

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

BETWEEN:

2615333 ONTARIO INC.

Applicant

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. and
9654445 CANADA INC.**

Respondents

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

**MOTION RECORD
VOLUME 2 of 3
(Returnable March 3, 2025)**

December 30, 2024

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TDB Restructuring Limited

**TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST**

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SUPERIOR COURT OF JUSTICE
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B E T W E E N :

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**FIFTH REPORT OF THE RECEIVER
September 16, 2024**

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CONFIDENTIAL APPENDICES

(to be filed with the Court and sealed from public record pending further Order of the Court)

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Confidential Appendix “3” – Summary of commercially sensitive terms of the Agreement of Purchase and Sale dated June 27, 2024

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I. INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021 (the “**Appointment Order**”), RSM Canada Limited (“**RCL**”) was appointed as receiver (the “**Receiver**”), without security, of certain lands and premises owned by the Respondents, identified in Schedule “A” hereto (the “**Harwood Properties**”), and all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to such lands and premises, including all proceeds thereof (collectively, the “**Property**”). A copy of the Appointment Order is attached as **Appendix “A”** to this fifth report of the Receiver (the “**Fifth Report**”).
2. Effective March 1, 2024, the name RCL was changed to TDB Restructuring Limited (“**TDB**”) on all active engagements of RCL pursuant to an order of this Court. As such, references to RCL in the Appointment Order, other orders made in this proceeding, and in prior reports of the Receiver should be interpreted as being with reference to TDB. A copy of the March 1, 2024, order effecting this change is attached as **Appendix “B”** to this report.
3. The purpose of this Fifth Report is to:
 - (a) provide an update on the Receiver’s activities since the Applicant’s motion in March 2024 and the directions originally sought by the Receiver with respect to the sale of the Property;
 - (b) provide information regarding relief sought by the Receiver on its motion for, among other things:

- (i) approval of the agreement of purchase and sale dated June 27, 2024, as amended by amending agreement dated September 1, 2024 (the “**APS**”), between the Receiver and 1000612843 Ontario Inc. (the “**Purchaser**”) and the associated transaction (the “**Transaction**”);
- (ii) approval of a back-up bid by the Town (as defined below) pursuant to an agreement of purchase and sale dated September 12, 2024 (the “**Back Up Bid Agreement**”) and the associated conditional transaction;
- (iii) approval of a partial distribution from the proceeds of the Transaction;
- (iv) approval of a proposed allocation of the Purchase Price (as that term is defined in the APS);
- (v) approval of this Fifth Report and the Receiver’s activities, decisions and conduct set out herein;
- (vi) approval of the Receiver’s Interim Statements of Receipts and Disbursements for the period February 1, 2024, to July 30, 2024;
- (vii) approval of the Receiver’s and its counsel’s fees and disbursements up to and including July 30, 2024; and
- (viii) an order sealing the Confidential Appendices (as defined below).

II. TERMS OF REFERENCE

4. In preparing this Fifth Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Fifth Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed

with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

5. Unless otherwise stated, all monetary amounts contained in this Fifth Report are expressed in Canadian dollars.

III. BACKGROUND

The Harwood Properties

6. The Harwood Properties are a collection of real property parcels located in Ajax, Ontario, across the street from the City Hall for the Town of Ajax (the “**Town**”). The Harwood Properties consist of units in a strip mall and a parking lot.
7. The Harwood Properties are comprised of:
 - (a) the “**Phase 1A Lands**”, being the lands bearing PIN 26459-0108 (LT), municipally known as 184/188 Harwood Avenue South;
 - (b) the “**Phase 1B Lands**”, being those lands bearing PINs 26459-0050(LT), 26459-0046(LT) and 26459-0045(LT), municipally known as 132/134, 144/148 and 150/152 Harwood Avenue South; and
 - (c) the “**Utility Lands**”, being those lands bearing PINs 26459-0037(LT), 26459-0036(LT) and 26459-0035(LT), municipally known as 214/222, 224 and 226 Harwood Avenue South.

8. A PIN map of the parcels comprising the Harwood Properties and surrounding lands is attached as **Appendix “C”** to this report.
9. The Harwood Properties are not identically encumbered. Set out below, listed in order of registration,¹ is a summary of the charges (reflecting principal amounts secured only) registered on title to the Harwood Properties in favour of:
 - (a) the Applicant 2615333 Ontario Inc. (“**261**”, which took assignment of charges in favour of Toronto Capital Corp. and other lenders);
 - (b) the Town;
 - (c) My Capital Club Inc. (“**MCC**”);
 - (d) Scougall Management (1987) Limited (“**Scougall**”);
 - (e) Lakeshore Luxe Design and Build Group Inc. (“**Lakeshore**”, which took an assignment of the mortgage held by Lawco Limited, which took an assignment of the mortgage held by Ajax Master Holdings Inc.); and
 - (f) Investecs Developments Inc. (“**Investecs**”).

¹ For greater certainty, this summary does not include any construction liens or other encumbrance registered on title to the Harwood Properties, or execution registered in the appropriate Land Registry Office against the Respondent that owns the applicable Harwood Property. This chart is current as of October 2023.

Harwood Properties by municipal address on Harwood Ave South						
Utility Lands			Phase 1A Lands	Phase 1B Lands		
132/134	144/148	150/152	0²	214/222	224	226
261 (\$2.05MM)	261 (\$2.05MM)	261 (\$2.05MM)	Town (\$1.422MM)	261 (\$2.05MM)	261 (\$2.05MM)	261 (\$0.5MM)
261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	MCC (\$1.3MM)
MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	Lakeshore (\$18.5MM)
Scougall (\$2MM)	Scougall (\$2MM)	Scougall (\$2MM)	Lakeshore (\$18.5MM)	Lakeshore (\$18.5MM)	Lakeshore (\$18.5MM)	261 (\$4MM)
			261 (\$4MM)	261 (\$4MM)	261 (\$4MM)	Scougall (\$2MM)
			Scougall (\$2MM)	Scougall (\$2MM)	Scougall (\$2MM)	Investecs (\$1MM)
			Investecs (\$1MM)	Investecs (\$1MM)	Investecs (\$1MM)	

The Development Agreement

10. Certain Harwood Properties, specifically the Phase 1A Lands and the Utility Lands, were subject to a development agreement (the “**Development Agreement**”) between Lemine Real Estate Consulting Inc. (“**Lemine**”) and the Town. Lemine is a developer and an affiliate of the Respondents. The Respondents are single-purpose corporations that own the various parcels that comprise the Harwood Properties.
11. A copy of the Development Agreement and its amendments are attached collectively as **Appendix “D”** to this report.
12. One feature of the Development Agreement was that if Lemine defaulted under the Development Agreement the Town would have the right to repurchase the Phase 1A Lands

² The Phase 1A Lands, being PIN26456-0108(LT), are a parking lot and, while in this proceeding they have been referred to previously as having municipal address 184/188 Harwood Avenue South, it appears after further investigation that there is no municipal address associated with this land.

and the Utility Lands, but not the Phase 1B Lands, at a certain price as determined by the terms of the Development Agreement (the “**Town Repurchase Price**”).

The Town’s Prior Proceedings

13. Prior to this receivership proceeding, the Town commenced an action and alleged that Lemine defaulted under the Development Agreement. The Town was successful in obtaining a finding that Lemine had breached the Development Agreement.³ That result was upheld by the Ontario Court of Appeal.⁴
14. Following the Court of Appeal’s decision, the Town commenced another action (Court File No. 433/20, the “**Town’s Repurchase Action**”) for a determination of the Town Repurchase Price. The Town’s Repurchase Action was on notice to the Respondents’ secured creditors, including the Applicant.
15. Among other things, the Applicant plead in response to the Town’s Repurchase Action that,
 - (a) it was not given notice of the Town’s prior action and that the orders made in such action were not binding on it; and
 - (b) the Town was not entitled to exercise the Repurchase Right or exercise it at the Town Repurchase Price alleged by the Town.
16. There was a live dispute in the Town’s Repurchase Action as to whether the Applicant’s rights pursuant to its first mortgage over the Respondents’ lands were in priority to the

³ *Central Park Ajax Developments Phase 1 Inc v Ajax (Town)*, [2018 ONSC 5769](#).

⁴ *Central Park Ajax Developments Phase 1 Inc v Ajax (Town)*, [2019 ONCA 793](#).

Town's Repurchase Right, as the Applicant's mortgage is registered prior in time to the registration of the Development Agreement against the relevant parcels (as set out in the table in paragraph 9).

The Applicant Commenced this Proceeding

17. By the time the Town's Repurchase Action was commenced, the Debtors had also defaulted in respect of their obligations to the Applicant, a secured creditor. The Applicant commenced this proceeding for an order appointing the Receiver over the Property.
18. Pursuant to the Appointment Order, TDB (formerly RCL) was appointed as receiver, without security, over the Property.
19. The Appointment Order was made with the consent of the Applicant and the Town, over the objections of the Respondents and others.
20. The Appointment Order did not determine the priority issue as between the Applicant and the Town, nor was such a determination sought at the hearing of the application to appoint the Receiver.
21. On April 26, 2021, the Respondents appealed the Appointment Order. On February 24, 2022, four days before the scheduled hearing of the appeal, the Respondents advised the Court of Appeal that the appeal was settled on a without costs basis. On February 24, 2022, the Receiver resumed its activities pursuant to the Appointment Order.

The Town's Rights Under the Appointment Order

22. The Appointment Order provides, among other things, that the Receiver may:
- (a) market and negotiate the terms and conditions of sale of the Property, provided that such terms and conditions are satisfactory to the Town, unless otherwise ordered by the Court; and
 - (b) sell, convey, transfer, lease or assign the Property with the approval of the Court, in consultation with the Town.
23. The Appointment Order also provides that, unless otherwise agreed to by the Town and the applicable purchaser or transferee (a “**Prospective Purchaser**”), none of the Harwood Properties subject to the Development Agreement could be sold, conveyed, transferred, leased or assigned by the Receiver without the Prospective Purchaser agreeing to enter into a development agreement (a “**New Development Agreement**”) with the Town, on mutually agreeable terms, which include a “Right of Repurchase” in favour of the Town. Such right was to be “substantively similar to such right provided for in the Development Agreement.”

The Competing Interests of the Town and the Respondents' Creditors

24. The Town's interests include ensuring that it enters into a New Development Agreement with a reputable, capable developer who will re-develop the Harwood Properties. Throughout this receivership proceeding, the Town has emphasized that it wants to see its “vision” for the Harwood Properties given effect.
25. The Town Repurchase Price was to be set pursuant to the Development Agreement, an agreement that was entered into over 10 years ago. As set out above, the dispute as to the

calculation of the Town Repurchase Right was never resolved by the Court. In the Receiver's view, which is not believed to be controversial, the Town Repurchase Price alleged by the Town was an amount significantly below the current fair market value of the Harwood Properties. Had the Receiver gone to market with a New Development Agreement that contained the same language as the Town's Right of Repurchase, the Town Repurchase Price would have effectively imposed a price ceiling for the Property that is insufficient to repay any material amount of the secured debt registered against such Property.

26. In contrast, the interests of the Respondents' other mortgagees (the Town is also a mortgagee) include maximizing the value of the Property. Their interests would have been negatively affected by a price ceiling on the Harwood Properties, especially given the highly leveraged state of the Harwood Properties.

New Development Agreement

27. The Receiver made extensive efforts to negotiate a draft of a New Development Agreement with the Town. These efforts were significant and time consuming because, among other reasons, the Receiver was attempting to balance two competing interests – those of the Town and those of the Respondents' mortgagees. Those activities were discussed in the Receiver's Second Report dated May 2, 2023 (the "**Second Report**") and approved by the Court by Order dated June 1, 2023. A copy of the Second Report (without appendices) will be included in the Receiver's Motion Record. A copy of the Court's June 1, 2023, Sale Procedure Order is appended as **Appendix "E"** to this Fifth Report.

28. After significant negotiations with the Town and consultations with stakeholders, the Receiver and the Town were able to prepare a form of draft New Development Agreement that was acceptable to the Town, the Receiver, and 261. The terms of the draft New Development Agreement are discussed further below.

The Sale Procedure & Bids

29. In consultation with the commercial real estate broker retained by the Receiver (the “**Broker**”), the Receiver developed the Sale Procedure that was intended to canvass the market for the opportunity to acquire the Property.⁵

Outcome of the Sale Procedure

30. Immediately following the Sale Procedure Order being made, the Receiver published notice of the Sale Procedure on its website.
31. Following the Sale Procedure Order being issued, the Broker commenced marketing the Harwood Properties for sale, which included the following activities:
- (a) arranging for a sale sign to be placed at the Harwood Properties;
 - (b) preparing a: (i) teaser brochure, and (ii) form of confidentiality agreement (“**CA**”);
 - (c) contacting a list of approximately 3,600 industry contacts including developers, builders, financiers, and others, enclosing details of the Property;
 - (d) listing the Harwood Properties on MLS on July 3, 2023;

⁵ Capitalized terms under the heading “The Sale Procedure & Bids” have the meanings given to them in the Sale Procedure.

- (e) establishing an online data room, which provided prospective purchasers with access to confidential information relating to the Property and the Sale Process (the “**Data Room**”) upon execution of a CA, including a template form of agreement of purchase and sale and the draft New Development Agreement; and
 - (f) arranging for a large colour advertisement to be published in *The Globe and Mail* on July 11, July 13, August 10 and August 15, 2023.
- 32. In response to the Broker’s marketing efforts, nineteen (19) potential purchasers executed CAs and were given access to the Data Room.
- 33. The Bid Deadline was August 24, 2023. There were only two Bidders. A summary of the bids submitted by these two Bidders, attached hereto as **Confidential Appendix “1”**, will be filed with the Court subject to a request for a sealing order.
- 34. Following the Bid Deadline, the Receiver engaged in discussions with these Bidders to determine if their bids were Qualified Bids and with a view to improving the terms of such Bids, if possible.
- 35. One Bidder was disqualified for failure to pay a deposit as required by the Sale Procedure, despite being given ample opportunity to do so. This Bidder is the Purchaser.
- 36. During the course of the Receiver’s discussions with the other Bidder (“**Bidder #2**”), the Receiver was advised by Bidder #2 that,
 - (a) they had determined that certain plans did not exist;
 - (b) approximately 6-7 months, and approximately \$3 million, would be required for those plans to be prepared; and

(c) that they required a \$3 million abatement to the price set out in their Bid.

37. The proposed abatement to the purchase price was not acceptable to the Receiver or the Applicant. Bidder #2 was not selected as having made a Successful Bid.

Terms of the draft New Development Agreement

38. The draft New Development Agreement provides, among other things, that:

(a) the successful purchaser is required to build a development on the Harwood Properties in accordance with the “Development Plans”, being plans substantially in accordance with the existing approved Site Plan Agreement; and

(b) the successful purchaser under the Sale Procedure would be required to:

(i) apply for a permit to allow construction to commence within 60 days from the date that the sale of the lands from the Receiver to such purchaser closes, and

(ii) commence construction within 150 days of obtaining such a permit, failing which the Town would have the right to require the purchaser to convey the Property to the Receiver.

Directions regarding a new Sale Procedure

39. In March 2024, the Applicant brought a motion for a determination that its rights vis-à-vis the Harwood Properties that are subject to the Development Agreement are in priority to the rights of the Town arising from the Development Agreement. The Receiver also brought a motion for directions relating to a further sale procedure.

40. The Court heard and dismissed the Applicant's motion on March 4, 2024. The Court also held that,⁶

In conclusion, I observe that the Applicant and the Town share an interest in having the Harwood Properties sold to a developer. The Town's interest is that the property be sold by the Receiver for the construction of an appropriate building that corresponds with the Town's "vision" for the proposed development. The Applicant's interest is that the Harwood Properties be sold by the Receiver expeditiously under a process that will realize fair value that is not lessened by unreasonable restrictions that the market will not accept. Although there is some tension between these interests, it seems to me that with diligent effort by the parties, it is possible to achieve a sale of the Harwood Properties by the Receiver in compliance with the Appointment Order and that satisfies the interests of the Applicant and the Town.

The Receiver brought a motion that was heard with the Applicant's motion. Included in the relief sought by the Receiver is an order for advice and direction regarding a further or amended sale procedure in respect of the Harwood Properties (and related property). I adjourned this part of the Receiver's motion until after my decision on the Applicant's motion.

Activities Following the March 2024 Motions

41. Following the result of the March 2024 motions, the Receiver considered how best to attempt "a sale of the Harwood Properties by the Receiver in compliance with the Appointment Order and that satisfies the interests of the Applicant and the Town."

Communication with the Town

42. The Receiver ultimately determined that the most likely option for a successful path forward would involve a development agreement that had appropriate construction milestones and permitted the Receiver to disburse the purchase price promptly after closing. The Receiver conveyed its views to the Town on a call on April 3, 2024, and

⁶ 2615333 Ontario Inc v Central Park Ajax Developments Phase 1 Inc et al, 2024 ONSC 1484 [at paras 55-56](#).

confirmed them in writing on April 16, 2024 (having not yet received a substantive response from the Town). A copy of this April 16, 2024, correspondence is attached as **Appendix “F”** to this Fifth Report, together with the Receiver’s follow-up emails.

43. The Town did not provide a substantive response until May 21, 2024, when it advised that it intended to make an offer to purchase the Property rather than negotiating or addressing the outstanding revised draft of the New Development Agreement. The Town confirmed this intent in writing on May 23, 2024. A copy of this correspondence (without attachment, which discloses the Town’s proposed purchase price) from the Town is attached as **Appendix “G”** to this Fifth Report.
44. The Town submitted a draft agreement of purchase and sale to the Receiver on Friday, May 31, 2024. The Receiver reviewed it and determined that it was not in an acceptable form. The Town’s offer also provided for an unacceptably low deposit. The Receiver sent the Town a form of revised agreement of purchase and sale that would be acceptable on June 7, 2024. Discussions with the Town regarding this draft agreement, and an appropriate deposit, continued in June 2024. On July 3, 2024, counsel to the Town indicated it was sending the revised agreement for execution by the Town, however, such agreement was not received until after an intervening and superior offer (discussed below) was received by the Receiver from the Purchaser.
45. On July 23, 2024, the Town sent the Receiver a signed agreement of purchase and sale, however, given that the Receiver had received and negotiated the Transaction, which represented a superior offer for the Property, the Receiver did not enter into this agreement with the Town.

46. Rather, as discussed below, the Receiver and the Town entered into the Back Up Bid Agreement, pursuant to which the Town agreed to be a back up bidder and would purchase the Harwood Properties if the Purchaser failed to close on the Transaction.

The APS and the Transaction

47. In the approximately two months that followed the Town advised that it intended to make an offer to purchase the Property, the Receiver received another bid from the Purchaser. The cash component of the purchase price in the APS from the Purchaser offers a significantly better result for the stakeholders than the Town's offer. The Receiver has a deposit with respect to the Transaction in its trust account. The Purchaser has confirmed its willingness to enter into the New Draft Development Agreement and has given a signed copy to the Receiver to be held in escrow.
48. A copy of the APS, with partial redactions, is attached as **Appendix "H"** to this Fifth Report. An unredacted copy of the APS is attached as **Confidential Appendix "2"** to this Fifth Report. The APS' terms include that:
- (a) **Purchase Price:** see the summary appended as **Confidential Appendix "3"** to this Fifth Report or the unredacted APS. The Purchase Price includes a cash component that is materially higher than the amount offered by the Town to purchase the Harwood Properties. The Purchase Price also includes that the Purchaser will assume the mortgage in favour of Lakeshore, an affiliate of the Purchaser (except for the amount secured by such mortgage in favour of amounts owing to Lawco Limited);
 - (b) **Purchased Assets:** the Harwood Properties;

- (c) **Deposit:** see the summary appended as **Confidential Appendix “3”** to this Fifth Report or the unredacted APS;
 - (d) **Development Agreement:** the Purchaser has agreed to enter into a New Development Agreement and has submitted a signed copy of same to the Receiver, which the Receiver holds in escrow pending approval and closing of the APS;
 - (e) **Allocation of Purchase Price:** as agreed upon between the Purchaser and the Receiver or as ordered by the Court; and
 - (f) **Closing Date:** three Business Days following the Court granting the Vesting Order (as those terms are defined in the APS).
49. On September 1, 2024, having regard to the requirement in s.4.5 of the APS that the Vesting Order (as defined in the APS) be made by September 30, 2024, and having regard to the Court’s schedule, the Receiver and the Purchaser entered into an amendment to the APS that extended that deadline to October 4, 2024. A copy of this amending agreement is attached as **Exhibit “I”** to this Fifth Report.

The Back Up Bid

50. After the Receiver and the Purchaser entered into the APS, having regard to the Town’s expression of continued interest in the Harwood Properties and the benefit to the stakeholders that would accrue in having a final sale of the Harwood Properties without the attendant cost of a further motion, the Receiver approached the Town regarding entering into an agreement pursuant to which the Town would purchase the Harwood Properties if the Purchaser failed to close on the APS.

51. The Town and the Receiver entered into such an agreement (the Back Up Bid Agreement), a redacted copy of which is attached as **Exhibit “J”** to this Fifth Report. An unredacted copy of the Back Up Bid Agreement is attached as **Confidential Appendix “4”** to this Fifth Report.
52. It is the Receiver’s view that, having regard to all of the circumstances, the Transaction, with a back up bid in the form of the conditional transaction contemplated by the Back Up Bid Agreement is the best outcome for all stakeholders. The Receiver therefore recommends that the Court approve the APS, the Transaction, the Back Up Bid Agreement and the conditional transaction contemplated thereby. The applicable circumstances include:
- (a) the Sale Process included a broad canvassing of the market for potential purchasers. The Property has been exposed to the market since June 2023 (though the listing of the Property expired on November 30, 2023);
 - (b) the Purchaser is willing to enter into the New Development Agreement;
 - (c) there are no conditions to closing of the APS;
 - (d) the Receiver has consulted with the Applicant and is advised that the Applicant supports the Transaction;
 - (e) the Transaction represents the highest and best acceptable offer for the Property that the Receiver has received;
 - (f) having regard to the procedural history of this receivership proceeding detailed above, it is in the best interests of all stakeholders to effect a sale of the Harwood Properties as soon as possible; and

- (g) having regard to the fact that the Town proposed to purchase the Harwood Properties in lieu of discussing a revised form of New Development Agreement.

Proposed Distribution

53. It is a condition of the APS that the Purchaser enter into a development agreement with the Town. The New Development Agreement, which the Purchaser has signed and the Town previously confirmed to the Court was acceptable to it, provides that,

Sales, Marketing and Repurchase Costs means all costs of the Receiver associated with the marketing and sale of the [Harwood Properties] and the possible repurchase of the [Harwood Properties] from the [Purchaser], including the costs of the Receiver's sales agent, the Receiver's professional costs, and those of their counsel, associated with the sales and possible repurchase processes, including negotiating with the Town, potential purchasers and the [Purchaser], and the Receiver's professional costs, and those of their counsel, associated with bringing a motion for approval of the sale to the [Purchaser] in the Receivership process and any and all costs relating to the repurchase, including any Land Transfer Taxes payable by the Receiver in connection with the repurchase.

Until the Construction Commencement Date, the Receiver will hold the price paid by the Developer for the [Harwood Properties], less an amount equal to the Sales, Marketing and Repurchase Costs, in escrow, such amounts being the "Escrow Funds".

54. The Receiver's Sales, Marketing and Repurchase Costs (as defined in the New Development Agreement) are \$950,757.87 (this amount includes the fees and costs incurred by the Receiver for the period March 1, 2022 – August 31, 2024, and its counsel for the period February 24, 2022 – July 31, 2024). No amount is owing on account of the Receiver's sales agent.
55. The Receiver seeks an order authorizing it to: (a) distribute the above amount to itself or its counsel on account of their fees; (b) distribute the above amount to a lender who has been issued a Receiver's Certificate (as defined in the Appointment Order) on the basis

that the Receiver has already drawn upon such certificate(s) for the purpose of paying the fees and costs included in the Receiver's Sales, Marketing and Repurchase Costs; and/or (c) retain the above amount in anticipation of the Receiver's future costs and expenses, including those of its counsel.

Proposed Allocation of Purchase Price

56. The APS does not require a specific allocation of the Purchase Price as between the different Harwood Properties, but does require that the Purchase Price be allocated before closing for tax purposes. If the distribution of the proceeds of the Transaction to creditors is determined to be the same as the allocation of the Purchase Price as between the individual Harwood Properties, the creditors are affected given the different encumbrances on the individual Harwood Properties, including property taxes and the encumbrances referred to in paragraph 9, above.

57. The Receiver proposes the following percentage allocation of the cash portion of the Purchase Price:

Harwood Properties by municipal address on Harwood Ave South						
Utility Lands			Phase 1A Lands	Phase 1B Lands		
132/134	144/148	150/152	0	214/222	224	226
6.66%	6.66%	6.66%	60%	6.66%	6.66%	6.66%

58. In arriving at the above proposed allocation, the Receiver considered, among other things:

- (a) an updated appraisal that it obtained for the Harwood Properties, on an as-is, where-is and subject to the New Development Agreement basis, a redacted copy of which is appended as **Appendix "K"** to this Fifth Report, and an unredacted copy of which is appended as **Confidential Appendix "5"** to this Fifth Report; and

(b) the views of the Purchaser.

Sealing Order

59. Confidential Appendices “1”, “2”, “3” and “4” (collectively, the “**Confidential Appendices**”) to this Fifth Report contain commercially sensitive information, an unredacted copy of the APS, a summary of the outcome of the Sale Procedure, a summary of the APS’ terms, and an appraisal for the Harwood Properties. The disclosure of such matters would interfere with the important public interest of maximizing recovery in this insolvency proceeding. A sealing order pending the termination of this proceeding is an adequately limited necessity in order to give effect to that important public interest. Reasonable alternative measures would not prevent the risk associated with disclosure of such information.

Receiver’s Interim Statement of Receipts and Disbursements

60. The Receiver’s Interim Statement of Receipts and Disbursements for the period February 1, 2024, to August 31, 2024, is attached as **Appendix “L”** to this report. During this period, total receipts were \$1,465,014, and disbursements were \$1,437,555, resulting in an excess of receipts over disbursements of \$27,459.

Professional Fees

61. The Receiver’s accounts total \$43,880.00 in fees and disbursements, plus HST in the amount of \$5,704.40, for a total of \$49,584.40 for the period January 1, 2024, to August 31, 2024 (the “**Receiver’s Accounts**”). Redacted copies of the Receiver’s Accounts, together with a summary thereof, the total billable hours charged per the accounts, and the average hourly rates charged per the accounts, supported by the Affidavit of Bryan A. Tannenbaum sworn September 13, 2024, are attached as **Appendix “M”** to this report.

62. The accounts of the Receiver's counsel, Thornton Grout Finnigan LLP, total \$99,276.57 in fees and disbursements, plus HST in the amount of \$12,905.95, for a total of \$112,182.52 for the period from January 1, 2024, to July 31, 2024 (the "**TGF Accounts**"). Redacted copies of the TGF Accounts, together with a summary of the personnel, hours and hourly rates described in the TGF Accounts, supported by the Affidavit of Rebecca L. Kennedy sworn September 12, 2024, are attached as **Appendix "N"** to this report.
63. The accounts of the Receiver's real estate counsel, Garfinkle Biderman LLP, total \$117,393.20 in fees and disbursements, plus HST in the amount of \$15,262.07 for a total of \$132,655.27 for the period from April 16, 2021, to July 31, 2024 (the "**GB Accounts**"). Redacted copies of the GB Accounts, together with a summary of the personnel, hours and hourly rates described in the TGF Accounts, supported by the Affidavit of Avrom Brown sworn September 12, 2024, are attached as **Appendix "O"** to this report.

IV. CONCLUSIONS

64. The Receiver respectfully requests that this Court make an Order:
- (a) approving of the APS and the Transaction;
 - (b) vesting all of the Debtors' right, title and interest in and to the Harwood Properties to the Purchaser;
 - (c) approving the proposed distribution described herein;
 - (d) approving of the Back Up Bid Agreement and the transaction contemplated thereby in the event that the APS does not close;
 - (e) sealing the Confidential Appendices;

- (f) approving the Receiver's fees and disbursements, and those of its counsel;
- (g) approving the Receiver's Interim Statement of Receipts and Disbursements; and
- (h) approving the Receiver's activities as described in this Fifth Report.

All of which is respectfully submitted to this Court as of this 16th day of September, 2024.

TDB Restructuring Limited, in its capacity
as Court-appointed Receiver of the Property
listed on Schedule "A" hereto,
and not in its personal or corporate capacity

Per:

A handwritten signature in black ink, appearing to read 'B. Tannenbaum', with a long horizontal flourish extending to the right.

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

Schedule “A”

PIN26459-0050 (LT) - PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134 HARWOOD

PIN26459-0046 (LT) - LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN26459-0045 (LT) - LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN26456-0108 (LT) - PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX 184/188 HARWOOD

PIN26459-0037 (LT) - LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX-214 HARWOOD

PIN26459-0036 (LT) - TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX- 224 HARWOOD

PIN26459-0035 (LT) - PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

APPENDIX “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	THURSDAY, THE 15TH
MR. JUSTICE CAVANAGH)	
)	DAY OF APRIL, 2021

B E T W E E N:

2615333 ONTARIO INC.

Applicant

and

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. AND
9654445 CANADA INC.

Respondents

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

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Canada Limited as receiver (in such capacities, the "Receiver"), without security, over the lands and premises described as:

PIN:26459-0050(LT) -PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134
HARWOOD

PIN: 26459-0046(LT)- LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN 26459-0045(LT)- LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN:26456-0108- PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX- 184/188 HARWOOD

PIN: 26459-0037(LT)-LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX-214 HARWOOD

PIN26459-0036(LT)-TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX- 224 HARWOOD

PIN:26459-0035(LT)- PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

(collectively the “**Harwood Properties**”) owned by Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc., 9654372 Canada Inc., 9617680 Canada Inc., and 9654445 Canada Inc. (the “**Debtors**”) was heard February 11, 2021 via videoconference at Toronto, Ontario.

ON READING the Application Record of the Applicant, the Responding Record of the Respondents, the Application Record of the Responding Party the Corporation of the Town of Ajax, the Supplementary Responding Record of the Respondents, the Affidavits of Baozheng Zheng and Allen Rutman on behalf of the Responding Party Ajax Master Holdings Inc., and the Reply Record of the Applicant and on hearing the submissions of counsel for the Applicant, the Respondents, The Corporation of the Town of Ajax, Ajax Master Holdings Inc. and Investecs Developments Inc., and on reading the consent of RSM Canada Limited to act as the Receiver and on being advised of the Consent of the Town of Ajax:

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM Canada Limited is hereby appointed Receiver, without security, of the Harwood Properties and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Harwood Properties, including all proceeds thereof (together with the Harwood Properties, (hereinafter collectively referred to as the "**Property**").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage and operate the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, or cease to perform any contracts of the Debtors in respect of the Property;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Property and to exercise all remedies of the Debtors in respect of the Property in collecting such monies, including, without limitation, to enforce any security held by the Debtors in respect of the Property;
- (f) to settle, extend or compromise any indebtedness owing to the Debtors in respect of the Property;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors in respect of the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided, however, that such terms and conditions must be satisfactory to the Town of Ajax, unless otherwise ordered by this Court;

- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court, in consultation with the Town of Ajax, in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required; and
 - (iii) unless otherwise agreed to by the Town of Ajax and the applicable purchaser or transferee, none of the real property presently subject to the Development Agreement and Agreement of Purchase and Sale between Windcorp Grand Harwood Place Ltd. and the Town of Ajax, as amended (The “Development Agreement”) shall be sold, conveyed, transferred, leased or assigned by the Receiver without the purchaser or transferee agreeing to enter into a development agreement with the Town of Ajax, on mutually agreeable terms, which include a Right of Repurchase in favour of the Town of Ajax, substantively similar to such right provided for in the Development Agreement.
- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property; other than such permitted encumbrances as may be acceptable to the purchaser or rights that run with the land.

- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors in respect of the Property;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Debtors;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have in respect of the Property; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the

Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS IN RESPECT OF THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts"). For certainty, all receipts in respect of the Property shall be deposited into the Post Receivership Accounts and all Permitted Disbursements (defined below) shall be drawn from the Post Receivership Accounts. "Permitted Disbursements" shall include realty taxes, utilities, insurance, maintenance expenses, other reasonable Property-specific expenses, and business expenses associated with the Property. The monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

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

GENERAL

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

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

28. THIS COURT ORDERS that the Land Registry Office for the Land Titles Division of Durham (No. 40) shall register this Order against title to the Harwood Properties.

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

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

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

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

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "Receiver") of the Property, as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 2020 appointing the Receiver (the "Order") made in an application having Court file number CV-20-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the ____ day of _____, 20__.

RSM Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

2615333 ONTARIO INC.
Applicant

and CENTRAL PARK AJAX DEVELOPMENTS PHASE 1
INC. et al.
Respondents

Court File No. CV-20-00651299-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-
3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS
AMENDED
Proceeding commenced at Toronto

ORDER

GARFINKLE BIDERMAN LLP

Barristers & Solicitors
1 Adelaide Street East, Suite 801
Toronto, Ontario
M5C 2V9

Wendy Greenspoon-Soer LSUC#: 34698L
Tel: 416-869-1234
Fax: 416-869-0547

Lawyers for the Applicant,
2615333 ONTARIO INC.

File Number: 12256-001

APPENDIX “B”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM)	FRIDAY, THE 1 ST
)	
JUSTICE CONWAY)	DAY OF MARCH, 2024

B E T W E E N:

TDB RESTRUCTURING LIMITED

Applicant

and

RSM CANADA OPERATIONS ULC

Respondent

APPLICATION UNDER Rule 14.05(3)(h) of the *Rules of Civil Procedure*

SUBSTITUTION ORDER

THIS APPLICATION made by TDB Restructuring Limited (“**TDB**”) for an order, among other things, substituting the name of RSM Canada Limited with the name TDB Restructuring Limited on the Substituted Mandates (as defined below), was heard was heard this day by way of judicial video conference in Toronto, Ontario by Zoom videoconference

ON READING the Application Record of TDB, including the Affidavit of Bryan A. Tannenbaum sworn February 27, 2024, together with the exhibits attached thereto (the “**Affidavit**”), and on hearing the submissions of counsel for TDB, no one else appearing, although served as evidenced by the Affidavit of Service of Lynda Christodoulou sworn February 28, 2024

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

BIA MANDATES

2. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Trustee in Bankruptcy (the “**Bankruptcy Trustee**”) of the estate files listed as bankruptcies on Schedule “A” hereto (the “**BIA Estates**”) and as Proposal Trustee (the “**Proposal Trustee**”) of the estate files listed as proposals on Schedule “A” hereto (collectively with the BIA Estates, the “**BIA Mandates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such BIA Mandates or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

3. **THIS COURT ORDERS** that, for greater certainty all, real and personal property wherever situate of the BIA Estates shall be, remain and is hereby vested in TDB Restructuring Limited in its capacity as Bankruptcy Trustee, to be dealt with by TDB Restructuring Limited in accordance with the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), pursuant to its powers and obligations as Bankruptcy Trustee of the BIA Estates.

4. **THIS COURT ORDERS** that TDB Restructuring Limited is authorized and directed to continue and to complete the administration of the BIA Mandates, to deal with the property in the BIA Mandates in accordance with its duties and functions as Bankruptcy Trustee or Proposal Trustee, as the case may be, as set out in the BIA and to receive all remuneration of the Bankruptcy Trustee or Proposal Trustee in the BIA Mandates for services performed from the commencement of each of the BIA Mandates until the discharge of the Bankruptcy Trustee or Proposal Trustee, as applicable.

5. **THIS COURT ORDERS** that that the requirement and responsibility for taxation of the Bankruptcy Trustee’s or Proposal Trustee’s accounts in respect of the BIA Mandates with respect to all work performed in respect of such BIA Mandate from the initial appointment of RSM Canada Limited or any other party, through to the completion of the administration of such BIA Mandates and discharge of TDB Restructuring Limited as Bankruptcy Trustee or Proposal Trustee, as applicable, shall be completed using the name TDB Restructuring Limited.

6. **THIS COURT ORDERS AND DIRECTS** that to the extent that security has been given in the name of RSM Canada Limited in cash or by bond of a guarantee company pursuant to section 16(1) of the BIA (the “**Security**”), such Security shall be transferred from the name RSM Canada Limited to the name TDB Restructuring Limited and any party holding such Security be and is hereby directed to take all steps necessary to effect such transfer. TDB Restructuring Limited shall retain all obligations respecting the Security.

RECEIVERSHIP PROCEEDINGS

7. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as the Receiver, Receiver and Manager, or Interim Receiver (collectively, “**Receiver**”) in respect of the mandates listed in Schedule “B” hereto (the “**Receivership Proceedings**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such Receivership Proceedings or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

CCAA PROCEEDINGS

8. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Monitor of the estate files listed as CCAA restructuring proceedings on Schedule “C” hereto (the “**CCAA Estates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such mandates (the “**CCAA Mandates**”) or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

ESTATE TRUSTEE DURING LITIGATION PROCEEDINGS

9. **THIS COURT ORDERS** that: (i) the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” hereto; and (ii) the name Bryan A. Tannenbaum of TDB Restructuring Limited be and is hereby substituted in place of the name Bryan A. Tannenbaum of RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” (collectively, the “**Estate Mandates**”), and any reference to the name RSM Canada Limited in any Court Order in respect of such Estate Mandates or any

schedule to such Court Order shall be replaced by the name TDB Restructuring Limited. Collectively, the BIA Mandates, the Receivership Proceedings, the CCAA Mandates and the Estate Mandates are referred to herein as the “**Substituted Matters**”).

SUBSTITUTED MANDATES

10. **THIS COURT ORDERS** that TDB Restructuring Limited (and its directors, officers, employees, agents, legal counsel and other representatives, as applicable) will continue to have all rights, benefits, protections and obligations granted to RSM Canada Limited (and its legal counsel and representatives, as applicable) under any order made in the Substituted Mandates or any statute applicable to the Substituted Mandates or any contract or agreement to which TDB Restructuring Limited is party under the name RSM Canada Limited in the Substituted Mandates. For greater certainty and without limitation, this includes the benefit of any indemnity, charge or priority granted in the Substituted Mandates and relief from the application of any statute including the Personal Information Protection and Electronic Documents Act (Canada) (“**PIPEDA**”).

11. **THIS COURT ORDERS** that to the extent required by the applicable Orders in the Substituted Mandates, the accounts of RSM Canada Limited and its legal counsel in respect of the Substituted Mandates shall be passed in accordance with the applicable Orders in the Substituted Mandates in the name and on the application of TDB Restructuring Limited.

ACCOUNTS

12. **THIS COURT ORDERS** that TDB Restructuring Limited be and is hereby authorized to transfer any and all accounts from the name RSM Canada Limited to the name TDB Restructuring Limited and, if the name on such accounts cannot be changed, to transfer all funds that remain in its trust bank accounts that belong or relate to the Substituted Mandates, or otherwise, to accounts in the name TDB Restructuring Limited, and TDB Restructuring Limited be and is hereby authorized to take all steps and to execute any instrument required for such purpose. Any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of

this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

13. **THIS COURT ORDERS AND DIRECTS** that TDB Restructuring Limited be and is hereby authorized to endorse for deposit, deposit, transfer, sign, accept or otherwise deal with all cheques, bank drafts, money orders, cash or other remittances received in relation to any of the Substituted Mandates where such cheques, bank drafts, money orders, cash or other remittances are made payable or delivered to the name TDB Restructuring Limited, in relation to the same, and any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

GENERAL

14. **THIS COURT ORDERS** that this Order shall be effective in all judicial districts in Ontario which govern any of the Substituted Mandates.

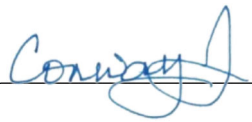
15. **THIS COURT ORDERS** that the requirement for a separate Notice of Motion and supporting Affidavit to be filed in the Court file of each of the Substituted Mandates be and is hereby waived.

16. **THIS COURT ORDERS** that TDB Restructuring Limited shall notify the parties on the Service Lists of the Substituted Mandates (if applicable) of the new website established for such Substituted Mandate and shall post a copy of this Order to the website of each Substituted Mandate and that such notice shall satisfy all requirements for service or notification of this motion and this Order on any interested party in the Substituted Mandates including, without limitation, proven creditors within the BIA Mandates, parties on the Service Lists of the Substituted Mandates (if applicable), the applicable bankrupts or debtors within the Substituted Mandates, and any other person, and any other requirements of service or notification of this motion be and is hereby waived.

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

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

18. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry or filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

Schedule "A": BIA Mandates

Bankruptcies

	Name	Estate Number
1.	Carrington Homes Limited	31-457618
2.	Fernicola, George	31-457619
3.	D. Mady Investments Inc.	31-2281994
4.	Eco Energy Home Services Inc.	31-2502463
5.	Ontario HVAC & Water Inc.	31-2613545
6.	2305992 Ontario Inc.	31-2655918
7.	Fernwood Developments (Ontario) Corporation	31-2661061
8.	Legal Print and Copy Incorporated	31-2884436
9.	Commerce Copy Incorporated	31-2884438
10.	TDI-Dynamic Canada, ULC	31-2903815
11.	Limestone Labs Limited	31-2907613
12.	2465409 Ontario Inc.	31-2939766
13.	Creative Wealth Media Finance Corp.	31-3003083
14.	Knight-Pro Inc.	31-3013900
15.	Ulmer, Blair	32-159136

Division 1 Proposals

	Name	Estate Number
1.	Vaughn Mills Packaging Ltd.	31-2895096
2.	RLogistics Limited Partnership	31-3040679
3.	RLogistics Inc.	31-3042209
4.	1696308 Ontario Inc.	31-3042213

Schedule “B”: Receivership Proceedings

Name	Court / OSB Number
1. Z. Desjardins Holdings Inc.	CV-23-00706607-00CL
2. 485, 501 and 511 Ontario Street South, Milton, ON	CV-23-00696349-00CL
3. Eco Energy Home Services Inc.	CV-19-614122-00CL
4. 3070 Ellesmere Developments Inc.	CV-19-00627187-00CL
5. Fernwood Developments Ontario Corporation	CV-20-00635523-00CL
6. Utilecredit Corp.	CV-20-00636417
7. 134, 148, 152, 184/188, 214, 224 and 226 Harwood Avenue, Ajax, ON	CV-20-00651299-00CL
8. Greenvilla (Sutton) Investment Limited (private receivership)	31-459273
9. 2088556 Ontario Inc. (private receivership)	31-459274
10. 935860 Ontario Limited (private receivership)	31-459275
11. Areacor Inc.	CV-22-00674747-00CL
12. Limestone Labs Limited and CleanSlate Technologies Incorporated (private receivership)	31-459498
13. 12252856 Canada Inc.	CV-22-00691528-00CL
14. Harry Sherman Crowe Housing Co-operative Inc.	CV-22-00688248-00CL
15. Richmond Hill Re-Dev Corporation	CV-23-00695238-00CL
16. Stateview Homes (Hampton Heights) Inc.	CV-23-00700356-00CL
17. 142 Queenston Street, St. Catharines, ON	CV-23-00705617-00CL
18. 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, ON	CV-23-00701672-00CL
19. 311 Conacher Drive, Kingston, ON	CV-23-00701672-00CL
20. Real Property owned by King David Inc.	CV-23-00710411-00CL
21. CBJ Developments Inc. et al.	CV-23-00707989-00CL
22. 25 Neighbourhood Lane, Etobicoke, ON M8Y 0C4	31-459784

Schedule “C”: CCAA Proceedings

Name	Court Number
1. Quality Sterling Group, comprising Quality Rugs of Canada Ltd., Timeline Floors Inc., Ontario Flooring Ltd., Weston Hardwood Design Centre Inc., Malvern Contract Interiors Ltd., Timeline Floor Inc. Ontario Flooring Ltd. Weston Hardwood Design Centre Inc. Malvern Contract Interior Limited Quality Commercial Carpet Corporation Joseph Douglas Pacione Holding Ltd. John Anthony Pacione Holding Ltd. Jopac Enterprises Limited, and Patjo Holding Inc.	CV-23-00703933-00CL

Schedule "D": Estate Trustee During Litigation Proceedings

Name	Court Number
1. The Estate of Sarah (Sue) Turk *	01-3188/14
2. The Estate of Sarah (Sue) Turk *	05-35/14
3. The Estate of Lev Alexandr Karp – <i>discharge</i> <i>pending</i>	05-100/17 05-265/17
4. The Estate of Peter Trezzi	01-4647/16
5. The Estate of Florence Maud Anderson *	05-159/19
6. Estate of Murray Burke	2988/19
7. Estate of Robert James Cornish	CV- 23-00693852-00ES
8. Estate of Anne Takaki *	CV-22-00011105-00ES
9. Estate of John Takaki *	CV-22-00011105-00ES
10. Estate of James Frederick Kay **	06-006/14
11. Klaczkowski Family Trust **	CV-21-00659498-00ES
12. Estate of Ethel Ailene Cork **	CV-23-00710309-00ES
13. Estate of Justin Milton Cork **	CV-23-00710291-00ES

* In the name of Bryan A. Tannenbaum of RSM Canada Limited.

