisory.ca; btannenbaum@tdbadvisory.ca; Jonathan Kulathungam; Nipuni Panama; Kathy Ples
Subject: Court of Appeal File No. COA-24-CV-1328
Attachments: Letter to Court (00750648xC0375).pdf

February 12, 2025

Our File 33756

Court of Appeal for Ontario
130 Queen Street West
Toronto, Ontario
M5H 2N5

SENT BY EMAIL TO:
COA.E-file@ontario.ca

Dear Sir:

Re: Court of Appeal File No. COA-24-CV-1328

We are Counsel for the Appellant in the above-noted matter. We are copying this letter to counsel for all parties.

The Appellants filed a Notice of Appeal (“**Appeal**”) on or around January 16, 2025, and perfected the appeal on January 28, 2025. The Appellants seek an expedited hearing date for the Appeal due to urgency as outlined below.

The matter concerns a receivership wherein TDB Restructuring Limited acts as the Court appointed receiver (“**Receiver**”) over, *inter alia*, property municipally known as 2849, 2851, 2853 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”). The secured lender is Cameron Stephen Mortgage Capital Inc. The debtors are Conacher Kingston Holdings Inc. and 5004591 Ontario Inc. (“**Debtors**”)

The Appellants are appealing the order and decision dated December 10, 2024, made by the Honourable Justice Black (“**Order**”) with respect to an approval and vesting motion (“**AVO Motion**”) wherein His Honour denied the Receiver’s Motion to approve the sale of the Toronto Property to the Appellant, but rather reopened the completed sales process.

We are seeking an expedited appeal as the interest and costs associated with further delaying or protracting the sale of the Toronto Property would be borne by, and be to the detriment of, the Debtors’ creditors:

- a. As of November 2024, the amount outstanding under the loan (and secured by the Toronto Property) is estimated to be approximately \$16 million, plus additional costs.

- b. Interest continues to accrue at the rate of 12.25% per annum, which amounts to over \$163,000.00 monthly.
- c. As of August 2024, the outstanding property taxes with respect to the Toronto Property total more than \$200,000.00 and continues to increase. The Receiver intends to pay these from the proceeds of the sale of the Toronto Property.

The Appellants are seeking:

- (i) An abridgment of the time limits for serving and / or filing the relevant material for the Appeal and;
- (ii) That the Appeal be expedited to be heard on any day of March except March 10 to March 20, 2025.

Yours very truly,
TEPLITSKY LLP

Per:

Jonathan Kulathungam

Jonathan Kulathungam

JK/kp

cc: David Ullman (dullmann@blaney.com)
Anisha Samat (asamat@blaney.com)
Jacob Lee (jlee@cl-law.ca)
Michael Byers (MByers@CMBLaw.ca)
Ronald Davidzon (ronald@davidzonlaw.com)
Dale Denis (dale@dilitigation.com)
Peter Proszanski (peter@himprolaw.com)
Raffaele Sparano (rsparano@himprolaw.com)
Jenna Morley (jmorley@LN.law)
Jeff Larry (jeff.larry@paliareroland.com)
Ryan Shah (ryan.shah@paliareroland.com)
Paul F. Rooney (rooney@paulfrooneyprofcorp.com)
Irving Marks (imarks@robapp.com)
Michael Gasch (mgasch@robapp.com)
Samuel Mosonyi (smosonyi@robapp.com)
Calvin Zhang (calvin@starkmanlawyers.com)
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Shimon Sherrington (ssherrington@tyrllp.com)
Arif Dhanani (adhanani@tdbadvisory.ca)
Bryan Tannenbaum (btannenbaum@tdbadvisory.ca)

Regards,

Sara Collins

Legal Assistant to Daniel Nishiguchi, Nipuni Panamaldeniya and Mariah Tianna Crudo

scollins@teplitskyllp.com

416.365.9320 x134



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This is **Exhibit 16** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Dale Denis

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Subject: RE: Court of Appeal File No. COA-24-CV-1328

Good afternoon,

Your perfection materials have been received and are currently being reviewed by a member of staff. Please resubmit this request once you have received confirmation that your appeal has been perfected. I have spoken with the staff member reviewing your materials and asked them to expedite their review so that this request can be processed as soon as possible.