** In the name of Bryan A. Tannenbaum only.

TDB RESTRUCTURING LIMITED

and

RSM CANADA OPERATIONS ULC

Court File No. CV-24-00715515-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

O R D E R

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak (LSUC #54100A)
Tel: 416-218-1161
Email: maya @chaitons.com

Lawyers for the Applicant

APPENDIX “C”

PROPERTY INDEX MAP
DURHAM(No. 40)

LEGEND

FREEHOLD PROPERTY
LEASEHOLD PROPERTY
LIMITED INTEREST PROPERTY
CONDOMINIUM PROPERTY
RETIRED PIN (MAP UPDATE PENDING)
PROPERTY NUMBER
BLOCK NUMBER
GEOGRAPHIC FABRIC
EASEMENT

THIS IS NOT A PLAN OF SURVEY

NOTES

**REVIEW THE TITLE RECORDS FOR COMPLETE
PROPERTY INFORMATION AS THIS MAP MAY
NOT REFLECT RECENT REGISTRATIONS**

THIS MAP WAS COMPILED FROM PLANS AND DOCUMENTS RECORDED IN THE LAND REGISTRATION SYSTEM AND HAS BEEN PREPARED FOR PROPERTY INDEXING PURPOSES ONLY

FOR DIMENSIONS OF PROPERTIES BOUNDARIES SEE
RECORDED PLANS AND DOCUMENTS

ONLY MAJOR EASEMENTS ARE SHOWN

REFERENCE PLANS UNDERLYING MORE RECENT
REFERENCE PLANS ARE NOT ILLUSTRATED



APPENDIX “D”

July 15/13

PRIVILEGED AND CONFIDENTIAL

WINDCORP GRAND HARWOOD PLACE LTD.

and

TOWN OF AJAX

**DEVELOPMENT AGREEMENT AND
AGREEMENT OF PURCHASE AND SALE**

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PRIVILEGED AND CONFIDENTIAL

DEVELOPMENT AGREEMENT AND
AGREEMENT OF PURCHASE AND SALE

BETWEEN:

WINDCORP GRAND HARWOOD PLACE LTD.
(the "Developer")

and

TOWN OF AJAX
("Ajax" or the "Town")

RECITALS:

- A. The Town wishes to revitalize its downtown area by encouraging private sector investment.
- B. The Town passed a Community Improvement Plan pursuant to section 28 of the Planning Act, R.S.O. 1990, c. P. 13, as amended (the "Planning Act") identifying a plan for the improvement for certain lands within the geographic Town of Ajax that includes the downtown area (the "Community Improvement Area"). The location and parameters of the Community Improvement Plan are depicted on Schedule "A".
- C. The Town owns certain lands within the Community Improvement Area that the Town determined were critical to the downtown revitalization effort, which lands are more particularly described at Schedule "B-1" and are depicted on Schedule "B-2" (the "Phase 1A Lands" and the "Phase 1B Lands"). For greater clarity, the Town only owns a portion of the Phase 1B Lands (the "Town Phase 1B Lands") and the remaining Phase 1B Lands are privately-owned (the "Private Phase 1B Lands") as depicted on Schedule "B-2".
- D. In accordance with the vision contained in the Community Improvement Plan, the Town's Official Plan and the Development Plans, as hereinafter defined, the Developer wishes to develop the Phase 1A Lands to include a high density mixed-use development that incorporates residential apartment buildings with ground floor retail and commercial uses, stacked townhouses and live/work units. The Developer's development of the Phase 1A Lands will require the acquisition of the Utility Lands as described on Schedule "B-1" and depicted on Schedule "B-2".
- E. The Developer and the Town acknowledge that the development of the Phase 1A Lands and the Phase 1B lands are integrated and integral to one another.
- F. The Developer and the Town wish to enter into this Agreement for the purchase of the Phase 1A Lands by the Developer from the Town and the acquisition of the Utility Lands by the Developer and the development by the Developer of the Phase 1A Lands and the Utility Lands.
- G. The development of the Phase 1A Lands by the Developer in the manner that will satisfy the Town's objectives will require partial relief from payment of the Town's portion of realty taxes attributable to the Phase 1A Lands (the "Rehabilitation Tax Rebate").
- H. The Developer and the Town are entering into this Agreement to confirm:

- (a) The terms upon which the Developer will acquire the Phase 1A Lands, the Utility Lands and to develop the Phase 1A Lands and the Utility Lands;
- (b) The financial incentives to be provided by the Town;
- (c) The basis upon which the Town may be required to expropriate the Utility Lands and the security to be provided by the Developer if such expropriation is required; and
- (d) The Town confirms that the Proposed Development, as defined herein, is permitted according to the applicable Zoning By-law of the Town of Ajax and the Official Plan for the Regional Municipality of Durham and the Town of Ajax.

IN CONSIDERATION of the mutual covenants contained in this Agreement, the parties hereto agree to and with each other as follows:

SECTION 1 DEFINITIONS

- 1.1 "Above-grade Building Permit" means a Building Permit for that part or parts of a structure that is to be constructed above-grade and shall not include any Building Permits for excavation, shoring and/or foundations.
- 1.2 "Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement including the attached Schedules, as amended from time to time, and "Article", "Section", "Subsection", "Paragraph", "Subparagraph" and "Schedule" followed by a number or letter refer to the specified article, section, subsection, paragraph, subparagraph or schedule, as the case may be, of this Agreement.
- 1.3 "Ajax Plaza" means that portion of the existing development on the Phase 1B Lands abutting Phase 1B Road 1 as depicted on Schedule "B-2".
- 1.4 "Applicable Laws" means, in respect of any person, property, transaction or event, all applicable federal, provincial and municipal laws, including Environmental Laws, statutes, regulations, rules, by-laws, policies and guidelines, all orders and permits, and all applicable common laws or equitable principles whether now or hereafter in force and effect.
- 1.5 "Apartment Unit" means a self-contained unit within an apartment-style structure that is either one of several units in a multi-unit residential apartment building or a unit within a building registered pursuant to the Condominium Act.
- 1.6 "Applications" means applications pursuant to the *Planning Act* and/or the *Condominium Act*.
- 1.7 "Authorization" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over the Person.
- 1.8 "*Building Code Act*" means the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended, superseded or replaced from time to time.
- 1.9 "Building Permit" means a permit issued by the Town pursuant to the *Building Code Act*, to construct a building, foundation or structure on the Lands and includes a demolition permit, an excavation and shoring permit.
- 1.10 "Business Day" means any day other than a Saturday, Sunday a statutory holiday in the Province of Ontario or any day on which the Town's offices are closed for business. For greater clarity, "Family Day" shall be deemed not to be a Business Day.
- 1.11 "Closing" means the completion of this Agreement.

- 1.12 "Closing Date" means the day falling on the ninetieth (90th) day after the conditions more particularly described in Sections 11.1 and 11.3 have been satisfied or waived or, in the event such day is not a Business Day, the following Business Day.
- 1.13 "Condominium Act" means the *Condominium Act*, 1998, S.O. 1998, c. C.19, as amended, superseded or replaced from time to time.
- 1.14 "Consent" means a consent issued by the Land Division Committee for the Region of Durham to transfer a part of the Lands pursuant to section 53 of the *Planning Act*.
- 1.15 "Council" means Council of the Town.
- 1.16 "Damages" means any losses, liabilities, damages or out-of-pocket expenses (including legal fees and expenses on a full indemnity basis without reduction for tariff rates or similar reductions) whether resulting from an action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a governmental entity, or a cause, matter, thing, act, omission or state of facts not involving a third party.
- 1.17 "Deposit" has the meaning ascribed in Subsection 7.11(a) herein.
- 1.18 "Developer" means Windcorp Grand Harwood Place Ltd.
- 1.19 "Development Charges Act" means the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended, superseded or replaced from time to time.
- 1.20 "Development Charges" means those charges under the Town's development charges by-law passed from time to time, pursuant to the *Development Charges Act*.
- 1.21 "Development Plans" has the meaning set out in Subsection 3.1.
- 1.22 "Downtown CIP" means the Downtown Community Improvement Plan passed by Council, pursuant to subsection 28(2) of the *Planning Act*, as By-law 44 - 2005, and as further amended from time to time.
- 1.23 "Eligible Assembly Costs" has the meaning set out in Subsection 7.6.
- 1.24 "Environmental Laws" means all applicable Laws of Governmental Entities and all other statutory requirements relating to public or occupational health and safety or the protection of the environment and all Authorizations issued pursuant to such Laws or statutory requirements.
- 1.25 "Execution Date" means the date of execution of this Agreement by both parties.
- 1.26 "Existing Environmental Report" has the meaning set out in Subsection 9.1(a)(i).
- 1.27 "Existing Tenants" means for the purposes of this Agreement, the commercial tenancies within the Ajax Plaza, as of the Execution Date.
- 1.28 "Expropriations Act" means the *Expropriations Act* R.S.O. 1990 c. E.26 as amended, superseded or replaced from time to time.
- 1.29 "Force Majeure Event" means a *bona fide* delay in the performance of any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, material or labour shortage not at the fault of the Developer, acts of public enemy, war, terrorism, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God.
- 1.30 "Future Application" means any complete application filed in accordance with the *Planning Act* which conforms to the provisions of the Town of Ajax Official Plan.
- 1.31 "Governmental Entity" means (i) federal, provincial, municipal, local or other governmental or public department commission, board, bureau, agency, commissioner, tribunal or instrumentality, (ii) any subdivision or authority of any of the above, and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

- 1.32 "Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Laws, including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes thereof or polychlorinated biphenyls and asbestos or asbestos-containing materials.
- 1.33 "HST" means the Harmonized Sales Tax.
- 1.34 "Lands" means the lands shown as Phase 1A, Phase 1B and the future Phase 2 Lands and Phase 3 Lands as depicted on Schedule "B-2".
- 1.35 "Laws" means any and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Entity and (iii) to the extent that they have the force of law, policies, guidelines, notices and protocols of any Governmental Entity.
- 1.36 "Minor Variance" means a minor variance granted by the Committee of Adjustment for the Town pursuant to section 45 of the *Planning Act*.
- 1.37 "Permitted Encumbrances" means those encumbrances set out in Schedule "C".
- 1.38 "Person" means a natural person, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or governmental entity, and pronouns have a similarly extended meaning.
- 1.39 "Phase 1A Lands" means the lands depicted in Schedule "B-2".
- 1.40 "Phase 1B Lands" means the lands depicted on Schedule "B-2".
- 1.41 "Phase 2 Lands" means the lands depicted on Schedule "B-2".
- 1.42 "Phase 3 Lands" means the lands depicted on Schedule "B-2".
- 1.43 "*Planning Act*" means the *Planning Act*, R.S.O. 1990, c. P.13, as amended.
- 1.44 "Private Phase 1B Lands" means the lands on Phase 1B not owned by the Town and depicted on Schedule "B-2".
- 1.45 "Project Building(s)" means a building comprising a component of the Proposed Development. ✓
- 1.46 "Proposed Development" means the proposed development of the Phase 1A Lands as contemplated by the Development Plans. ✓
- 1.47 "Purchase Price" has the meaning set out in Subsection 7.5 hereto.
- 1.48 "Purchaser" means the Developer.
- 1.49 "Region" means the Regional Municipality of Durham.
- 1.50 "Rehabilitation Tax Rebate Program" means the program of the same name as more particularly described in section 2.2.5 of the Downtown CIP By-law.
- 1.51 "Requisition Date" means the thirtieth (30th) day prior to the Closing Date.
- 1.52 "Site Plan Application" means a complete application as defined in the Town's Official Plan pursuant to section 41 of the *Planning Act*.
- 1.53 "Site Plan Approval" means an approval required under Subsection 11.3(a) pursuant to section 41 of the *Planning Act* and / or pursuant to any requirements reasonably imposed by the Town for the Proposed Development. }

- 1.54 "Town Development Conditions" has the meaning ascribed in Subsection 3.3.
- 1.55 "Town Phase 1B Lands" has the meaning ascribed in Section 13.2.
- 1.56 "Town's DC By-law" means Town Development Charge By-law No. 83-2008.
- 1.57 "Utility Lands" means those lands as described on Schedule "B-1" and depicted on Schedule "B-2".
- 1.58 "Value Reassessment Date" means the date on which a Project Building is fit for occupancy pursuant to the *Building Code Act*.
- 1.59 "Vendor" means the Town of Ajax.
- 1.60 "VTB" has the meaning ascribed thereto in Section 7.11(b).
- 1.61 "VTB Mortgagor" has the meaning ascribed thereto in Section 7.11(b).
- 1.62 "Zoning By-law" means the Town's zoning by-law applicable to the Proposed Development, as may be amended from time to time.

SECTION 2 INTENT AND GENERAL OBLIGATIONS

2.1 Financial Incentives.

The financial incentives to be provided by the Town to the Developer for the development of the Phase 1A Lands, as more particularly set out in this Agreement, include:

- (a) a partial municipal tax rebate for the Town's portion of property taxes;
- (b) the rebate of all fees paid to the Town in respect of any Applications;
- (c) an exemption of all Development Charges pursuant to the Town's DC By-law;
- (d) a rebate of all fees in respect of the issuance of any Building Permits; and
- (e) parkland dedication charges at lowest rates provided in the Downtown CIP.

In each case in respect of the Phase 1A Lands.

2.2 Parking Requirement Reduction.

In addition to a reduction in the above-captioned items, the Town acknowledges that the Downtown CIP provides the opportunity for the Developer to make an application for a reduction in the parking requirements as otherwise required by the Zoning By-law.

2.3 Required Improvements.

- (a) Development of the Phase 1A Lands will require the acquisition of the Utility Lands that are more particularly described in this Agreement. These acquisitions are required in order for the Developer to develop the Phase 1A Lands. It is understood and agreed by the Developer and Ajax that the Developer's acquisition of the Utility Lands are a condition precedent of the incentives under the Downtown CIP and under this Agreement and the purchase by the Developer of the Phase 1A Lands.
- (b) The Town will support the development of the Phase 1A Lands through financial incentives to the Developer pursuant to incentive programs offered by the Region under the Regional Revitalization Plan.

SECTION 3
PROPOSED DEVELOPMENT

3.1 Development to be Substantially in Accordance with Plans.

While acknowledging that, at this time, it is a conceptual design, the Town and the Developer agree that the Developer shall develop the Phase 1A Lands, and if applicable the Phase 1B Lands, substantially in accordance with the plans annexed hereto as Schedule "D" (the "Development Plans"). The Town acknowledges that the Developer is relying upon the Town's warranty and representation regarding the zoning permissions applicable to the Phase 1A Lands in agreeing to enter into this Agreement.

3.2 Development Plans Subject to Change.

The parties hereto acknowledge and agree that, subject to the Vendor's conditions in Subsection 11.3, the Developer may alter the Development Plans, provided such alterations are not material alterations. Where the Developer proposes to materially alter the Development Plans, the parties will act reasonably and use their respective best efforts to revise the Development Plans in a manner satisfactory to both parties. It is understood and agreed that it shall be a material alteration to propose development on the Phase 1A Lands that would result in less than 10 storeys, less than 2,300 square meters of total office and/or less than 2,800 square meters of retail gross floor area.

3.3 The Town Development Conditions.

The following conditions are the conditions that must be satisfied in respect of the development of the Phase 1A Lands (the "Town Development Conditions"):

- (a) The design and construction of all Project Buildings shall incorporate the sustainable building technologies and practices more particularly outlined in Schedule "E" (the "Sustainable Elements") that shall be included as conditions of Site Plan Approval and as a condition of any Site Plan Agreement.
- (b) The at-grade portions of the Project Buildings to be constructed facing Harwood Avenue and Road 1 as depicted on Schedule "B-2" shall be constructed for use as grade-related commercial and/or retail premises (the "Grade-related Commercial Premises").
- (c) The ownership of public highway identified as Road 1 as depicted on Schedule "B-2" shall be retained by the Town.

3.4 Timing of Commencement of Construction.

- (a) Following its acquisition of the Phase 1A Lands, the Developer agrees to proceed expeditiously with the development of the Project Buildings to be located thereon and, subject to receiving all regulatory approvals, construction of the development on the Phase 1A Lands shall commence no later than three (3) months from the Closing Date, weather permitting. The Developer shall not be required to construct the stacked townhouse live/work units on the Phase 1A Lands until the Phase 1B Lands are developed.
- (b) It is understood and agreed that construction of the services in the Utility Lands may be carried out at the same time as construction of the development on the Phase 1A Lands provided that temporary parking arrangements in accordance with Schedule "G" including temporary parking on the Utility Lands are in place before the existing parking on the Phase 1A Lands is removed. For greater clarity, the existing parking on the Phase 1A Lands shall not be removed until the Developer has (1) acquired the Utility Lands and demolished all existing buildings on the Utility Lands, (2) construction has commenced to install all services in the Utility Lands and (3) provided temporary parking in accordance with Schedule "G" hereto. It is understood that the use of the temporary parking spaces on the Utility Lands and Road 1 lands may not be available during limited periods of the installation of the services to facilitate the construction activities related to the installation of the services in the Utility Lands and Road 1

*Had it not
changed, it
would have
had to build
in November
cause it
closed in
August.*

Lands. Notwithstanding any of the foregoing, the Developer may remove existing parking spaces on the Phase 1A Lands for the purposes of the erection of a temporary sales office and to facilitate the construction of the services in Road 1 as shown on Schedule "B-2".

3.5 Site Plan Application

The Developer shall submit a Site Plan Application to the Town for the Proposed Development by January 15, 2014. The Town shall act diligently to process and approve the Site Plan Application for the Proposed Development with the anticipated approval being obtained within twelve (12) months of submission by the Developer. The Developer agrees to act diligently to process and respond to comments by the Town on the Site Plan Application.

3.6 Servicing.

The Developer shall be responsible for the construction and/or reconstruction of sanitary sewers, water mains, and storm sewers on the Phase 1A Lands and (if applicable) the Phase 1B Lands, the location and other specifications for which shall be more precisely determined through a Site Plan Application.

3.7 Stopping Up of Phase 1A Lands.

Within ninety (90) days of the Execution Date, the Town shall take the necessary steps to stop up and close the Phase 1A Lands as part of the Harwood Avenue road allowance.

3.8 Temporary Sales Office.

Upon request by the Developer (provided that the Phase 1A Lands have been closed as part of the Harwood Avenue road allowance, as referred to in Subsection 3.7 above), the Town shall, subject to any required Site Plan Approval, promptly issue a licence to permit the Developer to erect a temporary sales office on the Phase 1A Lands for the purposes of marketing the Proposed Development.

When the Developer no longer requires the temporary sales office for the purposes of developing any portion of the Lands, the Town has the option to request that the Developer donate the temporary sales office to the Town provided that the Town must relocate the temporary sales office from the Phase 1A Lands, at its own cost, within thirty (30) days of the Developer notifying the Town that the temporary sales office can be removed. In the event that the Town elects to acquire the temporary sales office, the Town shall provide a charitable tax receipt to the Developer for the value of the temporary sales office.

3.9 Temporary Parking.

The Developer shall provide temporary parking arrangements, at the sole cost of the Developer, as set out in Schedule "C" prior to the commencement of construction of the Proposed Development.

3.10 Official Plan Designation and Zoning.

The Town shall not initiate or grant any amendment to the in-force Official Plan or Zoning By-law or pass an interim control by-law which would have the effect of prohibiting the Proposed Development on the Phase 1A Lands.

3.11 Minor Variances.

In the event that a minor variance(s) are required to permit the Proposed Development on the Phase 1A Lands, the Town shall assist the Developer in any application for such variance(s).

3.12 Constructor.

The Developer will obtain the Town's prior written approval to the constructor(s) that it retains to carry out the Proposed Development or any material portion thereof, not to be unreasonably withheld.

**SECTION 4
DOWNTOWN CIP INCENTIVES**

4.1 Downtown CIP Incentives are a package.

- (a) The Town and the Developer acknowledge and agree that the incentives more particularly described in this Section 4 form a package of incentives (collectively, the "Downtown CIP Incentives") that are to be granted to the Developer in conjunction with the Developer's development and construction of the Proposed Development.
- (b) The Town and the Developer further acknowledge and agree that the benefit accruing to the Developer as a consequence of the Downtown CIP Incentives has been considered, in addition to other normally assessed factors, in arriving at the Purchase Price for the Phase 1A Lands.

4.2 Rehabilitation Tax Rebate Program.

- (a) The Town confirms that this Agreement satisfies the provisions of section 2.2.5 (h) of the current Downtown CIP By-law requiring the Town and the Developer to enter into a "Redevelopment Agreement".
- (b) The Town agrees the incentive to be provided to the Developer pursuant to the Rehabilitation Tax Rebate Program (a "Rehabilitation Tax Rebate") in respect of the Phase 1A Lands shall be eighty percent (80%) of the incremental difference in the Town's component of the property taxes between:
 - (i) property taxes exigible in respect of that part or parts of the Phase 1A Lands as of the Execution Date; and
 - (ii) property taxes exigible on the same part or parts of the Phase 1A Lands on the Value Reassessment Date.
- (c) The Developer hereby covenants and agrees that, after the Value Reassessment Date for any particular Project Building, it shall co-operate with the Municipal Property Assessment Corporation ("MPAC") to facilitate an assessment of the value of a part or parts of the Phase 1A Lands on which a Project Building has been constructed and that part of the Phase 1A Lands associated with such Project Building that may not be fit for occupancy (a "Post-construction Assessment") for the purposes of determining the value of the lands comprising said Project Building as of the Value Reassessment Date.
- (d) For the purpose of the determination of the commencement of Rehabilitation Tax Rebates, the parties hereto agree that there shall be a new date of "project completion" (as that term is used in the Downtown CIP By-law) for each Project Building. For greater clarity, each Project Building shall receive an independent Rehabilitation Tax Rebate commencing upon the first calendar year after the Value Reassessment Date for each Project Building.
- (e) Provided the property taxes for a given Project Building and its associated portion of the Phase 1A Lands as determined above are not in arrears, the Town shall commence paying the Developer the Rehabilitation Tax Rebates at the commencement of the next tax year following the Value Reassessment Date for the applicable Project Building.
- (f) The Rehabilitation Tax Rebate for each Project Building shall expire ten (10) years after the Value Reassessment Date for each Project Building.
- (g) The rebate under the Rehabilitation Tax Rebate Program to be provided by the Town to the Developer pursuant to this section shall be paid by the Town to the Developer or as it may direct provided that the Town shall not be required to make multiple payments at any one time and provided that any rebate will not enure to any residential condominium unit owners.

4.3 Planning and Development Fees Grant & Development Charge Exemption / Grant Programs.

Pursuant to the Planning and Development Fees Grant Program component of the Downtown CIP, and, if required, upon the amendment of the CIP eligibility requirements to include the Proposed Development, the Town covenants and agrees that:

- (a) it shall provide a rebate to the Developer equal to the amount of all fees charged in respect of any Applications in respect of the Lands or in respect of any permits or licences for signage and/or demolition in respect of the redevelopment of the Lands;
- (b) it shall exempt all Development Charges otherwise payable to the Town in respect of the development and/or construction of any component of the Proposed Development; and
- (c) in respect of any fee charged pursuant to the *Building Code Act* for a Building Permit to permit the construction of any structure at the Phase 1A Lands, the Town shall, provide a 100% rebate to the Developer for issuance of such Building Permit in accordance with the Downtown CIP.
- (d) The grants, waivers and/or rebates to be provided by the Town to the Developer pursuant to this section shall be paid by the Town to the registered owner of that part of the Phase 1A Lands subject to the applicable *Planning Act* application and/or Building Permit application at such time as:
 - (1) in the case of an Application, when the Application receives final approval; and
 - (2) in the case of a Building Permit application, when the Chief Building Official for the Town, or their designate, completes an inspection of the structure for which the *Planning Act* or Building Permit application was filed and such structure is fit for occupancy in accordance with the *Building Code Act*

provided that any grants, waivers and/or rebates will not enure to any residential condominium unit owners.

- (e) The payment by the Town to the Developer of any rebate or the waiver of any fee shall be conditional upon the Developer having paid or, to the extent provided hereunder, provided security for, all costs associated with the expropriation by the Town of the Utility Lands if such expropriation is required.

4.4 Fees, Levies or Charges Paid by Letter of Credit.

- (a) The Town acknowledges and agrees that wherever a fee, levy or charge, including without limitation, any fees applicable to Applications or applications for a Building Permit (a "Rebateable Payment"), is to be paid to the Town in respect of any matter covered by the Planning and Development Fees Grant and Development Charges Exemption/Grant Programs as provided in Subsection 4.3 and such fee, levy or charge may be subject to a rebate on a future occasion, such payment may be made in the form of an irrevocable letter of credit in favour of the Town (a "Rebateable LC").
- (b) The Town agrees that where the Developer pays a Rebateable Payment by delivery of a Rebateable LC, at such time as the rebateable portion of the Rebateable Payment would have otherwise accrued to the Developer the Town shall, at the option of the Developer, either:
 - (i) return the Rebateable LC to the Developer within seven (7) days;
 - (ii) cause a reduction in a Rebateable LC to the extent the Rebateable LC exceeds the amount for which security is required (the "Excess LC Amount"); or

- (iii) apply the Excess LC Amount to any other Rebateable Payments to be made by the Developer.
- (c) The Town shall be entitled to draw upon the Rebateable LC in the event and to the extent that the Developer does not qualify for any rebate or exemption under the Downtown CIP.

4.5 Reduced Parkland Dedication Requirements Program.

Pursuant to the Reduced Parkland Dedication Requirements Program, the Town will accept a reduced requirement for cash in lieu of parkland based on the ratio of 5% of the land area for residential development or 2% of the land area for non-residential development. The cash-in-lieu shall be payable prior to the issuance of a Building Permit and shall be calculated based on a market value of \$1,200,000.00 per acre without any adjustment as described in Subsections 7.3 or 7.6.

SECTION 5 REGIONAL, PROVINCIAL AND FEDERAL INCENTIVES

5.1 Best Efforts by Town.

The Town shall use best efforts to assist the Developer, including the preparation and/or supporting of any required applications (as applicable), to obtain incentives from the Region, Province of Ontario and federal government in conjunction with the Proposed Development, including but not limited to:

- (a) tax incentive financing;
- (b) reduction in education property taxes;
- (c) incentives under the Durham Regional Revitalization Program; and
- (d) any other incentives that may be available.

SECTION 6 PURCHASE AND SALE & CLOSING

6.1 Purchase and Sale.

The Developer agrees to purchase from the Town, and the Town hereby agrees to sell to the Developer, the Phase 1A Lands.

6.2 Closing.

The Closing shall occur on the Closing Date or such other date as the parties may agree in writing.

6.3 Completion.

This Agreement shall be completed on the Closing Date at which time possession of the Phase 1A Lands shall be given to the Developer or its nominee.

6.4 Risk.

Subject to any licensing agreement with the Developer for the temporary sales office, the Phase 1A Lands shall be at the risk of the Town until the Closing Date.

6.5 Survey.

The Developer shall be responsible, at its sole cost, for the preparation and registration of the reference plan of survey necessary to complete the herein transaction. The survey shall be submitted to the Town for its approval prior to its registration. The survey shall identify the roads abutting the Phase 1A Lands as parts on the survey.

SECTION 7 PURCHASE ARRANGEMENTS

7.1 Purchased Lands.

To advance its objectives with respect to community improvement and economic development, Ajax will sell the Phase 1A Lands to the Developer. The Phase 1A Lands have an approximate area of 2.35 acres and shall be confirmed by a certificate of a qualified surveyor.

7.2 Market Value.

The market value for purposes of establishing the Purchase Price for the Phase 1A Lands is one million and two hundred thousand dollars (\$1,200,000.00) per acre based on the Phase 1A Lands in their current state, unserviced, prior to assembly and without reference to any improvements currently in place, but assuming the Phase 1A Lands are vacant, with servicing available to the perimeter of the Phase 1A Lands and available for their highest and best use.

7.3 Revised Market Value as a Result of Required Remediation.

To the extent that the soils or groundwater of the Phase 1A Lands and/or the Utility Lands require any remediation work, either before or after the Closing Date, in order to carry out the Developer's obligations hereunder and to develop the Project Buildings, as a result of any Hazardous Materials on the Phase 1A Lands and/or the Utility Lands:

- (a) the market value of the Phase 1A Lands for the purposes of establishing the Purchase Price will be adjusted accordingly and the Purchase Price will be adjusted to the extent that the market value of the Phase 1A Lands is altered;
- (b) if the Town and the Developer cannot agree on a revised market value for the Phase 1A Lands, then each Party shall obtain its own independent appraisal of the Phase 1A Lands. In the event that the two appraisals provide different market values for the Phase 1A Lands and the Town's appraiser and the Developer's appraiser cannot agree on revised market value, then the Town's appraiser and the Developer's appraiser shall agree to obtain a third independent appraisal. Out of the three appraisals, the median of the two appraisals that are closest in value will be deemed to be the revised market value of the Phase 1A Lands, and the Purchase Price will be altered accordingly;
- (c) in the event that the determination that the Phase 1A Lands and/or Utility Lands require remediation work is made subsequent to the Closing Date, the parties agree that the adjustments to the market value and Purchase Price for the Phase 1A Lands will take place post-Closing and to the extent that the Purchase Price is adjusted downwards, the Town will repay the difference to the Developer as to 50%, by way of a repayment to the Developer, and as to 50%, by reducing the indebtedness secured by the VTB. This provision will survive the Closing; and
- (d) the Developer shall, prior to carrying out any remediation work, promptly notify the Town of any required remediation work and the manner in which the remediation work is intended to be carried out as a result of any Hazardous Materials on the Phase 1A Lands and/or the Utility Lands.

7.4 Commercial Leasing Programme.

In developing its leasing programme for the commercial space to be included in the Project Buildings located on the Phase 1A Lands, the Developer agrees that it will:

- (a) give all Existing Tenants in the Ajax Plaza an opportunity to lease space within such Project Buildings;

- (b) Provided that nothing in (a) above will oblige the Developer to enter into leases with commercial tenants whose businesses would not be consistent with the tenant mix that the Developer hopes to achieve at the Proposed Development or for rental rates that are below then current market rates for comparable commercial space.

7.5 Purchase Price.

The Purchase Price for the Phase 1A Lands (the "Purchase Price") shall be the market value of the Phase 1A Lands, as may be adjusted pursuant to Subsection 7.3, less the lesser of the amount of the Developer's Eligible Assembly Costs (as hereinafter defined) or the market value of the Phase 1A Lands. For greater clarity, the Eligible Assembly Costs will not reduce the Purchase Price to below zero.

7.6 Eligible Assembly Costs.

The Developer's Eligible Assembly Costs include:

- (a) The purchase price (whether paid by the Town or the Developer) as set out in agreements for the acquisition of the Utility Lands and the Private Phase 1B Lands, if applicable (the "Private Purchase Agreements") as well as any fees or payments incurred as consideration for entering into the Private Purchase Agreements;
- (b) all expropriation costs (including costs and compensation) relating to the expropriation of the Utility Lands and, if applicable, the Phase 1B Lands;
- (c) The reasonable fees incurred to hire land acquisition agents to purchase the Utility Lands and the Private Phase 1B Lands (if applicable);
- (d) The costs with respect to entering into and completing the Private Purchase Agreements;
- (e) The actual land transfer tax incurred in completing the Private Purchase Agreements;
- (f) The actual demolition and related remediation costs of existing buildings and other improvements on the Utility Lands and the Phase 1B Lands (if applicable); and
- (g) The cost of relocating sanitary, stormwater and water services on Commercial Avenue but limited to the frontage of the Phase 1B Lands.

7.7 Calculation of Eligible Assembly Costs.

- (a) In the event that, within two (2) years after the Closing Date, the Purchaser has not acquired the Private Phase 1B Lands, either by private purchase or by expropriation, and the Town and the Developer have not entered into the agreement described on Section 13.2(b), then Eligible Assembly Costs shall not include the items contained in Subsections 7.6 (a), (b), (c), (d), (e) and (f) but shall include item (g);
- (b) In the event the Developer develops the Phase 1B Lands, the Eligible Assembly Costs shall not include the items set out in Subsection 7.6(g).
- (c) It is possible that the total amount of Eligible Assembly Costs will change upwards or downwards after Closing, either because of the operation of Subsection 7.7(a) above, or because some of the items to be included in Eligible Assembly Costs are not known or quantified until after Closing.

The parties agree to calculate the final Eligible Assembly Costs by not later than twenty five (25) months after the Closing Date, and amend the Purchase Price accordingly. To the extent the Purchase Price is adjusted downward, the Town will, within thirty (30) days, pay the difference

to the Developer as to 50% by way of cash repayment to the Developer and as to 50% by reducing the indebtedness secured by the VTB.

7.8 Acquisition of Utility Lands and Phase 1B Lands

The Developer will be responsible for acquisition of the Utility Lands and the Phase 1B Lands (if applicable). Subject to Subsection 7.7(a), the acquisition of the Phase 1B Lands shall not be a condition of this Agreement. The incentives to be provided under the Downtown CIP, together with the Purchase Price of the Phase 1A Lands subject to any applicable Eligible Assembly Costs, shall represent the Town's financial contribution to the Proposed Development.

7.9 Responsibility for the Acquisition of Lands for Proposed Development.

The Developer will pay the Purchase Price for the acquisition of the Phase 1A Lands. Under no circumstances shall the Town be responsible for the payment of private land acquisition costs to permit the Proposed Development, other than through the provision of development incentives provided under the Downtown CIP and the Eligible Assembly Costs being deducted from the Purchase Price.

7.10 Additional Assistance from Town.

Prior to Closing, the Town will assist the Developer with respect to the following matters:

- (a) Coordinating development approvals for the Site Plan with the Region and GO Transit;
- (b) Assisting in public consultation and public information sessions with stakeholders, including the private owners in the Ajax Plaza;
- (c) Any issues related to land ownership, land boundaries and easements.

7.11 Payment of Purchase Price.

The Purchase Price shall be payable as follows:

- (a) within forty-five (45) days of the Execution Date, the sum of \$150,000.00 (the "Deposit") to the Town's solicitor's, Polak McKay and Hawkshaw in trust as a deposit to be held pending completion or other termination of this Agreement and to be credited against the Purchase Price at Closing, or repaid to the Developer with interest and without deduction if this Agreement is terminated and Closing does not occur. The Deposit shall be invested in thirty (30) day term deposits from time to time and the interest earned thereon shall be paid to the Developer as soon as reasonably possible following the Closing or other termination of this Agreement; and
- (b) on the Closing Date, the Developer (or the "VTB Mortgagor" for the purposes of this Subsection 7.11) shall execute, deliver to the Vendor and register on title to the Phase 1A Lands a mortgage of the Phase 1A Lands (the "VTB") including the following terms:
 - i. Principal: 50% of Purchase Price
 - ii. Interest: 4% per annum to be paid on maturity (calculated semi-annually, not in advance)
 - iii. Balance Due: In three (3) years.
 - iv. Prepayment: The VTB Mortgagor, its successors and assigns, may prepay the whole or any part or parts of the principal sum secured by the VTB at any time or times without notice or penalty.
 - v. Tripartite Agreement and Waterfall: Upon the Developer obtaining construction financing, the Town shall enter into a tripartite agreement with the Developer and the construction lender, which

Payments agreement, inter alia, will set out the order of repayment with respect to the proceeds from unit sales in the Proposed Development.

SECTION 8

TOWN'S RIGHT TO REPURCHASE & DEVELOPER'S RIGHT TO ADJUSTMENT

8.1 Definitions.

(a) "Town Repurchase Event" means:

- (i) Developer confirming to the Town that it intends on proceeding with the development of Phase 1A in a manner that does not conform to or that is materially different from the Development Plans, and the Developer and the Town cannot agree on revisions to the Development Plans; and/or
- (ii) provided the Developer is not awaiting comments or confirmation of approval on any Application from the Town, or any building permit or other permit from the Town or the Region or Province, the Developer failing to take reasonable steps to proceed with the construction of the Phase 1A Lands and/or the Utility Lands within three (3) months from the Closing Date, weather permitting.

8.2 Town's Right to Repurchase.

In the event of a Town Repurchase Event, the Town shall have the right to repurchase all (but not less than all) of the Phase 1A Lands, the Utility Lands and, if applicable, the Phase 1B Lands (collectively, the "Repurchased Lands") subject to the following terms and conditions (the "Town's Right to Repurchase"):

- (a) The purchase price for the Repurchased Lands shall be the greater of:
 - (i) the Purchase Price paid by the Developer to the Town for the Phase 1A Lands, plus the purchase price paid for (or if applicable, the expropriation cost of) the Utility Lands and, if applicable, the Phase 1B Lands; plus
 - (ii) the Developer's hard and soft out-of-pocket expenses attributable to any infrastructure it has designed and/or constructed whose benefit is attributable, in whole or in part, to the Phase 1A Lands, the Utility Lands and, if applicable, the Phase 1B lands.
- (b) Prior to exercising its rights pursuant this Subsection 8.2, the Town shall deliver written notice to the Developer (the "Repurchase Notice") confirming:
 - (i) the Town's intention to exercise the Town's Right to Repurchase;
 - (ii) whether the Town's Right to Repurchase arises under Subsection 8.1(a)(i) or 8.1(a)(ii);
 - (iii) a summary of the facts giving rise to the Town Repurchase Event.
- (c) Upon receipt of the Repurchase Notice, the Developer shall have ninety (90) days to abort the Town Repurchase Event (the "Curing Period") by:
 - (i) in the case of a Town Repurchase Event described in Subsection 8.1(a)(i), confirming that the Developer will proceed with the development of the Phase 1A Lands in a manner that conforms to the Development Plans or in a manner that does not conform to the Development Plans but which the Town approves nonetheless; or
 - (ii) in the case of a Town Repurchase Event described in Subsection 8.1(a)(ii), takes steps to commence construction on the Phase 1A Lands.

- (d) The closing date of the repurchase of the Phase 1A Lands and purchase of the Utility Lands and, if applicable, the Phase 1B Lands shall be the day that is sixty (60) days from the date the Town delivers the Repurchase Notice to the Developer at which time the Developer shall transfer the Phase 1A Lands to the Town free and clear of all encumbrances, other than encumbrances in place at the time of Closing or otherwise approved by the Town.

SECTION 9 INVESTIGATION OF PROPERTY

9.1 Materials to be Produced by Town.

- (a) No later than fifteen (15) days after the Execution Date (the "Delivery Date"), the Town shall deliver and/or make available to the Developer the following materials (the "Delivery Materials"):
 - (i) all soil and environmental inspections, audits, reports, tests, studies and assessments made with respect to the Phase 1A Lands in its possession or control (the "Existing Environmental Reports");
 - (ii) all other reports, for example traffic studies, with respect to the Phase 1A Lands;
 - (iii) any other documents or materials relating to the Phase 1A Lands that the Developer may reasonably request in writing and that are in the possession or control of the Town.
- (b) If this Agreement is terminated, all Delivery Materials will be returned to the Town.

9.2 Access to Property.

- (a) From the Execution Date until the Closing Date, the Developer and its agents, advisors, consultants, employees and lenders will have access to the Phase 1A Lands during normal business hours, unless otherwise authorized by the Town, upon reasonable prior written notice to the Town for the purpose of inspecting the Phase 1A Lands including performing physical and structural inspections, soil tests and environmental audits. Such access shall not substantially interfere with the parking areas of the Phase 1A Lands and the area of access shall be subject to the prior approval of the Town acting reasonably. The Developer shall repair any of the Phase 1A Lands following such inspection to the conditions existing prior to such inspections.
- (b) The Town may accompany the Developer and its agents, consultants, employees and lenders on any inspections and during any tests and audits.
- (c) The Developer is not liable for any Damages incurred by Town arising from Developer's discovery of adverse facts or conditions with respect to the Phase 1A Lands, which facts or conditions were not otherwise caused by Developer's activities on the Phase 1A Lands, or any pre-existing condition on the Phase 1A Lands.

SECTION 10 REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties of the Vendor.

The Vendor represents and warrants as follows to the Purchaser as of the date hereof and as of the date of Closing and acknowledges that the Purchaser is relying upon the representations and warranties in connection with its purchase of the Phase 1A Lands:

- (a) The Vendor has the authority to enter into this Agreement and complete the transaction contemplated hereunder.
- (b) The Vendor has complied with all applicable Town by-laws and policies in respect of its entering into this Agreement and the completion of the transaction contemplated hereunder, including without limitation, the satisfaction of any requirements of any sole-sourcing and divestiture by-laws or policies.
- (c) The Durham in-force Official Plan, the Town's in-force Official Plan and the Zoning By-law permit the Proposed Development on the Phase 1A Lands to include the following:
 - (i) as many as 350 residential Apartment Units;
 - (ii) a maximum height of 10 storeys, which is the minimum height to be constructed by the Developer;
 - (iii) as many as 48 stacked townhouse live/work units;
 - (iv) total of 5,100 square metres of office (2,300 square metres) and retail (2,800 square metres) floor space, consisting of two (2) storeys of office space and ground floor retail; and
 - (vi) the uses described in Schedule "F" hereto.
- (d) The Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).
- (e) Except for the Purchaser under this Agreement, no Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase or other acquisition from the Vendor of any of the Phase 1A Lands.
- (f) The Vendor is the sole registered owner of the Phase 1A Lands with good and marketable and insurable title to the Property, free and clear of all encumbrances, except for Permitted Encumbrances.
- (g) All accounts that are due and owing for work or services performed or materials placed or furnished upon or in respect of the construction, completion, repair, renovation or maintenance of the Phase 1A Lands have been fully paid, subject to statutory holdbacks the amount of which holdbacks will be credited in favour of the Purchaser on the statement of adjustments at Closing.
- (h) The Vendor is not bound by any agreement to enter into any, tenancy agreements, leases, subleases, agreements to lease or sublease, offers to lease or sublease, renewals of leases or subleases, storage agreements, parking agreements and other agreements, rights or licences allowing any Person to use, possess or occupy any portion of the Phase 1A Lands or any part of it.
- (i) There are no agreements, contracts, licences, undertakings, engagements or commitments of any nature (other than registered encumbrances) relating to the construction, ownership, development, operation, maintenance, repair, management, cleaning, security, fire protection, servicing or any other aspect of the Phase 1A Lands.
- (j) There are no actions, suits, arbitrations, alternative dispute resolution processes, or administrative or other proceedings by or before any governmental entity or other Person, pending, or, to the knowledge of the Vendor, threatened against or affecting the Phase 1A Lands, which would be reasonably expected to interfere

with the Vendor's ability to carry out the transactions contemplated hereby, and the Vendor does not know of any valid basis for any such action, suit, arbitration process or proceeding.

(k) The Vendor is a registrant for the purposes of the Tax imposed under Part IX of the *Excise Tax Act* (Canada).

(l) **Environmental Matters.**

- i. To the best of the Vendor's knowledge, without having completed any independent study or inquiry, neither the Phase 1A Lands nor any properties adjacent to the Phase 1A Lands are contaminated except to the extent disclosed in any Existing Environmental Reports disclosed to the Purchaser.
- ii. There are no Existing Environmental Reports relating to environmental matters affecting the Phase 1A Lands which are in the possession or under the control of the Vendor.
- iii. The Purchaser will have no obligation to assume and will not by reason of completion of the transaction contemplated by this Agreement assume or become liable for any obligations in respect of any employees, and the Vendor shall indemnify and hold harmless the Purchaser from and against any and all such liabilities and obligations.

10.2 Representations and Warranties of the Purchaser.

The Purchaser represents and warrants as follows to the Vendor and acknowledges that the Vendor is relying on such representations and warranties in connection with its sale of the Phase 1A Lands:

- (a) The Purchaser is, or will before Closing, be registered for the purposes of Part IX of the *Excise Tax Act* (Canada) in accordance with the requirements of Subdivision (d) of Division V thereof and it will continue to be so registered at the Closing Date, and the Phase 1A Lands are being purchased by the Purchaser as principal for its own account and is not being purchased by the Purchaser as an agent, trustee, or otherwise on behalf of or for another person.

SECTION 11 CONDITIONS OF CLOSING

11.1 Purchaser Conditions.

The Developer's obligation to carry out the transaction contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified (the "Purchaser's Conditions"):

- (a) Title to the Property. On the Closing Date, the Town's title to the Phase 1A Lands shall be a good and marketable title in fee simple, free and clear of all mortgages, liens, charges, encumbrances, restrictions, leases and any other claims and interests whatsoever save and except for the Permitted Encumbrances.
- (b) Geotechnical, Soil and other Investigations. By one hundred and eighty (180) days after the Execution Date, the Developer shall be satisfied, in its sole discretion, as to the state of the Phase 1A Lands, including without limitation, its geotechnical, soil and environmental state.
- (c) Official Plan and Zoning. On the Closing Date, the Developer shall be satisfied, in its sole discretion, that the Town's Official Plan, Region's Official and zoning applicable to the Phase 1A Lands has not been amended from that applicable to the Phase 1A Lands on the Execution Date save and except any amendment required by the Developer to permit the Development Plans.

- (d) Economic Feasibility. By the first anniversary of the Execution Date, the Developer is satisfied in its sole discretion with the economic feasibility of the development of the Phase 1A Lands in accordance with the Development Plans. The Developer shall have the right to extend the date for satisfaction of this condition on two (2) occasions, each such extension not to exceed six (6) months and provided that the Developer gives not less than thirty (30) days' notice to the Town of each such extension.

Economic feasibility is to be evaluated by the Developer based on a number of factors including, without limitation, a minimum unit sales target of eighty five percent (85%), the cost of construction, financial return/profit, the cost and availability of financing, and activity on adjacent properties within the Lands.

If the condition contained in this Subsection 11.1(d) is not satisfied and this Agreement is terminated as a result, upon request by the Town, the Developer will provide to the Town a report, on a confidential basis, indicating the reasoning behind the Developer's decision. This report will be submitted on a without prejudice basis, and because it will contain commercially sensitive information, it will not be made available pursuant to freedom of information requests.

- (e) Performance of Terms, Covenants and Conditions. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Town on or before the Closing Date shall have been complied with or performed in all material respects on or before the Closing Date.

11.2 Satisfaction or Waiver of Purchaser Conditions.

The conditions in Subsection 11.1 above are for the sole benefit of the Developer and may be waived by the Developer at any time. If the Developer's conditions set forth in Subsection 11.1 are not satisfied or waived in writing by the Developer by the dates specified, the Agreement shall be terminated, all obligations of the parties to each other shall be at an end and the Deposit with accrued interest shall be returned to the Developer, without prejudice to any remedies available to the Developer at law for breach of covenant.

11.3 Vendor Conditions.

- (a) The Town has granted Site Plan Approval in respect of the Proposed Development and that the parties have entered into a site plan agreement satisfactory to both the Town and the Developer. The Town shall be reasonable in its negotiation of the site plan agreement. It is understood and agreed that the site plan agreement shall include the obligations of the Developer, at its sole costs, for the construction of the Road 1 (as depicted on Schedule "B-2"), the relocation of sanitary, stormwater and water services on Commercial Avenue and the conveyance of all or part of the Utility Lands to the Town.
- (b) The Developer has acquired or the Town has expropriated the Utility Lands on or before the Closing Date.

11.4 Satisfaction or Waiver of Vendor Conditions.

The conditions in Subsection 11.3 are for the sole benefit of the Town and may be waived by Town at any time. If the Town's Conditions set forth in Subsection 11.3 are not satisfied or waived in writing by the Town by the dates specified, the Agreement shall be terminated, all obligations of the parties to each other shall be at an end and the Deposit with accrued interest shall be returned to the Developer.

11.5 Title Examination.

Title is to be examined by the Developer at the Developer's expense.

11.6 Requisitions.

- (a) the Developer shall be allowed until the date which is sixty (60) days prior to the

Closing Date to investigate the title to the Phase 1A Lands at its own expense and title to the Phase 1A Lands shall be good and marketable in fee simple subject to Permitted Encumbrances and free from liens, charges and mortgages (including local improvements, any prior outstanding development charges and capital contribution) and if within that time, the Developer shall furnish the Town in writing with any objections to the title which the Town shall be unable to remove, remedy or satisfy and which the Developer will not waive, this Agreement (notwithstanding any intermediate acts or negotiations with respect to such objections) shall be null and void and the Deposit shall be returned without deduction and with accrued interest.

- (b) Save as to any valid objections so made within such time, and save with respect to any requisitions going to the root of title and/or materially limiting the Developer's ability to construct the Proposed Development, the Developer shall be conclusively deemed to have accepted the title of the Town to the Phase 1A Lands.

11.7 Utility Lands Acquisition.

- (a) The Developer shall be responsible, at its sole cost but subject to the Eligible Assembly Costs, for the acquisition of the Utility Lands and demolition of the buildings located on the Utility Lands.
- (b) In the event the Developer is unable to reasonably acquire the Utility Lands privately, the Town agrees to proceed with the process of expropriating such part of Utility Lands provided that:
 - (i) the Developer has made a request to the Town to proceed with the process of expropriation by not later than the date which is six (6) months before the expected Closing Date;
 - (ii) the Developer has delivered to the Town security, in an amount satisfactory to the Town, acting reasonably, to satisfy all financial obligations the Town may incur as a result of such expropriation, including but without limiting the foregoing, land compensation and injurious affection claims;
 - (iii) the Developer has satisfied or waived the Purchaser's Conditions contained in Subsection 11.1(b) and (d); and
 - (iv) the Vendor's condition in Section 11.3 (a) has been satisfied.
- (c) Following determination of all costs payable by the Town for the expropriation of any part of the Utility Lands, the Town agrees to convey to the Developer any portion of the Utility Lands expropriated by the Town and not required for municipal purposes.

SECTION 12 CLOSING ARRANGEMENTS

12.1 Closing Arrangements.

This Agreement shall be completed on the Closing Date.

12.2 Documents of the Town.

The Town shall deliver to the Developer's solicitors on the Closing Date the following documents fully executed by the Town, where applicable, or such other parties as may be specified:

- (a) Transfer: A registerable Transfer transferring the Phase 1 A Lands in fee simple to the Developer;

- (b) Direction re Funds: A direction identifying the party to whom the balance of the Purchase Price to be paid on closing;
- (c) Certificate of the Town: A certificate of the Town certifying that it is not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (d) Undertaking to Readjust: An undertaking to readjust those items typically contained on the statement of adjustments;
- (e) Bring-down Certificate: A certificate executed by the Town confirming that the warranties and representations given by the Town pursuant to this Agreement have not changed and remain valid;
- (f) Such other deeds, conveyances resolutions and other documents as the Developer or its solicitors may reasonably require in order to implement the intent of this Agreement.

12.3 Documents of the Developer.

The Developer shall deliver to the Town's solicitors on the Closing Date the following documents, fully executed by the Developer, where applicable, or such other parties as may be specified:

- (a) Purchase Price. The Purchase Price subject to the adjustments but less the amount to be secured by the VTB Mortgage by certified cheque;
- (b) Direction re Title: A direction identifying the name of the party to whom the Phase 1A Lands is to be conveyed;
- (c) HST Declaration and Indemnity. A statutory declaration or certificate of an officer of the Developer confirming its registration number for HST purposes;
- (d) Undertaking to Readjust: An undertaking to readjust those items typically contained on the statement of adjustments;
- (e) Bring-down Certificate: A certificate executed by the Developer confirming that the warranties and representations given by the Developer pursuant to this Agreement have not changed and remain valid; and
- (f) the VTB Mortgage.

12.4 Taxes and Fees.

- (a) General: The Developer shall be responsible for goods and services tax and for sales tax and for registration fees and property transfer tax payable in connection with the transactions contemplated herein. Each party shall pay its own legal fees with respect to this transaction.
- (b) HST: The Developer and the Town acknowledge that, as of the date of this Agreement, harmonized sales tax ("HST") is exigible on this transaction and is not included in the Purchase Price. As HST is exigible on this transaction, the Developer covenants and agrees that it shall: provide to the Town the instrument referred to in Subsection 12.3(c) above and indemnify the Town from and against all HST, penalties, costs and interest payable by or assessed against the Town in relation to the purchase of the Phase 1A Lands by the Developer, in which case the Town shall not require payment to it of HST.

12.5 Electronic Registration.

- (a) The Town and the Developer covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "DRA") to govern the electronic submission of the transfer/deed for the Phase 1A Lands and the VTB to the applicable Land Registry Office. The DRA shall outline or establish the procedures and timing for completing all registrations electronically and

provide for all closing documents and closing funds to be held in escrow pending the submission of the transfer/deed and the VTB to the Land Registry Office and its acceptance by virtue of being assigned a registration number. The DRA shall also provide that if there is a problem with the Teraview electronic registration system which does not allow the parties to electronically register all registration documents on Closing, the Closing Date shall be deemed to be extended until the next day when the said system is accessible and operating for the applicable Land Registry Office applicable to the Property.

- (b) Any notice, approval, waiver, agreement, instrument or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Developer's Solicitors on behalf of the Developer and by the Town's Solicitors on behalf of the Town and any tender of closing documents and the balance of the Purchase Price may be made upon the Town's Solicitors and the Developer's Solicitors, as the case may be. The Town and the Developer acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete this transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed, the VTB and any other Closing Document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such documents to the other party's solicitor for registration.

SECTION 13 PHASE 1B LANDS

13.1 Best Efforts to Acquire Private Phase 1B Lands.

- (a) During the period starting on the date that is six (6) months after the Execution Date and ending on the third anniversary of the Execution Date or the date this Agreement is terminated, whichever is first to occur, the Developer will use its reasonable commercial efforts to acquire the Private Phase 1B Lands privately, and shall report to the Town periodically on the status and results of its efforts. For greater clarity, there is no absolute obligation on the Developer to acquire any of the Phase 1B Lands.

Reasonable commercial efforts means that: (1) as parcels in the Private Phase 1B Lands become available for sale, the Developer will make offers to acquire those parcels conditional on the acquisition of all of the Private Phase 1B Lands and subject to the purchase price of those parcels being acceptable to the Developer, acting reasonably; and (2) the Developer will obtain an appraisal of the market value for each parcel in the Private Phase 1B Lands that it has been unable to acquire and will provide evidence to the Town, including a copy of the appraisal, that it has made reasonable commercial efforts to acquire such parcel at the appraised market value.

- (b) In the event that the Developer is unable to reasonably acquire the Private Phase 1B Lands privately, and if the Developer so requests of the Town, and provided that the Town and the Developer have entered into the agreement as set out in Section 13.2 (b), the Town agrees to proceed with the process of expropriating the Private Phase 1B Lands and convey the Private Phase 1B Lands to the Developer, all at the cost of the Developer, subject to appropriate security being delivered by the Developer to the Town in an amount satisfactory to the Town, acting reasonably, to satisfy all financial obligations the Town may incur as a result of such expropriation.

13.2 Acquisition of Town Phase 1B Lands.

- (a) Provided that the Developer acquires the Private Phase 1B Lands privately or the Town expropriates the Private Phase 1B Lands, the Town shall sell the portion of the Phase 1B Lands owned by the Town (the "Town Phase 1B Lands") to the Developer upon request by the Developer, in accordance with the terms of the agreement to be entered into between the Developer and the Town as set out in Subsection 13.2(b), provided that the Developer develops the Phase 1B Lands substantially in accordance with the conceptual plans annexed hereto as Schedule "D".
- (b) The Town and the Developer will enter into good faith negotiations with respect to the acquisition and development of the Town Phase 1B Lands which will be the same in form and content as this Agreement, *mutatis mutandis*, with the applicable sections of this Agreement being Sections 1, 2.1, 2.2, 3.1-3.2, 3.3(a), 3.5, 3.8, 3.10-3.12, 4, 5, 6, 7.1-7.6, 7.10-7.12, 8, 9, 10, 11.1-11.7, 12, 14, 15, 16 and 17, or as the parties may further agree to. The agreement described in this subsection (b) shall be entered into within one year of the Execution Date failing which, unless otherwise mutually agreed by the parties, the obligations of the parties in this Agreement with respect to the Phase 1B Lands, except Subsection 7.7(a), shall be at an end. For greater clarity, the agreement for the acquisition and development of the Town Phase 1B Lands is to be conditional on the Developer acquiring the Private Phase 1B Lands.

SECTION 14

PHASE 2 LANDS AND PHASE 3 LANDS

14.1 Right of First Offer.

Before the Town may offer for sale any part of the Phase 2 Lands and/or the Phase 3 Lands, owned by the Town (the "Town Phase 2 and Phase 3 Lands") to any third party, the Town shall first offer for sale the Town Phase 2 and Phase 3 Lands to the Developer subject to the following terms and conditions:

- (a) The Developer will have ninety (90) days following the date that the Town presents the Developer with such offer to decide whether it wishes to enter into negotiations for the acquisition of the Town Phase 2 and Phase 3 Lands intended to be sold by the Town;
- (b) If the Developer wishes to enter into negotiations with the Town for the acquisition of the Town Phase 2 and Phase 3 Lands intended to be sold by the Town, the Developer shall deliver to the Town written notice thereof. Promptly after receipt of such notice, the Town and Developer shall commence good faith negotiations for a period not to exceed one hundred and twenty (120) days after the date that the Developer gives the requisite notice to the Town, and the Town will advise the Developer of the minimum price which the Town is prepared to accept for the Land in question;
- (c) If the Developer elects not to enter into negotiations for the acquisition of the Town Phase 2 and Phase 3 Lands intended to be sold by the Town or if the Developer and Town do not enter into a written agreement for the acquisition of such lands within one hundred and twenty (120) days after the Town's receipt of the notice in (b) above, then the herein right is at an end and the Town is free to enter into an agreement with a third party; and
- (d) In the event that the Developer delivers written notice to the Town that it elects to forgo all rights under this Agreement to pursue the acquisition of the Town Phase 2 and Phase 3 Lands the Town shall not be obligated to follow the procedure described in this Section 14.

14.2 Obligation of the Town.

The obligation of the Town set out in Subsection 14.1 shall not apply if the Town determines that the Developer has constructed any portion of the Proposed Development in a manner that is not substantially in accordance with the Development Plans and Site Plans.

14.3 Notification.

In the event that the Town makes the determination described in Section 14.2, the Town shall notify the Developer immediately and the Town shall advise the Developer in writing as to the basis for such determination.

SECTION 15 SHARED SERVICES

15.1 Shared Services.

It is understood and agreed that the construction of certain services by the Developer for the development of the Phase 1A Lands, including roads, sidewalks, pedestrian routes, streetscape treatment and services may benefit the other parts of the Lands (collectively, the "Shared Services"). It is further understood and agreed that the Shared Services are not included in the Town's DC By-law.

15.2 Reimbursement of Front End Costs

- (a) In the event that a party other than the Developer develops the Phase 1B Lands, Phase 2 Lands and/or Phase 3 Lands, or any portion thereof, the Town shall require as a condition of any application to the Town for development that such party reimburse the Developer for the front end costs that the Developer has incurred in servicing the Phase 1A Lands (and if applicable, the Phase 1B Lands), to the extent those Shared Services also benefitted the Phase 1B Lands, Phase 2 Lands and/or Phase 3 Lands, as applicable.
- (b) In the event the Town determines to sell any portion of the Town Phase 1B Lands, Phase 2 Lands and/or the Phase 3 Lands which are owned by the Town, it will include in the sale price an amount equal to the Shared Services benefitting the Town Phase 1B Lands, Town-owned portion of the Phase 2 Lands and Phase 3 Lands, which sum the Town shall pay to the Developer upon receipt, in reimbursement of the Developer's front end costs.
- (c) To the extent that Subsection 15.2(a) is applicable, the Parties will agree, before the date when the Developer waives its conditions under this Agreement as per Subsection 11.1, upon the proportion of the Developer's front end costs of the Shared Services which benefit the Phase 1B Lands (if applicable), Phase 2 Lands and/or Phase 3 Lands.
- (d) In the event any such condition is appealed to a Court or administrative tribunal (such as the Ontario Municipal Board), the Developer shall be permitted to take carriage of such appeal and, if it does so, will be solely responsible for all costs associated therewith.

SECTION 16 ARBITRATION

16.1 Disputes to be Resolved by Arbitration.

If the parties cannot, after negotiating in good faith, agree upon the resolution of any dispute arising from the interpretation of a provision of this Agreement, then the parties agree that such dispute will be resolved by binding arbitration pursuant to the *Arbitration Act, 1991, S.O. 1991, c. 17*, as may be amended from time to time (the "*Arbitration Act*").

16.2 Commencement of Arbitration.

- (a) In the event a dispute arises between the parties and one or both parties believe that the dispute is unlikely to be resolved through negotiation, in accordance with the provisions of this Agreement, that party shall deliver a notice of arbitration (the "Arbitration Notice") to the other party stating the intention to proceed to arbitration.
- (b) The arbitration shall commence within twenty (20) Business Days of delivery of the Arbitration Notice.
- (c) Upon receipt of the Arbitration Notice, the parties have seven (7) Business Days to agree upon a single arbitrator. In the event that the parties cannot agree upon a single arbitrator, each party shall, within three (3) Business Days thereafter, name an arbitrator. The two arbitrators chosen shall then select a third arbitrator who shall serve as the sole arbitrator.
- (d) The selected arbitrator shall establish all procedural requirements of the arbitration pursuant to the *Arbitration Act* as well as the determination of costs that may be payable by one party to the other.
- (e) In selecting an arbitrator, the parties acknowledge and agree that any the arbitration shall commence within twenty (20) Business Days of delivery of the Arbitration Notice and any arbitrator nominated shall be available within such dates.

16.3 Decision of Arbitration Panel.

The parties acknowledge and agree that the decision of the arbitrator shall be final.

16.4 Expenses of Arbitration.

The parties acknowledge and agree that the expenses of any arbitration shall be borne by the parties in accordance with the decision of the arbitrator.

SECTION 17 MISCELLANEOUS

17.1 Intention of Parties.

Notwithstanding any other provisions of the Agreement, provided that prior to execution the Town passes a by-law authorizing execution of this Agreement, the parties hereto agree with each other that none of the provisions of the Agreement (including a provision stating the Parties' intention) is intended to operate, nor shall have the effect of operating in any way to fetter either the Council which authorized the execution of the Agreement or any of its successors in the exercise of any of such Council's discretionary powers. Notwithstanding the foregoing, the parties hereto acknowledge that the Developer maintains and may exercise all rights and remedies available at law or equity against the Town in the event of non-fulfillment, non-observance or non-performance of any condition, obligation or covenant under this Agreement, in whole or in part, by the Town.

17.2 No Challenge to Jurisdiction.

It is agreed and acknowledged by the parties hereto that each is satisfied as to the jurisdiction of the other to enter into the Agreement. The Parties therefore agree that they will not challenge the jurisdiction of themselves or the other Party to enter into the Agreement, nor will they challenge the legality of any provision in the Agreement and, likewise, the parties shall not question the jurisdiction of the Town to enter into the Agreement nor question the legality of any provision contained herein. The Parties hereto, their successors, assigns and lessees are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction.

17.3 Further Assurances.

The parties hereto covenant and agree that at all times, and from time to time hereafter, upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of the Agreement.

17.4 Time of the Essence.

Time shall be of the essence in all respects for the purposes of this Agreement.

17.5 Tender.

Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque or bank draft.

17.6 Relationship of the Parties.

Nothing in this Agreement shall be construed so as to make either party a partner of the other.

17.7 Force Majeure.

Notwithstanding anything in the Agreement to the contrary, if the Developer is bona fide delayed in or prevented from performing any obligation arising under the Agreement by reason of a Force Majeure Event not caused by its own default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause and its effects exists. Moreover, the Developer will be entitled, without being in breach of the Agreement, to carry out such obligation within a reasonable time period after the cessation of such cause.

17.8 Notices.

- (a) **Addresses for Notice:** Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "Notice") shall be in writing and shall be given by delivery or written electronic communication which results in a written or printed notice being given to the applicable address set forth below:

in the case of the Town addressed to it at:

Town of Ajax
65 Harwood Avenue South
Ajax, ON L1S 2H9

Attention: Town Clerk
Telephone: (905) 683-8207

with a copy to:

Polak, McKay & Hawkshaw
467 Westney Road South, Unit 16
Ajax, ON L1S 6V8

Attention: Ron Hawkshaw
Telephone: (905) 428-2063

and in the case of the Developer addressed to it at:

Windcorp Grand Harwood Place Ltd.
3601 Highway #7, Suite 400
Markham, ON L3R 0M3

Attention: Laura Starr
Telephone: (905) 943-2981

With a copy to:

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

Attention: Dana Porter
Telephone: (416) 869-5533

- (b) **Receipt of Notice:** Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of delivery if received prior to 5:00 p.m. (Eastern Standard Time) on a Business Day, otherwise the date of delivery shall be deemed to be on the Business Day next following such date. Any notice, if sent by fax communication, shall be deemed to have been validly and effectively given and received on the date of transmission if received prior to 5:00 p.m. (Toronto time) on a Business Day, otherwise the date of delivery shall be deemed to be on the Business Day next following such date. Notices given by electronic mail alone will not be effective.
- (c) **Change of Address for Notice:** By giving to the other party at least ten (10) days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 17.8.

17.9 Schedule.

The schedules attached hereto are incorporated into this Agreement by reference and are deemed to be a part hereof. The schedules attached hereto are as follows:

Schedule "A"	Location And Parameters Of Community Improvement Plan
Schedule "B-1"	Description Of Lands
Schedule "B-2"	Sketch Of Lands
Schedule "C"	Permitted Encumbrances
Schedule "D"	Phase 1A and 1B Development Plans
Schedule "E"	Sustainable Elements
Schedule "F"	Permitted Uses
Schedule "G"	Temporary Parking Arrangements

17.10 Lawyers as Agents.

Notices, approvals, waivers and other documents permitted, required or contemplated by this Agreement may be given or delivered by the parties or by their respective solicitors on their behalf.

17.11 Assignment.

The Developer may, upon prior notice to the Town given no later than seven (7) Business Days prior to the Closing Date, assign all of its right, title and interest in and to this Agreement to a related entity or under the control of the Developer provided that:

- (a) such assignee covenants and agrees with the Town to assume and be bound hereby;
- (b) the Developer shall be and remain liable hereunder until Closing, after which time, only the assignee shall have any obligations hereunder.

The Parties acknowledge that the agreement for the development of the Phase 1B Lands, as per Subsection 13.2(b), may be entered into by a different entity (other than the Developer) with the Town.

17.12 Title Direction.

The Developer may direct title to the Phase 1A Lands be taken in the name of one or more entities related to or under the control of the Developer.

17.13 Non-Merger.

Except as herein otherwise provided, none of the covenants, provisions, representations and warranties of this Agreement shall merge in the deed or transfer of the Property or any other document delivered on the Closing Date and the provisions of this Agreement shall survive the Closing Date.

17.14 Enurement.

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

17.15 Compliance with *Planning Act*.

This Agreement is subject to compliance with the provision of the *Planning Act*, and this Agreement shall be effective to create an interest in lands only if such provisions are complied with prior to the Closing Date.

17.16 Counterparts.

This Agreement may be executed in counterparts, each of which is deemed to be an original and both of which taken together are deemed to constitute one and the same instrument, and production of one of the executed counterparts from each of the parties will be sufficient proof of execution of this Agreement.

[Signature Pages to Follow]

IN WITNESS WHEREOF the parties have executed this Agreement.

THE CORPORATION OF THE TOWN OF AJAX

Per: [Signature]
Name: Walter Hollingsworth
Title: Deputy Clerk

Per: [Signature]
Name: Steve Jarvis
Title: Mayor

I/We have authority to bind the Town.

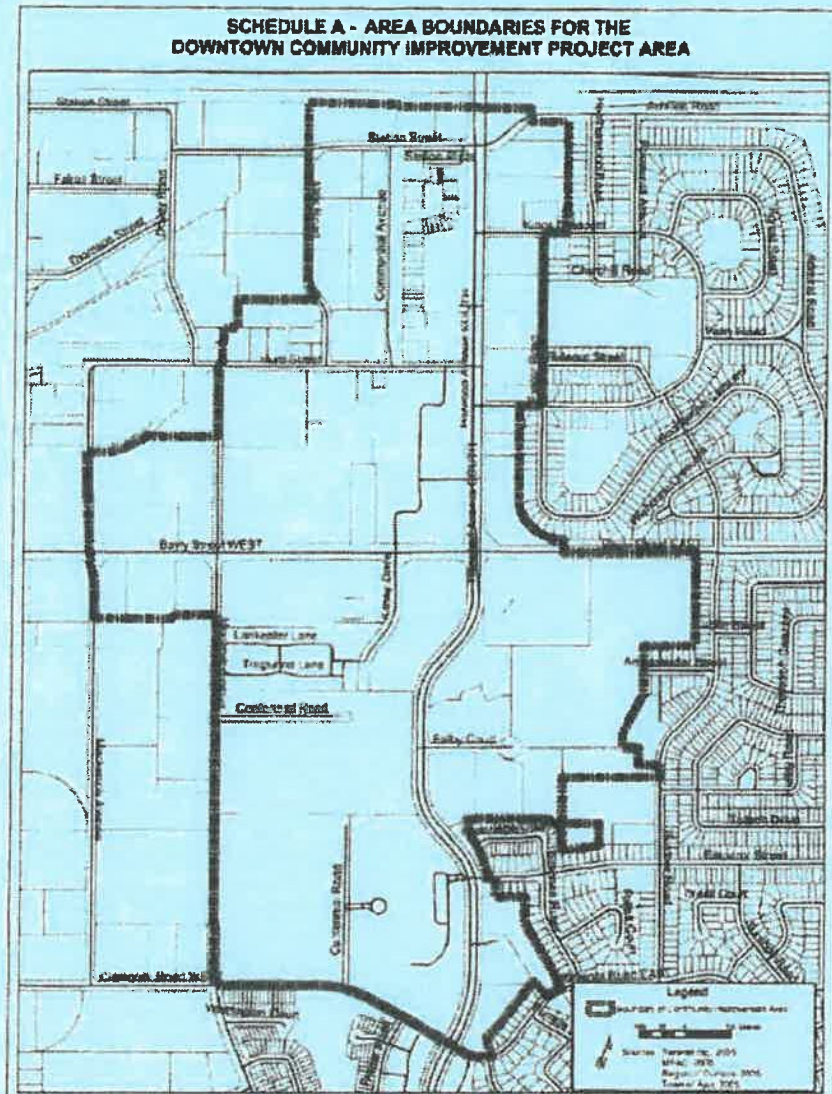
WINDCORP GRAND HARWOOD PLACE LTD.

Per: [Signature]
Name: [Signature]
Title: PRESIDENT

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

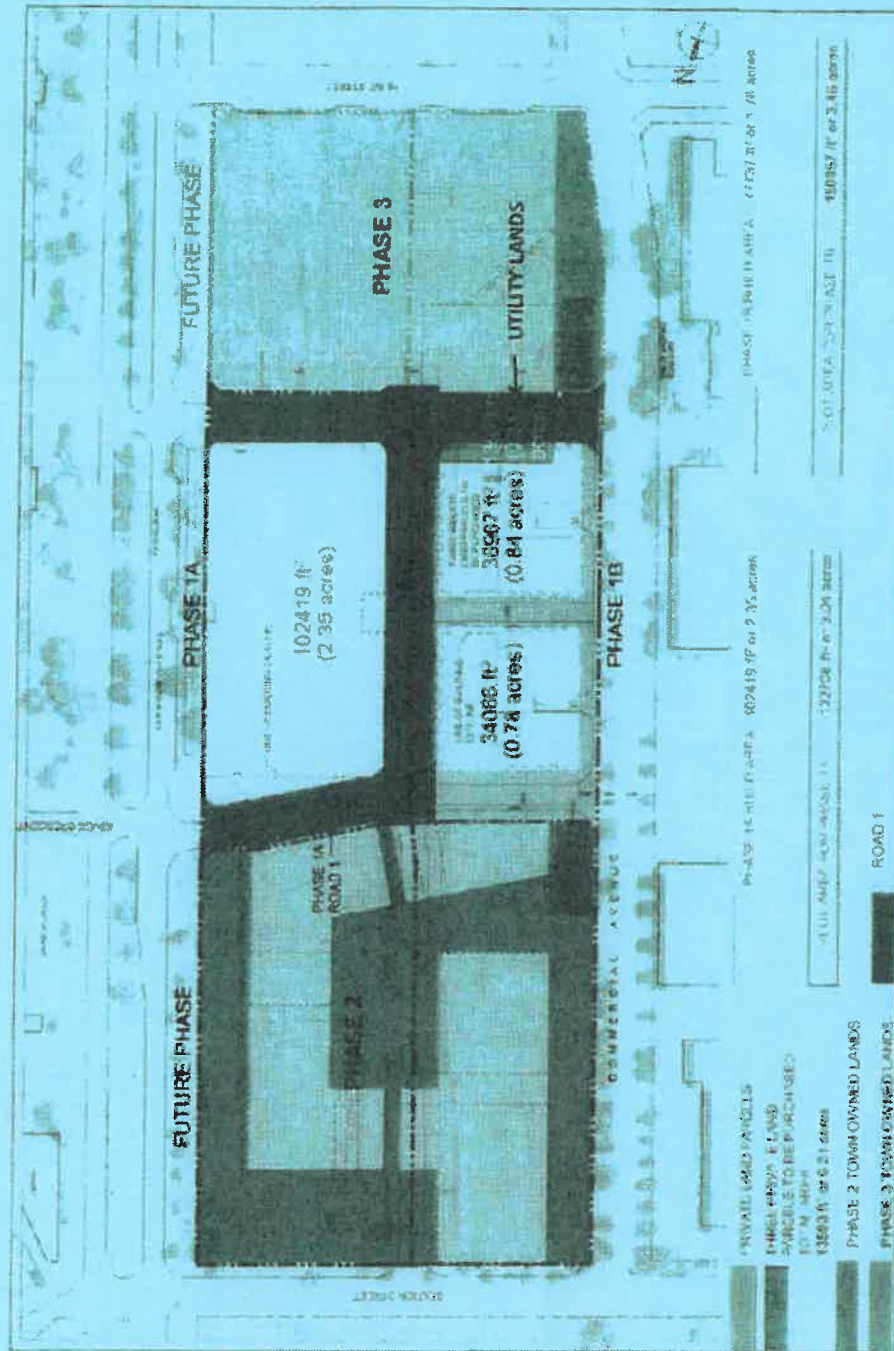
SCHEDULE "A"
LOCATION AND PARAMETERS OF COMMUNITY IMPROVEMENT PLAN



SCHEDULE "B-1"
DESCRIPTION OF LANDS

Part of Municipal Parking Area as shown on Plan 488 being part of Part 49 Plan 40R-23110
Town of Ajax as to be determined by the preparation of a reference plan of survey.

SCHEDULE "B-2"
SKETCH OF LANDS



SCHEDULE "C"
PERMITTED ENCUMBRANCES

1. Storm sewer,

SCHEDULE "D"
PHASE 1A AND PHASE 1B DEVELOPMENT PLANS

DRAWING	ARCHITECT	PROJECT NO.	DATE
PROPERTY ACQUISITION PLAN, PHASES 1A AND 1B	ZEIDLER	204T165	09/12/12
DEVELOPMENT PROGRAMME OVERLAID (PHASE 1A) ON THE AERIAL PHOTOGRAPH	ZEIDLER	204T165	10/23/12
DEVELOPMENT PROGRAMME OVERLAID ON THE AERIAL PHOTOGRAPH	ZEIDLER	204T165	10/23/12
SITE PLAN_SCALE 1:1000	ZEIDLER	204T165	10/23/12
GROUND FLOOR PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
PHASE 1A_UNDERGROUND PARKING PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
PHASE 1B_UNDERGROUND PARKING PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
PODIUM FLOOR PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
TYPICAL RESIDENTIAL FLOOR PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
SECTION AA_SCALE 1:500	ZEIDLER	204T165	10/23/12
SECTION BB_SCALE 1:500	ZEIDLER	204T165	10/23/12
RENDERING VIEWS	ZEIDLER	204T165	10/19/12
RENDERING 1	ZEIDLER	204T165	10/19/12
RENDERING 2	ZEIDLER	204T165	10/19/12
RENDERING 3	ZEIDLER	204T165	10/19/12

SCHEDULE "E"
SUSTAINABLE ELEMENTS

1. **Parking Standards**
 - (a) For residential portions of the Proposed Development, if a Project Building will be providing for more than the minimum number of parking spaces required pursuant to the Zoning By-law, any additional parking spaces must provide roughed-in conduits to allow future electrical outlets for plug-in electrical vehicles.
2. **Cycling Infrastructure**
 - (b) The development shall incorporate on-site bicycle parking on the basis of the following:
 - (i) For residential portions of the Proposed Development a minimum number of bicycle parking spaces allocated for residents and for visitors shall be provided based on an assessment of the bicycle parking needs of future residents with a view to encouraging the use of this mode of transportation; and
 - (ii) For commercial/office portions of the Proposed Development, a minimum of 0.2 spaces per 100 m² gross floor area; and
 - (c) Bicycle parking spaces for residents of the Residential portions of the Proposed Development shall be situated in a weather-protected, secure area with controlled access, or secure individual enclosures.
3. **Pedestrian Infrastructure**
 - (d) Project Buildings shall be designed and constructed to connect to adjacent off-site pedestrian paths, surface transit stops and parking areas (car and bicycle);
 - (e) On-site sidewalks, crosswalks and walkways shall be designed and constructed to be continuous, universally accessible, barrier free and clearly designated.
 - (f) Outdoor waiting areas shall be designed and constructed to offer protection from the weather;
 - (g) Pedestrian-specific lighting shall be directed on to sidewalks, pathways, entrances and outdoor waiting areas;
 - (h) The main entrance to Project Buildings shall have a pedestrian connection to a reconstructed surface transit stop for Durham Transit and GO Transit vehicles, to be constructed by the Developer.
4. **Urban Heat Island Reduction**
 - (i) Large growing shade trees shall be planted at the equivalent of 6-8 metre intervals starting from the property line:
 - (i) Along all frontages adjacent to public highways;
 - (ii) Along all frontages adjacent to public open space; and,
 - (iii) Along all public walkways and driveways.
5. **Environmentally Conscious Roofing Systems ("ECRS")**
 - (j) ECRS may include "white roofs", "organic/green roofs", sustainable power elements (i.e. solar cells or windmill) or other roof technologies that provide

environmentally sustainable elements to a building for purposes including but not limited to storm water management and/or prevention of heat island and/or the generation of sustainable energy.

- (k) Project Buildings shall take incorporate ECRS where feasible; provided that the portion of a roof available for ECRS will be reduced where such area is used:
 - (iv) as an outdoor amenity area for use of said Project Building's occupants;
 - (v) as part of a heating, ventilation and air conditioning system; and
 - (vi) to provide elevator overruns.

6. Minimum Energy Performance

- (l) All residential units shall be individually metered.

7. Stormwater Retention and Runoff

- (m) In order to minimize stormwater leaving the Property, the Project Buildings shall be designed and constructed to retain 25 mm from a 24 hour rainfall event for rainwater reuse, on-site infiltration and/or evapotranspiration:
 - (i) In order to manage and clean stormwater that leaves the Property, the Project Buildings shall be designed and constructed to remove 80% of total suspended solids on an annual loading basis from all runoff leaving the Property based on post-development level of imperviousness; and
 - (ii) Minimize the amount of E. Coli entering the storm sewer system.

8. Landscape Elements

- (n) Water efficient plant material shall be used for at least 50% of the soft landscaped area;
 - (i) A minimum of 50% of the vegetation species used in landscaping shall be native to the area in which the Property is located.

9. Bird Friendly Design

- (o) A Project Buildings shall be designed and constructed to ensure that design features minimize the risk of migratory bird collisions through appropriate glass treatments; and
 - (i) Ground level ventilation grates shall have a porosity of less than 2 cm x 2 cm.

10. Light Pollution

- (p) Exterior light fixtures shall be installed that are shielded to prevent glare and/or light trespass onto neighbouring properties.
 - (i) No up-lighting shall be provided from exterior light fixtures unless otherwise permitted for public art or displays.

11. Storage and Collection of Recycling and Organic Waste

- (q) A dedicated area shall be provided within the Project Buildings for the collection and storage of recycling and organic waste.

- (i) Project Buildings shall provide a recycling room within each Project Building with an area of size adequate and commensurate with the number of units within any such Project Building.

12. Construction Waste Management

- (r) The development shall recycle at least 75% of non-hazardous construction debris.

SCHEDULE "F"
PERMITTED USES

Permitted Uses - DCA/MU Downtown Central Area - Mixed Use Zone

- Accessory Outdoor Patio
- Art Gallery
- Banquet Facility
- Commercial Fitness centre
- Commercial School
- Community Centre
- Convenience Store
- Crisis Care Facility
- Day Care Facility
- Dry Cleaning Depot
- Dry Cleaning Establishment
- Financial Institution
- Funeral Home
- Hotel
- Laundromat, Self Serve
- Library
- Medical Clinic¹
- Motel
- Motor Vehicle Rental Depot
- Motor Vehicle Sales Establishment²
- Museum
- Office
- Parking Lot as a Principal Use
- Personal Service Shop
- Place of Assembly
- Place of Entertainment
- Place of Worship
- Restaurant
- Retail Store³
- Service or Repair Shop
- Sports Arena
- Veterinary Clinic
- Dwelling, Street Townhouse⁴
- Dwelling, Live-Work Units⁵
- Dwelling, Maisonette
- Dwelling, Multiple Attached⁶
- Dwelling, Back-to-Back Townhouse
- Dwelling, Back-to-Back Stacked Townhouse
- Dwelling, Apartment
- Senior Citizens' Apartment
- Nursing Home
- Home Based Business

¹ Provided that in a residential mixed-use building, the main entrance to the medical clinic is separate and apart from the main entrance to the residential portion of the building, with no shared lobby, foyer, or common entry area.

² Excluding accessory service/repair facilities and outdoor storage or display of vehicles.

³ Individual retail uses having a gross leasable floor area in excess of 4,645 m², located in a multi-unit commercial building erected after July 14, 2003, in a residential mixed-use building, or in a free-standing building, shall not be permitted. However, none of the provisions of this By-law shall apply to prevent the expansion of any individual retail store up to a maximum gross leasable floor area of 9,300 m² provided that the retail store existed prior to July 14, 2003 as part of a shopping centre and that has a total gross leasable floor area of the particular retail store, in all instances, is not more than half the total ground floor area of the overall building.

⁴ Dwellings having frontage on Bayly Street, Commercial Avenue, Falby Court, Harwood Avenue South, Kings Crescent, Kinney Drive, Mackenzie Avenue, Monarch Avenue and/or any east-west link between Kinney Drive and Harwood Avenue, shall be designed as live-work units, with directed pedestrian access (not vehicular) to these roads.

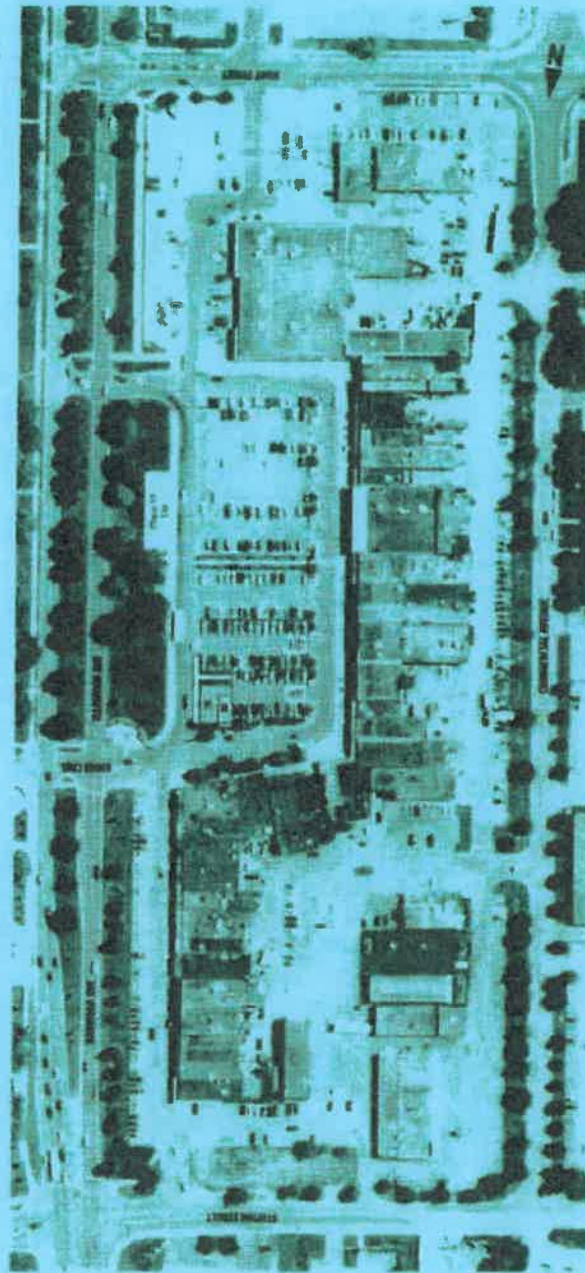
⁵ See Footnote 4.

⁶ See Footnote 4.

SCHEDULE "G"
TEMPORARY PARKING ARRANGEMENTS

Temporary Parking Arrangement: South Building Phase 1A
Sales Phase Pre-Construction

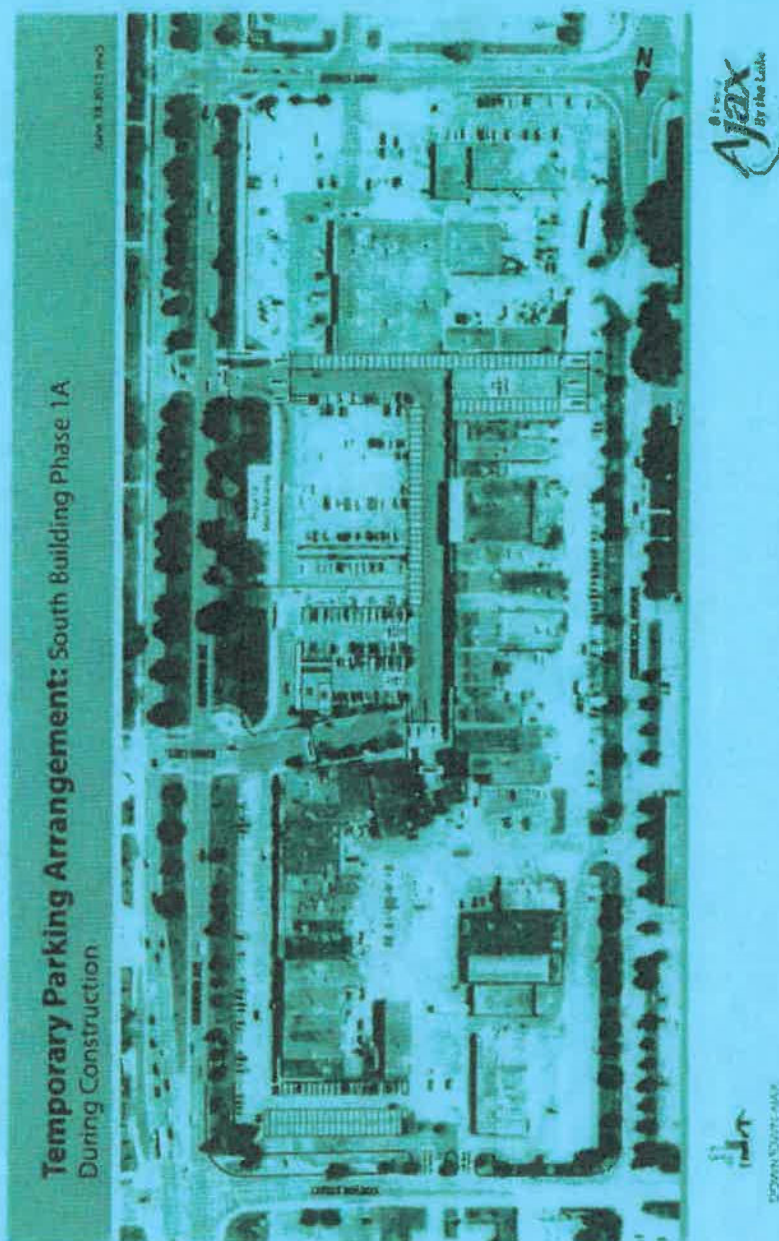
June 18 2013 revS



By the way
Ajax
By the Lake

Ajax
DOWNDOWN-AJAX





AMENDING AGREEMENT made this 22nd day of Sept, 2014.

BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX

(hereinafter referred to as "Ajax" or the "Town")

OF THE FIRST PART,

- and -

WINDCORP GRAND HARWOOD PLACE LTD.

(hereinafter referred to as the "Developer")

OF THE SECOND PART,

WHEREAS the Owner and the Town entered into a Development Agreement and an Agreement of Purchase and Sale, dated July 13, 2013 (the "Agreement") with respect to, among other matters, the purchase by the Developer of certain lands owned by the Town;

AND WHEREAS the parties hereto have agreed to amend the Agreement.

NOW THEREFORE this Agreement witnesseth that in consideration of mutual benefits, the Parties hereto agree as follows:

1. Section 3.5 of the Agreement is amended by deleting the words "within twelve (12) months of submission by the Developer" and inserting the following "by April 15, 2015".
2. Section 3.7 of the Agreement is amended by deleting the words "Within ninety (90) days of the Execution Date" and inserting the following "Sixty days prior to the Closing Date".
3. Section 3.8 of the Agreement is amended by deleting the words "(provided that the Phase 1A Lands have been closed as part of the Harwood Avenue road allowance, as referred to in Subsection 3.7 above)".
4. There shall be of the essence of this agreement and each of its provisions.
5. Except as specifically amended hereby the parties hereto do in all respects ratify and confirm the provisions of the Agreement.
6. This agreement shall be binding upon and enure to the benefit of each of the parties and their respective successors and assigns.
7. This agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this agreement.

[Signature page to follow.]

IN WITNESS WHEREOF the parties have signed this agreement by the hands of their respective officers duly authorized in that behalf as of the date set out above.

THE CORPORATION OF THE TOWN OF AJAX

Per: 

Name: Steve Parish
Title: Mayor

Per: 

Name: Nancy Nicole Wellsbury
Title: Deputy Clerk

We have authority to bind the Corporation.

WINDCORP GRAND HARWOOD PLACE LTD.

Per: 

Name: Laura Starr
Title: President

I have the authority to bind the Corporation.

AMENDING AND ASSUMPTION AGREEMENT made this ^{29th} day of June, 2015.

BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX

(hereinafter referred to as "Ajax" or the "Town")

OF THE FIRST PART,

- and -

WINDCORP GRAND HARWOOD PLACE LTD.