Court of Appeal for Ontario | Cour d'appel de l'Ontario
Noah D.

[416-327-5020](tel:416-327-5020)

[1-855-718-1756](tel:1-855-718-1756) (toll free | sans frais)

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Subject: Court of Appeal File No. COA-24-CV-1328

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February 12, 2025

Our File 33756

Court of Appeal for Ontario
130 Queen Street West
Toronto, Ontario
M5H 2N5

SENT BY EMAIL TO:
COA.E-file@ontario.ca

Dear Sir:

Re: Court of Appeal File No. COA-24-CV-1328

We are Counsel for the Appellant in the above-noted matter. We are copying this letter to counsel for all parties.

The Appellants filed a Notice of Appeal (“**Appeal**”) on or around January 16, 2025, and perfected the appeal on January 28, 2025. The Appellants seek an expedited hearing date for the Appeal due to urgency as outlined below.

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We are seeking an expedited appeal as the interest and costs associated with further delaying or protracting the sale of the Toronto Property would be borne by, and be to the detriment of, the Debtors’ creditors:

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The Appellants are seeking:

- (i) An abridgment of the time limits for serving and / or filing the relevant material for the Appeal and;
- (ii) That the Appeal be expedited to be heard on any day of March except March 10 to March 20, 2025.

Yours very truly,
TEPLITSKY LLP

Per:

Jonathan Kilathungam

JK/kp

Jonathan Kulathungam

cc: David Ullman (dullmann@blaney.com)
Anisha Samat (asamat@blaney.com)
Jacob Lee (jlee@cl-law.ca)
Michael Byers (MByers@CMBLaw.ca)
Ronald Davidzon (ronald@davidzonlaw.com)
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Shimon Sherrington (ssherrington@tyrllp.com)
Arif Dhanani (adhanani@tdbadvisory.ca)
Bryan Tannenbaum (btannenbaum@tdbadvisory.ca)

Regards,

Sara Collins

Legal Assistant to Daniel Nishiguchi, Nipuni Panamaldeniya and Mariah Tianna Crudo

scollins@teplitskyllp.com

416.365.9320 x134



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Sent: February 18, 2025 12:31 PM
To: JUS-G-MAG-Judicial COA E-file
Cc: dullmann@blaney.com; asamat@blaney.com; jlee@cl-law.ca; MByers@CMBLaw.ca; ronald@davidzonlaw.com; Dale Denis; peter@himprolaw.com; rsparano@himprolaw.com; jmorley@LN.law; jeff.larry@paliareroland.com; ryan.shah@paliareroland.com; rooney@paulfrooneyprofcorp.com; imarks@robapp.com; mgasch@robapp.com; smosonyi@robapp.com; calvin@starkmanlawyers.com; paul@starkmanlawyers.com; dmurdoch@stikeman.com; jwajs@stikeman.com; navis@stikeman.com; Jason Wadden; Shimon Sherrington; adhanani@tdbadvisory.ca; btannenbaum@tdbadvisory.ca; Jonathan Kulathungam; Nipuni Panama; Kathy Ples
Subject: RE: Court of Appeal File No. COA-24-CV-1328

Good morning,

We are following up on your email below. Could you please update us on whether our request has been processed with the expedited review of the materials?

Regards,

Sara Collins
Legal Assistant to Daniel Nishiguchi, Nipuni Panamaldeniya and Mariah Tianna Crudo
scollins@teplitskyllp.com
416.365.9320 x134



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<kples@teplitskyllp.com>

Subject: RE: Court of Appeal File No. COA-24-CV-1328

Good afternoon,

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Court of Appeal for Ontario | Cour d'appel de l'Ontario

Noah D.