(hereinafter referred to as the "Developer")

OF THE SECOND PART,

- and -

LEMINE REAL ESTATE CONSULTING INC.

(hereinafter referred to as the "Assignee")

OF THE THIRD PART.

WHEREAS the Developer and the Town entered into a Development Agreement and Agreement of Purchase and Sale dated July 15, 2013 with respect among other matters the purchase by the Developer of certain lands owned by the Town and defined in such agreement as the Agreement;

AND WHEREAS the Developer and the Town entered into an Amending Agreement dated September 22, 2014 for the purposes of amending the Original Agreement (the "First Amending Agreement");

AND WHEREAS Site Plan Approval has been issued for the Proposed Development subject to the Developer entering into a site plan agreement with the Town (the "Site Plan Agreement");

AND WHEREAS the Developer has waived the Purchaser's Conditions as defined in the Agreement save and except the Purchaser's Conditions set out in Section 11.1 (a) (c) and (d) of the Agreement;

AND WHEREAS the Developer and the Town entered into a License of Land and Temporary Sales Pavilion Agreement dated September 2014 (the "Sales Pavilion Agreement") in connection with the construction by the Developer for the Sales Pavilion as herein defined;

AND WHEREAS by an agreement dated June 23, 2015 the Developer has assigned the benefit of the Agreement and the Sales Pavilion Agreement to the Assignee;

AND WHEREAS the Town, in accordance with the Agreement and the Sales Pavilion Agreement has been requested to approve the assignment of the Agreement and the Sales Pavilion Agreement to the Assignee;

AND WHEREAS in consideration of the Town approving the assignment of the Agreement and the Sales Pavilion Agreement to the Assignee the parties hereto have agreed to further amend the Agreement as herein set out (the "Second Amending Agreement").

NOW THEREFORE this Second Amending Agreement witnesseth that in consideration of mutual benefits the Parties hereto agree as follows:

1. Subsection 1.18 of the Agreement is amended by deleting "Windcorp Grand Harwood Place Ltd." and substituting therefore "Lemine Real Estate Consulting Inc.".

2. Subsection 1.53 of the Agreement is deleted and the following substituted therefore:

"Site Plan Approval" means the approval granted by the Town for the site plan and associated drawings dated April 7, 2015 under Subsection 11.3 (a) pursuant to Section 41 of the Planning Act.

3. Subsection 1.57 of the Agreement is amended by deleting the words "described on Schedule "B-1 and" and subsection 1.39 of the Agreement is amended by adding the words "and described in Schedule "B-1".

4. Section 1 Definitions of the Agreement is amended by adding the following thereto:

"1.51.1 "Sales Pavilion" means the sales pavilion to be constructed by the Developer in accordance with the Sales Pavilion Agreement on lands owned by the Town for the purposes of selling units within the Proposed Development".

5. Subsection 3.4 (a) of the Agreement is deleted and the following substituted therefore:

"Following its acquisition of the Phase 1A Lands, the Developer agrees to proceed expeditiously with the development of the Project Buildings to be located thereon. In this regard the Developer covenants and agrees to commence construction of the building in the Proposed Development no later than twelve (12) months from the date of the satisfaction or waiver of the Purchaser's Conditions set out in Section 11.1 (d) of the Agreement as amended. The Developer shall be required to construct the stacked townhouse live/work units in conjunction with the construction of the building in the Proposed Development".

6. Subsection 3.4 (b) of the Agreement is amended by adding the words " as more particularly described in the Site Plan Approval" following the words "Utility Lands" in line 4 of the said subsection.

7. Subsection 3.9 of the Agreement is amended by inserting the words " as more particularly described in the Site Plan Approval" after the words "in Schedule "G".

8. Subsection 3.8 "Temporary Sales Office" of the Agreement is amended by deleting the second paragraph of the subsection 3.8 and by deleting the words " the Phase 1A Lands " in the first paragraph of subsection 3.8 and substituting therefore the words " the Site as defined in the Sales Pavilion Agreement".

9. Subsection 6.5 is deleted from the Agreement.

10. Subsection 6.1 of the Agreement is amended by adding the words "being the lands described as Part 1 on Plan 40R-28209".

11. Subsection 7.1 of the Agreement is amended to delete the words "an approximate area of 2.35 acres" and substitute therefore the words "an area of 0.98 hectares".

12. Subsection 7.6 of the Agreement is amended by deleting all reference to the Phase 1B Lands in subparagraphs (a), (b), (c) and (f) such that it is understood and agreed that Eligible Assembly Costs shall not include any cost whatsoever associated with the Private Phase 1 B Lands or the Town Phase 1B Lands except as set out in subparagraph (g) of subsection 7.6.

13. Subsection 7.7 of the Agreement is amended by deleting the words "as to 50% by way of cash repayment to the Developer and as to 50% by reducing the indebtedness secured by VTB" and substituting therefore the words "by first reducing the indebtedness secured by the VTB and thereafter, if any part of the difference remains, by way of cash repayment to the Developer".

14. Subsection 7.8 of the Agreement is amended by deleting all reference to the Phase 1B Lands therein.

15. Subsection 8.1 (a) (i) of the Agreement is amended by deleting the words "Development Plans" and substituting therefore the words "Site Plan Approval".

16. Subsection 8.1 (a) (ii) of the Agreement is amended by deleting the words "within three (3) months from the Closing Date" and substituting therefore "in accordance with Subsection 3.4 (a) of this Agreement".

17. Subsection 11.1 (d) of the Agreement is amended by deleting the words "By the first anniversary of the Execution Date" and substituting therefore "By July 15, 2016". Subsection 11.1 (d) of the Agreement is further amended by deleting "The Developer shall have the right to extend the date for the satisfaction of this condition on two occasions, each such extension not to exceed six (6) months, and provided that the Developer gives not less than thirty (30 days' notice to the Town of each such extension".

18. Subsection 11.3 (a) of the Agreement is amended by adding the following thereto:

"The Site Plan Agreement shall be entered into no later than December 31, 2015. It is understood and agreed that the Site Plan Agreement shall include provisions for the delivery of security to the Town in the form of a letter of credit issued by a Schedule 1 Canadian Bank securing, among other matters, the installation of the internal and external road works, sanitary and storm sewer works, watermains and connections, engineering approvals and landscape works".

19. Subsection 11.3 (b) of the Agreement is amended by deleting the words "the Closing Date" and substituting therefore the words "December 31, 2015" and by adding the words "or commenced expropriation of, in accordance with subsection 11.7," after the word "expropriated". Subsection 11.3 (b) is further amended by adding the following thereto;

"In the event this Agreement is terminated for any reason and the Developer has acquired the Utility Lands the Town shall have the option, but not the obligation, to purchase the Utility Lands from the Developer at the price paid by the Developer for the Utility Lands. The Developer shall, no later than the tenth (10th) day after the date this Agreement is terminated, deliver to the Town a copy of each agreement of purchase and sale entered into by the Developer for the purchase of the Utility Lands. Within thirty (30) days following the delivery of all the agreements of purchase and sale the Town shall advise the Developer, in writing, of its intention to purchase all but not less than all of the Utility Lands from the Developer failing which the right of the Town to purchase the Utility Lands as herein set out shall be at an end. In the event the Town exercises its

right to purchase the Utility Lands as herein set out the purchase shall be completed in accordance with subsection 8.2 (d) of the Agreement.

20. Subsection 11.3 is further amended by adding the following thereto:

"(c) The Developer shall no later than July 15, 2015 deliver to the Town the securities required to be delivered pursuant to the Sales Pavilion Agreement. It is acknowledged that it is the intent of the Developer to commence construction of the Sales Pavilion no later than August 1, 2015 and complete construction of the Sales Pavilion no later than November 30, 2015. Notwithstanding the Developer's intent as herein set out, it is a condition of this subsection 11.3 (b) that the construction of the Sales Pavilion shall commence no later than January 2, 2016 and the completion of the construction shall be no later than April 15, 2016, subject to weather conditions. In addition the Developer shall, no later than July 8, 2015 complete the installation of the curbing, paving and required site works required for the construction and use of the Sales Pavilion in accordance with the Sales Pavilion Agreement."

21. Subsection 11.6 of the Agreement is amended by deleting the words "the date which is sixty (60) days prior to the Closing Date" and substituting therefore the words "December 31, 2015."

22. Subsection 11.7 (b) (i) is amended by deleting the words "the date which is six months before the expected Closing Date" and substituting therefore "September 1, 2015".

23. Section 13 of the Agreement is deleted in its entirety.

24. Section 14 of the Agreement is amended as follows:

"The title of the Section shall now read "PHASE 1B LANDS, PHASE 2 LANDS AND PHASE 3 LANDS".

Section 14 of the Agreement is further amended by including the Phase 1B Lands owned by the Town in the Right of First Offer in favour of the Developer such that the definition of "Town Phase 2 and Phase 3 Lands" shall now read "Town Phase 1B, Phase 2 and Phase 3 Lands".

Subsection 14.1 of the Agreement is further amended by deleting the words "ninety (90), one hundred and twenty (120) and one hundred and twenty (120) in subparagraphs (a), (b) and (c) and substituting therefore the words "thirty (30), ninety (90) and ninety (90)" respectively.

Subsection 14.1 of the Agreement is further amended by adding subsection 14.1 (e) as follows thereto:

" (e) In addition to the Right of First Offer set out in this subsection 14.1, upon commencement of construction of the building for the Proposed Development the Town and the Developer, if the Developer elects, in writing, within thirty (30) days of the commencement of such construction, will enter into good faith negotiations with respect to the acquisition and development of the Town Phase 1B, Phase 2 and Phase 3 Lands which will be in the same form and content as this Agreement, mutatis mutandis, or as the parties may further agree to. It is understood and agreed that, prior to commencement of negotiations and as a condition of the Town to negotiate an agreement for the acquisition of the Town Phase 1B, Phase 2 and Phase 3 Lands, the Developer shall submit to the Town, for its approval, a concept plan for the proposed development of the Phase 1B, Phase 2 and Phase 3 Lands. The agreement described in this subsection (e) shall be entered into within ninety (90) days of the receipt of the notice by the Town of the Developer's election to enter into such negotiations. In the event the Developer does not elect to enter into negotiations within the time set out in this

subsection (e) or the agreement has not been entered into by the date set out in this subsection (e) the obligations of the Town to enter into any negotiations and the Town's obligations to give the Developer any right of first offer set out in this subsection 14.1 shall be at an end. For purposes of clarity it is understood and agreed that the Phase 1B Lands shall be developed with the Phase 2 Lands or the Phase 3 Lands and the Town's obligation to negotiate for the sale of the Town's Phase 1B, Phase 2 and Phase 3 Lands as set out in this subsection 14.1 (e) shall be subject to a concept plan that provides for the development of the Phase 1B Lands concurrently with the Phase 2 Lands or the Phase 3 Lands unless the Town agrees otherwise."

Subsection 14.1 (e) of the Agreement is amended by adding the words "and the right of election in favour of the Developer set out in subsection 14.1 (e)" after the words "then the bargain right" in line five of subsection (e).

25. Subsection 17.3 of the Agreement is hereby amended by adding thereto the following:

"in the case of the Assignee addressed to it at:

5000 Yonge Street
Unit 1806
Toronto, Ontario
M2N 7E9

Attention: Executive Director
Telephone: (416) 224-8898

With a copy to:

Bogart Robertson and Chu LLP
20 Adelaide Street East
Suite 303
Toronto, Ontario
M5C 2T6

Attention: Brian Chu
Telephone: (416) 601-1991

26. Schedule "B-1" of the Agreement is amended by deleting the words "DESCRIPTION OF LAND" and substituting therefore the words "DESCRIPTION OF THE PHASE 1A LANDS". Schedule "B-1" is further amended by deleting the words "as to be determined by the preparation of a reference plan of survey" and substituting therefore the words "now being Part 1 Plan 40R2R209". Subsection 17.9 is amended by changing Schedule "B-1" Description of Lands to Schedule "B-1" Description of Phase 1A Lands.

27. Time shall be of the essence of this Agreement and each of its provisions.

28. The Assignee hereby covenants with the Town to be bound by the terms and conditions of the Agreement as amended and the Sales Pavilion Agreement.

29. The Town hereby consents to the assignment of the Agreement and the Sales Pavilion Agreement to the Assignee. This Second Amending Agreement shall only take effect on the assignment of the Agreement to the Assignee.

30. Unless otherwise defined in this Second Amending Agreement, the capitalized terms and definitions in the Agreement shall apply to this Second Amending Agreement and the capitalized terms defined in this Second Amending Agreement shall apply to and have the same meaning in the Agreement.

31. Except as specifically amended hereby the parties hereto do in all respects ratify and confirm the provisions of the Agreement.

32. This Agreement shall be binding upon and enure to the benefit of each of the parties.

33. This Agreement may be executed and delivered in several counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same Second Amending Agreement.

IN WITNESS WHEREOF the parties have signed this Agreement by the hands of their respective officers duly authorized in that behalf as of the date set out above.

THE CORPORATION OF THE TOWN OF AJAX

Per: 

Name: Steve Parish

Title: Mayor (Acting)

 COLLEEN JORDAN

Per: 

Name: Nicole Wellsbury

Title: Deputy Clerk

We have authority to bind the Corporation.

WINDCORP GRAND HARWOOD PLACE LTD.

Per: 

Name: Laura Starr

Title: President

I have the authority to bind the Corporation.

LEMINE REAL ESTATE CONSULTING INC.

Per: 

Name: Thomas Li

Title: Executive Director

I have the authority to bind the Corporation.



July 15, 2016

BY EMAIL: ronald.hawkshaw@pmhlawoffice.com

Ronald John Hawkshaw
Barrister & Solicitor
Polak McKay & Hawkshaw, LLP
467 Westney Road South, Unit 16
Ajax, Ontario L1S 6V8

Dear Mr. Hawkshaw,

**RE: WAIVER AND AMENDMENT
LEMINE REAL ESTATE CONSULTING INC. ("LEMINE") AND THE TOWN
OF AJAX ("AJAX")**

As per LeMine's discussion with Ajax on July 11, 2016, and Ajax's subsequent email dated July 12, 2016 requesting LeMine's agreement with certain provisions, as more particularly set out below, please be advised that LeMine agrees with and accepts the following:

a. *Based on the assurances given to the Developer by the General Governance Committee members on July 11, 2016 with respect to permitting the Developer to submit an amended Site Plan and an amendment to the Site Plan Agreement for the addition of two storeys, changes to the west elevation (approximately 170 units) and additional underground parking to the Project Building, the Developer hereby waives condition 11.1 (d) as amended by the Amending and Assumption Agreement dated June 29, 2015.*

b. *The Development Agreement and Agreement of Purchase and Sale dated July 15, 2013 as amended is hereby further amended by the addition of Subsection 11.1 (f) as follows:*

"By October 31, 2016 the Town has granted approval of an amended Site Plan and an amendment to the Site Plan Agreement dated December 29, 2015 that permits the addition of two storeys, changes to the west elevation (approximately 170 units) and additional underground parking to the Project Building. The Developer agrees to submit to the Town a revised Site Plan showing the addition of the two storeys, changes to the west elevation and one additional level of underground parking to the Project Building on or before September 15, 2016. It is understood and agreed that nothing herein obligates the Town to grant such approval. In the event the Town has granted the approval as herein set out this condition shall be deemed to have been satisfied."



I trust you will find the foregoing satisfactory. I ask you to kindly indicate your acceptance of the provisions as set out above, by signing and dating below and returning the same to my attention.

Please contact me for any further information.

Thank you in advance.

Yours Very Truly

A handwritten signature in dark ink, appearing to read "G. Badwal", written over a horizontal line.

Gurpreet (Rocky) Badwal
General Counsel

CC: Gary Muller (email); Geoff Romanowski (email)

ACCEPTANCE

By signing below, we, the Town of Ajax, hereby accept the provisions set out above this _____ day of July, 2016.

TOWN OF AJAX

Per: A handwritten signature in dark ink, appearing to read "R. Hawkshaw", written over a horizontal line.

Name: RONALD J. HAWKSHAW

Title: Town Solicitor

APPENDIX “E”

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

THE HONOURABLE)	THURSDAY, THE 1 ST
)	
JUSTICE KIMMEL)	DAY OF JUNE, 2023

2615333 ONTARIO INC.

Applicant

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. and
9654445 CANADA INC.**

Respondents

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

**ORDER
(Approving Sale Procedure and Ancillary Matters)**

THIS MOTION made by RSM Canada Limited, in its capacity as receiver (in such capacity, the “**Receiver**”), without security, of certain lands and premises owned by the Respondents, identified in Schedule “A” hereto, and all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to such lands and premises, including all proceeds thereof (collectively, the “**Property**”), for an order approving a Sale Procedure in respect of the Property, authorizing the Receiver to enter into an agreement with Avison-Young Commercial Real Estate Services, LP for the purpose of listing the Property for sale (the “**Listing Agreement**”), approving the Receiver’s First Report dated May 14, 2021 (the “**First Report**”) and Second Report dated May 2, 2023 (the “**Second Report**”) and the Receiver’s activities, decisions and conduct set out therein, amending the Order of Justice Cavanagh dated April 15, 2021 (the “**Appointment Order**”) to increase the Receiver’s Borrowings Charge limit

set out in paragraph 20 of the Appointment Order, sealing Confidential Appendices “1” and “2” to the Second Report, and approving the Interim R&D (as defined in the Second Report), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report, the Second Report, and on hearing the submissions of counsel for the Receiver and such other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Roxana G. Manea sworn May 29, 2023, filed,

SALE PROCEDURE

1. **THIS COURT ORDERS** that the Sale Procedure attached hereto as Schedule “B” is approved, and the Receiver is authorized and directed to carry out the Sale Procedure in accordance with its terms and this Order, and to take such steps as are reasonably necessary or desirable to carry out and give full effect to the Sale Procedure.
2. **THIS COURT ORDERS** that the Receiver is authorized to enter into an agreement with Avison Young Commercial Real Estate Services, LP for the purpose of listing the Property for sale.
3. **THIS COURT ORDERS** that the Receiver and its respective representatives and advisors shall have no corporate or personal liability whatsoever to any person, in connection with conducting the Sale Procedure, or for any act or omission related to the Sale Procedure, save and except for any gross negligence or wilful misconduct on their part, as determined by this Court. Nothing in this Order shall derogate from the protections afforded to the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* (Canada) or the Appointment Order.
4. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders and to their advisors, but only to the extent desirable or required in furtherance of the Sale Procedure. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information

to its evaluation of the potential purchase described in the Sale Procedure, and if the prospective purchaser or bidder does not make a Bid by the Bid Deadline, if their Bid is not selected as a Qualified Bid, or if after being selected as a Qualified Bidder such Bidder is not selected as the Successful Bid or a Back-up Bid (as such capitalized terms are defined in the Sale Procedure), such person shall return all such information to the Receiver, or in the alternative, destroy all such information.

RECEIVER'S BORROWINGS CHARGE

5. **THIS COURT ORDERS** that paragraph 20 of the Appointment Order is hereby amended and restated as follows:

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

SEALING

6. **THIS COURT ORDERS** that Confidential Appendices “1” and “2” to the Second Report shall be sealed, kept confidential and not form part of the public record, until further Order of the Court.

APPROVAL OF RECEIVER’S ACTIVITIES AND INTERIM R&D

7. **THIS COURT ORDERS** that the First Report and the Second Report, and the Receiver’s activities, decisions and conduct set out therein are hereby ratified and approved, provided, however, that only the Receiver in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

8. **THIS COURT ORDERS** that the Interim R&D (as defined in the Second Report) is hereby approved.

GENERAL

9. **THIS COURT ORDERS** that the Receiver is at liberty to apply to the Court for advice and directions with respect to this Order and/or the Sale Procedure.
 10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Receiver in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as may be necessary or desirable to give effect to this Order and to assist the Receiver in carrying out the terms of this Order.
 11. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without further need for entry and filing.
-

Schedule “A”

PIN26459-0050 (LT) - PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134 HARWOOD

PIN26459-0046 (LT) - LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN26459-0045 (LT) - LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN26456-0108 (LT) - PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX 184/188 HARWOOD

PIN26459-0037 (LT) - LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX-214 HARWOOD

PIN26459-0036 (LT) - TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX- 224 HARWOOD

PIN26459-0035 (LT) - PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

- 6 -

Schedule “B”

Sale Procedure

Sale Procedure

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021 (the “**Appointment Order**”), RSM Canada Limited (the “**Receiver**”) was appointed receiver and manager, without security, of the lands and premises set out on **Schedule “A”** attached hereto (collectively, the “**Harwood Properties**”) owned by the Debtors (as defined herein) and of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Harwood Properties, including all proceeds thereof.

On June 1, 2023, the Court made an order (the “**Sale Procedure Order**”) among other things, approving this Sale Procedure for the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the Harwood Properties.

Accordingly, the following Sale Procedure shall govern the sale process relating to the solicitation by the Receiver of one or more Bids for the Harwood Properties.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

“**Acknowledgement of Sale Procedure**” means an acknowledgement of the Sale Procedure in the form attached as **Schedule “B”** hereto;

“**Agreement of Purchase and Sale**” shall be the form of agreement uploaded to the Confidential Data Room;

“**Back-up Bid**” means the next highest and/or best Qualified Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

“**Back-up Bidder**” means the Bidder that submits the Back-up Bid;

“**Bid**” means a bid submitted by a Bidder pursuant to Section 2 hereof;

“**Bid Deadline**” means 3 p.m. (Toronto time) on August 24, 2023;

“**Bidder**” means a party that submits a Bid in accordance with Section 2;

“Confidential Data Room” means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the Harwood Properties;

“Confidential Information” means the confidential information in the Confidential Data Room;

“Confidential Information Memorandum” means the confidential information memorandum prepared by the Listing Agent providing certain confidential information in respect of or related to the Harwood Properties;

“Confidentiality Agreement” means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel;

“Debtors” means, collectively, 9617680 Canada Inc., 9654372 Canada Inc., Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc. and 9654445 Canada Inc.;

“Encumbrances” has the meaning given to such term in the Agreement of Purchase and Sale;

“Good Faith Deposit” means a cash deposit in an amount equal to 10% of the purchase price as set out in the Agreement of Purchase and Sale;

“Interested Party” means a party participating in this Sale Procedure;

“Listing Agent” shall mean Avison-Young Commercial Real Estate (Ontario) Inc.;

“Notice Parties” means the Receiver, its counsel and the Listing Agent;

“Participant Requirements” has the meaning set out in Section 3 hereof;

“Potential Bidder” means an Interested Parties that satisfies the Participant Requirements;

“Qualified Bid” means a Bid that satisfies the conditions set out in Section 6 hereof as determined by the Receiver;

“Qualified Bidder” means a Bidder submitting a Qualified Bid;

“Sale Hearing” means the hearing of a motion by the Receiver for an Order approving the sale of the Harwood Properties to the Successful Bidder, together with such other relief as the Receiver may deem appropriate to seek;

“Successful Bid” means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including the Expense Reimbursement, if applicable, and those factors affecting the speed and certainty of consummating the proposed sale; and

“Successful Bidder” means the Bidder that submits the Successful Bid.

1. Assets for Sale

The Receiver is soliciting superior offers for all of and not less than all of the right, title and interest of the Receiver and the Debtors in and to some or all of the Harwood Properties.

An en bloc sale of the Harwood Properties is preferred.

2. Sale Procedure Structure and Bidding Deadlines

Interested Parties that meet the Participant Requirements shall be given the Confidential Information Memorandum and access to the Confidential Information.

All offers to purchase the assets for sale in this Sale Procedure must be submitted to the Notice Parties by email, at the same time, in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Bid Deadline, failing which they will not constitute a Bid and shall be disqualified.

3. Participant Requirements

To participate in the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the **“Participant Requirements”**).

4. Access to Due Diligence Materials

Only Potential Bidders will be eligible to receive the Confidential Information Memorandum and access to the Confidential Data Room.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Potential Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Bid Deadline. Neither the Receiver nor the Listing Agent, nor their agents, shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Harwood Properties, or any of them.

5. Information from Interested Parties

Each Potential Bidder shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent regarding such Potential Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Potential Bidder is not a Qualified Bidder.

6. Bid Requirements

In order to be considered a Qualified Bid, as determined by the Receiver, a Bid must satisfy each of the following conditions:

- a) *Written Submission of Agreement of Purchase and Sale.* The Bidder must submit a clean and redline version of the Agreement of Purchase and Sale that must constitute a written and binding commitment to close on a transaction for the purchase some or all of the Harwood Properties, or such subset of the Harwood Properties as permitted by the Agreement of Purchase and Sale, on the terms and conditions set forth therein;
- b) *Irrevocable.* A Bid must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid;
- c) *Conditions.* A Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Bid may not, in aggregate, be more burdensome in the sole and exclusive opinion of the Receiver;
- d) *Financing Sources.* A Bid must be accompanied by: (i) written evidence of a commitment for financing or other evidence of the Bidder's ability to close on the Agreement of Purchase and Sale satisfactory to the Receiver; (ii) appropriate contact information for such financing sources; and (iii) names of all principals of the Purchaser together with names of all development partners whether corporate or personal in sufficient detail to allow the Receiver to make a determination as to the Purchaser's ability to complete the transaction in accordance with the terms of the Agreement of Purchase and Sale;
- e) *Development Agreement.* Each Bid must be accompanied by a clean and

redline copy of the Development Agreement is appended hereto as **Schedule “C”**; and

- f) *Good-Faith Deposit*. Each Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft, to be held by the Receiver's counsel in trust in accordance with this Sale Procedure and which shall constitute the Deposit under the Agreement of Purchase and Sale.

The Receiver shall be entitled to seek additional information and clarifications from Bidders in respect of their Bids at any time.

7. Designation as Qualified Bidder

Following the Bid Deadline, the Receiver shall determine which Bidders are Qualified Bidders. The Receiver shall notify each Bidder of its determination as to whether the Bidder is a Qualified Bidder as soon as practicable after the Bid Deadline.

If no Qualified Bid is received by the Bid Deadline, then the Sale Procedure shall be terminated.

8. Determination of Successful Bid

If one or more Qualified Bids is received by the Bid Deadline, the Receiver may: (i) conduct an auction amongst the Qualified Bidders, on terms to be determined by the Receiver and communicated to the Qualified Bidders; and/or (ii) negotiate with the Qualified Bidders to determine the Successful Bid and the Back-up Bid, if any.

As noted above, an *en bloc* sale of the Harwood Properties is preferred. If, however, a Qualified Bid is received for the Development Lands and Utility Lands, and another Qualified Bid is received for the Commercial Lands, and the Receiver determines such Qualified Bids should be treated together as the Successful Bid or the Back-up Bid, the Receiver may then select both such Qualified Bids to be, jointly, the Successful Bid or Back-up Bid, as applicable.

As part of any negotiation with one or more Qualified Bidders, the Receiver may select one or more Qualified Bidders to negotiate with the Town of Ajax for the purpose of arriving at a form of Development Agreement that is acceptable to the Town of Ajax, the Qualified Bidder and the Receiver, and which the Town of Ajax and the Qualified Bidder confirm in writing to the Receiver that they would enter into if the Qualified Bidder were selected as the Successful Bidder.

For greater certainty, a Qualified Bidder will not be selected as the Successful Bidder or Back-up Bidder, if any, if the Receiver has not received that above confirmation from such Qualified Bidder and the Town of Ajax.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall, as soon as reasonably practicable, seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein. The Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established pursuant to the Appointment Order.

9. Acceptance of Successful Bid

Subject to the terms of the Agreement of Purchase and Sale, the Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

10. "As Is, Where Is"

The sale of the Harwood Properties, or any of them, pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. Each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Harwood Properties prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Harwood Properties in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the Harwood Properties, made by the Receiver or Listing Agent or their respective officers, directors, employees, representatives or agents, or the accuracy or completeness of any such information, except as expressly stated in this Sale Procedure or, as to the Successful Bidder, the applicable Agreement of Purchase and Sale.

11. Free Of Any and All Encumbrances

Except as otherwise provided in the Successful Bid, those Harwood Properties that the Successful Bidder proposes to purchase pursuant to the Successful Bid shall be sold free and clear of all Encumbrances, except as set out in the Agreement of Purchase and Sale, in accordance with a vesting order of the Court, with all Encumbrances on or against the Harwood Properties that are sold, except for such Encumbrances set out in the Agreement of Purchase and Sale, to attach to the net

proceeds of the sale of such Harwood Properties after completion of such sale under a Successful Bid.

12. Back-up Bid

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Receiver shall be entitled, but not required, to deem the Back-up Bid the Successful Bid. The Receiver may seek the Court's approval to consummate the transaction with the Back-up Bidder at the Sale Hearing on a conditional basis, or may seek such approval in the event that it deems the Back-up Bid to be the Successful Bid under this section.

13. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder, if any. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder, if any, shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the Agreement of Purchase and Sale of the Back-up Bidder at closing.

14. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

Schedule "A"

Hardwood Properties

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

**Schedule “B”
ACKNOWLEDGEMENT**

TO: RSM Canada Limited, in its capacity as court-appointed receiver and manager of the lands and premises described on Schedule “B” to the Sale Procedure (collectively, the “**Harwood Properties**”) (the “**Receiver**”)

RE: The sale procedure with respect to the sale by the Receiver of the Harwood Properties, as approved by the Court on June 1, 2023 (the “**Sale Procedure**”)

The undersigned hereby acknowledges receipt of, and its agreement with, the Sale Procedure.

DATED this ____ day of _____, 2023.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

**Schedule “C”
DEVELOPMENT AGREEMENT**

DEVELOPMENT AND PURCHASE AGREEMENT between

THE CORPORATION OF THE TOWN OF AJAX
(the “Town” or “Ajax”)

- And -

THE DEVELOPER CORPORATION
PURCHASER IN RECEIVERSHIP PROCESS
(the “Developer”)

WHEREAS the Developer, through the Receivership process defined herein, acquired title to the properties identified in Schedule “A” to this Agreement (hereinafter the “Schedule “A” Lands”)

AND WHEREAS the Developer has assured the Town of Ajax that the Developer will construct a mixed-use development in accordance with the Development Plans listed in Schedule “B” to this Agreement (hereinafter “the Development Plans”);

AND WHEREAS the Developer acquired title to the Schedule “A” Lands knowing that the Town of Ajax would require the Developer to enter into a Development Agreement for the purpose of ensuring that the mixed-use development and services upon a portion of the Schedule “A” Lands are constructed in accordance with the Development Plans;

AND WHEREAS the Developer acquired title to the Schedule “A” Lands knowing that its rights would be subject to a potential Conveyance Event (as defined below), if the Developer does not proceed with the construction of the mixed-use development in accordance with the terms of this Agreement;

AND WHEREAS it is vital to Ajax to see that the mixed-use development is developed upon a portion of the Schedule “A” Lands in a timely manner in accordance with the Development Plans;

AND WHEREAS the Developer had an opportunity to review this Agreement prior to acquiring title to the Schedule “A” Lands through the Receivership process;

AND WHEREAS the Town of Ajax approved of the Developer in accordance with the terms of the Receivership Order on the basis that the Developer would execute this Agreement, which requires the Developer to construct the mixed-use development and services upon a portion of the Schedule “A” Lands in accordance with the Development Plans and which also provides for a potential Conveyance Event;

NOW WITNESSETH that in consideration of the exchange of \$5.00 of lawful money of Canada

from one party to the other and other good and valuable consideration which each party acknowledges as having been exchanged between the parties, and the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are accurate and form part of this Agreement.

2. **DEFINITIONS**

- a. *Commence construction* means the day upon which (i) the Developer first starts excavation for the construction of the foundation and underground parking for the mixed-use development, (ii) the Developer first starts demolition of the buildings located on the Utility Lands, and (iii) the Receiver has confirmed, in its sole discretion, that such excavation and demolition has begun by giving written notice to the Developer and the Town.
- b. *Complete construction* means the conclusion of both the construction and clean-up process on the Development Lands, and ready for occupancy closing of the units.
- c. *Conveyance Event* means the event described in section 17 of this Agreement.
- d. *Development Lands* means the lands shown and described in Schedule “C” of this Agreement and which are the part of the Schedule “A” Lands upon which the Developer is to construct the mixed-use development. In the event of any discrepancy between the Development Lands as described by way of their legal description or as shown on the map as part of Schedule “C”, the legal description shall prevail.
- d. *Development Plans* means the plans, which have been agreed to as between the Town and the Developer prior to the Developer executing this agreement and as set out in Schedule “B” to this Agreement. The Development Plans shall be substantially in accordance with the existing approved Site Plan Agreement, which can be found at Schedule “D” of this Agreement, and the Development Plans shall be used and implemented by the Developer to construct the mixed-use development upon the Development Lands.
- e. *Escrow Funds* has the meaning given to it in section 19 of this Agreement.
- f. *Mixed-use development* means the mixed-use development and services that the Developer is obligated to construct in accordance with the terms of this Agreement upon the Development Lands.

- g. *Receiver* means RSM Canada Limited, in its capacity as the Receiver of the Schedule “A” Lands, by way of an Order of Mr. Justice Cavanagh, dated April 15, 2021, made in the proceeding bearing Court File No. CV-20-00651299-00CL.
- h. *Receivership process* means the Receivership that was ordered by the Court by way of an Order of Mr. Justice Cavanagh, dated April 15, 2021, as part of the proceeding bearing Court File No. CV-20-00651299-00CL.
- i. *Sales and Marketing Costs* means all costs of the Receiver associated with the marketing and sale of the Schedule “A” Lands to the Developer, including the costs of the Receiver’s sales agent, the Receiver’s professional costs, and those of their counsel, associated with the sales process, including negotiating with the Town, potential purchasers and the Developer, and the costs Receiver’s professional costs, and those of their counsel, associated with bringing a motion for approval of the sale to the Developer in the Receivership process.
- j. *Schedule “A” Lands* are all of the lands to which the Developer obtained title by way of acquiring all rights, title and interests in through the Receivership process and which are shown and described in Schedule “A” of this Agreement.

OBLIGATION TO CONSTRUCT MIXED-USE DEVELOPMENT IN ACCORDANCE WITH DEVELOPMENT PLANS

- 3. The Developer shall apply for a permit to allow construction to commence within 60 days after the date on which the Developer’s purchase of the Schedule “A” lands from the Receiver closes, and commence construction of the mixed-use development within the greater of 150 days after such permit has been obtained, or such other period mutually agreed to by the Developer, the Receiver and Ajax (the “Construction Commencement Date”). Should the Developer refuse or fail to commence the construction of the mixed-use development within the time permitted in Section 3 herein, the refusal or failure to commence is considered a Conveyance Event under the terms of this Agreement.
- 4. The Developer shall give the Receiver and Ajax five business days’ notice before the date that the Developer intends to start excavation for the construction of the foundation and underground parking for the mixed-use development. Representatives of the Receiver and Ajax will attend the Development on the date that the Developer commences construction.
- 5. The Developer shall complete construction of the mixed-use development within 30 months from the date on which the Developer commences construction.

6. Should the Developer refuse or fail to complete the construction of the mixed-use development within the time permitted in Section 5 herein, the Developer shall, within ten (10) days thereafter provide a written report to the Town explaining the reason or reasons for the delay and the expected completion date for the construction of the mixed-use development.
7. Should the Town, acting reasonably, be satisfied with the explanation for the delay and the expected completion date for the completion of the mixed-use development as set out in the report referenced in Section 6, above, the Town will so advise the Developer in writing within ten (10) days of receipt of the report from the Developer, and shall permit the construction to proceed without the payment of liquidated damages paid by the Developer as contemplated in Section 9 herein.
8. Should the Town not be satisfied with the explanation for the delay or the expected completion date of the mixed-use development as set out in the report referenced in Section 6, above, or should the Developer fail to submit the required report, the Town may impose a deadline upon the Developer, which cannot be less than ninety (90) days from original completion date by which the construction of the mixed-use development must be completed by the Developer (the “deadline extension date”).
9. Should the Developer refuse or fail to complete the construction of the mixed-use development by the expected completion date established by the Town in accordance with Section 7 or by the deadline extension date established by the Town in accordance with Section 8, above, the Town may claim liquidated damages against the Developer commencing the day after the expected completion date or the deadline extension date, as the case may be, of \$1000 per day, which liquidated damages shall be payable by the Developer on the Monday of the following week and every Monday thereafter until construction of the mixed-use development has been completed.
10. Should the Developer refuse or fail to pay the liquidated damages referenced in Section 9, above, the Town may, if and when it sees fit to do so, draw upon the Letter of Credit posted with the Town by the Developer, as referenced in Section 28, below, for the purpose of recovering the amount of the liquidated damages owed to the Town.

ABILITY OF THE DEVELOPER TO SEEK CHANGES TO THE DEVELOPMENT

PLANS AFTER DEVELOPER ACQUIRES TITLE TO THE DEVELOPMENT LANDS

11. Should the Developer wish to alter the Development Plans prior to or during the construction of the mixed-use development, it may do so by way of filing all reports and documents as required by the Town and in accordance with all applicable statutes, regulation, and policies of the Town.
12. It is acknowledged and agreed by the Developer that the Town, as decision maker (and not as a contracting party to this Agreement) under the *Planning Act* or any other applicable statute, may, at its sole discretion, approve or reject the alteration of the Development Plans as proposed by the Developer and the Developer agrees to abide by the decision of the Town, as decision maker.
13. Should the Developer file an application for an Official Plan Amendment, a Zoning By-law Amendment, or a Site Plan Amendment that in any way relates to the Development Lands and appeal any such application to the Ontario Land Tribunal, the filing of such an appeal is a Conveyance Event under the terms of this Agreement.
14. Should a Conveyance Event arise under the terms of this Agreement by way of the Developer filing an appeal in relation to any of an Official Plan Amendment application, a Zoning By-law Amendment application, or a Site Plan Amendment application that in any way relates to the Development Lands, the Developer shall, on the day that the appeal is filed and without taking any steps, be deemed to have, and will in fact have, assigned, any such appeal to the Town (as a contracting party to this Agreement) as it relates to the Development Lands. The Town may rely upon the terms of this Agreement to confirm that the appeal related to the Development Lands has been assigned to the Town.
15. Should the Developer file an application to seek a minor variance pursuant to Section 45 of the *Planning Act* that in any way relates to the Development Lands, the Developer agrees to pursue the approval of the minor variance at the Committee of Adjustment only if Town staff files a staff report in support of the requested variance(s).
16. Should the Developer file an application to seek a minor variance pursuant to Section 45 of the *Planning Act* that in any way relates to the Development Lands, and should Town staff file a staff report that recommends refusal of the requested variance(s), the Developer shall, within two (2) days of the release of the staff report, withdraw its request, prior to any decision having been rendered by the Committee of Adjustment, including a deferral of the consideration of the application, for any variances which staff recommends be refused through its staff report.

CONVEYANCE OF THE SCHEDULE “A” LANDS

17. A Conveyance Event means the following:
 - a. The attempted assignment of this Agreement without the prior written consent of the Town of Ajax and the Receiver;
 - b. The Developer filing an appeal to the Ontario Land Tribunal in furtherance of seeking approval for an Official Plan Amendment, a Zoning By-law Amendment or a Site Plan Amendment in relation to any of the Development Lands;
 - c. The Developer refusing or neglecting to withdraw its application for a minor variance or minor variances as required under Section 16 of this Agreement;
 - d. The Developer failing, for any reason, to commence construction of the mixed-use development, in accordance with the Development Plans, as may be amended pursuant to the terms of this Agreement, upon the Development Lands by the date set out in Section 3, above;
 - e. The Developer attempting to sell or selling, without the prior written consent of the Town of Ajax and the Receiver, any or all of the Schedule “A” Lands.
18. In the event that a Conveyance Event arises, the Town shall have the right to require that the Developer convey title to all, but not less than all of the Schedule “A” Lands, to the Receiver, free and clear of all encumbrances in accordance with the terms of this Agreement (a “Conveyance”).
19. Until the Construction Commencement Date, the Receiver will hold the price paid by the Developer for the Schedule “A” Lands, less an amount equal to the Sales and Marketing Costs, in escrow, such amounts being the “Escrow Funds”.
20. Notwithstanding anything to the contrary in this Agreement, after the Construction Commencement Date the Town shall have no right to require a Conveyance and the Receiver shall be under no obligation to hold the Escrow Funds in escrow.
21. In the event that a Conveyance Event arises, and the Town chooses to require a Conveyance, then the Town shall, within fifteen (15) days of the Town becoming aware of the fact that a Conveyance Event occurred, provide written notice to the Developer and the Receiver, of the Town’s intention to require a Conveyance pursuant to this Agreement.
22. Upon receiving notice in writing from the Town that the Town intends to require a Conveyance, the Developer shall transfer the title of Schedule “A” Lands, free and clear of

all encumbrances, to the Receiver, on or before fifteen (15) days from receipt of the written notice from the Town.

23. Upon a Conveyance, the Receiver shall pay to the Developer the Escrow Funds as consideration for the Conveyance.

RECEIVER'S RIGHT TO NOT CONVEY THE SCHEDULE "A" LANDS

24. Should a Conveyance Event arise, and the Town choose not to exercise its right to require a Conveyance of the Schedule "A" Lands, the Town may, at its sole discretion, permit the Developer to continue to deal with the Schedule "A" Lands in such manner as agreed to by the Town, in writing.
25. Any decision by the Town to allow the Developer to continue to deal with the Schedule "A" Lands for any period of time after a Conveyance Event has occurred does not in any way limit the right of the Town to exercise its right to require a Conveyance pursuant to the terms of this Agreement, unless such right has expired pursuant to the terms of this Agreement or the Town has expressly, in writing, waived or otherwise limited its right to require a Conveyance by making specific reference to this section of this Agreement and by confirming its intention to waive or otherwise limit its right.
26. Any delay or failure of the Town to exercise its right to require a Conveyance after a Conveyance Event has occurred does not in any way limit the right of the Town to exercise its right to require a Conveyance at any time after another Conveyance Event has been discovered by the Town to have occurred.
27. The Developer expressly waives any and all claims that the Developer may have, or could have, against the Town or Receiver that in any way relate to an allegation that the Town or Receiver has been unjustly enriched, or that are based upon quantum meruit and/or betterment, as a result of the Receiver exercising its right to require a Conveyance pursuant to the terms of this Agreement.

LETTER OF CREDIT

28. Concurrent with the execution of this Agreement, the Developer shall post a letter of credit, in a form satisfactory to the Town and in an amount of \$250,000.00, for the purpose allowing the Town to draw upon the letter of credit pursuant to Section 10, above.

REPRESENTATIONS AND WARRANTIES

29. The Town represents and warrants to the Developer that:
 - a. as of the date of this Agreement, the Durham Region in-force Official Plan, the Town's in-force Official Plan and the in-force Zoning By-law applicable to the Development Lands permits the mixed-use development to be constructed upon the Development Lands;

- b. the Town will not initiate or grant any amendment to the in-force Official Plan or any amendment to the in-force Zoning By-law applicable to the Development Lands or pass an interim control by-law which would have the effect of prohibiting or delaying the construction of the mixed-use development.
- 30. The Developer represents and warrants to the Town that as of the date of this Agreement:
 - a. the Developer has the authority to enter into this Agreement and the ability to complete the obligations contemplated herein.

ARBITRATION TO RESOLVE DISPUTES

- 31. If the parties cannot, after good faith, discussions, agree upon the resolution of any dispute arising from the interpretation of a provision of this agreement, except as noted in Section 33, below, then the parties agree that such dispute will be resolved by binding arbitration pursuant to the *Arbitrations Act* 1991, S.O. 1991, c. 17, as may be amended from time to time, on the following basis:
 - a. The arbitration shall commence within 20 business days of delivery of an arbitration notice, which either party may deliver once one or both parties believe that a dispute is unlikely to be resolved in the absence of arbitration.
 - b. Upon receipt of the arbitration notice, the parties have seven (7) business days to agree upon a single arbitrator. In the event that the parties cannot agree upon a single arbitrator, each party shall, within three (3) business days thereafter, name an arbitrator. The two arbitrators chosen shall then, within five (5) days of being named, select a third arbitrator who shall serve as the sole arbitrator.
 - c. The selected arbitrator shall establish all procedural requirements of the arbitration pursuant to the *Arbitrations Act*, as well as the determination of costs that may be payable by one party to the other.
 - d. In selecting an arbitrator, the parties acknowledge and agree that the arbitration shall commence no later than twenty (20) business days after the delivery of the arbitration notice and any arbitrator nominated shall be available within such dates.
- 32. The parties acknowledge and agree that the right of the Town to require a Conveyance is not a matter that can be subject to the arbitration process set out above, and the parties further agree that the arbitrator has no jurisdiction to determine if the Town has the right, or had the right, to require a Conveyance pursuant to the terms of this Agreement. The Developer agrees that its obligation to effect a Conveyance in accordance with the terms of this Agreement is enforceable by specific performance and that an award of damages for breach of such obligation is not sufficient.
- 33. The parties acknowledge and agree that the decision of the arbitrator shall be final.

34. The parties acknowledge and agree that the expenses of any arbitration shall be borne by the parties in accordance with the decision of the arbitrator.