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Subject: Court of Appeal File No. COA-24-CV-1328

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February 12, 2025

Our File 33756

Court of Appeal for Ontario
130 Queen Street West
Toronto, Ontario
M5H 2N5

SENT BY EMAIL TO:
COA.E-file@ontario.ca

Dear Sir:

Re: Court of Appeal File No. COA-24-CV-1328

We are Counsel for the Appellant in the above-noted matter. We are copying this letter to counsel for all parties.

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Yours very truly,
TEPLITSKY LLP

Per:

Jonathan Kulathungam

Jonathan Kulathungam

JK/kp

cc: David Ullman (dullmann@blaney.com)
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Bryan Tannenbaum (btannenbaum@tdbadvisory.ca)

Regards,

Sara Collins

Legal Assistant to Daniel Nishiguchi, Nipuni Panamaldeniya and Mariah Tianna Crudo

scollins@teplitskyllp.com

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Sent: February 19, 2025 11:53 AM
To: 'Sara Collins'
Cc: dullmann@blaney.com; asamat@blaney.com; jlee@cl-law.ca; MByers@CMBLaw.ca; ronald@davidzonlaw.com; Dale Denis; peter@himprolaw.com; rsparano@himprolaw.com; jmorley@LN.law; jeff.larry@paliareroland.com; ryan.shah@paliareroland.com; rooney@paulfrooneyprofcorp.com; imarks@robapp.com; mgasch@robapp.com; smosonyi@robapp.com; calvin@starkmanlawyers.com; paul@starkmanlawyers.com; dmurdoch@stikeman.com; jwajs@stikeman.com; navis@stikeman.com; Jason Wadden; Shimon Sherrington; adhanani@tdbadvisory.ca; btannenbaum@tdbadvisory.ca; Jonathan Kulathungam; Nipuni Panama; Kathy Ples
Subject: RE: Court of Appeal File No. COA-24-CV-1328
Attachments: RE: Court File No. COA-24-CV-1328 - Appellant's Appeal Materials - Arjun Anand in trust for a company to be incorporated (34013) RE: Cameron Stephens v. Conacher Kingston

Good morning,

I believe you have received an email today advising that the Appeal Book and Compendium has been rejected for filing as per the email attached.

Thank you,

Court of Appeal for Ontario | Cour d'appel de l'Ontario
Rebecca S.

[416-327-5020](tel:416-327-5020)

[1-855-718-1756](tel:1-855-718-1756) (toll free | sans frais)

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Kulathungam <jkulathungam@teplitskyllp.com>; Nipuni Panama <npanama@teplitskyllp.com>; Kathy Ples <kples@teplitskyllp.com>

Subject: RE: Court of Appeal File No. COA-24-CV-1328

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Sara Collins

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Sent: Wednesday, February 12, 2025 1:20 PM

To: Sara Collins <scollins@teplitskyllp.com>

Cc: dullmann@blaney.com; asamat@blaney.com; jlee@cl-law.ca; MByers@CMBLaw.ca; ronald@davidzonlaw.com; dale@dilitigation.com; peter@himprolaw.com; rsparano@himprolaw.com; jmorley@LN.law; jeff.larry@paliareroland.com; ryan.shah@paliareroland.com; rooney@paulfrooneyprofcorp.com; imarks@robapp.com; mgasch@robapp.com; smosonyi@robapp.com; calvin@starkmanlawyers.com; paul@starkmanlawyers.com; dmurdoch@stikeman.com; jwajs@stikeman.com; navis@stikeman.com; Jason Wadden <jwadden@tyrllp.com>; Shimon Sherrington <ssherrington@tyrllp.com>; adhanani@tdbadvisory.ca; btannenbaum@tdbadvisory.ca; Jonathan Kulathungam <jkulathungam@teplitskyllp.com>; Nipuni Panama <npanama@teplitskyllp.com>; Kathy Ples <kples@teplitskyllp.com>

Subject: RE: Court of Appeal File No. COA-24-CV-1328

Good afternoon,

Your perfection materials have been received and are currently being reviewed by a member of staff. Please resubmit this request once you have received confirmation that your appeal has been perfected. I have spoken with the staff member reviewing your materials and asked them to expedite their review so that this request can be processed as soon as possible.