NOTICE AND SERVICE UNDER THIS AGREEMENT

35. The Town can be served at:

65 Harwood Avenue South
Ajax, ON
L1S 2H9
Attention: Chief Administrative Officer

36. The Developer can be served at:

XXXXXXXXXX

37. The Receiver can be served at:

11 King Street West, Suite 700,
Toronto, ON
M5H 4C7

Attention: Bryan Tannenbaum
Attention: Jeff Berger

CC Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, ON
M5K 1K7

Attention: Rebecca L. Kennedy
Attention: Alexander Soutter

38. Any notice if personally served shall be deemed to have been validly and effectively given and received on the date of delivery if received prior to 5:00 pm on a business day, otherwise the date of delivery shall be deemed to be the on the business day next following such date. Any notice, if sent by facsimile or e-mail, shall deemed to have been validly and effectively given and received on the date of transmission if received prior to 5:00 pm on a business day, otherwise the date shall be deemed to be on the business day next following such date. Notices given by regular mail shall be deemed to have been validly and effectively given on the fifth business day after the date upon which the notice was deposited in the mail for delivery.

MISCELLANEOUS

39. Notwithstanding any other provision of this Agreement, none of the provisions of this Agreement, including a provision stating the parties' intentions, is intended to operate, nor will have the effect of operating, in any way to fetter Town of Ajax Council which authorized the execution of this agreement or any of its successor councils in the exercise of any of councils' discretionary powers, duties or authorities. The Developer hereby acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.
40. Nothing in this Agreement shall be construed so as to make either party a partner of the other nor to have the parties engaged in any joint venture.
41. This Agreement shall be registered by the Town on the Schedule "A" Lands and shall constitute a first registration thereon after the transfer of title to the Developer.
42. It is agreed and acknowledged by the parties that each is satisfied as to the jurisdiction of the other to enter into this Agreement. The parties agrees that it will not challenge the jurisdiction of the other party to enter into this Agreement, nor will they challenge the legality of any provision in this Agreement.
43. The parties covenant and agree that at all times, and from time-to-time hereafter, upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required or more effectively implementing and carrying out the true intent and meaning of this Agreement.
44. Time shall be of the essence in all respect for the purposes of this Agreement.
45. Any tender of documents of money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or a cheque from a solicitor's trust account.
46. This Agreement may not be assigned by either party without the prior written consent of any party and each party may unreasonably withhold their consent to any proposed assignment.
47. This Agreement shall enure to the benefit of and shall be binding upon the parties and upon their permitted assigns and shall enure to the benefit of and be enforceable only by such permitted assigns which have received such assignment in the manner permitted by this Agreement.
48. This Agreement is subject to compliance with the provisions of the *Planning Act*.

49. This Agreement may be executed in counterparts, each of which is deemed to be an original and both of which taken together are deemed to constitute one and the same instrument, and production of one of the executed counterparts from each of the parties will be sufficient proof of execution of this Agreement.

Schedule A

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

Schedule B
Development Plans

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A1.0 – Context Plan	Kirkor Architects & Planners	November 27, 2015
A1.1 – Site Plan	Kirkor Architects & Planners	December 15, 2015
A2.1 – Underground Parking Garage – Level P1 & P2	Kirkor Architects & Planners	December 15, 2015
A2.2 – Level 1 Floor Plan	Kirkor Architects & Planners	December 15, 2015
A2.3 – Mezzanine & Level 2 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.4 – Level 3 & 4 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.5 – Level 5 & 6 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.6 – Level 7 & 8 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.7 – Level 9 & 10 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.8 – Mechanical Penthouse & Enlarged Plans	Kirkor Architects & Planners	November 27, 2015
A3.1 – Exterior Elevations	Kirkor Architects & Planners	November 27, 2015
A3.2 – Exterior Elevations (Courtyard)	Kirkor Architects & Planners	November 27, 2015
A4.1 – Building Sections	Kirkor Architects & Planners	November 27, 2015
A5.1 – Shadow Study	Kirkor Architects & Planners	November 27, 2015
PCL-CMP-01	PCL	March 20, 2015
PCL-CMP-02	PCL	March 20, 2015
PCL-CMP-03	PCL	March 20, 2015
PCL-CMP-04	PCL	March 20, 2015
PCL-CMP-05	PCL	March 20, 2015
PCL-CMP-06	PCL	March 20, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
PCL-CMP-07	PCL	March 20, 2015
L-1a – Ground Level Landscape Plan	MBTW	December 16, 2015
L-1b – Roof Level 4 Landscape Plan	MBTW	September 22, 2015
L-2 – Ground Level Grading Plan	MBTW	December 16, 2015
L-3a – Ground Level Planting Plan	MBTW	December 16, 2015
L-3b – Roof Level 4 Planting Plan	MBTW	December 16, 2015
L-D1 – Landscape Details	MBTW	December 16, 2015
L-D2 – Landscape Details	MBTW	December 16, 2015
L-D3 – Landscape Details	MBTW	December 16, 2015
L-D4 – Landscape Details	MBTW	December 16, 2015
L-D5 – Paving Details	MBTW	December 16, 2015
1 – General Notes	Morrison Hershfield	December 16, 2015
2 – Surface Removal Plan	Morrison Hershfield	December 16, 2015
3 – Sub-Surface Removal Plan	Morrison Hershfield	December 16, 2015
4 – Storm Drainage Area Plan	Morrison Hershfield	December 16, 2015
5 – Sanitary Drainage Area Plan	Morrison Hershfield	December 16, 2015
6 – General Plan	Morrison Hershfield	December 16, 2015
7 – Grading Plan	Morrison Hershfield	December 16, 2015
8 – Erosion and Sedimentation Control Plan	Morrison Hershfield	November 27, 2015
9 – Temporary Parking Plan Phase 1a	Morrison Hershfield	December 16, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
10 – Plan and Profile Street “A”	Morrison Hershfield	December 16, 2015
11 – Plan and Profile Street “B”	Morrison Hershfield	December 16, 2015
12 – Plan and Profile Street “C”	Morrison Hershfield	December 16, 2015
13 – Plan and Profile Street “C”	Morrison Hershfield	December 16, 2015
14 – Plan and Profile Street “D”	Morrison Hershfield	December 16, 2015
15 – Details	Morrison Hershfield	December 16, 2015
16 – Lighting Layout	Morrison Hershfield	December 16, 2015
17 – Photometric Layout	Morrison Hershfield	December 16, 2015
18 – Electrical Details	Morrison Hershfield	December 16, 2015
19 – Existing Vegetation Plan	Morrison Hershfield/Matthew Hooker	November 27, 2015
20 – Tree List and Details	Morrison Hershfield/Matthew Hooker	November 27, 2015
21 – Road Cross Sections	Morrison Hershfield	December 16, 2015
22 – Utility Coordination Plan	Morrison Hershfield	December 16, 2015
TMIP's 9766C001, 9766C002, 9766C003	LEA Consulting Ltd.	December 18, 2015
Truck Turning Movements P1, P2, P3, P4, P5 & P6	LEA Consulting Ltd.	December 18, 2015
Stormwater Management Report	Morrison Hershfield	December 16, 2015

Schedule C

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

Schedule D
Site Plan Agreement

THIS SITE PLAN AGREEMENT made this 20th day of Dec , 2015

BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX

(hereinafter referred to as the "Town")

OF THE FIRST PART,

- and -

2480832 Ontario Inc.

(hereinafter referred to as the "Owner")

OF THE SECOND PART.

WHEREAS:

The Town pursuant to a Development Agreement and Agreement of Purchase and Sale dated July 15, 2013 and amended by the Amending and Assumption Agreement dated June 29, 2015 (the "Development Agreement") has agreed to convey to the Owner the Lands as hereinafter defined;

By application SP2/14, the Owner has applied to the Town under Section 41 of the *Planning Act*, R.S.O. 1990, c. P.13, (the "Act") for site plan approval in respect of its development of the Lands;

The Town requires the Owner to enter into an agreement with it prior to the development, including redevelopment, of the Lands and the erection, construction and installation of buildings, structures, facilities and works thereon as permitted by subsection 41 (7) of the Act and as required by the Development Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of mutual benefits, the Parties hereto agree as follows:

1. The lands and premises affected by this Agreement (hereinafter referred to as the "Lands") are those lands more particularly described in Schedule "A" hereto.
2. No development, including redevelopment, shall be undertaken on the Lands except in accordance with the following plans and drawings and any revisions there to as approved by the Town (the "Plans"):

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A1.0 – Context Plan	Kirkor Architects & Planners	November 27, 2015
A1.1 – Site Plan	Kirkor Architects & Planners	December 15, 2015
A2.1 – Underground Parking Garage – Level P1 & P2	Kirkor Architects & Planners	December 15, 2015
A2.2 – Level 1 Floor Plan	Kirkor Architects & Planners	December 15, 2015
A2.3 – Mezzanine & Level 2 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.4 – Level 3 & 4 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.5 – Level 5 & 6 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.6 – Level 7 & 8 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.7 – Level 9 & 10 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.8 – Mechanical Penthouse & Enlarged Plans	Kirkor Architects & Planners	November 27, 2015
A3.1 – Exterior Elevations	Kirkor Architects & Planners	November 27, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A3.2 – Exterior Elevations (Courtyard)	Kirkor Architects & Planners	November 27, 2015
A4.1 – Building Sections	Kirkor Architects & Planners	November 27, 2015
A5.1 – Shadow Study	Kirkor Architects & Planners	November 27, 2015
PCL-CMP-01	PCL	March 20, 2015
PCL-CMP-02	PCL	March 20, 2015
PCL-CMP-03	PCL	March 20, 2015
PCL-CMP-04	PCL	March 20, 2015
PCL-CMP-05	PCL	March 20, 2015
PCL-CMP-06	PCL	March 20, 2015
PCL-CMP-07	PCL	March 20, 2015
L-1a – Ground Level Landscape Plan	MBTW	December 16, 2015
L-1b – Roof Level 4 Landscape Plan	MBTW	September 22, 2015
L-2 – Ground Level Grading Plan	MBTW	December 16, 2015
L-3a – Ground Level Planting Plan	MBTW	December 16, 2015
L-3b – Roof Level 4 Planting Plan	MBTW	December 16, 2015
L-D1 – Landscape Details	MBTW	December 16, 2015
L-D2 – Landscape Details	MBTW	December 16, 2015
L-D3 – Landscape Details	MBTW	December 16, 2015
L-D4 – Landscape Details	MBTW	December 16, 2015
L-D5 – Paving Details	MBTW	December 16, 2015
1 – General Notes	Morrison Hershfield	December 16, 2015
2 – Surface Removal Plan	Morrison Hershfield	December 16, 2015
3 – Sub-Surface Removal Plan	Morrison Hershfield	December 16, 2015
4 – Storm Drainage Area Plan	Morrison Hershfield	December 16, 2015
5 – Sanitary Drainage Area Plan	Morrison Hershfield	December 16, 2015
6 – General Plan	Morrison Hershfield	December 16, 2015
7 – Grading Plan	Morrison Hershfield	December 16, 2015
8 – Erosion and Sedimentation Control Plan	Morrison Hershfield	November 27, 2015
9 – Temporary Parking Plan Phase 1a	Morrison Hershfield	December 16, 2015
10 – Plan and Profile Street 'A'	Morrison Hershfield	December 16, 2015
11 – Plan and Profile Street 'B'	Morrison Hershfield	December 16, 2015
12 – Plan and Profile Street 'C'	Morrison Hershfield	December 16, 2015
13 – Plan and Profile Street 'C'	Morrison Hershfield	December 16, 2015
14 – Plan and Profile Street 'D'	Morrison Hershfield	December 16, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
15 - Details	Morrison Hershfield	December 16, 2015
16 - Lighting Layout	Morrison Hershfield	December 16, 2015
17 - Photometric Layout	Morrison Hershfield	December 16, 2015
18 - Electrical Details	Morrison Hershfield	December 16, 2015
19 - Existing Vegetation Plan	Morrison Hershfield/Matthew Hooker	November 27, 2015
20 - Tree List and Details	Morrison Hershfield/Matthew Hooker	November 27, 2015
21 - Road Cross Sections	Morrison Hershfield	December 16, 2015
22 - Utility Coordination Plan	Morrison Hershfield	December 16, 2015
TMP's 9766C001, 9766C002, 9766C003	LEA Consulting Ltd.	December 18, 2015
Truck Turning Movements P1, P2, P3, P4, P5, & P6	LEA Consulting Ltd.	December 18, 2015
Stormwater Management Report	Morrison Hershfield	December 16, 2015

3. (1) As a condition to the approval of the said Plans, the Owner agrees to install and maintain to the Town's satisfaction and at the sole risk and expense of the Owner any or all of the facilities or works including the grading, landscaping, fencing, the removal of snow from access ramps and driveways, parking and loading areas and walkways as shown on the Plans (the "Works").
- (i) for the purpose of guaranteeing the installation and maintenance, by the Owner, of the Works required to be installed and maintained pursuant to a condition of approval imposed under Section 2 above, restoration of public lands under subsection (5) below, construction of the Services defined in Section 19 of this Agreement and payment of any amounts payable by the Owner pursuant to this Agreement the Owner shall deliver to the Town prior to the execution of this Agreement, security (the "Performance Guarantee") in the form of an irrevocable Letter of Credit issued by a chartered bank in Canada approved by the Treasurer of the Town, acting reasonably, in an amount as determined by the Town. The Performance Guarantee may be drawn upon by the Town in such amounts and at such times as the Town, in its sole discretion, deems advisable should the Owner fail to install or maintain the Works, fail to install or maintain the Services, fail to restore public lands or fails to pay any amount required to be paid by the Owner pursuant to this Agreement or fail to comply with any obligation of the Owner pursuant to this Agreement provided the Town has provided the Owner with a notice of default and established a time frame in which to rectify the default and the Owner fails to comply with such time frames.;
- (ii) the amount of the Performance Guarantee shall be based on the cost of installation of the Works and Services and may be reduced by the Town at the sole discretion of the Town upon the completion of the Works and Services but in no event shall the Performance Guarantee be reduced below the amount equal to the total of 100% of the cost to complete or rectify any default plus the maintenance required of any Works or Services.
- (iii) if, in the opinion of the Town the amount of the Performance Guarantee is insufficient, then the Town shall recalculate the amount of the Performance Guarantee and shall advise the Owner of such recalculation and provide the Owner with a copy of such recalculation and the Owner

shall deliver any additional security required by the Town within seven (7) business days of its receipt of such notice.

- (iv) Schedule "C" is a guide to the amount of the Performance Guarantee required but in determining the sufficiency of the Performance Guarantee regard shall be given to the total cost of satisfying all of the obligations of the Owner pursuant to any provisions of this Agreement.
 - (v) where any Works or Services are not installed or where the Owner is in default of any of its obligations in this Agreement, the Town may enter and install such Works or Services or perform such obligations at the Owner's expense and apply the Performance Guarantee to reimburse the Town and where the Performance Guarantee is insufficient the expense shall be a charge on the Lands. It is hereby acknowledged and agreed that the Performance Guarantee is held by the Town for its sole benefit and not for the benefit of, by way of trust or otherwise, any person constructing or supplying any of the Works or Services, directly or indirectly, on behalf of the Owner.
- (2) Prior to the execution of this Agreement by the Town, the Owner shall, if required by the Town, deposit with the Town the sum of **TWENTY THOUSAND DOLLARS (\$20,000.00)** (the "Mud and Right of Way Deposit") to guarantee that:
- (i) the streets shall be kept free from deposits and debris. In the event debris or deposits remain on the streets for more than four (4) consecutive hours after receiving notice from the Town, the Town shall be entitled to clean the streets and deduct the cost of same from the Mud and Right of Way Deposit; and
 - (ii) the Owner further covenants and agrees with the Town to repair any damage to other lands and/or streets caused by the work or construction carried on by the Owner on the Lands, by restoring the lands and streets to the condition existing prior to the damage sustained. Such restoration is to be undertaken by the Owner at its own expense upon notification by the Town to the Owner. If the Owner does not undertake the restoration in a reasonable time frame the Town shall be entitled to restore the lands and streets and deduct the cost from the Mud and Right of Way Deposit.
- The Owner shall immediately reimburse for all costs incurred so that the Mud and Right of Way Deposit is reinstated to the sum of **TEN-THOUSAND DOLLARS (\$10,000.00)**. The Mud and Right of Way Deposit shall be returned to the Owner once the development of the Lands is completed to the satisfaction of the Town. The Mud and Right of Way Deposit may be included in the Performance Guarantee.
- (3) Prior to the execution of this Agreement by the Town, the Owner shall, if required by the Town, deposit with the Town the sum of **FIVE-THOUSAND DOLLARS (\$5,000.00)** to guarantee that streets shall be kept free from litter and garbage emanating from the Lands during construction (the "Litter Deposit"). In the event litter and garbage remain on the streets for more than four (4) consecutive hours after receiving notice from the Town, the Town shall be entitled to clean the streets and deduct the cost of same from the Litter Deposit. The Owner shall immediately reimburse the Town for all costs incurred so that the Litter Deposit is reinstated to the sum of **FIVE-THOUSAND DOLLARS (\$5,000.00)**. The Litter Deposit may be included in the Performance Guarantee.
- (4) The Owner agrees with the Town:
- (i) to pay the taxes in full on the Lands as required by law from time to time;
 - (ii) to pay the costs of all registrations incurred by the Town relating in any way to this Agreement;
 - (iii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$1,000.00 for digital drawing management fees;

- (iv) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$201,800.00 for cash-in-lieu of parkland as required by the Town's Parkland Dedication Policy, By-law 79-2006, as amended;
 - (v) not applicable to this Agreement as the development is exempt from development charges pursuant to the Development Agreement;
 - (vi) to pay for the costs of the control architect for his review of the elevation Plans in accordance with Section 25 of this Agreement;
 - (vii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$750.00 for benchmark construction purposes;
 - (viii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$3,000.00 for the Town's Litter Management Program;
 - (ix) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$50,910.75 for engineering review, inspection and administration service fees;
 - (x) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$63,715.57 for architectural landscape review and inspection service fees;
 - (xi) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$4,800.00 for the maintenance of the stormwater; and
 - (xii) to pay to the Town prior to the signing of this Agreement by the Town the legal fees incurred by the Town in connection with this Agreement in the amount of \$609.37.
- (5) The Owner covenants and agrees, at its sole cost, to restore any public lands disturbed or damaged as a result of the development of the Lands to the satisfaction of the Town.
 - (6) The Owner covenants and agrees that all garbage and recyclable material shall be stored inside the buildings shown on the Plans and accessible to vehicles for removal.
 - (7) The Owner covenants and agrees to be responsible for all waste collection from the Lands.
 - (8) The Owner covenants and agrees not to erect, locate, relocate or otherwise place any sign or light or light standard on any part of the Lands or on the exterior portion of any building or other structure thereon, unless the light or light standard and the sign location is as approved in the Plans. All signs shall conform to the Town's municipal By-law No. 27-2009 (Sign By-law) as amended. Site illumination must be designed with a zero illumination cut-off at the property line.
 - (9) The Owner covenants and agrees that no mechanical equipment, such as air conditioners or ventilators, or signs, satellite dishes or any other equipment shall protrude from the roof or any other portion of the building(s) unless the design and location thereof, including the screening of such equipment from public view, are as approved in writing by the Town.
 - (10) The Owner covenants and agrees to ensure that the "as-built" site servicing and landscape plans for the Lands are forwarded in digital format, and AutoCAD compatible, to the Town.
 - (11) The Owner covenants and agrees that a construction management plan and a pedestrian management plan shall be submitted to and be approved by the Town prior to the issuance of building permit approval. The construction management plan shall include, but is not limited to, all stages of construction, all proposed staging areas, all proposed construction access points, all material storage

areas, all construction office trailers, all locations of required construction fencing and hoarding, and all parking locations for construction works and trades. The pedestrian management plan shall include, but is not limited to, all safe pedestrian walkways and sidewalks, all pedestrian signage, all accessible plaza parking locations during all stages of construction.

- (12) The Owner covenants and agrees to clean local area streets of mud caused by development on the Lands a minimum of three times per week and a maximum of five times per week, to the satisfaction of the Director of Planning and Development Services or his designate.
- (13) The Town may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of any Services required by this Agreement. The Owner agrees to submit all tests to the Town and the costs of such tests shall be paid by the Owner within thirty (30) days of the account for same being rendered by the Town.

4. Underground Stormwater Control Structure

- (1) The Owner covenants and agrees to install, maintain and not remove any underground stormwater quality control structure or any stormwater quantity devices. The Owner shall have the underground stormwater quality control structure inspected annually and maintained accordingly. The inspection and maintenance of the underground stormwater quality control structure must be completed by a qualified contractor. The Owner shall keep accurate and up to date records of all inspections and maintenance of the underground stormwater quality control structure. If the Town so requests, the Owner shall deliver to the Manager of Engineering of the Town, within ten (10) days of such request, a record of all inspections and maintenance of the underground stormwater quality control structure. If the Owner does not supply the records of inspection and maintenance the Town may enter upon the Lands, inspect the stormwater quality control structure and carry out, if necessary in the sole discretion of the Town, the maintenance thereof at the Owner's expense. In the event that any costs incurred by the Town are not paid by the Owner within ten (10) days of the deliver of the Town's invoice therefore, the Town shall be entitled, in addition to any other remedy it may have, to add such costs to the tax roll and collect same in the same manner as taxes.
- (2) Upon completion of the landscaping and submission of the certificate of substantial completion for the landscaping associated with the underground stormwater management quality control structure the Owner covenants and agrees to supply to the Town the following:
 - (i) a copy of a five year contract for the maintenance and cleaning of the underground stormwater management quality control structure,
 - (ii) a certificate stating that the underground stormwater quality control structure has been installed in conformance with the approved Plans and that the unit has been inspected, cleaned and all adjustments have been completed.

5. Refuse Storage

The Owner covenants and agrees to accommodate all facilities for refuse storage within the buildings which are part of the Development.

6. Timing of Completion

- (1) Upon approval by the Town of the Plans, the proposed building(s), structure(s), Works and Services shall be erected, constructed, installed and maintained in conformance with the Plans as approved. Unless otherwise agreed, the said work shall be fully completed within thirty (30) months of the date of commencement of erection or construction. For the purposes of establishing the thirty (30) month period, the date of building permit issuance shall be used to determine the commencement date and such determination shall be final and binding on the parties hereto.



- (2) If erection, construction or installation has not commenced in accordance with the provisions of the Development Agreement the approval of the Plans may, at the option of the Town, become null and void in which event the Plans must be resubmitted for approval prior to any erection, construction or installation commencing.

7. Building Permit Issuance

The Owner agrees that the issuance of any building permit in respect of the Lands may not be requested until the Plans have been approved by the Town and the Lands have been conveyed to the Owner by the Town.

8. Building Levels

- (1) The Owner covenants and agrees that all buildings erected on the Lands shall conform to building levels approved by the Town before the building operations are commenced. Building levels and building location shall be checked by an Ontario Land Surveyor and certification of such levels and locations shall be submitted to the Town prior to a sub-floor for such building being constructed.
- (2) At the time of application for building permit, a soil investigation report of the Lands must be provided to the Chief Building Official of the Town to verify the structural adequacy of the proposed foundation.
- (3) Prior to pouring concrete footings for each building or structure to be erected on the Lands a soils field report prepared by a qualified Professional Engineer shall be submitted to the Chief Building Official of the Town verifying adequate bearing capacity and the level of permanent ground water which may affect the soil bearing capacity. In the event the soils field report demonstrates a need for revisions to the foundation design or construction of a de-watering or subdrainage system the Owner covenants and agrees to submit to the Chief Building Official of the Town for his approval, prior to the commencement of construction, design drawings showing such revisions or system.
- (4) Prior to the issuance of a building permit, access to the Lands for any construction vehicles or equipment or emergency vehicles or equipment is required. The access must be a minimum of a granular base road, capable of providing a route for fire vehicles and extending to an existing, maintained public road, to the satisfaction of the Town and the Fire Department of the Town.
- (5) Prior to issuance of building permit, watermains and hydrants, storm and sanitary sewer facilities must be constructed and installed in accordance with this Agreement and a certificate of preliminary acceptance has been accepted.

9. Registration

The Owner covenants and agrees that the Town may register this Agreement against the title to the Lands and that the Town may enforce the provisions of this Agreement against the Owner of the Lands and against any and all subsequent owners of the Lands.

10. Certificates

The Owner covenants and agrees to deliver to the Town a Certificate of Compliance from a Professional Engineer certifying that all Works and Services have been constructed in accordance with the approved Plans and sound engineering practices and that grading has been completed according to approved grading plans. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

The Owner covenants and agrees to deliver to the Town a Certificate of Substantial Completion from a Landscape Architect in good standing with the O.A.L.A. (Ontario Association of Landscape Architects) certifying that all landscape work has been constructed and materials installed in accordance with the approved Plans and that

sound engineering and horticultural practices have been implemented. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

The Owner covenants and agrees to deliver to the Town a Photometrics Certificate from a certified Electrical Engineering Consultant certifying that all electrical luminaires have been installed in accordance with the approved Plans. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

11. Breach of Agreement

Notwithstanding any action taken by or remedy available to the Town or to any other governing body or authority any breach of this Agreement may be restrained by action at the instance of a ratepayer of the Town or at the instance of the Town or a local board thereof just as if such breach were a contravention of a By-law of the Town to which Section 440 of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended, applied.

12. Binding Agreement

This Agreement, the Schedules hereto, and everything contained therein, shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and assigns, and Section 446 of the *Municipal Act, 2001, S.O., 2001, c. 25* as amended, shall be applicable to the obligations created herein.

13. Indemnification

The Owner will indemnify the Town from all actions, causes of action, suits, claims and demands whatsoever and all costs incurred in respect thereof by reason of the Owner doing, failing to do or doing incorrectly or negligently anything which by the terms of this Agreement it is required to do. Without limiting the foregoing the Owner agrees to indemnify and hold harmless the Town for all costs, fees, expenses and disbursements incurred by the Town in connection with the preparation for and attendance at a hearing before a Court of Law or tribunal as a result of the *Occupational Health and Safety Act, R.S.O. 1990 c. O.1* and any Order issued thereunder with respect to the development of the Lands.

14. Noise

"Construction" includes erection, alteration, repair of the Works or buildings, painting, grading, excavating, laying of pipe and "construction equipment" means any equipment or device designed and intended for use in construction.

"Noise" means sound originating from construction on the Lands and received on other lands.

No noise shall be emitted or caused to be emitted from the Lands or from construction of the Services on other lands on Sunday and statutory holidays and except between the hours of 7:00 a.m. and 8:00 p.m. on each day Monday to Thursday, between the hours of 7:00 a.m. and 5:00 p.m. on Fridays and between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays.

15. Street Numbers

The Owner covenants and agrees to affix the street number(s) for any building or parts of buildings on the Lands to a wall of the building, or other approved locations, which faces a public street so as to ensure clear visibility of the number at all times from the public street. Each number(s) shall be a minimum of ten (10) centimetres in height.

16. Liability Insurance

The Owner covenants and agrees to obtain and maintain public liability and property damage insurance, satisfactory to the Town, to protect the Owner and Town jointly against loss, damage or injury to persons or property caused directly or indirectly by reason of the Owner undertaking the development of the Lands. A certificate of such



insurance shall be filed with the Town prior to the execution of this Agreement, including the Town of Ajax as an additional insured, and such policy shall be effective until final sign off of the consulting engineer or architect and release of all securities by the Town.

Such policy shall be in an amount not less than \$5,000,000.00 and shall not be cancellable unless prior notice has been received by the Town not less than thirty (30) days prior to cancellation date.

17. Debris

The Owner covenants and agrees to remove debris and litter on the property in accordance with the Town's "The Clean and Clear By-law" as amended.

18. Refer to Section 47.

19. Municipal Services

- (1) In this Agreement "Services" shall mean works to be installed by the Owner and to be assumed for ownership by the Town or works to be installed or carried out on municipal property.
- (2) The Owner shall construct, install and carry out in a good and workmanlike manner all the Services as shown on the Plans, including but without limiting the foregoing, grinding and resurfacing, sidewalks, curbs and gutters, driveway aprons, and storm sewers connections. The Plans for Services may be amended from time to time but such amendments shall not take effect unless approved by the Town. All Plans for Services and any other drawings required therefore pursuant to this Agreement shall be prepared in accordance with the Design Criteria and Standard Detail Drawings adopted by the Town and in accordance with the Digital Data and format requirements of the Town.
- (3) The Owner shall carry out or caused to be carried out the installation of the storm sewer connections in the accordance with Town Standards. Upon completion of the said connections the Owner shall deliver to the Town as-built drawings for all storm sewer service connections and rear lot catch basins.
- (4) The Town may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of any Services required by this Agreement and the cost of such tests shall be paid by the Owner.

20. Private Property Maintenance Period for Works

- (1) The Owner agrees that all Works shall have a maintenance period of twelve (12) months from the date of receipt of the Certificate of Compliance and/or Certificate of Substantial Completion. The Owner must arrange for a final inspection of the Site Works towards the end of the maintenance period.
- (2) The Owner agrees that the Town shall not reduce the Performance Guarantee below 25% of the estimated cost of installation of the Works during the maintenance period.

21. Municipal Property Performance and Maintenance Guarantee

- (1) Before commencing the construction, installation or performance of any of the Services provided for herein or before the Town issues a letter releasing the Plan for registration, whichever first occurs, the Owner shall supply the Town with a 100% performance and maintenance guarantee (hereinafter called "Performance Guarantee"), either in the form of a cash deposit or Unconditional and Irrevocable Letter of Credit approved by the Town Treasurer in an amount as determined in Schedule "A" for the purpose of:
 - (i) guaranteeing the satisfactory construction, installation or performance of the Services;
 - (ii) guaranteeing the payment of any amounts payable to the Town under this Agreement;

- (iii) guaranteeing the payment of any amount, including legal expenses that the Town may be required to pay under or as a result of claims pursuant to the *Construction Lien Act, R.S.O. 1990 c. C30*;
 - (iv) guaranteeing all underground Services, workmanship and materials for a period of two (2) years from the date of certification;
 - (v) guaranteeing all above ground Services, workmanship and materials including all landscaping works and materials for a period of two (2) years from the date of certification set out in Section 22(3); and
 - (vi) guaranteeing all other obligations of the Owner in this Agreement.
- (2) The Performance Guarantee may be reduced by the Town at the sole discretion of the Town but in no event shall the Performance Guarantee be reduced below the amount equal to the total of 100% of the cost of the Services and Lot grading, sodding and driveway paving remaining to be completed, plus 10% of the value of the Services as finally completed. The balance of any Performance Guarantee shall be returned to the Owner, less any deductions for rectification of deficiencies, when the above ground Services have been assumed.
 - (3) If, in the opinion of the Town the amount of the Performance Guarantee is insufficient, then the Town shall recalculate the amount of the Performance Guarantee and shall advise the Owner of such recalculation and provide the Owner with a copy of such recalculation and the Owner shall deliver any additional security required by the Town within seven (7) business days of its receipt of such notice.
 - (4) Schedule "A" is a guide to the amount of the Performance Guarantee required but in determining the sufficiency of the Performance Guarantee regard shall be given to the total cost of satisfying all of the obligations of the Owner pursuant to any provisions of this Agreement.
 - (5) Where any Services are not installed in accordance with the Schedule of Construction or where the Owner is in default of any of its obligations in this Agreement, the Town may enter and install such Services or perform such obligations at the Owner's expense and apply the Performance Guarantee to reimburse the Town and where the Performance Guarantee is insufficient the expense shall be a charge on the Land as set out in Section 33. It is hereby acknowledged and agreed that the Performance Guarantee is held by the Town for its sole benefit and not for the benefit of, by way of trust or otherwise, any person performing any of the Services, directly or indirectly, on behalf of the Owner.
 - (6) To ensure the completion of all works, the Performance Guarantee shall not be reduced below an amount equal to the cost of completing the works as determined by the Town. If the works are not completed within six months of the first occupancy of the building, seasonal conditions permitting, in addition to any other available remedies, the Town may draw upon the Performance Guarantee to its full value and complete same.

22. Construction Lien Act

The Owner agrees that it will comply with the Construction Lien Act and hold in its possession and in a separate fund, which fund shall be designated a trust fund, the statutory holdback and added amounts required by reason of notice of construction lien claims. Such money will not be disbursed except in compliance with the Construction Lien Act. The Owner will be responsible to and save harmless the Town for any loss suffered by the Town, including legal expenses, by reason of any neglect or refusal by the Owner to comply with the Construction Lien Act and/or this Section. The Town shall be entitled to apply the Performance Guarantee to cover liens and costs that may be claimed against or include the Town in respect of work done or improvements made to lands owned by the Town.

23. Traffic Control - Flagging

Flagging for traffic control for the development of the Lands shall be in conformance with the procedure outlined in the pamphlet entitled "Traffic Control Manual for Roadway Work Operations - Field Edition" issued by the Ministry of Transportation of Ontario. Copies of this pamphlet may be obtained from Ministry of Transportation's District Office.

Each flagman shall, while controlling traffic, wear an approved fluorescent blaze orange or fluorescent red safety vest, an approved fluorescent blaze orange or fluorescent red armband on each arm and an approved fluorescent blaze orange or fluorescent red hat.

24. Supply of Construction Signs

The Owner is responsible for the supply, erection, maintenance and subsequent removal of all temporary traffic control devices, including signs, lights, barricades, delineators, cones, etc., required during the development of the Lands.

Traffic controls shall be provided in general accordance with the latest edition of the "Ontario Traffic Manual Book 7, Temporary Conditions".

The Owner shall provide the Town with a Traffic Control Plan (the "TCP") for review and approval. The TCP must include a procedure for the control and maintenance of traffic. The TCP must be supplied at least seven (7) days prior to commencing work.

25. Maintenance of Road for Local Traffic

The Owner hereby accepts full responsibility to maintain a road for local traffic and reasonable access for residents to their driveway. The Owner shall supply at its expense, all labour, equipment and material to maintain the road in a satisfactory condition including but not limited to the supply and placing of Granular 'A', calcium chloride, bituminous patching material.

26. Architectural Control

The Owner shall, prior to applying for any building permit, comply with the Town's architectural control requirements. The Owner shall pay for or reimburse the Town for the cost of a Control Architect. Such payments shall be made to the Town within thirty (30) days of the Town submitting to the Owner its invoice.

27. Professional Engineers and Other Consultants

(1) The Owner shall employ a Professional Engineer to:

- (i) design all Works and Services other than the landscape Works;
- (ii) prepare and furnish all drawings, plans, reports and certificates as required by the Town, or pursuant to this Agreement;
- (iii) obtain all approvals required from all other governmental authorities or agencies;
- (iv) provide the field layout, the contract administration and site supervision and inspection of the construction of all Works and Services;
- (v) maintain all records of construction and upon completion, advise the Town of all construction changes and final measurements;
- (vi) provide the Town with "as constructed" drawings from time to time upon completion of the construction of the Services in paper and digital format satisfactory to the Town;
- (vii) act as the Owner's representative in all matters pertaining to the construction of the Services;
- (viii) issue "Letter or Letters of Completion";
- (ix) perform such additional functions and services as may be required pursuant to this Agreement; and
- (x) provide the Town with Grading Certification.

(2) The Professional Engineer, or any successor thereto, shall continue to be retained until the completion of the development of the Lands and all certificates have been supplied.

- (3) The Owner shall, at all times and from time to time, at the Owner's expense, furnish all reasonable aid and assistance to the Professional Engineer, the Town and any other consultant, inspector or inspection firm in connection with this Agreement, the Services, the Plans or the Lands, including all necessary testing certification and inspection of material and methods as may be required by the Professional Engineer, the Town, inspector or inspection firm. All tests required shall be carried out in accordance with the specifications of the person requesting such test, and shall be performed at the cost of the Owner. Notwithstanding any inspection that may be carried out by the Town, or any inspector or inspection firm on behalf of the Town, the failure of the Town or the said inspector or inspection firm to condemn or object to any defective work or material shall not constitute a waiver of any specification or the approval or acceptance of any defective work or material, and the Owner shall remain responsible for all and any work done or required to be done in accordance with the terms of this Agreement, including the repair or replacement of any defective work or material, at the Owner's sole cost and expense. In the event that the Town has required any quantitative or qualitative test for any purpose whatsoever as a pre-condition of any further construction, the Owner shall not construct such Services for which the test is required until such test has been received, reviewed and approved by the Town and has issued an order in connection therewith. Such order may specify which work and in what manner it should be done, and may be subject to conditions and may specify that such work is to be completed within a specified time period and the Owner shall comply with all terms of such order.
- (4) The Owner shall employ a Landscape Architect that is in good standing with the Ontario Association of Landscape Architects (O.A.L.A.) to design and supervise landscape Works and to issue a "Certificate of Substantial Completion".
- (5) The Owner shall employ a Landscape Architect that is in good standing with the Ontario Association of Landscape Architects (O.A.L.A.) or an International Society of Arboriculture (I.S.A.) Certified Arborist to design tree preservation and supervise the installation of tree protection hoarding and tree removal Works.

28. Emergency Vehicle Access

The Owner covenants and agrees that access routes for emergency vehicles shall be provided in accordance with the requirements of the Ontario Building Code and Ajax Fire and Emergency Services. Where roadways provide access to condominium developments, or buildings on private lands, the design and construction of the access route shall meet the requirements of the Ontario Building Code and the Town of Ajax Engineering Standards. Access routes for emergency vehicles shall be maintained to new buildings, construction trailers and material storage areas at all times during construction. Water supply for fire fighting purposes must be kept accessible and operational at all times.

Prior to occupancy of any building, an application to designate the required fire route in accordance with the Town's Traffic By-law 5-2004, as amended, must be submitted and approved by Ajax Fire and Emergency Services. All fire route signs shall be installed, prior to occupancy, to the approval of Ajax Fire and Emergency Services.

29. Not applicable to this Agreement

30. Cost of Service Relocation

Should the relocation or abandonment of existing services and utilities become necessary as a result of any work done on or in conjunction with the Plans, the Owner covenants and agrees to pay the cost of such relocation or abandonment of any existing services and utilities.

31. Tree Preservation

- (1) Prior to the execution of this Agreement by the Town, the Owner shall, deposit with the Town the sum of **Eighteen Thousand Five Hundred Dollars (\$18,500.00)** as outlined in Schedule 'C' attached hereto, to ensure that the health of the persevered trees has been maintained during site works and



construction. This security may be released two (2) years after the completion of construction.

- (2) Trees allocated for preservation shall be fully protected with tree protection hoarding, as per the approved **Existing Vegetation Plan and Tree List and Details**. Tree protection zones shall be established prior to any site works, and shall remain in satisfactory condition, as deemed by the Town, until the completion of construction. No works, including construction, shall take place within tree protection zones.

32. Retaining Wall Installation and Inspection

The Owner covenants and agrees to apply for and obtain a building permit for a retaining wall, if any, prior to construction thereof. The Owner is responsible for the following requirements:

- (1) Obtaining a Consulting Engineer that would be responsible for the design and inspection services for the retaining wall. The Consulting Engineer must be qualified in the area of segmental retaining wall design and construction and must be licensed to practice engineering in the Province of Ontario. Prior to construction the Consulting Engineer shall review the site soil conditions and the geometric conditions to ensure the designed wall is compatible for the site;
- (2) The Consulting Engineer shall provide to the Town reports of construction of the retaining wall;
- (3) The Consulting Engineer shall supply a Certificate of Compliance for the retaining wall(s), certifying that all constructed retaining wall(s) have been constructed in accordance with the approved Plans and in accordance with good engineering practice.

Definition:

Consulting Engineer shall refer to an individual or firm retained by the Owner to provide design and inspection services for the retaining wall. The Consulting Engineer must be qualified in the area of segmental retaining wall design and construction and must be licensed to practice engineering in the Province of Ontario.

33. Air Conditioning Units

All required air conditioning units shall be installed in accordance with, By-law 95-2003, as amended, and/or in accordance with the location indicated on the Plans. All air conditioning units (condensers, evaporators, and line-sets) shall be installed and sized appropriately and to the manufactures specifications to ensure that all required air conditioning units function in an efficient manner and do not require future modifications. No air conditioning units shall be permitted at-grade or visible from a public street.

34. Sustainable Building Elements

The Owner covenants and agrees that the development of the Lands shall incorporate all sustainable elements outlined within Schedule 'E' of the Development Agreement which includes but is not limited to, parking standards for electric vehicles, cycling infrastructure in the form of cycle track, bike lockers and racks, pedestrian infrastructure in the form of sidewalks, crosswalks, transit stops, pedestrian lighting, indoor and outdoor waiting areas all being accessible in nature, urban heat island reduction methods being shade trees 8 - 12 metres apart where possible, with a continuous tree trench and/or silva cell system along all property lines, environmentally Conscious Roofing System (ECRS) in the form of a roof-top outdoor amenity space for the buildings occupants, individually metered units, stormwater runoff and retention methods to retain 25 mm of water for a 24 hour period and to remove 80% of total suspended solids, landscape elements to include 50% native species with water efficient characteristics, bird friendly design elements, light pollution limiting fixtures, and proper storage and collection methods for recycling and organic waste.

35. Construction of Streets 'A', 'B', 'C', and 'D' and associated services and lands

Future streets, being Street 'A', Street 'B', Street 'C' and Street 'D' as shown on the Plans shall remain under full ownership of the Town, but the Owner is fully obligated, and at its sole costs, for the construction of these streets, including, but without limiting the foregoing, the relocation of sanitary, stormwater and water services on Commercial Avenue and the conveyance of all or part of the Utility Lands as defined in the Development Agreement to the Town.

All proposed streets (Streets 'A', 'B', 'C' & 'D') are to be constructed to full municipal standards, including all services (sanitary, storm, and water services) as per the Town of Ajax and Region of Durham standard requirements. These streets will also be constructed as per Drawing 9 – Temporary Parking Phasing Plan prepared by Morrison Hershfield (Drawing No. 9, and dated December 16, 2015).

36. Timing of the Removal Parking Field

The Owner acknowledges that the Development Agreement requires the Owner to construct temporary parking prior to the commencement of construction on the Lands. The existing parking field consisting of 217 parking spaces on the Lands shall not be removed or decommissioned until the developer has completed the temporary parking requirements of the Development Agreement including, but without limiting the foregoing, the construction of all services in the Utility Lands and Streets 'A', 'B', 'C' and 'D', all as set out in the Development Agreement..

37. Sales Pavilion - Conditions of Removal

When the Owner no longer requires the temporary sales pavilion (or if the Sales Pavilion is no longer operational) as constructed by the Owner on other lands owned by the Town for the purposes of developing any portion of the Lands the sales pavilion shall be removed within 30 days by the Owner of the Sales Pavilion, unless the Town agrees otherwise.

38. Constructor Approval by Town

In accordance with the Development Agreement the Owner shall obtain the Town's prior written approval of the constructor whom is retained to carry out all works associated with the development of the project.

39. Survey for Lands to be Sold

That the Developer be responsible for and at its sole expense, prepare and register the reference plan survey necessary to complete the transaction of the lands that the development is going to be on. The survey shall also identify all abutting roads abutting the Phase 1A lands as parts on the survey.

40. Utility Lands

All dealings with the Utility Lands shall be in accordance with Development Agreement.

41. Building of the Project

The proposed building will be constructed in its entirety as one building. There will be no phasing of the building, nor will there be one side of the building built at a time. The entire building, including all underground parking structures will be built and a building permit will only be issued for the entire building, with no exceptions.

42. CMP/PMP & Communications Plan

An overall Construction Management Plan/Pedestrian Management Plan will be approved by the Town of Ajax prior to the issuance of any building permit for any component of the project. Also each stage of construction referenced in the approved Construction Management Plan/Pedestrian Management Plan will be reviewed and approved prior to construction occurring and with each stage of construction a Town approved communication will be prepared by the Developer for circulation to all affected properties and parties.

43. Monitoring and Maintenance of Permeable Elements

The Owner will be required to carry out all of the monitoring and maintenance of all permeable elements within the development for a period of 5 years after full installation of the permeable elements. Prior to the Town assuming the permeable elements the owner shall supply a report and certification of full functionality by the Owner's Professional Engineer, subject to the Town's approval.

44. Plan and Construction Coordination

All Plans shall be coordinated so that they depict the same base information. This must be done in order to ensure that at the time of construction all of these overlapping elements are addressed. These matters must be addressed through a preconstruction meeting.

45. Engineering Drawing Approvals Prior to Building Permit Issuance

All engineering drawings must be finalized and approved by the Town of Ajax Engineering Services prior to building permit issuance. This includes, but is not limited to, drawings showing how the interim streets are going to be constructed, how the future permanent streets are going to be constructed (Streets 'A', 'B', 'C', and 'D'), and a utility coordination plan signed off by all required utility providers.

46. Certification of Acceptance

(1) In this Agreement "Functional" means:

- i) the Professional Engineer's Letter of Completion has been delivered to the Town;
- ii) drawings for the General Plan of Services have been submitted to the Town in AutoCAD format acceptable to the Town in accordance with the Design Criteria; and
- iii) close circuit television (CCTV) inspection videos of the storm sewer system have been delivered to the Town.

(2) "Certificates of Preliminary Acceptance of Services" indicating the start of the maintenance period for underground Services shall be issued by the Town as follows:

- i) underground Services are Functional and all deficiencies corrected to the satisfaction of the Town;
- ii) base curb and base asphalt are complete;
- iii) as-built drawings for all underground Services including service connections have been delivered to the Town; and
- iv) a statutory declaration by the Owner that all accounts for underground Services have been paid has been delivered to the Town.