Court of Appeal for Ontario | Cour d'appel de l'Ontario

Noah D.

[416-327-5020](tel:416-327-5020)

[1-855-718-1756](tel:1-855-718-1756) (toll free | sans frais)

Address, hours, other contact info: ontariocourts.ca/coa/contact/

Adresse, heures, autres coordonnées : ontariocourts.ca/coa/fr/contact/

e-Filing | Dépôt électronique : coa.e-file@ontario.ca

From: Sara Collins <scollins@teplitskyllp.com>

Sent: Wednesday, February 12, 2025 10:39 AM

To: JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>

Cc: dullmann@blaney.com; asamat@blaney.com; jlee@cl-law.ca; MByers@CMBLaw.ca; ronald@davidzonlaw.com; dale@dilitigation.com; peter@himprolaw.com; rsparano@himprolaw.com; jmorley@LN.law; jeff.larry@paliareroland.com; ryan.shah@paliareroland.com; rooney@paulfrooneyprofcorp.com; imarks@robapp.com; mgasch@robapp.com; smosonyi@robapp.com; calvin@starkmanlawyers.com; paul@starkmanlawyers.com; dmurdoch@stikeman.com; jwajs@stikeman.com; navis@stikeman.com; Jason Wadden <jwadden@tyrllp.com>; Shimon Sherrington <ssherrington@tyrllp.com>; adhanani@tdbadvisory.ca; btannenbaum@tdbadvisory.ca; Jonathan Kulathungam <jkulathungam@teplitskyllp.com>; Nipuni Panama <npanama@teplitskyllp.com>; Kathy Ples <kples@teplitskyllp.com>

Subject: Court of Appeal File No. COA-24-CV-1328

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February 12, 2025

Our File 33756

Court of Appeal for Ontario
130 Queen Street West
Toronto, Ontario
M5H 2N5

SENT BY EMAIL TO:
COA.E-file@ontario.ca

Dear Sir:

Re: Court of Appeal File No. COA-24-CV-1328

We are Counsel for the Appellant in the above-noted matter. We are copying this letter to counsel for all parties.

The Appellants filed a Notice of Appeal (“**Appeal**”) on or around January 16, 2025, and perfected the appeal on January 28, 2025. The Appellants seek an expedited hearing date for the Appeal due to urgency as outlined below.

The matter concerns a receivership wherein TDB Restructuring Limited acts as the Court appointed receiver (“**Receiver**”) over, *inter alia*, property municipally known as 2849, 2851, 2853 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”). The secured lender is Cameron Stephen Mortgage Capital Inc. The debtors are Conacher Kingston Holdings Inc. and 5004591 Ontario Inc. (“**Debtors**”)

The Appellants are appealing the order and decision dated December 10, 2024, made by the Honourable Justice Black (“**Order**”) with respect to an approval and vesting motion (“**AVO Motion**”) wherein His Honour denied the Receiver’s Motion to approve the sale of the Toronto Property to the Appellant, but rather reopened the completed sales process.

We are seeking an expedited appeal as the interest and costs associated with further delaying or protracting the sale of the Toronto Property would be borne by, and be to the detriment of, the Debtors’ creditors:

- a. As of November 2024, the amount outstanding under the loan (and secured by the Toronto Property) is estimated to be approximately \$16 million, plus additional costs.
- b. Interest continues to accrue at the rate of 12.25% per annum, which amounts to over \$163,000.00 monthly.
- c. As of August 2024, the outstanding property taxes with respect to the Toronto Property total more than \$200,000.00 and continues to increase. The Receiver intends to pay these from the proceeds of the sale of the Toronto Property.

The Appellants are seeking:

- (i) An abridgment of the time limits for serving and / or filing the relevant material for the Appeal and;
- (ii) That the Appeal be expedited to be heard on any day of March except March 10 to March 20, 2025.

Yours very truly,
TEPLITSKY LLP

Per:

Jonathan Kulathungam

Jonathan Kulathungam

JK/kp

cc: David Ullman (dullmann@blaney.com)
Anisha Samat (asamat@blaney.com)
Jacob Lee (jlee@cl-law.ca)
Michael Byers (MByers@CMBLaw.ca)
Ronald Davidzon (ronald@davidzonlaw.com)
Dale Denis (dale@dilitigation.com)
Peter Proszanski (peter@himprolaw.com)
Raffaele Sparano (rsparano@himprolaw.com)
Jenna Morley (jmorley@LN.law)
Jeff Larry (jeff.larry@paliareroland.com)
Ryan Shah (ryan.shah@paliareroland.com)
Paul F. Rooney (rooney@paulfrooneyprofcorp.com)
Irving Marks (imarks@robapp.com)
Michael Gasch (mgasch@robapp.com)
Samuel Mosonyi (smosonyi@robapp.com)
Calvin Zhang (calvin@starkmanlawyers.com)
Paul H. Starkman (paul@starkmanlawyers.com)
Daniel S. Murdoch (dmurdoch@stikeman.com)
Jordan D. Wajs (jwajs@stikeman.com)
Nicholas Avis (navis@stikeman.com)
Jason Wadden (jwadden@tyrllp.com)
Shimon Sherrington (ssherrington@tyrllp.com)
Arif Dhanani (adhanani@tdbadvisory.ca)
Bryan Tannenbaum (btannenbaum@tdbadvisory.ca)

Regards,

Sara Collins

Legal Assistant to Daniel Nishiguchi, Nipuni Panamaldeniya and Mariah Tianna Crudo

scollins@teplitskyllp.com

416.365.9320 x134



70 Bond St, Suite 200 • Toronto, Ontario • M5B 1X3 • Canada
Office 416.365.9320 • Fax: 416.365.7702 • www.teplitskyllp.com

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Dale Denis

From: JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>
Sent: February 19, 2025 9:54 AM
To: Kathy Ples
Cc: Jonathan Kulathungam
Subject: RE: Court File No. COA-24-CV-1328 - Appellant's Appeal Materials - Arjun Anand in trust for a company to be incorporated (34013) RE: Cameron Stephens v. Conacher Kingston

Good morning,

The Factum and Book of Authorities have been filed, however the Court is unable to accept the Appeal Book and Compendium and Appeal Record.

The Appeal Book is missing the required December 10th, 2024 issued and entered order as outlined in Rule 61.10(c) of the Rules of Civil Procedure.

The Appeal Record is not a document that is accepted by the Court of Appeal. This will have to be resubmitted as a Supplementary Appeal Book or Exhibit Book depending on the contents, pursuant to the Rules of Civil Procedure.

Thank you,

Court of Appeal for Ontario | Cour d'appel de l'Ontario
Christina N.

[416-327-5020](tel:416-327-5020)

[1-855-718-1756](tel:1-855-718-1756) (toll free | sans frais)

Address, hours, other contact info: ontariocourts.ca/coa/contact/

Adresse, heures, autres coordonnées : ontariocourts.ca/coa/fr/contact/

e-Filing | Dépôt électronique : coa.e-file@ontario.ca

From: Kathy Ples <kples@teplitskyllp.com>
Sent: Friday, January 24, 2025 9:02 AM
To: JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>
Cc: Jonathan Kulathungam <jkulathungam@teplitskyllp.com>
Subject: RE: Court File No. COA-24-CV-1328 - Appellant's Appeal Materials - Arjun Anand in trust for a company to be incorporated (34013) RE: Cameron Stephens v. Conacher Kingston

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Dear Sir/Madame:

We are the lawyers for the Appellant, Arjun Anand in trust for a company to be incorporated, in the above-referenced matter.

Attached please find the Affidavits of Service with respect to service of the below appeal materials and via Sync link (<https://ln5.sync.com/dl/c206e6440#bt22mr8d-ed8avpbs-xbmcvrvd-6tnyeska>), for the purpose of filing with the Court, the Appellant's:

- a) Appeal Book and Compendium;
- b) Appeal Record;
- c) Factum;
- d) Book of Authorities.

If you require anything further, please do not hesitate to contact our office.