(3) "Certificate of Preliminary Acceptance of Services" indicating the start of maintenance period for aboveground Services shall be issued by the Town as follows:

- (i) completion of all aboveground Services including landscaping and boulevard planting required by this Agreement;
- (ii) if required by the Town the street and walkway lighting has been completed and is operational;
- (iii) the Professional Engineer's Letter of Completion referred to in Section 28;
- (iv) a Statutory Declaration of the Owner that all accounts have been paid has been delivered to the Town;
- (v) expiry of any Construction Lien Act (Ontario) holdback period;



- (vi) the Owner has complied with all of the provisions of this Agreement; and
 - (vii) Preliminary Lot Grading Certification has been delivered to the Town.
- (4) The Town shall, within sixty (60) days from the receipt of the Professional Engineer's Letter of Completion, either advise in writing the Professional Engineer that such work has been completed to its satisfaction or has not been completed to its satisfaction as the case may be and if the Town does not within the said sixty (60) day period so advise the Professional Engineer, it is assumed the work has been accepted unless the Town is delayed in inspecting the work and such delay is not the fault of the Town in which case the sixty (60) day period may be extended by the Town equal to the period of delay.
- (5) "Certificate of Final Acceptance" indicating the end of the maintenance period for underground Services shall be issued by the Town subject to the following:
- (i) issuance of a Certificate of Preliminary Acceptance of aboveground Services; and
 - (ii) an inspection by the Town of the Services to be covered by such Certificate of Final Acceptance indicating that all such Services have been maintained and all deficiencies and defects in such Services have been corrected by the Owner to the satisfaction of the Town.
- (6) "Certificate of Final Acceptance" indicating the end of the maintenance period for aboveground Services shall be issued by the Town subject to the following:
- (i) a complete set of "as constructed" Drawings satisfactory to the Town including lot grading elevations and boulevard tree planting locations submitted on mylar drafting film acceptable to the Town in accordance with the Design Criteria, but not until the Services are acceptable; and
 - (iii) the Owner has cleaned out, the oil and grit separator and inspected the quality control structure and outlet control devices and performed all of its obligations under the terms of this Agreement at which time the Town will assume ownership of the Services and the maintenance thereof.

47. Construction

- (1) The Owner shall not commence construction of any Services unless:
- (i) a Certificate of Insurance has been delivered in accordance with Section 16 and the Performance Guarantee has been provided in accordance with Section 3;
 - (ii) the Plans for the Services have been approved by the Town;
 - (iii) the Owner has given five (5) full business days written notice to the Town of its intention to commence construction; and
 - (iv) the Owner has submitted to the Town a detailed construction schedule (hereinafter called the "Schedule of Construction") at least 45 days prior to commencement of construction indicating the various stages of construction, references to the location of each stage, the anticipated date of commencement of construction and the anticipated completion date of each stage of construction relating to the construction of the Services and the Schedule of Construction has been approved by the Town. In the event that the Owner should fail to comply with the provisions of this paragraph, then the Town may at any time after such default prepare its own schedule of construction and upon sending a copy of such schedule to the Owner, it shall become binding and effective on the Owner in the same manner and to the same extent as if such schedule of construction had been prepared by the Owner and approved by the Town. The Schedule of Construction may be revised with the approval of the Town upon not less than thirty (30) days notice to the Town prior to the date on the Schedule of Construction to be revised.
- (2) The Owner shall construct the Services in accordance with the Schedule of Construction. Failure to fully complete all Services in accordance with the Schedule of

Construction shall be deemed to be a default of the Owner pursuant to the terms of this Agreement, and the Town shall be entitled to avail itself of all remedies contained herein with respect to such default. Upon such default and in addition to any other remedy the Town may have, the Town may require that the Owner cease and desist from doing any further work on the Lands, and the Owner hereby agrees to stop work if it receives notice to do so. The aforesaid agreement to stop work refers to any and all construction of any nature or kind whatsoever in connection with the Lands, including the construction of houses or other buildings or structures on the Lands. If the Owner is unable to fulfill the Schedule of Construction by labour disputes, fire or by a cause of any kind beyond its control then the Schedule of Construction shall be amended with the approval of the Town.

- (6) The construction of Services shall be deemed completed only upon the issuance of a Certificate of Preliminary Acceptance by the Town.
- (7) If the Owner covers or permits to be covered work that has been designated for special tests, inspections or approvals by the Town before such special tests, inspections or approvals have been made, given or completed, the Owner shall, if so directed by the Town, uncover such work, have the inspection or test satisfactorily completed and make good such work at the Owner's expense. The Town may order any part or parts of the Services to be specially examined should it believe that such work is not in accordance with the requirements of this Agreement. If, upon examination, such work is in the opinion of the Town found not in accordance with the requirements of this Agreement, the Owner shall correct such work and regardless of any finding as aforesaid the Owner shall pay all expenses in connection with the provisions of this clause.

48. Incomplete or Faulty Work

- (1) If in the opinion of the Town the Owner fails to install the Services, or, having commenced to install the Services, fails or neglects to proceed to complete the Services in accordance with the Schedule of Construction, or, in the event that the Services are not being installed according to the requirements of this Agreement, or if the Owner abandons the work, in addition to any other remedy the Town may have and upon the Town giving seven days' written notice to the Owner or its Professional Engineer, the Town may, without further notice, enter upon the Lands if necessary and proceed to supply all materials and to do all necessary works in connection with the installation of the Services including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the specifications, and to charge the cost thereof, together with an engineering fee of 15% of the cost of such materials and works, to the Owner who shall forthwith pay the same upon demand by the Town, such entry by the Town shall be as agent for the Owner and shall not be deemed, for any purposes whatsoever, as an acceptance or assumption of the Services by the Town. The Town, in addition to all other remedies it may have, may apply for an order from a Court of competent jurisdiction ordering the Owner to cease construction of any building on the Lands until such Services are completely installed in accordance with the requirements of the Town.
- (2) When, after the Owner has commenced construction of the Services, but before the Services have been finally accepted by the Town, any of the Services provided by the Owner do not function properly and, in the opinion of the Town, repairs are necessary to be made to prevent damage or hardship to any persons or any property, the Town shall notify the Owner or the Professional Engineer of the repairs which are required to be made. In the event the condition as aforesaid is an emergency, or immediate repair is required, then the Town without prior notice may take such action and do all such acts and things as are considered necessary and advisable in the place of the Owner, and the Owner shall reimburse the Town for any and all expenses incurred, whether directly or indirectly by the Town, in connection with such action.
- (3) The Owner further covenants and agrees with the Town that it will repair any damage that may be caused to any of the Services, including grading and landscaping, by any person, resulting from the construction of any buildings on the Lands or resulting from the construction of any of the Services or other matters which the Owner is obligated to perform under this Agreement. It is further understood and agreed that if damages should occur to any of the Services it shall be assumed that such damages were caused by the above-mentioned construction operations and the onus shall therefore be upon the Owner to prove otherwise.

49. Roadways

- (i) The Owner shall maintain all streets constructed or reconstructed by the Owner suitable for vehicular traffic after the installation of Granular 'A' material and until the work thereon has been finally accepted by the Town.
- (ii) The granular base, when possible, shall be laid just prior to the time that curbs and gutters are constructed. Any granular base material which has, in the opinion of the Town, become contaminated with deleterious material or is otherwise determined to be unacceptable, shall be removed and shall not become part of the final road base.
- (iii) The granular stone base shall be inspected and approved by the Professional Engineer before the base course of asphalt is laid in accordance with the Town's material testing requirements.
- (iv) The Owner agrees to maintain such streets free from construction deposits and debris after the first lift of asphalt has been laid.
- (v) The final lift of asphalt paving shall not be placed until underground service trenches have been subjected to a full winter for consolidation purposes and until the Owner has tested all such streets in accordance with a testing method approved by the Town.

50. Concrete Sidewalks

All sidewalks shall be constructed in locations as shown on the Plans.

51. Walkways and Boulevards

- (i) The Owner shall carry out or cause to be carried out, at its expense, boulevard tree planting in accordance with the Town's policy on boulevard planting, pruning and tree removal as amended from time to time and subject to the approval of the Town. Boulevard planting is to be illustrated on "STREET TREE PLANTING PLANS" describing species, quantities and schematic locations for street trees. Such plans are to be based upon the utility co-ordination drawings prepared for the development and shall form part of the engineering drawings described by Schedule "H" of this Agreement. Utility co-ordination plans are to be prepared in anticipation of the requirement for street trees. The tree planting shall be completed within six (6) months of the completion of grading and sodding of the boulevard.
- (ii) The Owner agrees to grade, topsoil, seed and provide interim drainage on all park blocks (as per Section H. Parklands and Open Space, Town of Ajax Design Criteria and Standard Drawings) in conjunction with the Drawings.
- (iii) In the event the Owner agrees to develop parks beyond the requirements of subparagraph (ii), parks and walkways, including lighting, shall be constructed in accordance with the approved Engineering Drawings. The said drawings shall show the proposed treatment of parks and all dedicated lands together with school sites and shall be prepared in accordance with drawings approved by the Town.
- (iv) Prior to the acceptance of the works in the parks and boulevards the Owner shall deliver to the Town as-built drawings showing all works and plantings constructed or planted thereon.
- (v) The Town reserves the right to revise or request a revision to any drawing necessary for the better utilization of the parks or boulevards.
- (vi) The Owner agrees to insert a notice in all agreements of purchase and sale for any dwelling unit in the Plan and in the sales office as follows:

"Any parks and open spaces shown within this plan of subdivision may or may not include future facilities for active and/or passive recreational use. This decision shall be at the sole discretion of the Town of Ajax."



52. Storm Sewers

- (i) A complete system of storm sewers and appurtenances shall be installed by the Owner to service the Lands and other lands covered t in accordance with the Plans.
- (ii) Storm sewers shall be connected and drained to outlets approved by the Town.
- (iii) The Owner shall flush and clean all the storm sewers prior to acceptance by the Town.
- (v) All storm sewers regardless of size are to be inspected by Closed Circuit Television and the Owner shall submit reports and tapes to the Town prior the issuance of a Certificate of Preliminary Acceptance of Services.

53. Street Lighting

The Owner covenants and agrees to design, supply and install at its own expense, street lighting, including poles, standards, lamps, wires and switches and supplemental equipment; and poles, standards and lamps to be at all locations shown in the Plans such work to be done to the approval of the Town and in accordance with the specifications. Note: LED lighting is required for this subdivision as per the new lighting standards in the Town Design Criteria and Standards dated January, 2014.

54. Hydro Services

The Owner covenants and agrees with the Town:

- (i) To enter into a separate agreement with Veridian Connections for the supply of electrical distribution services within the Plan;
- (ii) To provide evidence of entering into the said agreement with Veridian Connections prior to the release, by the Town, of the Plan for registration.
- (iii) To design, supply and install at their own expense an underground electrical distribution service using above ground, low profile transformers and junction boxes to service all lots and blocks within the Plan, according to drawings and specifications approved by Veridian.

55. Development Agreement

The Owner covenants and agrees to comply with the obligations of the Development Agreement with respect to the development of the Lands and the construction of the Services and the obligations of the Owner in this Agreement are in addition to the obligations of the Owner in the Development Agreement.

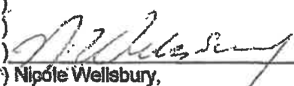


IN WITNESS WHEREOF the Parties hereto have hereunto affixed their respective corporate seals, duly attested by their proper authorized officers.

SIGNED, SEALED & DELIVERED


) THE CORPORATION OF THE TOWN OF AJAX
)
)
)


Steve Parish, Mayor


Nicole Wellsbury,
Manager of Legislative Services/Deputy Clerk

) I/We have the authority to bind the Corporation
)

) 2480832 Ontario Inc.
)


Per: _____
Name: THOMAS LIN
Title: President & CEO

) Per:
Name:
Title:

) I/We have the authority to bind the Corporation

SCHEDULE "A"

Legal Description

All and singular that certain parcel or tract of land described as Part 1, 40R-28209, Town of Ajax,
Regional Municipality of Durham. Part of PIN # 2645-60086 (LT),

LT

SCHEDULE "B"

SECURITY CALCULATIONS FORM

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
LANDSCAPING				
Part A - On-Site Work				
Permeable Concrete Unit Paving - Vehicular	1,810	m ²	\$65.00	\$117,650.00
Precast Concrete Unit Paving - Pedestrian	825	m ²	\$75.00	\$61,875.00
Permeable Concrete Unit Paving - Pedestrian	2,015	m ²	\$85.00	\$171,275.00
Poured Concrete Planter Curb	82	l.m.	\$60.00	\$4,900.00
Precast Concrete Planter - narrow	1	each	\$1,500.00	\$1,500.00
Bike Rack	19	each	\$300.00	\$5,700.00
Table and Chair Seating	5	each	\$1,500.00	\$7,500.00
Tactile Warning Strip	2	each	\$175.00	
Deciduous Tree	2	each	\$450.00	\$900.00
Shrubs	32	each	\$35.00	\$1,120.00
Perennials	628	each	\$15.00	\$9,420.00
Part B - Amenity Terrace				
Precast Concrete Unit Paving - Amenity Terrace	770	m ²	\$75.00	\$57,750.00
Private Terrace Paving	57	m ²	\$50.00	\$2,850.00
Precast Concrete Roof Slabs	54	m ²	\$50.00	\$2,700.00
Granular Paving	25	m ²	\$30.00	\$750.00
Precast Concrete Planter Wall	320	l.m.	\$150.00	\$48,000.00
Shade Structure	6	each	\$2,500.00	\$15,000.00
BBO	4	each	\$600.00	\$2,400.00
Prefabricated Planter	14	each	\$150.00	\$2,100.00
Light Pole	12	each	\$1,250.00	\$15,000.00
Landscape Bollard	58	each	\$250.00	\$14,500.00
Bench	4	each	\$1,250.00	\$5,000.00
Sofa	4	each	\$2,000.00	\$8,000.00
Chair	8	each	\$900.00	\$7,200.00
Coffee Table	4	each	\$200.00	\$800.00
Small Game Table	6	each	\$250.00	\$1,500.00
Large Game Table	8	each	\$400.00	\$3,200.00
Cyber Lounge Seating	16	each	\$900.00	\$14,400.00

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
Dining Table - Small	8	each	\$400.00	\$3,200.00
Dining Table - Large	4	each	\$1,000.00	\$4,000.00
Dining Chair	56	each	\$250.00	\$14,000.00
Large Shrub	128	each	\$100.00	\$12,800.00
Shrubs	584	each	\$35.00	\$20,440.00
Perennials	1428	each	\$15.00	\$21,420.00
Live Roof/Green-Roof Pre-vegetated Tray	156	m ²	\$20.00	\$3,120.00
Part C - Streetscape Work				
Permeable Precast Concrete - Vehicular	1,488	m ²	\$85.00	\$126,480.00
Precast Concrete Unit Paving - Pedestrian	1,145	m ²	\$85.00	\$97,325.00
Precast Concrete Unit Paving	940	m ²	\$75.00	\$70,500.00
Poured Concrete Paving - Pedestrian	355	m ²	\$60.00	\$21,300.00
Asphalt Cycle Track Path	230	m ²	\$50.00	\$11,500.00
Driveway Crossings	2	each	\$2,000.00	\$4,000.00
Precast Concrete Planter - Large	3	each	\$5,000.00	\$15,000.00
Precast Concrete Planter - Small	4	each	\$2,700.00	\$10,800.00
Precast Concrete Planter - Low	2	each	\$1,400.00	\$2,800.00
Bike Rack	18	each	\$300.00	\$5,400.00
Bench	10	each	\$1,250.00	\$12,500.00
Litter Receptacle	10	each	\$800.00	\$8,000.00
Light Pole	16	each	\$1,250.00	\$20,000.00
Continuous Soil Trench	280	m ²	\$150.00	\$42,000.00
Metal Tree Grate	12	each	\$900.00	\$10,800.00
Tactile Warning Strips	24	each	\$175.00	\$4,200.00
Deciduous Tree	27	each	\$450.00	\$12,150.00
Shrubs	172	each	\$35.00	\$6,020.00
Perennials	1048	each	\$15.00	\$15,720.00
Sub-Total				\$1,158,465.00
ENGINEERING				
Foundation Certificate(s)	1	per block	\$5,000.00	\$5,000.00
Grading Certificate	1	each	\$5,000.00	\$5,000.00
Site Servicing Certificate/Stormwater Maintenance Contract	1	each	\$5,000.00	\$5,000.00
Photometrics Certificate		each	\$5,000.00	\$5,000.00
Entrance(s)	4	each	\$3,000.00	\$12,000.00
Street Lights	20	each	\$4,000.00	\$80,000.00

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
Underground Services (Water, Storm and Sanitary)	**	**	100% of total cost	\$419,850.00
Asphalt Paving, Concrete Curbing, Raised Intersections, and Permeable Pavers on all Roads (Harwood, Street A, B, C & D)	**	**	100% of total cost	\$578,500.00
Mud/Right of Way Damage Deposit	1	each	\$20,000.00	\$20,000.00
Garbage Facility	1	each	\$5,000.00	\$5,000.00
Litter Deposit	1	each	\$5,000.00	\$5,000.00
Sub-Total				\$1,131,350.00
TOTAL SECURITIES REQUIRED				\$2,289,815.00

Prior to Town Staff completing a site inspection to reduce/release a letter of credit, the required Certificate of Compliance and Certificate of Substantial Completion must be submitted by a Professional Engineer and Landscape Architect respectively certifying that all works have been constructed in accordance with the approved plans.



SCHEDULE "C"

Summary of financial payments and guarantees to the Town of Ajax by the Owner.

PAYMENT	METHOD OF PAYMENT	AMOUNT	DUE DATE
Performance Guarantee	Irrevocable Letter of Credit	\$2,289,815.00	Prior to Execution of Agreement
Digital Drawing Management Fee	Bank Draft or Certified Cheque	\$ 1,000.00	Prior to Execution of Agreement
Cash-in-lieu of Parkland	Bank Draft or Certified Cheque	5% Residential \$57,600.00 2% Commercial \$144,000.00 Total \$201,600.00	Prior to Execution of Agreement
Tax Arrears	Cash	Nil	Prior to Execution of Agreement
Registrations	Cash	By Invoice	Upon Invoice by Town
Development Charges	Cash	As Per By-law	Prior to Issuance of Each Building Permit
Benchmark	Bank Draft or Certified Cheque	\$750.00	Prior to Execution of Agreement
Architectural Control	Cash	By Invoice	Upon Invoice by Town
Legal Fees	Bank Draft or Certified Cheque	\$609.37	Prior to Execution of Agreement
Litter Management Program	Bank Draft or Certified Cheque	\$3,000.00	Prior to Execution of Agreement
Tree Compensation Payment	Bank Draft or Certified Cheque	\$18,500.00	Prior to Execution of Agreement
Mud and Right-of-Way Deposit	Bank Draft or Certified Cheque	\$20,000.00	Prior to Execution of Agreement
Architectural Landscape Review and Inspection Service Fees	Bank Draft or Certified Cheque	\$83,715.57	Prior to Execution of Agreement
Engineering Review, Inspection and Administration Service Fees	Bank Draft or Certified Cheque	\$50,910.75	Prior to Execution of Agreement
Stormwater Maintenance Fee	Bank Draft or Certified Cheque	\$4,800.00	Prior to Execution of Agreement
Liability Insurance	Insurance Certificate	\$5,000,000.00	Prior to Execution of Agreement

2615333 ONTARIO INC.

- and -

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., et al

Applicant

Respondents

Court File No. CV-20-00651299-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Approving Sale Procedure and Ancillary Matters)**

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

Rebecca L. Kennedy (LSO# 61146S)
Tel: (416) 304-0603
Email: rkennedy@tgf.ca

Alexander Soutter (LSO# 72403T)
Tel: (416) 304-0595
Email: asoutter@tgf.ca

Lawyers for the Court-appointed Receiver, RSM Canada Limited

APPENDIX “F”

[REDACTED]

From: John Hart <jhart@ritchieketcheson.com>
Sent: Wednesday, May 15, 2024 12:20 PM
To: Alexander Soutter; Rebecca Kennedy
Cc: 'Bryan Tannenbaum'; 'Jeffrey Berger'; 'Geoff Romanowski'
Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Starting at 5 pm is not an issue for me. I have not checked the availability of Mr. Romanowski. While his attendance is preferable, it is not necessary on Tuesday.

John

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Wednesday, May 15, 2024 12:06 PM
To: John Hart <jhart@ritchieketcheson.com>; Rebecca Kennedy <Rkennedy@tgf.ca>
Cc: 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>
Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Good afternoon,

I am available Tuesday afternoon. I'd prefer we start at 5pm if possible.

If that works, please let me know and I'll send a Teams link. I suggest that we have Bryan, Jeff and Geoff join.

Regards,
Alex



Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

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From: John Hart <jhart@ritchieketcheson.com>
Sent: Wednesday, May 15, 2024 10:12 AM
To: Rebecca Kennedy <Rkennedy@tgf.ca>; Alexander Soutter <ASoutter@tgf.ca>
Cc: 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>
Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Good Morning Ms. Kennedy

I appeared before the General Government Committee of Town Council of Ajax on Monday May 13, 2024 (I had previously referenced my anticipated attendance as being before Town Council itself and I apologize for that error). At that time, the Central Park Ajax matter was discussed and instructions were provided, which instructions are required to be ratified by Town Council at its meeting on May 21, 2024. Immediately after ratification, I shall advise you of how the Town has instructed me to proceed. For your reference, I attach the Report of the General Government Committee, in which this matter is noted as being "Carried" (see pages 94 and 98).

It is likely that Town Council will ratify the recommendation of General Government Committee presented to it for consideration; nonetheless, I am required to wait until my instructions are ratified before I can engage in any communication regarding same.

Could we schedule a meeting for late on Tuesday (after 5 pm) so that I can apprise you of the Town's position. Thank you.

John

From: Rebecca Kennedy <Rkennedy@tgf.ca>

Sent: Wednesday, May 15, 2024 8:59 AM

To: John Hart <jhart@ritchieketcheson.com>; Alexander Soutter <ASoutter@tgf.ca>

Cc: 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Mr. Hart,

Do you have instructions? We need an update.

Thanks,
Rebecca

Rebecca Kennedy | rkennedy@tgf.ca | **Direct Line: 416-304-0603** | **Thornton Grout Finnigan LLP** | Suite 3200, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | Phone: 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca



Rebecca Kennedy | Rkennedy@tgf.ca | Direct Line +1 416 304 0603 | www.tgf.ca

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From: John Hart <jhart@ritchieketcheson.com>

Sent: Friday, May 10, 2024 12:50 PM

To: Alexander Soutter <ASoutter@tgf.ca>

Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Good Afternoon, Mr. Soutter

I expect to receive instructions on Monday afternoon when I appear before Ajax Town Council at a closed session convened for the purpose of addressing the various issues that presently exist.

I will communicate with you thereafter in accordance with the instructions that I receive.

Have a good weekend.

John R. Hart
Ritchie, Ketcheson, Hart & Biggart LLP
1 Eva Road, Ste. 206
TORONTO, Ontario
M9C 4Z5

Tele: 416 622 6601 Ext 1009 **NEW EXTENSION**

Fax: 416 622 4713

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Friday, May 10, 2024 12:45 PM
To: John Hart <jhart@ritchieketcheson.com>
Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>
Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Good afternoon Mr. Hart,
We trust you have instructions now. Please respond to our questions.

Regards,



Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

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From: John Hart <jhart@ritchieketcheson.com>
Sent: Monday, May 6, 2024 11:14 AM
To: Alexander Soutter <ASoutter@tgf.ca>
Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>
Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Dear Mr. Soutter

I reference your e-mail dated April 30, 2024, set out below.

I have a meeting scheduled today with Senior Staff of Ajax and a meeting scheduled with the Mayor and Senior Staff on Thursday. Once I have instructions to respond to your specific questions, I will do so.

I do wish to offer one comment. At our last meeting, the Town provided “outside the box” proposals in order to find a way to sell this property. Thinking “outside the box” seems to be required because of the difficulties related to creating a mutually agreeable “Right of Repurchase”. The Town and the main Creditor spent a great deal of time trying to find a “Right of Repurchase” that could be included in the proposed development agreement. According to the Receiver, that Right of Repurchase was rejected by the marketplace. Accordingly, the only way that an “acceptable” Right of Repurchase could possibly be created would be with the involvement of the proposed Stalking Horse bidder, in order to determine what would be acceptable to it. I am not presently in a position to offer any comment that the Town may have on the proposed Stalking Horse bidder. That being said, if the Receiver wants to have the Stalking Horse bidder discuss a Right of Repurchase on a WITHOUT INSTRUCTIONS WITHOUT PREJUDICE basis, then the Town would participate in such venture. I want to be clear that this offer is being made solely to accommodate the apparent tight deadlines that exist and should not be construed as an acceptance in any way of either the Stalking Horse bid or the Stalking Horse bidder.

I will provide you with information and instructions as I receive same.

Thank you.

John R. Hart

Ritchie, Ketcheson, Hart & Biggart LLP
1 Eva Road, Ste. 206
TORONTO, Ontario
M9C 4Z5

Tele: 416 622 6601 Ext 1009

Fax: 416 622 4713

From: Alexander Soutter <ASoutter@tgf.ca>

Sent: Tuesday, April 30, 2024 7:58 PM

To: John Hart <jhart@ritchieketcheson.com>

Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Dear Mr. Hart,

It has been 14 days since our emails now. We need to know if the proposed Stalking Horse Bidder is a satisfactory purchaser. Please update us on the Town's position and where we are in the timeline that you refer to below. That timeline, taking a month to answer a question that calls for a binary answer, won't do, particularly given the drop dead date we all have as a result of the maturity of Hillmount's facility at the end of this year.

To avoid further delay, please also give us the Town's position on the meaning of what Right of Repurchase would be "substantively similar" to the one provided for in the original development agreement.

Regards,



Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

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From: John Hart <jhart@ritchieketcheson.com>

Sent: Tuesday, April 16, 2024 5:08 PM

To: Alexander Soutter <ASoutter@tgf.ca>

Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: [EXTERNAL]RE: Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Importance: High

Dear Mr. Soutter

I want to first address your last point. I am not in a position on Tuesday April 16, 2024 to provide you with a position on Friday April 19, 2024 about whether the Town considers the proposed Stalking Horse Bidder as a "satisfactory purchaser". **I must again remind you that I take instructions from the Town Council of Ajax and such instructions can only be received at a properly convened meeting of Town Council.** Advising me as Counsel for the Town on a Tuesday that you want instructions by Friday is eminently unreasonable.

That being said, I am in the process of drafting a report to Town Council in which I am seeking instructions from Town Council and can include that request therein. The time lines within which I am presently working are as follows:

- April 19th to report to CAO;
- Week of April 22nd – report to the Mayor and get direction to proceed to Council;
- Week of April 29th – determine meeting date to brief/get direction from Council;
- Meeting no later than May 13th General Government Committee meeting.

Mr. Romanowski is presently out of the office but has advised me that he will be reviewing his e-mails from time to time. As I am an external counsel, I am not in a position to arrange/schedule Special Meetings and therefore make no comment about the possibility of same. Nonetheless, I do acknowledge that Special Meetings of Town Council can be called on certain matters using requisite procedures.

I will respond to your various other points shortly.

John R. Hart
Counsel for the Town of Ajax

Ritchie, Ketcheson, Hart & Biggart LLP
1 Eva Road, Ste. 206
TORONTO, Ontario
M9C 4Z5

Tele: 416 622 6601 Ext 1009
Fax: 416 622 4713

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Tuesday, April 16, 2024 4:39 PM
To: John Hart <jhart@ritchieketcheson.com>
Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; Jeffrey Berger <jberger@tdbadvisory.ca>; Geoff Romanowski <Geoff.Romanowski@ajax.ca>
Subject: Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Dear Mr. Hart,

Thank you for meeting with us virtually on April 3rd. As we advised on the call, the Receiver is considering proposing a further sale procedure with RPL Holdings Limited (the “**Stalking Horse Bidder**”) to be a stalking horse bidder. If that path were taken, the next steps in this proceeding would be to (a) finalize a development agreement acceptable to the Stalking Horse Bidder, the Town, the Receiver and the Applicant, (b) finalize a stalking horse agreement acceptable to the stalking horse bidder and the Receiver, (c) return to Court to seek approval of an updated sale procedure, (d) carry out that procedure and close on the successful bid. We discussed that four-point framework with you on our call.

We also discussed the issues with the draft development agreement that was before the Court in June 2023 that will need to change: (a) the timing for construction milestones will need to change given the feedback that the Receiver has obtained from the market; (b) the Receiver can no longer hold the purchase price in escrow given the maturity of the Hillmount facility, and will have to be able to make a final distribution to creditors before that deadline; and (c) whether the Town would agree to include some of the “incentives” contained in the original development agreement. On that point, on our call you advised that the Town would consider including a right of first refusal relating to the Phase 2 and Phase 3 lands (as those terms were used in the original development agreement).

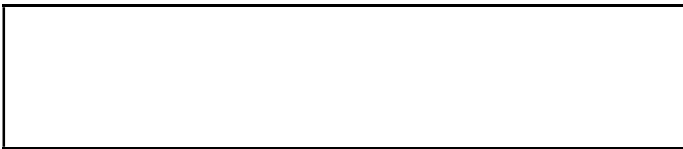
Further, you advised that the restriction on the height of a building to be constructed on the receivership lands has changed. The height was previously limited to 10 storeys because of a nearby steam generating facility. You advised that because that facility is not an environmental factor anymore, the height of the building need not be restricted to 10 storeys.

We have not yet raised the potential for a stalking horse bid with the proposed Stalking Horse Bidder but, given the extent of their participation in the last sale procedure we hope they will be interested. On our call you advised that the Town may take the position that the proposed Stalking Horse Bidder is not a satisfactory purchaser of the lands subject to this receivership in the eyes of the Town. We were surprised to hear this. The Town had previously advised us of its concerns regarding the proposed Stalking Horse Bidder's past projects, but nevertheless confirmed that the proposed Stalking Horse Bidder was acceptable on a preliminary basis. There were extensive negotiations with the proposed Stalking Horse Bidder that also involved the Town between mid-September and early November 2023. After the sale procedure failed, you even raised the potential of having this proposed Stalking Horse Bidder purchase the receivership lands from the Receiver with me on a telephone call on December 8, 2023. At no point did the Town advise that the proposed Stalking Horse Bidder might not be acceptable.

Please confirm that, without prejudice to your position regarding what an acceptable development agreement might entail, the proposed Stalking Horse Bidder is a satisfactory purchaser from the Town's perspective. Please advise by the end of the week.

If the Town has other views regarding a further sale procedure or bidder, please propose those views in writing.

Regards,



Alexander Soutter | Associate | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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APPENDIX “G”

From: John Hart <jhart@ritchieketcheson.com>
Sent: Thursday, May 23, 2024 4:21 PM
To: Alexander Soutter
Cc: 'Bryan Tannenbaum'; 'Jeffrey Berger'; 'Geoff Romanowski'; Rebecca Kennedy
Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]
Attachments: 20240523161556.pdf

Good Afternoon All

Please find attached my letter to the Receiver confirming the advice given at the Teams meeting on May 21, 2024 that the Town wishes to make an offer to purchase the Central Park Ajax lands.

John

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Thursday, May 23, 2024 2:52 PM
To: John Hart <jhart@ritchieketcheson.com>
Cc: 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>; Rebecca Kennedy <Rkennedy@tgf.ca>
Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Hi John,

We are writing further to our videoconference on May 21, 2024. You advised during that call that the Town intended to make an offer to buy the property subject to this receivership and that we should expect a letter from you regarding this offer by the end of the day yesterday. We have not received one. Please let us know when we can expect it.

Regards,
Alex



Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

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From: Rebecca Kennedy <Rkennedy@tgf.ca>
Sent: Wednesday, May 15, 2024 1:24 PM
To: Alexander Soutter <ASoutter@tgf.ca>; John Hart <jhart@ritchieketcheson.com>
Cc: 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>
Subject: RE: [EXTERNAL] Central Park Ajax Receivership

As I advised Alex, I have court Tuesday afternoon, which may go late. Please proceed without me, and I will circle with the team after the meeting.

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Wednesday, May 15, 2024 12:06 PM
To: John Hart <jhart@ritchieketcheson.com>; Rebecca Kennedy <Rkennedy@tgf.ca>
Cc: 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>
Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Good afternoon,

I am available Tuesday afternoon. I'd prefer we start at 5pm if possible.

If that works, please let me know and I'll send a Teams link. I suggest that we have Bryan, Jeff and Geoff join.

Regards,

Alex

From: John Hart <jhart@ritchieketcheson.com>

Sent: Wednesday, May 15, 2024 10:12 AM

To: Rebecca Kennedy <Rkennedy@tgf.ca>; Alexander Soutter <ASoutter@tgf.ca>

Cc: 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Good Morning Ms. Kennedy

I appeared before the General Government Committee of Town Council of Ajax on Monday May 13, 2024 (I had previously referenced my anticipated attendance as being before Town Council itself and I apologize for that error). At that time, the Central Park Ajax matter was discussed and instructions were provided, which instructions are required to be ratified by Town Council at its meeting on May 21, 2024. Immediately after ratification, I shall advise you of how the Town has instructed me to proceed. For your reference, I attach the Report of the General Government Committee, in which this matter is noted as being "Carried" (see pages 94 and 98).

It is likely that Town Council will ratify the recommendation of General Government Committee presented to it for consideration; nonetheless, I am required to wait until my instructions are ratified before I can engage in any communication regarding same.

Could we schedule a meeting for late on Tuesday (after 5 pm) so that I can apprise you of the Town's position. Thank you.

John

From: Rebecca Kennedy <Rkennedy@tgf.ca>

Sent: Wednesday, May 15, 2024 8:59 AM

To: John Hart <jhart@ritchieketcheson.com>; Alexander Soutter <ASoutter@tgf.ca>

Cc: 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Mr. Hart,

Do you have instructions? We need an update.

Thanks,

Rebecca

Rebecca Kennedy | rkennedy@tgf.ca | Direct Line: 416-304-0603 | Thornton Grout Finnigan LLP | Suite 3200, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | Phone: 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

 Rebecca Kennedy | Rkennedy@tgf.ca | Direct Line +1 416 304 0603 | www.tgf.ca

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From: John Hart <jhart@ritchieketcheson.com>

Sent: Friday, May 10, 2024 12:50 PM

To: Alexander Soutter <ASoutter@tgf.ca>

Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Good Afternoon, Mr. Soutter

I expect to receive instructions on Monday afternoon when I appear before Ajax Town Council at a closed session convened for the purpose of addressing the various issues that presently exist.

I will communicate with you thereafter in accordance with the instructions that I receive.

Have a good weekend.

John R. Hart

Ritchie, Ketcheson, Hart & Biggart LLP

1 Eva Road, Ste. 206

TORONTO, Ontario

M9C 4Z5

Tele: 416 622 6601 Ext 1009 **NEW EXTENSION**

Fax: 416 622 4713

From: Alexander Soutter <ASoutter@tgf.ca>

Sent: Friday, May 10, 2024 12:45 PM

To: John Hart <jhart@ritchieketcheson.com>

Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Good afternoon Mr. Hart,

We trust you have instructions now. Please respond to our questions.

Regards,

 Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

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From: John Hart <jhart@ritchieketcheson.com>

Sent: Monday, May 6, 2024 11:14 AM

To: Alexander Soutter <ASoutter@tgf.ca>

Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger'

<jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Dear Mr. Soutter

I reference your e-mail dated April 30, 2024, set out below.

I have a meeting scheduled today with Senior Staff of Ajax and a meeting scheduled with the Mayor and Senior Staff on Thursday. Once I have instructions to respond to your specific questions, I will do so.

I do wish to offer one comment. At our last meeting, the Town provided “outside the box” proposals in order to find a way to sell this property. Thinking “outside the box” seems to be required because of the difficulties related to creating a mutually agreeable “Right of Repurchase”. The Town and the main Creditor spent a great deal of time trying to find a “Right of Repurchase” that could be included in the proposed development agreement. According to the Receiver, that Right of Repurchase was rejected by the marketplace. Accordingly, the only way that an “acceptable” Right of Repurchase could possibly be created would be with the involvement of the proposed Stalking Horse bidder, in order to determine what would be acceptable to it. I am not presently in a position to offer any comment that the Town may have on the proposed Stalking Horse bidder. That being said, if the Receiver wants to have the Stalking Horse bidder discuss a Right of Repurchase on a WITHOUT INSTRUCTIONS WITHOUT PREJUDICE basis, then the Town would participate in such venture. I want to be clear that this offer is being made solely to accommodate the apparent tight deadlines that exist and should not be construed as an acceptance in any way of either the Stalking Horse bid or the Stalking Horse bidder.

I will provide you with information and instructions as I receive same.

Thank you.

John R. Hart

Ritchie, Ketcheson, Hart & Biggart LLP
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From: Alexander Soutter <ASoutter@tgf.ca>

Sent: Tuesday, April 30, 2024 7:58 PM

To: John Hart <jhart@ritchieketcheson.com>

Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: RE: [EXTERNAL] Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Dear Mr. Hart,

It has been 14 days since our emails now. We need to know if the proposed Stalking Horse Bidder is a satisfactory purchaser. Please update us on the Town's position and where we are in the timeline that you refer to below. That

timeline, taking a month to answer a question that calls for a binary answer, won't do, particularly given the drop dead date we all have as a result of the maturity of Hillmount's facility at the end of this year.

To avoid further delay, please also give us the Town's position on the meaning of what Right of Repurchase would be "substantively similar" to the one provided for in the original development agreement.

Regards,



Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

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From: John Hart <jhart@ritchieketcheson.com>

Sent: Tuesday, April 16, 2024 5:08 PM

To: Alexander Soutter <ASoutter@tgf.ca>

Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; 'Bryan Tannenbaum' <btannenbaum@tdbadvisory.ca>; 'Jeffrey Berger' <jberger@tdbadvisory.ca>; 'Geoff Romanowski' <Geoff.Romanowski@ajax.ca>

Subject: [EXTERNAL]RE: Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Importance: High

Dear Mr. Soutter

I want to first address your last point. I am not in a position on Tuesday April 16, 2024 to provide you with a position on Friday April 19, 2024 about whether the Town considers the proposed Stalking Horse Bidder as a "satisfactory purchaser". **I must again remind you that I take instructions from the Town Council of Ajax and such instructions can only be received at a properly convened meeting of Town Council.** Advising me as Counsel for the Town on a Tuesday that you want instructions by Friday is eminently unreasonable.

That being said, I in the process of drafting a report to Town Council in which I am seeking instructions from Town Council and can include that request therein. The time lines within which I am presently working are as follows:

- April 19th to report to CAO;
- Week of April 22nd – report to the Mayor and get direction to proceed to Council;
- Week of April 29th – determine meeting date to brief/get direction from Council;
- Meeting no later than May 13th General Government Committee meeting.

Mr. Romanowski is presently out of the office but has advised me that he will be reviewing his e-mails from time to time. As I am an external counsel, I am not in a position to arrange/schedule Special Meetings and therefore make no comment about the possibility of same. Nonetheless, I do acknowledge that Special Meetings of Town Council can be called on certain matters using requisite procedures.

I will respond to your various other points shortly.

John R. Hart
Counsel for the Town of Ajax

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1 Eva Road, Ste. 206
TORONTO, Ontario
M9C 4Z5

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From: Alexander Soutter <ASoutter@tgf.ca>

Sent: Tuesday, April 16, 2024 4:39 PM

To: John Hart <jhart@ritchieketcheson.com>

Cc: Rebecca Kennedy <Rkennedy@tgf.ca>; Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; Jeffrey Berger <jberger@tdbadvisory.ca>; Geoff Romanowski <Geoff.Romanowski@ajax.ca>

Subject: Central Park Ajax Receivership [IMAN-CLIENT.FID140057]

Dear Mr. Hart,

Thank you for meeting with us virtually on April 3rd. As we advised on the call, the Receiver is considering proposing a further sale procedure with RPL Holdings Limited (the “**Stalking Horse Bidder**”) to be a stalking horse bidder. If that path were taken, the next steps in this proceeding would be to (a) finalize a development agreement acceptable to the Stalking Horse Bidder, the Town, the Receiver and the Applicant, (b) finalize a stalking horse agreement acceptable to the stalking horse bidder and the Receiver, (c) return to Court to seek approval of an updated sale procedure, (d) carry out that procedure and close on the successful bid. We discussed that four-point framework with you on our call.

We also discussed the issues with the draft development agreement that was before the Court in June 2023 that will need to change: (a) the timing for construction milestones will need to change given the feedback that the Receiver has obtained from the market; (b) the Receiver can no longer hold the purchase price in escrow given the maturity of the Hillmount facility, and will have to be able to make a final distribution to creditors before that deadline; and (c) whether the Town would agree to include some of the “incentives” contained in the original development agreement. On that point, on our call you advised that the Town would consider including a right of first refusal relating to the Phase 2 and Phase 3 lands (as those terms were used in the original development agreement).

Further, you advised that the restriction on the height of a building to be constructed on the receivership lands has changed. The height was previously limited to 10 storeys because of a nearby steam generating facility. You advised that because that facility is not an environmental factor anymore, the height of the building need not be restricted to 10 storeys.

We have not yet raised the potential for a stalking horse bid with the proposed Stalking Horse Bidder but, given the extent of their participation in the last sale procedure we hope they will be interested. On our call you advised that the Town may take the position that the proposed Stalking Horse Bidder is not a satisfactory purchaser of the lands subject to this receivership in the eyes of the Town. We were surprised to hear this. The Town had previously advised us of its concerns regarding the proposed Stalking Horse Bidder’s past projects, but nevertheless confirmed that the proposed Stalking Horse Bidder was acceptable on a preliminary basis. There were extensive negotiations with the proposed Stalking Horse Bidder that also involved the Town between mid-September and early November 2023. After the sale procedure failed, you even raised the potential of having this proposed Stalking Horse Bidder purchase the receivership lands from the Receiver with me on a telephone call on December 8, 2023. At no point did the Town advise that the proposed Stalking Horse Bidder might not be acceptable.

Please confirm that, without prejudice to your position regarding what an acceptable development agreement might entail, the proposed Stalking Horse Bidder is a satisfactory purchaser from the Town’s perspective. Please advise by the end of the week.

If the Town has other views regarding a further sale procedure or bidder, please propose those views in writing.

Regards,



Alexander Soutter | Associate | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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APPENDIX “H”

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made the 27th day of June, 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

1000612843 ONTARIO INC.

(the “**Purchaser**”)

NOTE TO PURCHASER:

Please indicate below which of the following lands this Agreement of Purchase and Sale relates to:

☒ Development Lands, Utility Lands and Commercial Lands

☐ Development Lands and Utility Lands only

☐ Commercial Lands only

In the event that this Agreement of Purchase and Sale does not include the Development Lands and Utility Lands, any reference in this Agreement of Purchase and Sale to the Development Agreement shall be considered inapplicable. For greater certainty, neither the Development Lands nor the Utility Lands can be purchased without also purchasing the other.

RECITALS:

- A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021, (the “**Appointment Order**”) the Receiver was appointed as receiver over the lands legally described in Schedule “A” attached hereto;
- B. 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 it being acknowledged by the Purchaser that this Agreement will not be effective or binding until the Vesting Order has been granted;
- (b) **"Agent"** shall mean Avison-Young Commercial Real Estate Services, LP;
- (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 Charge"** has the meaning ascribed to it in Section 2.18;
- (f) **"Assumed Liabilities"** has the meaning ascribed to it in Section 2.10;
- (g) **"Business Day"** means a day on which banks and the Land Registry Office for the Region of Durham are open for business but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (h) **"CIM"** means the confidential information memorandum prepared by the Agent;
- (i) **"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;
- (j) **"Closing"** means the successful completion of the Transaction;

- (k) **"Closing Date"** means the date which is three (3) days immediately following the date upon which the Vesting Order is granted, or the next Business Day, as applicable, or such other date as the Parties may mutually agree upon;
- (l) **"Commercial Lands"** means those lands bearing PINs 26459-0050 (LT), 26459-0046 (LT) and 26459-0045 (LT);
- (m) **"Conveyance Event"** has the meaning ascribed to it in Section 2.14;
- (n) **"Court"** means the Court defined in the first recital of this Agreement;
- (o) **"Data Room"** means the electronic data room established by or on behalf of the Vendor containing the Property Documents for review by the Purchaser;
- (p) **"Development Agreement"** means the agreement in the form of the agreement set out at Schedule "C";
- (q) **"Development Lands"** means those lands bearing PIN 26456-0108 (LT);
- (r) **"Debtor"** means all or any one of 9617680 Canada Inc., 9654372 Canada Inc., Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc. and 9654445 Canada Inc.;
- (s) **"Deposit"** has the meaning ascribed to it in Section 2.5;
- (t) **"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;
- (u) **"Environmental Condition"** has the meaning ascribed to it in Section 2.2(a);
- (v) **"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;

- (w) **"Ereg"** has the meaning ascribed to it in Section 5.7;
- (x) **"ETA"** means the *Excise Tax Act* (Canada), as it may be amended from time to time;
- (y) **"Excluded Assets"** means the assets, if any, listed in Schedule "D";
- (z) **"Final Order"** means, in respect of any Court 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;
- (aa) **"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;
- (bb) **"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;

- (cc) **"HST"** means all goods and services taxes and harmonized sales tax payable under the ETA;
- (dd) **"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;
- (ee) **"Leases"** means any leases with any tenants relating to the Property;
- (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;
- (gg) **"Parties"** means the Vendor, the Purchaser and any other Person who may become a party to this Agreement;
- (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";
- (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, the CIM, 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;
- (ll) **"Property"** means the real property described in Schedule "A" and shown on the Sketch of Purchased Assets attached hereto as Schedule "A-1", which is included for convenience and discussion purposes only;

- (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) **"Purchase Price Cash Component"** shall have the meaning ascribed to it in section 2.4;
- (qq) **"Purchaser's Solicitors"** means the law firm of Corsianos Lee Vashishth LLP (Attention: Jacob Lee jlee@clvlaw.ca);
- (rr) **"Purchased Assets"** means those assets designated in the "Note to Purchaser" on the front page of this Agreement as being the lands which are the subject of this Agreement;
- (ss) **"Receiver"** has the meaning described thereto in the Recitals;
- (tt) **"Reports"** means collectively any written reports or documents received or obtained by the Receiver from any third party regarding any aspect of the Property;
- (uu) **"Rights"** has the meaning ascribed to it in Section 2.13;
- (vv) **"Sale Procedure"** means the sale procedure approved by the Court attached as Schedule "E", as maybe amended in accordance with such sale procedure;
- (ww) **"Sale Procedure Order"** means the order of the Court approving of the Sale Procedure;
- (xx) **"Successful Bid"** has the meaning given to it in the Sale Procedure;
- (yy) **"Successful Bidder"** has the meaning given to it in the Sale Procedure;
- (zz) **"Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;
- (aaa) **"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;

- (bbb) **“Utility Lands”** means those lands bearing PINs 26459-0037 (LT), 26459-0036 (LT) and 26459-0035 (LT);
- (ccc) **“Vendor Closing Conditions”** has the meaning ascribed to it in Section 4.3;
- (ddd) **“Vendor’s Solicitor”** means the law firm of Garfinkle Biderman LLP;
- (eee) **“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, acting reasonably;
- (fff) **“Vesting Order Motion”** means a motion by the Receiver seeking the granting of the Vesting Order; and
- (ggg) **“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 "A-1" Sketch of Property
- Schedule "B" Permitted Encumbrances
- Schedule "C" Development Agreement
- Schedule "D" Excluded Assets

Schedule "E" Sale Procedure

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 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 Purchased Assets or any part thereof, or in the air, surface or ground water flowing through, onto or from the Purchased Assets, 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 the CIM, 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 CIM, 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 Purchased Assets 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 Purchased Assets 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 Purchased Assets which impacts the use, enjoyment, income or development opportunities connected with the Purchased Assets;
 - (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 Purchased Assets with Environmental Laws, Reports or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Purchased Assets,

or otherwise with respect to the environmental condition of the Purchased Assets;

- (e) the CIM, 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 this Agreement) 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 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 Purchased Assets 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 terms in Section 2.5 and 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 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 the CIM and any of the Property Documents; and

- (j) 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 Purchased Assets, adequacy, marketability, quantity, location, condition, quality, fitness or state of repair. The information in the CIM, 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 [REDACTED] including the assumption of the [REDACTED] mortgage of Ajax Master Holding Inc., for total cash payment of [REDACTED] (the **"Purchase Price Cash Component"**), allocated as set out in paragraph 2.7.

2.5 Deposit

The Parties acknowledge and agree that the sum of [REDACTED] being ten (10%) percent of the Purchase Price Cash Component (the **"Deposit"**) has been delivered by the Purchaser to the Vendor's solicitor in trust upon submission by the Purchaser of an executed copy of the Agreement to 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 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), and minus the Assumed Charge pursuant to Section 2.18, 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 Allocation of Purchase Price

The entire Purchase Price shall be allocated to the Purchased Lands for each parcel being purchased in allocations to be agreed between the Receiver and the Purchaser, acting reasonably, or as determined by the Court, with the credit bid portion of the Purchase price to be allocated to the Development Lands, such that the aggregate of such allocation equal to the Purchase Price, and the Parties agree that they shall follow such allocation in determining and reporting their liabilities for any Taxes and, without limitation, shall file their respective income tax returns prepared in accordance with such allocation, provided that nothing herein shall require the Vendor to file any income tax

returns that it is not otherwise required to file. Upon the agreement of the Receiver and the Purchaser, or the determination of the Court, of the purchase price allocation for each parcel being purchased, the Receiver and Purchaser shall jointly indicate the allocated purchase price for each parcel, in the form immediately below:

<u>Commercial Lands</u>	<u>Purchase Price</u>
PIN No. 26459-0050 (LT)	\$ _____
PIN No. 26459-0046 (LT)	\$ _____
PIN No. 26459-0045 (LT)	\$ _____
<u>Development Lands</u>	
PIN No. 26456-0108 (LT)	\$ _____
<u>Utility Lands</u>	
PIN No. 26459-0037 (LT)	\$ _____
PIN No. 26459-0036 (LT)	\$ _____
PIN No. 26459-0035 (LT)	\$ _____

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
- (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 Purchased Assets, 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 part of Property comprising the Purchased Assets 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 enures 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 Conveyance Event

At the same time as the Purchaser submits a signed copy of this Agreement to the Vendor, the Purchaser must submit a signed copy of the Development Agreement to the Vendor on the understanding that, upon Closing, the Receiver will deliver a copy of the Development Agreement to the Town to be signed unless the Purchaser and the Town have agreed to similar form of agreement on terms that are acceptable to the Receiver.

The Receiver will hold the Escrow Funds in escrow until the earlier of the Construction Commencement Date (as such terms are defined in the Development Agreement) and 210 days after the Closing Date. For greater certainty, after earlier of the Construction

Commencement Date and 210 days after the Closing Date, the Receiver shall be under no obligation to hold the Escrow Funds in escrow.

If the Town exercises its right to require a Conveyance pursuant to the Development Agreement (and as defined therein), the Purchaser shall transfer title of the Purchased Assets, free and clear of all encumbrances, except for the Permitted Encumbrances, to the Receiver, within 15 days from receipt of the Town giving notice of its intention to require a Conveyance. The Receiver shall pay to the Purchaser the Escrow Funds as consideration for the Conveyance.

The obligations of the Parties under this Section 2.14 survive Closing.

2.15 Sale Procedure Order and Vesting Order

- (a) The Receiver and the Purchaser acknowledge that:
 - i. this Agreement is subject to Court approval; and
 - ii. Closing is subject to this Agreement being determined by the Receiver to be the Successful Bid pursuant to the Sale Procedure and to the issuance of the Vesting Order, and the Vesting Order becoming a Final Order.
- (b) If this Agreement is determined to the Successful Bid (as defined in the Sale Procedure) pursuant to the Sale Procedure, 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 Purchaser is the Successful Bidder (as defined in the Sale Procedure), 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 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 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 the Court a certificate, substantially in the form attached to the 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 the Sale Procedure, 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.

2.18 Assumed Charge

The Purchaser hereby covenants and agrees with the Receiver to assume the obligations, liabilities and indebtedness of the Debtor under the Charge registered against the Development Lands and the Utility Lands as Instrument No. DR1675556, as transferred by Transfer of Charge registered as Instrument No. DR2241513 (collectively, the "**Assumed Charge**") in all respects. For clarity, the debt of the Debtor under Transfer of Charge registered as Instrument No. DR2103584 shall not be assumed and the Receiver shall pay down and discharge the debt owed to Lawco Limited pursuant to the Transfer of Charge.

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;
- (b) the Assumed Liabilities and any other obligations and liabilities assumed by the Purchaser as provided for by this Agreement; and
- (c) to effect a Conveyance upon the terms of Section 2.14, if the circumstances arise that require it to do so.

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 the Development Agreement, to perform its obligations thereunder and to consummate the Transaction;
- (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 Vesting Order prior to Closing, to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the 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) the Development Agreement having been entered into by the Purchaser and the Town of Ajax;
- (d) the Appointment Order, the Sale Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction; and
- (e) the Receiver shall have determined in accordance with the Sale Procedure that this Agreement is the Successful Bid.

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, including the Development 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;
- (d) The Receiver shall have determined in accordance with the Sale Procedure that this Agreement is the Successful Bid; and
- (e) On the closing date, the Appointment Order, the Sale Procedure Order and the 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 that was not fulfilled was the Vendor Closing Condition contained in Section 4.3(c), 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 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 or before September 30, 2024, thereby approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the applicable Debtor in the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances. 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. However, if the hearing of the motion for the approval of the Vesting Order is adjourned by the Court of its own volition or adjourned over the objection of both the Vendor and the Purchaser, then the deadline for the granting of the Order shall be extended to five (5) business days following the hearing of the motion for the approval of the Vesting Order.

SECTION 5 — CLOSING

5.1. Closing

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

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, including an executed copy of the Development 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 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.

5.8 Payment of Land Transfer Tax

The parties agree that the Purchase Price will not be shown in the Vesting Order. The parties agree that any Land Transfer Tax payable by the Purchaser (and similarly, in the event of a Conveyance Event, any Land Transfer Tax payable by the Vendor) shall be paid directly to the Ministry of Finance prior to closing such that the Purchase Price will not be shown on any registered document nor will the Land Transfer Tax paid be shown on any registered document.

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: Lakeshore Luxe Design & Build Group Inc. and 1000612843 Ontario Inc.

Telephone No: 905.370.1093

Email: jlee@clvlaw.ca

with a copy to:

Corsianos Lee Vashisth LLP

6 Ronrose Drive, Suite 301

Vaughan, Ontario L4K 4R3

and in the case of the Vendor, as follows:

TDB Restructuring Limited, Court-Appointed Receiver of 9617680 Canada Inc., 9654372 Canada Inc., Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc. and 9654445 Canada Inc.

11 King Street West

Suite 700, PO Box 27

Toronto, ON M5H 4C7

Attention: Bryan Tannenbaum

Email: btannenbaum@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

Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

Attention: Rebecca Kennedy
Email: rkennedy@tgf.ca

Attention: Alexander Soutter
Email: asoutter@tgf.ca

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 constitutes the entire agreement between the Parties with respect to the Purchased Assets 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 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 which for greater certainty, do not form part of the Purchase Price. Any other commissions payable to any other party shall be the responsibility of the Purchaser.

6.12. 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.

6.13. 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.

6.14. 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.

6.15. 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.

6.16. 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.

6.17. 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.

6.18. 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**

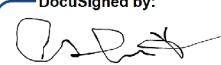
Signed by:

Per: 1B6D99C078914D0...

Name: Jeffrey Berger, CPA, CA, CIRP, LIT

Title: Managing Director

1000612843 ONTARIO INC.

DocuSigned by:

0933A59F063849C...

Per: _____

Name: Anthony De Francesco

Title: Authorized Signing Officer

Schedule A

Property

1. The Property:

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

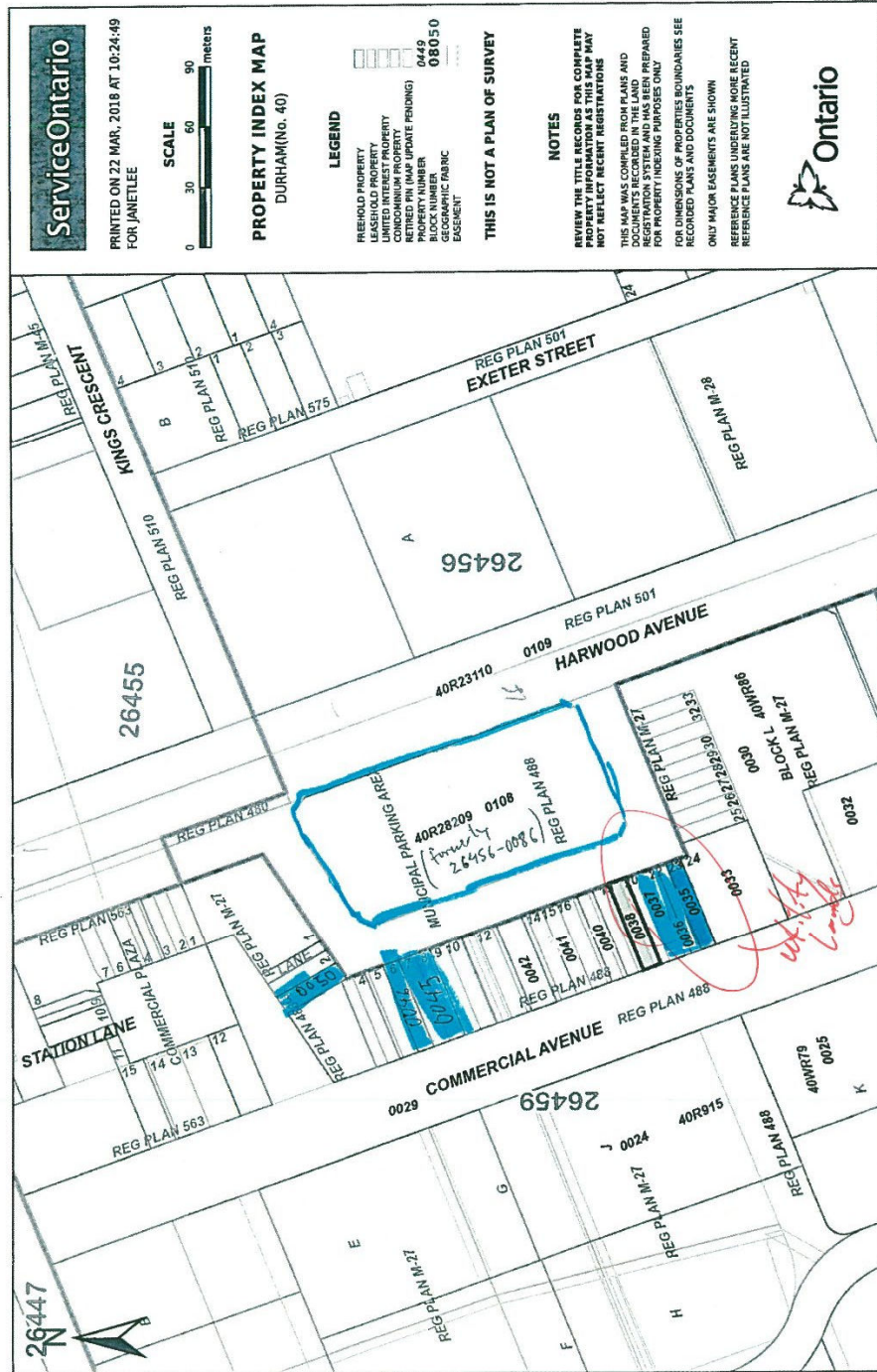
PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

Schedule "A-1" **Sketch of the Property**



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 Vesting Order)

PIN No.	Reg. Num.	Date	Instrument Type	Parties To
26459-0050	CO97966	September 29, 1961	Municipal By-Law	RSM Canada Limited
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR963279	January 11, 2011	Director of Titles Order	
	DR2104350	February 25, 2022	Court Order	
26459-0046	CO97966	September 29, 1961	Municipal By-Law	RSM Canada Limited
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR2104350	February 25, 2022	Court Order	
26459-0045	CO97966	September 29, 1961	Municipal By-Law	RSM Canada Limited
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR2104350	February 25, 2022	Court Order	
26456-0108	CO169590	June 26, 1968	Municipal By-Law	The Corporation of the Town of Ajax The Corporation of the Town of Ajax RSM Canada Limited Ajax Master Holding Inc. Lakeshore Luxe Design And Build Group Inc.
	D79596	November 1, 1978	Municipal By-law	
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR1508437	August 24, 2016	Notice of Site Plan Agreement	
	DR1511281	August 31, 2016	Municipal By-Law	
	DR2121686	April 14, 2022	Court Order	
	DR1675556	January 19, 2018	Charge	
	DR2241513	June 27, 2023	Transfer of Charge	
26459-0037	CO97966	September 29, 1961	Municipal By-Law	RSM Canada Limited Ajax Master Holding Inc. Lakeshore Luxe Design And Build Group Inc.
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR2104350	February 25, 2022	Court Order	

	DR1675556	January 19, 2018	Charge	
	DR2241513	June 27, 2023	Transfer of Charge	
26459-0036	CO97966	September 29, 1961	Municipal By-law	RSM Canada Limited
	DR2104350	February 25, 2022	Court Order	Ajax Master Holding Inc.
	DR1675556	January 19, 2018	Charge	Lakeshore Luxe Design And Build Group Inc.
	DR2241513	June 27, 2023	Transfer of Charge	
26459-0035	LTC3716	September 29, 1961	Municipal By-law	RSM Canada Limited
	DR2104350	February 25, 2022	Court Order	Ajax Master Holding Inc.
	DR1675556	January 19, 2018	Charge	Lakeshore Luxe Design And Build Group Inc.
	DR2241513	June 27, 2023	Transfer of Charge	

Schedule C

Development Agreement

Enclosed.

DEVELOPMENT AND PURCHASE AGREEMENT between

THE CORPORATION OF THE TOWN OF AJAX

(the "Town" or "Ajax")

- And -

THE DEVELOPER CORPORATION

PURCHASER IN RECEIVERSHIP PROCESS

(the "Developer")

WHEREAS the Developer, through the Receivership process defined herein, acquired title to the properties identified in Schedule "A" to this Agreement (hereinafter the "Schedule "A" Lands")

AND WHEREAS the Developer has assured the Town of Ajax that the Developer will construct a mixed-use development in accordance with the Development Plans listed in Schedule "B" to this Agreement (hereinafter "the Development Plans");

AND WHEREAS the Developer acquired title to the Schedule "A" Lands knowing that the Town of Ajax would require the Developer to enter into a Development Agreement for the purpose of ensuring that the mixed-use development and services upon a portion of the Schedule "A" Lands are constructed in accordance with the Development Plans;

AND WHEREAS the Developer acquired title to the Schedule "A" Lands knowing that its rights would be subject to a potential Conveyance Event (as defined below), if the Developer does not proceed with the construction of the mixed-use development in accordance with the terms of this Agreement;

AND WHEREAS it is vital to Ajax to see that the mixed-use development is developed upon a portion of the Schedule “A” Lands in a timely manner in accordance with the Development Plans;

AND WHEREAS the Developer had an opportunity to review this Agreement prior to acquiring title to the Schedule “A” Lands through the Receivership process;

AND WHEREAS the Town of Ajax approved of the Developer in accordance with the terms of the Receivership Order on the basis that the Developer would execute this Agreement, which requires the Developer to construct the mixed-use development and services upon a portion of the Schedule “A” Lands in accordance with the Development Plans and which also provides for a potential Conveyance Event;

NOW WITNESSETH that in consideration of the exchange of \$5.00 of lawful money of Canada from one party to the other and other good and valuable consideration which each party acknowledges as having been exchanged between the parties, and the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are accurate and form part of this Agreement.

2. **DEFINITIONS**


- a. *Commence construction* means the day upon which (i) the Developer first starts excavation for the construction of the foundation and underground parking for the mixed-use development, (ii) the Developer first starts demolition of the buildings located on the Utility Lands, and (iii) the Receiver has confirmed, in its sole discretion, that such excavation and demolition has begun by giving written notice to the Developer and the Town.
- b. *Complete construction* means the conclusion of both the construction and clean-up process on the Development Lands, and ready for occupancy closing of the units.
- c. *Conveyance Event* means the event described in section 17 of this Agreement.


- d. *Development Lands* means the lands shown and described in Schedule “C” of this Agreement and which are the part of the Schedule “A” Lands upon which the Developer is to construct the mixed-use development. In the event of any discrepancy between the Development Lands as described by way of their legal description or as shown on the map as part of Schedule “C”, the legal description shall prevail.
- d. *Development Plans* means the plans, which have been agreed to as between the Town and the Developer prior to the Developer executing this agreement and as set out in Schedule “B” to this Agreement. The Development Plans shall be substantially in accordance with the existing approved Site Plan Agreement, which can be found at Schedule “D” of this Agreement, and the Development Plans shall be used and implemented by the Developer to construct the mixed-use development upon the Development Lands.
- e. *Escrow Funds* has the meaning given to it in section 19 of this Agreement.
- f. *Mixed-use development* means the mixed-use development and services that the Developer is obligated to construct in accordance with the terms of this Agreement upon the Development Lands.
- g. *Receiver* means RSM Canada Limited, in its capacity as the Receiver of the Schedule “A” Lands, by way of an Order of Mr. Justice Cavanagh, dated April 15, 2021, made in the proceeding bearing Court File No. CV-20-00651299-00CL.
- h. *Receivership process* means the Receivership that was ordered by the Court by way of an Order of Mr. Justice Cavanagh, dated April 15, 2021, as part of the proceeding bearing Court File No. CV-20-00651299-00CL.
- i. *Sales, Marketing and Repurchase Costs* means all costs of the Receiver associated with the marketing and sale of the Schedule “A” Lands to the Developer and the possible repurchase of the Schedule “A” Lands from the Developer, including the costs of the Receiver’s sales agent, the Receiver’s professional costs, and those of their counsel, associated with the sales and possible repurchase processes, including negotiating with the Town, potential purchasers and the Developer, and the Receiver’s professional costs, and those of their counsel, associated with bringing a motion for approval of the sale to the Developer in the Receivership

process and any and all costs relating to the repurchase, including any Land Transfer Taxes payable by the Receiver in connection with the repurchase.


- j. *Schedule "A" Lands* are all of the lands to which the Developer obtained title by way of acquiring all rights, title and interests in through the Receivership process and which are shown and described in Schedule "A" of this Agreement.

OBLIGATION TO CONSTRUCT MIXED-USE DEVELOPMENT IN ACCORDANCE WITH DEVELOPMENT PLANS

3. The Developer shall apply for a permit to allow construction to commence within 60 days after the date on which the Developer's purchase of the Schedule "A" lands from the Receiver closes, and commence construction of the mixed-use development within the greater of 150 days after such permit has been obtained, or such other period mutually agreed to by the Developer, the Receiver and Ajax (the "Construction Commencement Date"). Should the Developer refuse or fail to commence the construction of the mixed-use development within the time permitted in Section 3 herein, the refusal or failure to commence is considered a Conveyance Event under the terms of this Agreement.  The town of Ajax building department shall provide a permit to the Developer within 60 days after applying for the building permit.
4. The Developer shall give the Receiver and Ajax five business days' notice before the date that the Developer intends to start excavation for the construction of the foundation and underground parking for the mixed-use development. Representatives of the Receiver and Ajax will attend the Development on the date that the Developer commences construction.
5. The Developer shall complete construction of the mixed-use development within 30 months from the date on which the Developer commences construction.
6. Should the Developer refuse or fail to complete the construction of the mixed-use development within the time permitted in Section 5 herein, the Developer shall, within ten (10) days thereafter provide a written report to the Town explaining the reason or reasons for the delay and the expected completion date for the construction of the mixed-use development.

 ~~7. Should the Town, acting reasonably, be satisfied with the explanation for the delay and the expected completion date for the completion of the mixed use development as set out in the report referenced in Section 6, above, the Town will so advise the Developer in writing within ten (10) days of receipt of the report from the Developer, and shall permit the construction to proceed without the payment of liquidated damages paid by the Developer as contemplated in Section 9 herein.~~

8. Should the Town not be satisfied with the explanation for the delay or the expected completion date of the mixed-use development as set out in the report referenced in Section 6, above, or should the Developer fail to submit the required report, the Town may impose a deadline upon the Developer, which cannot be less than ninety (90) days from original completion date by which the construction of the mixed-use development must be completed by the Developer (the "deadline extension date").

 ~~9. Should the Developer refuse or fail to complete the construction of the mixed use development by the expected completion date established by the Town in accordance with Section 7 or by the deadline extension date established by the Town in accordance with Section 8, above, the Town may claim liquidated damages against the Developer commencing the day after the expected completion date or the deadline extension date, as the case may be, of \$1000 per day, which liquidated damages shall be payable by the Developer on the Monday of the following week and every Monday thereafter until construction of the mixed-use development has been completed.~~

10. Should the Developer refuse or fail to pay the liquidated damages referenced in Section 9, above, the Town may, if and when it sees fit to do so, draw upon the Letter of Credit posted with the Town by the Developer, as referenced in Section 28, below, for the purpose of recovering the amount of the liquidated damages owed to the Town.

ABILITY OF THE DEVELOPER TO SEEK CHANGES TO THE DEVELOPMENT PLANS AFTER DEVELOPER ACQUIRES TITLE TO THE DEVELOPMENT LANDS

11. Should the Developer wish to alter the Development Plans prior to or during the construction of the mixed-use development, it may do so by way of filing all reports and documents as required by the Town and in accordance with all applicable statutes, regulation, and policies of the Town.

12. It is acknowledged and agreed by the Developer that the Town, as decision maker (and not as a contracting party to this Agreement) under the *Planning Act* or any other applicable statute, may, at its sole discretion, approve or reject the alteration of the Development Plans as proposed by the Developer and the Developer agrees to abide by the decision of the Town, as decision maker.
13. Should the Developer file an application for an Official Plan Amendment, a Zoning By-law Amendment, or a Site Plan Amendment that in any way relates to the Development Lands and appeal any such application to the Ontario Land Tribunal, the filing of such an appeal is a Conveyance Event under the terms of this Agreement.
14. Should a Conveyance Event arise under the terms of this Agreement by way of the Developer filing an appeal in relation to any of an Official Plan Amendment application, a Zoning By-law Amendment application, or a Site Plan Amendment application that in any way relates to the Development Lands, the Developer shall, on the day that the appeal is filed and without taking any steps, be deemed to have, and will in fact have, assigned, any such appeal to the Town (as a contracting party to this Agreement) as it relates to the Development Lands. The Town may rely upon the terms of this Agreement to confirm that the appeal related to the Development Lands has been assigned to the Town.
15. Should the Developer file an application to seek a minor variance pursuant to Section 45 of the *Planning Act* that in any way relates to the Development Lands, the Developer agrees to pursue the approval of the minor variance at the Committee of Adjustment only if Town staff files a staff report in support of the requested variance(s).
16. Should the Developer file an application to seek a minor variance pursuant to Section 45 of the *Planning Act* that in any way relates to the Development Lands, and should Town staff file a staff report that recommends refusal of the requested variance(s), the Developer shall, within two (2) days of the release of the staff report, withdraw its request, prior to any decision having been rendered by the Committee of Adjustment, including a deferral of the consideration of the application, for any variances which staff recommends be refused through its staff report.

CONVEYANCE OF THE SCHEDULE "A" LANDS

17. A Conveyance Event means the following:

- a. The attempted assignment of this Agreement without the prior written consent of the Town of Ajax and the Receiver;
- b. The Developer filing an appeal to the Ontario Land Tribunal in furtherance of seeking approval for an Official Plan Amendment, a Zoning By-law Amendment or a Site Plan Amendment in relation to any of the Development Lands;
- c. The Developer refusing or neglecting to withdraw its application for a minor variance or minor variances as required under Section 16 of this Agreement;
- d. The Developer failing, for any reason, to commence construction of the mixed-use development, in accordance with the Development Plans, as may be amended pursuant to the terms of this Agreement, upon the Development Lands by the date set out in Section 3, above;
- e. The Developer attempting to sell or selling, without the prior written consent of the Town of Ajax and the Receiver, any or all of the Schedule "A" Lands.

18. In the event that a Conveyance Event arises, the Town shall have the right to require that the Developer convey title to all, but not less than all of the Schedule "A" Lands, to the Receiver, free and clear of all encumbrances in accordance with the terms of this Agreement (a "Conveyance").

19. Until the Construction Commencement Date, the Receiver will hold the price paid by the Developer for the Schedule "A" Lands, less an amount equal to the Sales, Marketing and Repurchase Costs, in escrow, such amounts being the "Escrow Funds".

20. Notwithstanding anything to the contrary in this Agreement, after the Construction Commencement Date the Town shall have no right to require a Conveyance and the Receiver shall be under no obligation to hold the Escrow Funds in escrow.

21. In the event that a Conveyance Event arises, and the Town chooses to require a Conveyance, then the Town shall, within fifteen (15) days of the Town becoming aware of the fact that a Conveyance Event occurred, provide written notice to the Developer and the Receiver, of the Town's intention to require a Conveyance pursuant to this Agreement.

22. Upon receiving notice in writing from the Town that the Town intends to require a Conveyance, the Developer shall transfer the title of Schedule "A" Lands, free and clear of all encumbrances, to the Receiver, on or before fifteen (15) days from receipt of the written notice from the Town.
23. Upon a Conveyance, the Receiver shall pay to the Developer the Escrow Funds as consideration for the Conveyance.

RECEIVER'S RIGHT TO NOT CONVEY THE SCHEDULE "A" LANDS

24. Should a Conveyance Event arise, and the Town choose not to exercise its right to require a Conveyance of the Schedule "A" Lands, the Town may, at its sole discretion, permit the Developer to continue to deal with the Schedule "A" Lands in such manner as agreed to by the Town, in writing.
25. Any decision by the Town to allow the Developer to continue to deal with the Schedule "A" Lands for any period of time after a Conveyance Event has occurred does not in any way limit the right of the Town to exercise its right to require a Conveyance pursuant to the terms of this Agreement, unless such right has expired pursuant to the terms of this Agreement or the Town has expressly, in writing, waived or otherwise limited its right to require a Conveyance by making specific reference to this section of this Agreement and by confirming its intention to waive or otherwise limit its right.
26. Any delay or failure of the Town to exercise its right to require a Conveyance after a Conveyance Event has occurred does not in any way limit the right of the Town to exercise its right to require a Conveyance at any time after another Conveyance Event has been discovered by the Town to have occurred.
27. The Developer expressly waives any and all claims that the Developer may have, or could have, against the Town or Receiver that in any way relate to an allegation that the Town or Receiver has been unjustly enriched, or that are based upon quantum meruit and/or betterment, as a result of the Receiver exercising its right to require a Conveyance pursuant to the terms of this Agreement.

~~LETTER OF CREDIT~~

- ~~28. Concurrent with the execution of this Agreement, the Developer shall post a letter of credit, in a form satisfactory to the Town and in an amount of \$250,000.00, for the purpose allowing the Town to draw upon the letter of credit pursuant to Section 10, above.~~

A blue DocuSign signature mark, consisting of a stylized 'DS' and a handwritten signature.

REPRESENTATIONS AND WARRANTIES

29. The Town represents and warrants to the Developer that:
- a. as of the date of this Agreement, the Durham Region in-force Official Plan, the Town's in-force Official Plan and the in-force Zoning By-law applicable to the Development Lands permits the mixed-use development to be constructed upon the Development Lands;
 - b. the Town will not initiate or grant any amendment to the in-force Official Plan or any amendment to the in-force Zoning By-law applicable to the Development Lands or pass an interim control by-law which would have the effect of prohibiting or delaying the construction of the mixed-use development.
30. The Developer represents and warrants to the Town that as of the date of this Agreement:
- a. the Developer has the authority to enter into this Agreement and the ability to complete the obligations contemplated herein.

ARBITRATION TO RESOLVE DISPUTES

31. If the parties cannot, after good faith, discussions, agree upon the resolution of any dispute arising from the interpretation of a provision of this agreement, except as noted in Section 33, below, then the parties agree that such dispute will be resolved by binding arbitration pursuant to the *Arbitrations Act* 1991, S.O. 1991, c. 17, as may be amended from time to time, on the following basis:
- a. The arbitration shall commence within 20 business days of delivery of an arbitration notice, which either party may deliver once one or both parties believe that a dispute is unlikely to be resolved in the absence of arbitration.
 - b. Upon receipt of the arbitration notice, the parties have seven (7) business days to agree upon a single arbitrator. In the event that the parties cannot agree upon a single arbitrator, each party shall, within three (3) business days thereafter, name an arbitrator. The two arbitrators chosen shall then, within five (5) days of being named, select a third arbitrator who shall serve as the sole arbitrator.
 - c. The selected arbitrator shall establish all procedural requirements of the arbitration pursuant to the *Arbitrations Act*, as well as the determination of costs that may be payable by one party to the other.

- d. In selecting an arbitrator, the parties acknowledge and agree that the arbitration shall commence no later than twenty (20) business days after the delivery of the arbitration notice and any arbitrator nominated shall be available within such dates.
32. The parties acknowledge and agree that the right of the Town to require a Conveyance is not a matter that can be subject to the arbitration process set out above, and the parties further agree that the arbitrator has no jurisdiction to determine if the Town has the right, or had the right, to require a Conveyance pursuant to the terms of this Agreement. The Developer agrees that its obligation to effect a Conveyance in accordance with the terms of this Agreement is enforceable by specific performance and that an award of damages for breach of such obligation is not sufficient.
33. The parties acknowledge and agree that the decision of the arbitrator shall be final.
34. The parties acknowledge and agree that the expenses of any arbitration shall be borne by the parties in accordance with the decision of the arbitrator.

NOTICE AND SERVICE UNDER THIS AGREEMENT

35. The Town can be served at:
- 65 Harwood Avenue South
Ajax, ON
L1S 2H9
- Attention: Chief Administrative Officer

36. The Developer can be served at:
- ~~XXXXXXXXXX~~ 66 Carnforth Rd
Toronto, ON
M4a 2K7



37. The Receiver can be served at:
- 11 King Street West, Suite 700,
Toronto, ON
M5H 4C7
- Attention: Bryan Tannenbaum
Attention: Jeff Berger

CC Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, ON
M5K 1K7

Attention: Rebecca L. Kennedy
Attention: Alexander Soutter

38. Any notice if personally served shall be deemed to have been validly and effectively given and received on the date of delivery if received prior to 5:00 pm on a business day, otherwise the date of delivery shall be deemed to be the on the business day next following such date. Any notice, if sent by facsimile or e-mail, shall deemed to have been validly and effectively given and received on the date of transmission if received prior to 5:00 pm on a business day, otherwise the date shall be deemed to be on the business day next following such date. Notices given by regular mail shall be deemed to have been validly and effectively given on the fifth business day after the date upon which the notice was deposited in the mail for delivery.

MISCELLANEOUS

39. Notwithstanding any other provision of this Agreement, none of the provisions of this Agreement, including a provision stating the parties' intentions, is intended to operate, nor will have the effect of operating, in any way to fetter Town of Ajax Council which authorized the execution of this agreement or any of its successor councils in the exercise of any of councils' discretionary powers, duties or authorities. The Developer hereby acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.
40. Nothing in this Agreement shall be construed so as to make either party a partner of the other nor to have the parties engaged in any joint venture.
41. This Agreement shall be registered by the Town on the Schedule "A" Lands and shall constitute a first registration thereon after the transfer of title to the Developer.
42. It is agreed and acknowledged by the parties that each is satisfied as to the jurisdiction of the other to enter into this Agreement. The parties agrees that it will not challenge the jurisdiction of the other party to enter into this Agreement, nor will they challenge the legality of any provision in this Agreement.
43. The parties covenant and agree that at all times, and from time-to-time hereafter, upon every reasonable written request so to do, they shall make, execute, deliver

or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required or more effectively implementing and carrying out the true intent and meaning of this Agreement.

44. Time shall be of the essence in all respect for the purposes of this Agreement.
45. Any tender of documents of money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or a cheque from a solicitor's trust account.
46. This Agreement may not be assigned by either party without the prior written consent of any party and each party may unreasonably withhold their consent to any proposed assignment.
47. This Agreement shall enure to the benefit of and shall be binding upon the parties and upon their permitted assigns and shall enure to the benefit of and be enforceable only by such permitted assigns which have received such assignment in the manner permitted by this Agreement.
48. This Agreement is subject to compliance with the provisions of the *Planning Act*.
49. This Agreement may be executed in counterparts, each of which is deemed to be an original and both of which taken together are deemed to constitute one and the same instrument, and production of one of the executed counterparts from each of the parties will be sufficient proof of execution of this Agreement.

Schedule A

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

Schedule B
Development Plans

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A1.0 – Context Plan	Kirkor Architects & Planners	November 27, 2015
A1.1 – Site Plan	Kirkor Architects & Planners	December 15, 2015
A2.1 – Underground Parking Garage – Level P1 & P2	Kirkor Architects & Planners	December 15, 2015
A2.2 – Level 1 Floor Plan	Kirkor Architects & Planners	December 15, 2015
A2.3 – Mezzanine & Level 2 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.4 – Level 3 & 4 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.5 – Level 5 & 6 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.6 – Level 7 & 8 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.7 – Level 9 & 10 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.8 – Mechanical Penthouse & Enlarged Plans	Kirkor Architects & Planners	November 27, 2015
A3.1 – Exterior Elevations	Kirkor Architects & Planners	November 27, 2015
A3.2 – Exterior Elevations (Courtyard)	Kirkor Architects & Planners	November 27, 2015
A4.1 – Building Sections	Kirkor Architects & Planners	November 27, 2015
A5.1 – Shadow Study	Kirkor Architects & Planners	November 27, 2015
PCL-CMP-01	PCL	March 20, 2015
PCL-CMP-02	PCL	March 20, 2015
PCL-CMP-03	PCL	March 20, 2015
PCL-CMP-04	PCL	March 20, 2015
PCL-CMP-05	PCL	March 20, 2015
PCL-CMP-06	PCL	March 20, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
PCL-CMP-07	PCL	March 20, 2015
L-1a – Ground Level Landscape Plan	MBTW	December 16, 2015
L-1b – Roof Level 4 Landscape Plan	MBTW	September 22, 2015
L-2 – Ground Level Grading Plan	MBTW	December 16, 2015
L-3a – Ground Level Planting Plan	MBTW	December 16, 2015
L-3b – Roof Level 4 Planting Plan	MBTW	December 16, 2015
L-D1 – Landscape Details	MBTW	December 16, 2015
L-D2 – Landscape Details	MBTW	December 16, 2015
L-D3 – Landscape Details	MBTW	December 16, 2015
L-D4 – Landscape Details	MBTW	December 16, 2015
L-D5 – Paving Details	MBTW	December 16, 2015
1 – General Notes	Morrison Hershfield	December 16, 2015
2 – Surface Removal Plan	Morrison Hershfield	December 16, 2015
3 – Sub-Surface Removal Plan	Morrison Hershfield	December 16, 2015
4 – Storm Drainage Area Plan	Morrison Hershfield	December 16, 2015
5 – Sanitary Drainage Area Plan	Morrison Hershfield	December 16, 2015
6 – General Plan	Morrison Hershfield	December 16, 2015
7 – Grading Plan	Morrison Hershfield	December 16, 2015
8 – Erosion and Sedimentation Control Plan	Morrison Hershfield	November 27, 2015
9 – Temporary Parking Plan Phase 1a	Morrison Hershfield	December 16, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
10 – Plan and Profile Street “A”	Morrison Hershfield	December 16, 2015
11 – Plan and Profile Street “B”	Morrison Hershfield	December 16, 2015
12 – Plan and Profile Street “C”	Morrison Hershfield	December 16, 2015
13 – Plan and Profile Street “C”	Morrison Hershfield	December 16, 2015
14 – Plan and Profile Street “D”	Morrison Hershfield	December 16, 2015
15 – Details	Morrison Hershfield	December 16, 2015
16 – Lighting Layout	Morrison Hershfield	December 16, 2015
17 – Photometric Layout	Morrison Hershfield	December 16, 2015
18 – Electrical Details	Morrison Hershfield	December 16, 2015
19 – Existing Vegetation Plan	Morrison Hershfield/Matthew Hooker	November 27, 2015
20 – Tree List and Details	Morrison Hershfield/Matthew Hooker	November 27, 2015
21 – Road Cross Sections	Morrison Hershfield	December 16, 2015
22 – Utility Coordination Plan	Morrison Hershfield	December 16, 2015
TMIP's 9766C001, 9766C002, 9766C003	LEA Consulting Ltd.	December 18, 2015
Truck Turning Movements P1, P2, P3, P4, P5 & P6	LEA Consulting Ltd.	December 18, 2015
Stormwater Management Report	Morrison Hershfield	December 16, 2015

Schedule C

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

Schedule D
Site Plan Agreement

THIS SITE PLAN AGREEMENT made this 29th day of Dec, 2015

BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX

(hereinafter referred to as the "Town")

OF THE FIRST PART,

- and -

2480832 Ontario Inc.

(hereinafter referred to as the "Owner")

OF THE SECOND PART.

WHEREAS:

The Town pursuant to a Development Agreement and Agreement of Purchase and Sale dated July 15, 2013 and amended by the Amending and Assumption Agreement dated June 29, 2015 (the "Development Agreement") has agreed to convey to the Owner the Lands as hereinafter defined;

By application **SP2/14**, the Owner has applied to the Town under Section 41 of the *Planning Act, R.S.O. 1990, c. P.13*, (the "Act") for site plan approval in respect of its development of the Lands;

The Town requires the Owner to enter into an agreement with it prior to the development, including redevelopment, of the Lands and the erection, construction and installation of buildings, structures, facilities and works thereon as permitted by subsection 41 (7) of the Act and as required by the Development Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of mutual benefits, the Parties hereto agree as follows:

1. The lands and premises affected by this Agreement (hereinafter referred to as the "Lands") are those lands more particularly described in Schedule "A" hereto.
2. No development, including redevelopment, shall be undertaken on the Lands except in accordance with the following plans and drawings and any revisions there to as approved by the Town (the "Plans"):

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A1.0 – Context Plan	Kirkor Architects & Planners	November 27, 2015
A1.1 – Site Plan	Kirkor Architects & Planners	December 15, 2015
A2.1 – Underground Parking Garage – Level P1 & P2	Kirkor Architects & Planners	December 15, 2015
A2.2 – Level 1 Floor Plan	Kirkor Architects & Planners	December 15, 2015
A2.3 – Mezzanine & Level 2 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.4 – Level 3 & 4 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.5 – Level 5 & 6 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.6 – Level 7 & 8 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.7 – Level 9 & 10 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.8 – Mechanical Penthouse & Enlarged Plans	Kirkor Architects & Planners	November 27, 2015
A3.1 – Exterior Elevations	Kirkor Architects & Planners	November 27, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A3.2 – Exterior Elevations (Courtyard)	Kirkor Architects & Planners	November 27, 2015
A4.1 – Building Sections	Kirkor Architects & Planners	November 27, 2015
A5.1 – Shadow Study	Kirkor Architects & Planners	November 27, 2015
PCL-CMP-01	PCL	March 20, 2015
PCL-CMP-02	PCL	March 20, 2015
PCL-CMP-03	PCL	March 20, 2015
PCL-CMP-04	PCL	March 20, 2015
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PCL-CMP-07	PCL	March 20, 2015
L-1a – Ground Level Landscape Plan	MBTW	December 16, 2015
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L-D1 – Landscape Details	MBTW	December 16, 2015
L-D2 – Landscape Details	MBTW	December 16, 2015
L-D3 – Landscape Details	MBTW	December 16, 2015
L-D4 – Landscape Details	MBTW	December 16, 2015
L-D5 – Paving Details	MBTW	December 16, 2015
1 – General Notes	Morrison Hershfield	December 16, 2015
2 – Surface Removal Plan	Morrison Hershfield	December 16, 2015
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6 – General Plan	Morrison Hershfield	December 16, 2015
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10 – Plan and Profile Street 'A'	Morrison Hershfield	December 16, 2015
11 – Plan and Profile Street 'B'	Morrison Hershfield	December 16, 2015
12 – Plan and Profile Street 'C'	Morrison Hershfield	December 16, 2015
13 – Plan and Profile Street 'C'	Morrison Hershfield	December 16, 2015
14 – Plan and Profile Street 'D'	Morrison Hershfield	December 16, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
15 - Details	Morrison Hershfield	December 16, 2015
16 - Lighting Layout	Morrison Hershfield	December 16, 2015
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19 - Existing Vegetation Plan	Morrison Hershfield/Matthew Hooker	November 27, 2015
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21 - Road Cross Sections	Morrison Hershfield	December 16, 2015
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TMIP's 9766C001, 9766C002, 9766C003	LEA Consulting Ltd.	December 18, 2015
Truck Turning Movements P1, P2, P3, P4, P5, & P6	LEA Consulting Ltd.	December 18, 2015
Stormwater Management Report	Morrison Hershfield	December 16, 2015

3. (1) As a condition to the approval of the said Plans, the Owner agrees to install and maintain to the Town's satisfaction and at the sole risk and expense of the Owner any or all of the facilities or works including the grading, landscaping, fencing, the removal of snow from access ramps and driveways, parking and loading areas and walkways as shown on the Plans (the "Works").
- (i) for the purpose of guaranteeing the installation and maintenance, by the Owner, of the Works required to be installed and maintained pursuant to a condition of approval imposed under Section 2 above, restoration of public lands under subsection (5) below, construction of the Services defined in Section 19 of this Agreement and payment of any amounts payable by the Owner pursuant to this Agreement the Owner shall deliver to the Town prior to the execution of this Agreement, security (the "Performance Guarantee") in the form of an irrevocable Letter of Credit issued by a chartered bank in Canada approved by the Treasurer of the Town, acting reasonably, in an amount as determined by the Town. The Performance Guarantee may be drawn upon by the Town in such amounts and at such times as the Town, in its sole discretion, deems advisable should the Owner fail to install or maintain the Works, fail to install or maintain the Services, fail to restore public lands or fails to pay any amount required to be paid by the Owner pursuant to this Agreement or fail to comply with any obligation of the Owner pursuant to this Agreement provided the Town has provided the Owner with a notice of default and established a time frame in which to rectify the default and the Owner fails to comply with such time frames.;
- (ii) the amount of the Performance Guarantee shall be based on the cost of installation of the Works and Services and may be reduced by the Town at the sole discretion of the Town upon the completion of the Works and Services but in no event shall the Performance Guarantee be reduced below the amount equal to the total of 100% of the cost to complete or rectify any default plus the maintenance required of any Works or Services.
- (iii) if, in the opinion of the Town the amount of the Performance Guarantee is insufficient, then the Town shall recalculate the amount of the Performance Guarantee and shall advise the Owner of such recalculation and provide the Owner with a copy of such recalculation and the Owner

shall deliver any additional security required by the Town within seven (7) business days of its receipt of such notice.