Kathy Ples

Legal Assistant to Jonathan Kulathungam

kples@teplitskyllp.com

(416) 365-9320 x 112



70 Bond St, Suite 200 • Toronto, Ontario • M5B 1X3 • Canada

Tel: 416.365.9320 • Fax: 416.365.7702 • www.teplitskyllp.com



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This is **Exhibit 17** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

From: ryan.shah@paliarerland.com
Sent: February 19, 2025 4:09 PM
To: Dale Denis; wgreenspoon@garfinkle.com
Cc: Jeff.Larry@paliarerland.com; jkulathungam@teplitskyllp.com;
Candace.Baumtrog@Paliarerland.com; Douglas.Montgomery@paliarerland.com;
npanama@teplitskyllp.com; scollins@teplitskyllp.com; kples@teplitskyllp.com
Subject: Conacher/Islington - Form of Order [IMAN-PRIMANAGE.FID422513]
Attachments: Draft Order (Sales Process)-Receiver-TDB 10-DEC-2024.docx

Counsel:

I am writing about the endorsement of Justice Black dated December 10, 2024 in connection with the above noted matter.

We have not yet taken out an order in connection with this decision, which will be necessary for the Toronto Purchaser's appeal to proceed.

I am attaching a draft order, which has been approved by the Toronto Purchaser's counsel. Please let us know if you have any comments on behalf of AJGL or Cameron Stephens, respectively.

Once we come to an agreement on the form of order, we will send to his Honour to be signed.

Thanks very much,



Ryan Shah
Associate

Phone: 647-865-4702
Email: ryan.shah@paliarerland.com

155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

paliarerland.com

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This is **Exhibit 18** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

From: ryan.shah@paliarerland.com
Sent: February 24, 2025 1:25 PM
To: MAG.CSD.To.SCJCom@ontario.ca
Cc: Jeff.Larry@paliarerland.com; wgreenspoon@garfinkle.com;
Douglas.Montgomery@paliarerland.com; jkulathungam@teplitskyllp.com; Dale Denis;
Candace.Baumtrog@Paliarerland.com; kples@teplitskyllp.com;
npanama@teplitskyllp.com; scollins@teplitskyllp.com
Subject: Request for Signed Order - CAMERON STEPHENS MORTGAGE CAPITAL LTD. v.
CONACHER KINGSTON HOLDINGS INC. et al - CV-23-00701672-00CL [IMAN-
PRIMANAGE.FID422513]
Attachments: Cameron Stephens et al v. Conacher Kingston et al; CV-23-00701672; Endorsement -
Dec 10-2024.pdf; Draft Order (Sales Process)-Receiver-TDB 10-DEC-2024.docx;
2024-12-10 - Aide Memorandum (AJGL Group Inc)..pdf

Good afternoon,

I am counsel to TDB Restructuring Limited in its capacity as receiver of properties municipally known as 311 Conacher Drive, Kingston, Ontario and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the "Toronto Property").

On December 10, 2024, the Honourable Justice Black issued the attached endorsement in this matter, which dismissed the Receiver's motion for an approval and vesting order in respect of the Toronto Property and directed the Receiver to re-market the Toronto Property.

I am writing to request that his Honour sign the attached draft order, to give effect to this decision. We have canvassed counsel (copied here) and they have agreed that the terms of the attached draft order reflects his Honour's decision in his December 10, 2024 endorsement.

As set out in paragraph 36 of his Honour's endorsement, the order is intended to incorporate the terms contained in paragraph 79(b) of the Aide Memoire of AJGL Group Inc., a party that claims a beneficial interest in the Toronto Property. This paragraph sets out procedures for the re-marketing of the Toronto Property. I have attached a copy of this Aide Memoire for his Honour's reference and convenience.

I respectfully request that you forward this correspondence to his Honour for consideration.

I am available to answer any questions that his Honour may have.

Thank you very much,



Ryan Shah
Associate

Phone: 647-865-4702
Email: ryan.shah@paliarerland.com

155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

paliarerland.com

This is **Exhibit 19** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis

From: ryan.shah@paliareroland.com
Sent: March 4, 2025 10:25 AM
To: Lorie.Waltenbury@ontario.ca
Cc: Jeff.Larry@paliareroland.com; Douglas.Montgomery@paliareroland.com; scollins@teplitskyllp.com; npanama@teplitskyllp.com; Candace.Baumtrog@Paliareroland.com; kples@teplitskyllp.com; Dale Denis; wgreenspoon@garfinkle.com
Subject: FW: Request for Signed Order - CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al - CV-23-00701672-00CL [IMAN-PRIMANAGE.FID422513]
Attachments: Cameron Stephens et al v. Conacher Kingston et al; CV-23-00701672; Endorsement - Dec 10-2024.pdf; Draft Order (Sales Process)-Receiver-TDB 10-DEC-2024.docx; 2024-12-10 - Aide Memorandum (AJGL Group Inc)..pdf

Dear Ms. Waltenbury:

I hope you're well. I am writing because I understand that you are the Honourable Justice Black's judicial assistant.

I am writing to respectfully request that the below email and attachments be brought to the attention of the Honourable Justice Black. There is some urgency to the issuance of the Order in this matter, as the Order has been appealed by one of the parties and the absence of an issued and entered form of Order is preventing the appellant from perfecting their appeal at the Court of Appeal for Ontario.

The Registrar of the Court of Appeal for Ontario has advised that they intend to dismiss the appeal for delay if the appeal is not perfected by March 12, 2025. Accordingly, we respectfully request that his Honour sign the attached draft Order as soon as practicable.

Thank you very much, and I would be happy to speak to any questions that his Honour may have.

Ryan Shah

647-865-4702

Paliare Roland Rosenberg Rothstein LLP

From: Ryan Shah
Sent: February 24, 2025 1:25 PM
To: 'mag.csd.to.scjcom@ontario.ca' <MAG.CSD.To.SCJCom@ontario.ca>
Cc: Jeff Larry <Jeff.Larry@paliareroland.com>; wgreenspoon@garfinkle.com; Douglas Montgomery <Douglas.Montgomery@paliareroland.com>; jkulathungam@teplitskyllp.com; Dale Denis <dale@dilitigation.com>; Candace Baamtrog <Candace.Baamtrog@Paliareroland.com>; Kathy Ples <kples@teplitskyllp.com>; Nipuni Panama <npanama@teplitskyllp.com>; Sara Collins <scollins@teplitskyllp.com>
Subject: Request for Signed Order - CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al - CV-23-00701672-00CL [IMAN-PRIMANAGE.FID422513]

Good afternoon,

I am counsel to TDB Restructuring Limited in its capacity as receiver of properties municipally known as 311

Conacher Drive, Kingston, Ontario and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the "Toronto Property").

On December 10, 2024, the Honourable Justice Black issued the attached endorsement in this matter, which dismissed the Receiver's motion for an approval and vesting order in respect of the Toronto Property and directed the Receiver to re-market the Toronto Property.

I am writing to request that his Honour sign the attached draft order, to give effect to this decision. We have canvassed counsel (copied here) and they have agreed that the terms of the attached draft order reflects his Honour's decision in his December 10, 2024 endorsement.

As set out in paragraph 36 of his Honour's endorsement, the order is intended to incorporate the terms contained in paragraph 79(b) of the Aide Memoire of AJGL Group Inc., a party that claims a beneficial interest in the Toronto Property. This paragraph sets out procedures for the re-marketing of the Toronto Property. I have attached a copy of this Aide Memoire for his Honour's reference and convenience.

I respectfully request that you forward this correspondence to his Honour for consideration.

I am available to answer any questions that his Honour may have.

Thank you very much,



Ryan Shah
Associate

Phone: 647-865-4702

Email: ryan.shah@paliareroland.com

155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

paliareroland.com

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This is **Exhibit 20** to the affidavit of Simion Kronenfeld sworn by the deponent on July 17, 2026 in the City of Bucharest Romania, before me at the City of Toronto, in the Province of Ontario, on July 17, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



.....

Commissioner for taking Affidavits (or as may be)

Dale Denis