- (iv) Schedule "C" is a guide to the amount of the Performance Guarantee required but in determining the sufficiency of the Performance Guarantee regard shall be given to the total cost of satisfying all of the obligations of the Owner pursuant to any provisions of this Agreement.
 - (v) where any Works or Services are not installed or where the Owner is in default of any of its obligations in this Agreement, the Town may enter and install such Works or Services or perform such obligations at the Owner's expense and apply the Performance Guarantee to reimburse the Town and where the Performance Guarantee is insufficient the expense shall be a charge on the Lands. It is hereby acknowledged and agreed that the Performance Guarantee is held by the Town for its sole benefit and not for the benefit of, by way of trust or otherwise, any person constructing or supplying any of the Works or Services, directly or indirectly, on behalf of the Owner.
- (2) Prior to the execution of this Agreement by the Town, the Owner shall, if required by the Town, deposit with the Town the sum of [REDACTED] (the "Mud and Right of Way Deposit") to guarantee that:
- (i) the streets shall be kept free from deposits and debris. In the event debris or deposits remain on the streets for more than four (4) consecutive hours after receiving notice from the Town, the Town shall be entitled to clean the streets and deduct the cost of same from the Mud and Right of Way Deposit; and
 - (ii) the Owner further covenants and agrees with the Town to repair any damage to other lands and/or streets caused by the work or construction carried on by the Owner on the Lands, by restoring the lands and streets to the condition existing prior to the damage sustained. Such restoration is to be undertaken by the Owner at its own expense upon notification by the Town to the Owner. If the Owner does not undertake the restoration in a reasonable time frame the Town shall be entitled to restore the lands and streets and deduct the cost from the Mud and Right of Way Deposit.
- The Owner shall immediately reimburse for all costs incurred so that the Mud and Right of Way Deposit is reinstated to the sum of [REDACTED]. The Mud and Right of Way Deposit shall be returned to the Owner once the development of the Lands is completed to the satisfaction of the Town. The Mud and Right of Way Deposit may be included in the Performance Guarantee.
- (3) Prior to the execution of this Agreement by the Town, the Owner shall, if required by the Town, deposit with the Town the sum of [REDACTED] to guarantee that streets shall be kept free from litter and garbage emanating from the Lands during construction (the "Litter Deposit"). In the event litter and garbage remain on the streets for more than four (4) consecutive hours after receiving notice from the Town, the Town shall be entitled to clean the streets and deduct the cost of same from the Litter Deposit. The Owner shall immediately reimburse the Town for all costs incurred so that the Litter Deposit is reinstated to the sum of [REDACTED]. The Litter Deposit may be included in the Performance Guarantee.
- (4) The Owner agrees with the Town:
- (i) to pay the taxes in full on the Lands as required by law from time to time;
 - (ii) to pay the costs of all registrations incurred by the Town relating in any way to this Agreement;
 - (iii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$[REDACTED] for digital drawing management fees;

- (iv) to pay to the Town prior to the signing of this Agreement by the Town, the sum of [REDACTED] for cash-in-lieu of parkland as required by the Town's Parkland Dedication Policy, By-law 79-2006, as amended;
 - (v) not applicable to this Agreement as the development is exempt from development charges pursuant to the Development Agreement;
 - (vi) to pay for the costs of the control architect for his review of the elevation Plans in accordance with Section 25 of this Agreement;
 - (vii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of [REDACTED] for benchmark construction purposes;
 - (viii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of [REDACTED] for the Town's Litter Management Program;
 - (ix) to pay to the Town prior to the signing of this Agreement by the Town, the sum of [REDACTED] for engineering review, inspection and administration service fees;
 - (x) to pay to the Town prior to the signing of this Agreement by the Town, the sum of [REDACTED] for architectural landscape review and inspection service fees;
 - (xi) to pay to the Town prior to the signing of this Agreement by the Town, the sum of [REDACTED] for the maintenance of the stormwater; and
 - (xii) to pay to the Town prior to the signing of this Agreement by the Town the legal fees incurred by the Town in connection with this Agreement in the amount of [REDACTED]
- (5) The Owner covenants and agrees, at its sole cost, to restore any public lands disturbed or damaged as a result of the development of the Lands to the satisfaction of the Town.
 - (6) The Owner covenants and agrees that all garbage and recyclable material shall be stored inside the buildings shown on the Plans and accessible to vehicles for removal.
 - (7) The Owner covenants and agrees to be responsible for all waste collection from the Lands.
 - (8) The Owner covenants and agrees not to erect, locate, relocate or otherwise place any sign or light or light standard on any part of the Lands or on the exterior portion of any building or other structure thereon, unless the light or light standard and the sign location is as approved in the Plans. All signs shall conform to the Town's municipal By-law No. 27-2009 (Sign By-law) as amended. Site illumination must be designed with a zero illumination cut-off at the property line.
 - (9) The Owner covenants and agrees that no mechanical equipment, such as air conditioners or ventilators, or signs, satellite dishes or any other equipment shall protrude from the roof or any other portion of the building(s) unless the design and location thereof, including the screening of such equipment from public view, are as approved in writing by the Town.
 - (10) The Owner covenants and agrees to ensure that the "as-built" site servicing and landscape plans for the Lands are forwarded in digital format, and AutoCAD compatible, to the Town.
 - (11) The Owner covenants and agrees that a construction management plan and a pedestrian management plan shall be submitted to and be approved by the Town prior to the issuance of building permit approval. The construction management plan shall include, but is not limited to, all stages of construction, all proposed staging areas, all proposed construction access points, all material storage



areas, all construction office trailers, all locations of required construction fencing and hoarding, and all parking locations for construction works and trades. The pedestrian management plan shall include, but is not limited to, all safe pedestrian walkways and sidewalks, all pedestrian signage, all accessible plaza parking locations during all stages of construction.

- (12) The Owner covenants and agrees to clean local area streets of mud caused by development on the Lands a minimum of three times per week and a maximum of five times per week, to the satisfaction of the Director of Planning and Development Services or his designate.
- (13) The Town may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of any Services required by this Agreement. The Owner agrees to submit all tests to the Town and the costs of such tests shall be paid by the Owner within thirty (30) days of the account for same being rendered by the Town.

4. Underground Stormwater Control Structure

- (1) The Owner covenants and agrees to install, maintain and not remove any underground stormwater quality control structure or any stormwater quantity devices. The Owner shall have the underground stormwater quality control structure inspected annually and maintained accordingly. The inspection and maintenance of the underground stormwater quality control structure must be completed by a qualified contractor. The Owner shall keep accurate and up to date records of all inspections and maintenance of the underground stormwater quality control structure. If the Town so requests, the Owner shall deliver to the Manager of Engineering of the Town, within ten (10) days of such request, a record of all inspections and maintenance of the underground stormwater quality control structure. If the Owner does not supply the records of inspection and maintenance the Town may enter upon the Lands, inspect the stormwater quality control structure and carry out, if necessary in the sole discretion of the Town, the maintenance thereof at the Owner's expense. In the event that any costs incurred by the Town are not paid by the Owner within ten (10) days of the deliver of the Town's invoice therefore, the Town shall be entitled, in addition to any other remedy it may have, to add such costs to the tax roll and collect same in the same manner as taxes.
- (2) Upon completion of the landscaping and submission of the certificate of substantial completion for the landscaping associated with the underground stormwater management quality control structure the Owner covenants and agrees to supply to the Town the following:
 - (i) a copy of a five year contract for the maintenance and cleaning of the underground stormwater management quality control structure,
 - (ii) a certificate stating that the underground stormwater quality control structure has been installed in conformance with the approved Plans and that the unit has been inspected, cleaned and all adjustments have been completed.

5. Refuse Storage

The Owner covenants and agrees to accommodate all facilities for refuse storage within the buildings which are part of the Development.

6. Timing of Completion

- (1) Upon approval by the Town of the Plans, the proposed building(s), structure(s), Works and Services shall be erected, constructed, installed and maintained in conformance with the Plans as approved. Unless otherwise agreed, the said work shall be fully completed within thirty (30) months of the date of commencement of erection or construction. For the purposes of establishing the thirty (30) month period, the date of building permit issuance shall be used to determine the commencement date and such determination shall be final and binding on the parties hereto.



- (2) If erection, construction or installation has not commenced in accordance with the provisions of the Development Agreement the approval of the Plans may, at the option of the Town, become null and void in which event the Plans must be resubmitted for approval prior to any erection, construction or installation commencing.

7. Building Permit Issuance

The Owner agrees that the issuance of any building permit in respect of the Lands may not be requested until the Plans have been approved by the Town and the Lands have been conveyed to the Owner by the Town.

8. Building Levels

- (1) The Owner covenants and agrees that all buildings erected on the Lands shall conform to building levels approved by the Town before the building operations are commenced. Building levels and building location shall be checked by an Ontario Land Surveyor and certification of such levels and locations shall be submitted to the Town prior to a sub-floor for such building being constructed.
- (2) At the time of application for building permit, a soil investigation report of the Lands must be provided to the Chief Building Official of the Town to verify the structural adequacy of the proposed foundation.
- (3) Prior to pouring concrete footings for each building or structure to be erected on the Lands a soils field report prepared by a qualified Professional Engineer shall be submitted to the Chief Building Official of the Town verifying adequate bearing capacity and the level of permanent ground water which may affect the soil bearing capacity. In the event the soils field report demonstrates a need for revisions to the foundation design or construction of a de-watering or subdrainage system the Owner covenants and agrees to submit to the Chief Building Official of the Town for his approval, prior to the commencement of construction, design drawings showing such revisions or system.
- (4) Prior to the issuance of a building permit, access to the Lands for any construction vehicles or equipment or emergency vehicles or equipment is required. The access must be a minimum of a granular base road, capable of providing a route for fire vehicles and extending to an existing, maintained public road, to the satisfaction of the Town and the Fire Department of the Town.
- (5) Prior to issuance of building permit, watermains and hydrants, storm and sanitary sewer facilities must be constructed and installed in accordance with this Agreement and a certificate of preliminary acceptance has been accepted.

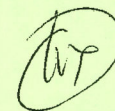
9. Registration

The Owner covenants and agrees that the Town may register this Agreement against the title to the Lands and that the Town may enforce the provisions of this Agreement against the Owner of the Lands and against any and all subsequent owners of the Lands.

10. Certificates

The Owner covenants and agrees to deliver to the Town a Certificate of Compliance from a Professional Engineer certifying that all Works and Services have been constructed in accordance with the approved Plans and sound engineering practices and that grading has been completed according to approved grading plans. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

The Owner covenants and agrees to deliver to the Town a Certificate of Substantial Completion from a Landscape Architect in good standing with the O.A.L.A. (Ontario Association of Landscape Architects) certifying that all landscape work has been constructed and materials installed in accordance with the approved Plans and that



sound engineering and horticultural practices have been implemented. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

The Owner covenants and agrees to deliver to the Town a Photometrics Certificate from a certified Electrical Engineering Consultant certifying that all electrical luminaires have been installed in accordance with the approved Plans. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

11. Breach of Agreement

Notwithstanding any action taken by or remedy available to the Town or to any other governing body or authority any breach of this Agreement may be restrained by action at the instance of a ratepayer of the Town or at the instance of the Town or a local board thereof just as if such breach were a contravention of a By-law of the Town to which Section 440 of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended, applied.

12. Binding Agreement

This Agreement, the Schedules hereto, and everything contained therein, shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and assigns, and Section 446 of the *Municipal Act, 2001, S.O., 2001, c. 25* as amended, shall be applicable to the obligations created herein.

13. Indemnification

The Owner will indemnify the Town from all actions, causes of action, suits, claims and demands whatsoever and all costs incurred in respect thereof by reason of the Owner doing, failing to do or doing incorrectly or negligently anything which by the terms of this Agreement it is required to do. Without limiting the foregoing the Owner agrees to indemnify and hold harmless the Town for all costs, fees, expenses and disbursements incurred by the Town in connection with the preparation for and attendance at a hearing before a Court of Law or tribunal as a result of the *Occupational Health and Safety Act, R.S.O. 1990 c. O.1* and any Order issued thereunder with respect to the development of the Lands.

14. Noise

"Construction" includes erection, alteration, repair of the Works or buildings, painting, grading, excavating, laying of pipe and "construction equipment" means any equipment or device designed and intended for use in construction.

"Noise" means sound originating from construction on the Lands and received on other lands.

No noise shall be emitted or caused to be emitted from the Lands or from construction of the Services on other lands on Sunday and statutory holidays and except between the hours of 7:00 a.m. and 8:00 p.m. on each day Monday to Thursday, between the hours of 7:00 a.m. and 5:00 p.m. on Fridays and between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays.

15. Street Numbers

The Owner covenants and agrees to affix the street number(s) for any building or parts of buildings on the Lands to a wall of the building, or other approved locations, which faces a public street so as to ensure clear visibility of the number at all times from the public street. Each number(s) shall be a minimum of ten (10) centimetres in height.

16. Liability Insurance

The Owner covenants and agrees to obtain and maintain public liability and property damage insurance, satisfactory to the Town, to protect the Owner and Town jointly against loss, damage or injury to persons or property caused directly or indirectly by reason of the Owner undertaking the development of the Lands. A certificate of such



insurance shall be filed with the Town prior to the execution of this Agreement, including the Town of Ajax as an additional insured, and such policy shall be effective until final sign off of the consulting engineer or architect and release of all securities by the Town.

Such policy shall be in an amount not less than \$5,000,000.00 and shall not be cancellable unless prior notice has been received by the Town not less than thirty (30) days prior to cancellation date.

17. Debris

The Owner covenants and agrees to remove debris and litter on the property in accordance with the Town's "The Clean and Clear By-law" as amended.

18. Refer to Section 47.

19. Municipal Services

- (1) In this Agreement "Services" shall mean works to be installed by the Owner and to be assumed for ownership by the Town or works to be installed or carried out on municipal property.
- (2) The Owner shall construct, install and carry out in a good and workmanlike manner all the Services as shown on the Plans, including but without limiting the foregoing, grinding and resurfacing, sidewalks, curbs and gutters, driveway aprons, and storm sewers connections. The Plans for Services may be amended from time to time but such amendments shall not take effect unless approved by the Town. All Plans for Services and any other drawings required therefore pursuant to this Agreement shall be prepared in accordance with the Design Criteria and Standard Detail Drawings adopted by the Town and in accordance with the Digital Data and format requirements of the Town.
- (3) The Owner shall carry out or caused to be carried out the installation of the storm sewer connections in the accordance with Town Standards. Upon completion of the said connections the Owner shall deliver to the Town as-built drawings for all storm sewer service connections and rear lot catch basins.
- (4) The Town may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of any Services required by this Agreement and the cost of such tests shall be paid by the Owner.

20. Private Property Maintenance Period for Works

- (1) The Owner agrees that all Works shall have a maintenance period of twelve (12) months from the date of receipt of the Certificate of Compliance and/or Certificate of Substantial Completion. The Owner must arrange for a final inspection of the Site Works towards the end of the maintenance period.
- (2) The Owner agrees that the Town shall not reduce the Performance Guarantee below 25% of the estimated cost of installation of the Works during the maintenance period.

21. Municipal Property Performance and Maintenance Guarantee

- (1) Before commencing the construction, installation or performance of any of the Services provided for herein or before the Town issues a letter releasing the Plan for registration, whichever first occurs, the Owner shall supply the Town with a 100% performance and maintenance guarantee (hereinafter called "Performance Guarantee"), either in the form of a cash deposit or Unconditional and Irrevocable Letter of Credit approved by the Town Treasurer in an amount as determined in Schedule "A" for the purpose of:
 - (i) guaranteeing the satisfactory construction, installation or performance of the Services;
 - (ii) guaranteeing the payment of any amounts payable to the Town under this Agreement;

- (iii) guaranteeing the payment of any amount, including legal expenses that the Town may be required to pay under or as a result of claims pursuant to the *Construction Lien Act, R.S.O. 1990 c. C30*;
 - (iv) guaranteeing all underground Services, workmanship and materials for a period of two (2) years from the date of certification;
 - (v) guaranteeing all above ground Services, workmanship and materials including all landscaping works and materials for a period of two (2) years from the date of certification set out in Section 22(3); and
 - (vi) guaranteeing all other obligations of the Owner in this Agreement.
- (2) The Performance Guarantee may be reduced by the Town at the sole discretion of the Town but in no event shall the Performance Guarantee be reduced below the amount equal to the total of 100% of the cost of the Services and Lot grading, sodding and driveway paving remaining to be completed, plus 10% of the value of the Services as finally completed. The balance of any Performance Guarantee shall be returned to the Owner, less any deductions for rectification of deficiencies, when the above ground Services have been assumed.
- (3) If, in the opinion of the Town the amount of the Performance Guarantee is insufficient, then the Town shall recalculate the amount of the Performance Guarantee and shall advise the Owner of such recalculation and provide the Owner with a copy of such recalculation and the Owner shall deliver any additional security required by the Town within seven (7) business days of its receipt of such notice.
- (4) Schedule "A" is a guide to the amount of the Performance Guarantee required but in determining the sufficiency of the Performance Guarantee regard shall be given to the total cost of satisfying all of the obligations of the Owner pursuant to any provisions of this Agreement.
- (5) Where any Services are not installed in accordance with the Schedule of Construction or where the Owner is in default of any of its obligations in this Agreement, the Town may enter and install such Services or perform such obligations at the Owner's expense and apply the Performance Guarantee to reimburse the Town and where the Performance Guarantee is insufficient the expense shall be a charge on the Land as set out in Section 33. It is hereby acknowledged and agreed that the Performance Guarantee is held by the Town for its sole benefit and not for the benefit of, by way of trust or otherwise, any person performing any of the Services, directly or indirectly, on behalf of the Owner.
- (6) To ensure the completion of all works, the Performance Guarantee shall not be reduced below an amount equal to the cost of completing the works as determined by the Town. If the works are not completed within six months of the first occupancy of the building, seasonal conditions permitting, in addition to any other available remedies, the Town may draw upon the Performance Guarantee to its full value and complete same.

22. Construction Lien Act

The Owner agrees that it will comply with the Construction Lien Act and hold in its possession and in a separate fund, which fund shall be designated a trust fund, the statutory holdback and added amounts required by reason of notice of construction lien claims. Such money will not be disbursed except in compliance with the Construction Lien Act. The Owner will be responsible to and save harmless the Town for any loss suffered by the Town, including legal expenses, by reason of any neglect or refusal by the Owner to comply with the Construction Lien Act and/or this Section. The Town shall be entitled to apply the Performance Guarantee to cover liens and costs that may be claimed against or include the Town in respect of work done or improvements made to lands owned by the Town.

23. Traffic Control - Flagging

Flagging for traffic control for the development of the Lands shall be in conformance with the procedure outlined in the pamphlet entitled "Traffic Control Manual for Roadway Work Operations - Field Edition" issued by the Ministry of Transportation of Ontario. Copies of this pamphlet may be obtained from Ministry of Transportation's District Office.

Each flagman shall, while controlling traffic, wear an approved fluorescent blaze orange or fluorescent red safety vest, an approved fluorescent blaze orange or fluorescent red armband on each arm and an approved fluorescent blaze orange or fluorescent red hat.

24. Supply of Construction Signs

The Owner is responsible for the supply, erection, maintenance and subsequent removal of all temporary traffic control devices, including signs, lights, barricades, delineators, cones, etc., required during the development of the Lands.

Traffic controls shall be provided in general accordance with the latest edition of the "Ontario Traffic Manual Book 7, Temporary Conditions".

The Owner shall provide the Town with a Traffic Control Plan (the "TCP") for review and approval. The TCP must include a procedure for the control and maintenance of traffic. The TCP must be supplied at least seven (7) days prior to commencing work.

25. Maintenance of Road for Local Traffic

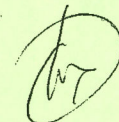
The Owner hereby accepts full responsibility to maintain a road for local traffic and reasonable access for residents to their driveway. The Owner shall supply at its expense, all labour, equipment and material to maintain the road in a satisfactory condition including but not limited to the supply and placing of Granular 'A', calcium chloride, bituminous patching material.

26. Architectural Control

The Owner shall, prior to applying for any building permit, comply with the Town's architectural control requirements. The Owner shall pay for or reimburse the Town for the cost of a Control Architect. Such payments shall be made to the Town within thirty (30) days of the Town submitting to the Owner its invoice.

27. Professional Engineers and Other Consultants

- (1) The Owner shall employ a Professional Engineer to:
 - (i) design all Works and Services other than the landscape Works;
 - (ii) prepare and furnish all drawings, plans, reports and certificates as required by the Town, or pursuant to this Agreement;
 - (iii) obtain all approvals required from all other governmental authorities or agencies;
 - (iv) provide the field layout, the contract administration and site supervision and inspection of the construction of all Works and Services;
 - (v) maintain all records of construction and upon completion, advise the Town of all construction changes and final measurements;
 - (vi) provide the Town with "as constructed" drawings from time to time upon completion of the construction of the Services in paper and digital format satisfactory to the Town;
 - (vii) act as the Owner's representative in all matters pertaining to the construction of the Services;
 - (viii) issue "Letter or Letters of Completion";
 - (ix) perform such additional functions and services as may be required pursuant to this Agreement; and
 - (x) provide the Town with Grading Certification.
- (2) The Professional Engineer, or any successor thereto, shall continue to be retained until the completion of the development of the Lands and all certificates have been supplied.



- (3) The Owner shall, at all times and from time to time, at the Owner's expense, furnish all reasonable aid and assistance to the Professional Engineer, the Town and any other consultant, inspector or inspection firm in connection with this Agreement, the Services, the Plans or the Lands, including all necessary testing certification and inspection of material and methods as may be required by the Professional Engineer, the Town, inspector or inspection firm. All tests required shall be carried out in accordance with the specifications of the person requesting such test, and shall be performed at the cost of the Owner. Notwithstanding any inspection that may be carried out by the Town, or any inspector or inspection firm on behalf of the Town, the failure of the Town or the said inspector or inspection firm to condemn or object to any defective work or material shall not constitute a waiver of any specification or the approval or acceptance of any defective work or material, and the Owner shall remain responsible for all and any work done or required to be done in accordance with the terms of this Agreement, including the repair or replacement of any defective work or material, at the Owner's sole cost and expense. In the event that the Town has required any quantitative or qualitative test for any purpose whatsoever as a pre-condition of any further construction, the Owner shall not construct such Services for which the test is required until such test has been received, reviewed and approved by the Town and has issued an order in connection therewith. Such order may specify which work and in what manner it should be done, and may be subject to conditions and may specify that such work is to be completed within a specified time period and the Owner shall comply with all terms of such order.
- (4) The Owner shall employ a Landscape Architect that is in good standing with the Ontario Association of Landscape Architects (O.A.L.A.) to design and supervise landscape Works and to issue a "Certificate of Substantial Completion".
- (5) The Owner shall employ a Landscape Architect that is in good standing with the Ontario Association of Landscape Architects (O.A.L.A.) or an International Society of Arboriculture (I.S.A.) Certified Arborist to design tree preservation and supervise the installation of tree protection hoarding and tree removal Works.

28. Emergency Vehicle Access

The Owner covenants and agrees that access routes for emergency vehicles shall be provided in accordance with the requirements of the Ontario Building Code and Ajax Fire and Emergency Services. Where roadways provide access to condominium developments, or buildings on private lands, the design and construction of the access route shall meet the requirements of the Ontario Building Code and the Town of Ajax Engineering Standards. Access routes for emergency vehicles shall be maintained to new buildings, construction trailers and material storage areas at all times during construction. Water supply for fire fighting purposes must be kept accessible and operational at all times.

Prior to occupancy of any building, an application to designate the required fire route in accordance with the Town's Traffic By-law 5-2004, as amended, must be submitted and approved by Ajax Fire and Emergency Services. All fire route signs shall be installed, prior to occupancy, to the approval of Ajax Fire and Emergency Services.

29. Not applicable to this Agreement

30. Cost of Service Relocation

Should the relocation or abandonment of existing services and utilities become necessary as a result of any work done on or in conjunction with the Plans, the Owner covenants and agrees to pay the cost of such relocation or abandonment of any existing services and utilities.

31. Tree Preservation

- (1) Prior to the execution of this Agreement by the Town, the Owner shall, deposit with the Town the sum of [REDACTED] as outlined in Schedule "C" attached hereto, to ensure that the health of the persevered trees has been maintained during site works and



construction. This security may be released two (2) years after the completion of construction.

- (2) Trees allocated for preservation shall be fully protected with tree protection hoarding, as per the approved **Existing Vegetation Plan and Tree List and Details**. Tree protection zones shall be established prior to any site works, and shall remain in satisfactory condition, as deemed by the Town, until the completion of construction. No works, including construction, shall take place within tree protection zones.

32. Retaining Wall Installation and Inspection

The Owner covenants and agrees to apply for and obtain a building permit for a retaining wall, if any, prior to construction thereof. The Owner is responsible for the following requirements:

- (1) Obtaining a Consulting Engineer that would be responsible for the design and inspection services for the retaining wall. The Consulting Engineer must be qualified in the area of segmental retaining wall design and construction and must be licensed to practice engineering in the Province of Ontario. Prior to construction the Consulting Engineer shall review the site soil conditions and the geometric conditions to ensure the designed wall is compatible for the site;
- (2) The Consulting Engineer shall provide to the Town reports of construction of the retaining wall;
- (3) The Consulting Engineer shall supply a Certificate of Compliance for the retaining wall(s), certifying that all constructed retaining wall(s) have been constructed in accordance with the approved Plans and in accordance with good engineering practice.

Definition:

Consulting Engineer shall refer to an individual or firm retained by the Owner to provide design and inspection services for the retaining wall. The Consulting Engineer must be qualified in the area of segmental retaining wall design and construction and must be licensed to practice engineering in the Province of Ontario.

33. Air Conditioning Units

All required air conditioning units shall be installed in accordance with, By-law 95-2003, as amended, and/or in accordance with the location indicated on the Plans. All air conditioning units (condensers, evaporators, and line-sets) shall be installed and sized appropriately and to the manufactures specifications to ensure that all required air conditioning units function in an efficient manner and do not require future modifications. No air conditioning units shall be permitted at-grade or visible from a public street.

34. Sustainable Building Elements

The Owner covenants and agrees that the development of the Lands shall incorporate all sustainable elements outlined within Schedule 'E' of the Development Agreement which includes but is not limited to, parking standards for electric vehicles, cycling infrastructure in the form of cycle track, bike lockers and racks, pedestrian infrastructure in the form of sidewalks, crosswalks, transit stops, pedestrian lighting, indoor and outdoor waiting areas all being accessible in nature, urban heat island reduction methods being shade trees 8 - 12 metres apart where possible, with a continuous tree trench and/or silva cell system along all property lines, environmentally Conscious Roofing System (ECRS) in the form of a roof-top outdoor amenity space for the buildings occupants, individually metered units, stormwater runoff and retention methods to retain 25 mm of water for a 24 hour period and to remove 80% of total suspended solids, landscape elements to include 50% native species with water efficient characteristics, bird friendly design elements, light pollution limiting fixtures, and proper storage and collection methods for recycling and organic waste.

35. Construction of Streets 'A', 'B', 'C', and 'D' and associated services and lands

Future streets, being Street 'A', Street 'B', Street 'C' and Street 'D' as shown on the Plans shall remain under full ownership of the Town, but the Owner is fully obligated, and at its sole costs, for the construction of these streets, including, but without limiting the foregoing, the relocation of sanitary, stormwater and water services on Commercial Avenue and the conveyance of all or part of the Utility Lands as defined in the Development Agreement to the Town.

All proposed streets (Streets 'A', 'B', 'C' & 'D') are to be constructed to full municipal standards, including all services (sanitary, storm, and water services) as per the Town of Ajax and Region of Durham standard requirements. These streets will also be constructed as per Drawing 9 – Temporary Parking Phasing Plan prepared by Morrison Hershfield (Drawing No. 9, and dated December 16, 2015).

36. Timing of the Removal Parking Field

The Owner acknowledges that the Development Agreement requires the Owner to construct temporary parking prior to the commencement of construction on the Lands. The existing parking field consisting of 217 parking spaces on the Lands shall not be removed or decommissioned until the developer has completed the temporary parking requirements of the Development Agreement including, but without limiting the foregoing, the construction of all services in the Utility Lands and Streets 'A', 'B', 'C' and 'D', all as set out in the Development Agreement..

37. Sales Pavilion - Conditions of Removal

When the Owner no longer requires the temporary sales pavilion (or if the Sales Pavilion is no longer operational) as constructed by the Owner on other lands owned by the Town for the purposes of developing any portion of the Lands the sales pavilion shall be removed within 30 days by the Owner of the Sales Pavilion, unless the Town agrees otherwise.

38. Constructor Approval by Town

In accordance with the Development Agreement the Owner shall obtain the Town's prior written approval of the constructor whom is retained to carry out all works associated with the development of the project.

39. Survey for Lands to be Sold

That the Developer be responsible for and at its sole expense, prepare and register the reference plan survey necessary to complete the transaction of the lands that the development is going to be on. The survey shall also identify all abutting roads abutting the Phase 1A lands as parts on the survey.

40. Utility Lands

All dealings with the Utility Lands shall be in accordance with Development Agreement.

41. Building of the Project

The proposed building will be constructed in its entirety as one building. There will be no phasing of the building, nor will there be one side of the building built at a time. The entire building, including all underground parking structures will be built and a building permit will only be issued for the entire building, with no exceptions.

42. CMP/PMP & Communications Plan

An overall Construction Management Plan/Pedestrian Management Plan will be approved by the Town of Ajax prior to the issuance of any building permit for any component of the project. Also each stage of construction referenced in the approved Construction Management Plan/Pedestrian Management Plan will be reviewed and approved prior to construction occurring and with each stage of construction a Town approved communication will be prepared by the Developer for circulation to all affected properties and parties.

43. Monitoring and Maintenance of Permeable Elements

The Owner will be required to carry out all of the monitoring and maintenance of all permeable elements within the development for a period of 5 years after full installation of the permeable elements. Prior to the Town assuming the permeable elements the owner shall supply a report and certification of full functionality by the Owner's Professional Engineer, subject to the Town's approval.

44. Plan and Construction Coordination

All Plans shall be coordinated so that they depict the same base information. This must be done in order to ensure that at the time of construction all of these overlapping elements are addressed. These matters must be addressed through a preconstruction meeting.

45. Engineering Drawing Approvals Prior to Building Permit Issuance

All engineering drawings must be finalized and approved by the Town of Ajax Engineering Services prior to building permit issuance. This includes, but is not limited to, drawings showing how the interim streets are going to be constructed, how the future permanent streets are going to be constructed (Streets 'A', 'B', 'C', and 'D'), and a utility coordination plan signed off by all required utility providers.

46. Certification of Acceptance

(1) In this Agreement "Functional" means;

- i) the Professional Engineer's Letter of Completion has been delivered to the Town;
- ii) drawings for the General Plan of Services have been submitted to the Town in AutoCAD format acceptable to the Town in accordance with the Design Criteria; and
- iii) close circuit television (CCTV) inspection videos of the storm sewer system have been delivered to the Town.

(2) "Certificates of Preliminary Acceptance of Services" indicating the start of the maintenance period for underground Services shall be issued by the Town as follows:

- i) underground Services are Functional and all deficiencies corrected to the satisfaction of the Town;
- ii) base curb and base asphalt are complete;
- iii) as-built drawings for all underground Services including service connections have been delivered to the Town; and
- iv) a statutory declaration by the Owner that all accounts for underground Services have been paid has been delivered to the Town.

(3) "Certificate of Preliminary Acceptance of Services" indicating the start of maintenance period for aboveground Services shall be issued by the Town as follows:

- (i) completion of all aboveground Services including landscaping and boulevard planting required by this Agreement;
- (ii) if required by the Town the street and walkway lighting has been completed and is operational;
- (iii) the Professional Engineer's Letter of Completion referred to in Section 26;
- (iv) a Statutory Declaration of the Owner that all accounts have been paid has been delivered to the Town;
- (v) expiry of any Construction Lien Act (Ontario) holdback period;



- (vi) the Owner has complied with all of the provisions of this Agreement; and
 - (vii) Preliminary Lot Grading Certification has been delivered to the Town.
- (4) The Town shall, within sixty (60) days from the receipt of the Professional Engineer's Letter of Completion, either advise in writing the Professional Engineer that such work has been completed to its satisfaction or has not been completed to its satisfaction as the case may be and if the Town does not within the said sixty (60) day period so advise the Professional Engineer, it is assumed the work has been accepted unless the Town is delayed in inspecting the work and such delay is not the fault of the Town in which case the sixty (60) day period may be extended by the Town equal to the period of delay.
- (5) "Certificate of Final Acceptance" indicating the end of the maintenance period for underground Services shall be issued by the Town subject to the following:
- (i) issuance of a Certificate of Preliminary Acceptance of aboveground Services; and
 - (ii) an inspection by the Town of the Services to be covered by such Certificate of Final Acceptance indicating that all such Services have been maintained and all deficiencies and defects in such Services have been corrected by the Owner to the satisfaction of the Town.
- (6) "Certificate of Final Acceptance" indicating the end of the maintenance period for aboveground Services shall be issued by the Town subject to the following:
- (i) a complete set of "as constructed" Drawings satisfactory to the Town including lot grading elevations and boulevard tree planting locations submitted on mylar drafting film acceptable to the Town in accordance with the Design Criteria, but not until the Services are acceptable; and
 - (iii) the Owner has cleaned out, the oil and grit separator and inspected the quality control structure and outlet control devices and performed all of its obligations under the terms of this Agreement at which time the Town will assume ownership of the Services and the maintenance thereof.

47. Construction

- (1) The Owner shall not commence construction of any Services unless:
- (i) a Certificate of Insurance has been delivered in accordance with Section 16 and the Performance Guarantee has been provided in accordance with Section 3;
 - (ii) the Plans for the Services have been approved by the Town;
 - (iii) the Owner has given five (5) full business days written notice to the Town of its intention to commence construction; and
 - (iv) the Owner has submitted to the Town a detailed construction schedule (hereinafter called the "Schedule of Construction") at least 45 days prior to commencement of construction indicating the various stages of construction, references to the location of each stage, the anticipated date of commencement of construction and the anticipated completion date of each stage of construction relating to the construction of the Services and the Schedule of Construction has been approved by the Town. In the event that the Owner should fail to comply with the provisions of this paragraph, then the Town may at any time after such default prepare its own schedule of construction and upon sending a copy of such schedule to the Owner, it shall become binding and effective on the Owner in the same manner and to the same extent as if such schedule of construction had been prepared by the Owner and approved by the Town. The Schedule of Construction may be revised with the approval of the Town upon not less than thirty (30) days notice to the Town prior to the date on the Schedule of Construction to be revised.
- (2) The Owner shall construct the Services in accordance with the Schedule of Construction. Failure to fully complete all Services in accordance with the Schedule of



Construction shall be deemed to be a default of the Owner pursuant to the terms of this Agreement, and the Town shall be entitled to avail itself of all remedies contained herein with respect to such default. Upon such default and in addition to any other remedy the Town may have, the Town may require that the Owner cease and desist from doing any further work on the Lands, and the Owner hereby agrees to stop work if it receives notice to do so. The aforesaid agreement to stop work refers to any and all construction of any nature or kind whatsoever in connection with the Lands, including the construction of houses or other buildings or structures on the Lands. If the Owner is unable to fulfil the Schedule of Construction by labour disputes, fire or by a cause of any kind beyond its control then the Schedule of Construction shall be amended with the approval of the Town.

- (6) The construction of Services shall be deemed completed only upon the issuance of a Certificate of Preliminary Acceptance by the Town.
- (7) If the Owner covers or permits to be covered work that has been designated for special tests, inspections or approvals by the Town before such special tests, inspections or approvals have been made, given or completed, the Owner shall, if so directed by the Town, uncover such work, have the inspection or test satisfactorily completed and make good such work at the Owner's expense. The Town may order any part or parts of the Services to be specially examined should it believe that such work is not in accordance with the requirements of this Agreement. If, upon examination, such work is in the opinion of the Town found not in accordance with the requirements of this Agreement, the Owner shall correct such work and regardless of any finding as aforesaid the Owner shall pay all expenses in connection with the provisions of this clause.

48. Incomplete or Faulty Work

- (1) If in the opinion of the Town the Owner fails to install the Services, or, having commenced to install the Services, fails or neglects to proceed to complete the Services in accordance with the Schedule of Construction, or, in the event that the Services are not being installed according to the requirements of this Agreement, or if the Owner abandons the work, in addition to any other remedy the Town may have and upon the Town giving seven days' written notice to the Owner or its Professional Engineer, the Town may, without further notice, enter upon the Lands if necessary and proceed to supply all materials and to do all necessary works in connection with the installation of the Services including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the specifications, and to charge the cost thereof, together with an engineering fee of 15% of the cost of such materials and works, to the Owner who shall forthwith pay the same upon demand by the Town, such entry by the Town shall be as agent for the Owner and shall not be deemed, for any purposes whatsoever, as an acceptance or assumption of the Services by the Town. The Town, in addition to all other remedies it may have, may apply for an order from a Court of competent jurisdiction ordering the Owner to cease construction of any building on the Lands until such Services are completely installed in accordance with the requirements of the Town.
- (2) When, after the Owner has commenced construction of the Services, but before the Services have been finally accepted by the Town, any of the Services provided by the Owner do not function properly and, in the opinion of the Town, repairs are necessary to be made to prevent damage or hardship to any persons or any property, the Town shall notify the Owner or the Professional Engineer of the repairs which are required to be made. In the event the condition as aforesaid is an emergency, or immediate repair is required, then the Town without prior notice may take such action and do all such acts and things as are considered necessary and advisable in the place of the Owner, and the Owner shall reimburse the Town for any and all expenses incurred, whether directly or indirectly by the Town, in connection with such action.
- (3) The Owner further covenants and agrees with the Town that it will repair any damage that may be caused to any of the Services, including grading and landscaping, by any person, resulting from the construction of any buildings on the Lands or resulting from the construction of any of the Services or other matters which the Owner is obligated to perform under this Agreement. It is further understood and agreed that if damages should occur to any of the Services it shall be assumed that such damages were caused by the above-mentioned construction operations and the onus shall therefore be upon the Owner to prove otherwise.

49. Roadways

- (i) The Owner shall maintain all streets constructed or reconstructed by the Owner suitable for vehicular traffic after the installation of Granular 'A' material and until the work thereon has been finally accepted by the Town.
- (ii) The granular base, when possible, shall be laid just prior to the time that curbs and gutters are constructed. Any granular base material which has, in the opinion of the Town, become contaminated with deleterious material or is otherwise determined to be unacceptable, shall be removed and shall not become part of the final road base.
- (iii) The granular stone base shall be inspected and approved by the Professional Engineer before the base course of asphalt is laid in accordance with the Town's material testing requirements.
- (iv) The Owner agrees to maintain such streets free from construction deposits and debris after the first lift of asphalt has been laid.
- (v) The final lift of asphalt paving shall not be placed until underground service trenches have been subjected to a full winter for consolidation purposes and until the Owner has tested all such streets in accordance with a testing method approved by the Town.

50. Concrete Sidewalks

All sidewalks shall be constructed in locations as shown on the Plans.

51. Walkways and Boulevards

- (i) The Owner shall carry out or cause to be carried out, at its expense, boulevard tree planting in accordance with the Town's policy on boulevard planting, pruning and tree removal as amended from time to time and subject to the approval of the Town. Boulevard planting is to be illustrated on "STREET TREE PLANTING PLANS" describing species, quantities and schematic locations for street trees. Such plans are to be based upon the utility co-ordination drawings prepared for the development and shall form part of the engineering drawings described by Schedule "H" of this Agreement. Utility co-ordination plans are to be prepared in anticipation of the requirement for street trees. The tree planting shall be completed within six (6) months of the completion of grading and sodding of the boulevard.
- (ii) The Owner agrees to grade, topsoil, seed and provide interim drainage on all park blocks (as per Section H. Parklands and Open Space, Town of Ajax Design Criteria and Standard Drawings) in conjunction with the Drawings.
- (iii) In the event the Owner agrees to develop parks beyond the requirements of subparagraph (iii), parks and walkways, including lighting, shall be constructed in accordance with the approved Engineering Drawings. The said drawings shall show the proposed treatment of parks and all dedicated lands together with school sites and shall be prepared in accordance with drawings approved by the Town.
- (iv) Prior to the acceptance of the works in the parks and boulevards the Owner shall deliver to the Town as-built drawings showing all works and plantings constructed or planted thereon.
- (v) The Town reserves the right to revise or request a revision to any drawing necessary for the better utilization of the parks or boulevards.
- (vi) The Owner agrees to insert a notice in all agreements of purchase and sale for any dwelling unit in the Plan and in the sales office as follows:

"Any parks and open spaces shown within this plan of subdivision may or may not include future facilities for active and/or passive recreational use. This decision shall be at the sole discretion of the Town of Ajax."



52. Storm Sewers

- (i) A complete system of storm sewers and appurtenances shall be installed by the Owner to service the Lands and other lands covered t in accordance with the Plans.
- (ii) Storm sewers shall be connected and drained to outlets approved by the Town.
- (iii) The Owner shall flush and clean all the storm sewers prior to acceptance by the Town.
- (v) All storm sewers regardless of size are to be inspected by Closed Circuit Television and the Owner shall submit reports and tapes to the Town prior the issuance of a Certificate of Preliminary Acceptance of Services.

53. Street Lighting

The Owner covenants and agrees to design, supply and install at its own expense, street lighting, including poles, standards, lamps, wires and switches and supplemental equipment; and poles, standards and lamps to be at all locations shown in the Plans such work to be done to the approval of the Town and in accordance with the specifications. Note: LED lighting is required for this subdivision as per the new lighting standards in the Town Design Criteria and Standards dated January, 2014.

54. Hydro Services

The Owner covenants and agrees with the Town:

- (i) To enter into a separate agreement with Veridian Connections for the supply of electrical distribution services within the Plan;
- (ii) To provide evidence of entering into the said agreement with Veridian Connections prior to the release, by the Town, of the Plan for registration.
- (iii) To design, supply and install at their own expense an underground electrical distribution service using above ground, low profile transformers and junction boxes to service all lots and blocks within the Plan, according to drawings and specifications approved by Veridian.

55. Development Agreement

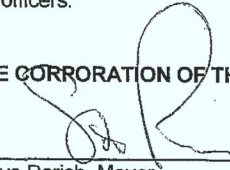
The Owner covenants and agrees to comply with the obligations of the Development Agreement with respect to the development of the Lands and the construction of the Services and the obligations of the Owner in this Agreement are in addition to the obligations of the Owner in the Development Agreement.

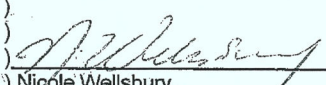


IN WITNESS WHEREOF the Parties hereto have hereunto affixed their respective corporate seals, duly attested by their proper authorized officers.

SIGNED, SEALED & DELIVERED

) THE CORPORATION OF THE TOWN OF AJAX

) 
Steve Parish, Mayor

) 
Nicole Wellsbury,
Manager of Legislative Services/Deputy Clerk

) I/We have the authority to bind the Corporation

) 2480832 Ontario Inc.

) Per: 

) Name: Thomas Lin
Title: President & CEO

) Per:

) Name:
Title:

) I/We have the authority to bind the Corporation

SCHEDULE "A"

Legal Description

All and singular that certain parcel or tract of land described as Part 1, 40R-28209, Town of Ajax,
Regional Municipality of Durham. Part of PIN # 2645-60086 (LT),

A handwritten signature or set of initials, possibly 'LT', enclosed within a hand-drawn circle.

SCHEDULE "B"
SECURITY CALCULATIONS FORM

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
LANDSCAPING:				
Part A – On Site Work				
Permeable Precast Concrete Unit Paving - Vehicular	1,810	m ²		
Precast Concrete Unit Paving - Pedestrian	825	m ²		
Permeable Precast Concrete Unit Paving - Pedestrian	2,015	m ²		
Poured Concrete Planter Curb	82	l.m.		
Precast Concrete Planter - narrow	1	each		
Bike Rack	19	each		
Table and Chair Seating	5	each		
Tactile Warning Strip	2	each		
Deciduous Tree	2	each		
Shrubs	32	each		
Perennials	628	each		
Part B – Amenity Terrace				
Precast Concrete Unit Paving – Amenity Terrace	770	m ²		
Private Terrace Paving	57	m ²		
Precast Concrete Roof Slabs	54	m ²		
Granular Paving	25	m ²		
Precast Concrete Planter Wall	320	l.m.		
Shade Structure	6	each		
BBQ	4	each		
Prefabricated Planter	14	each		
Light Pole	12	each		
Landscape Bollard	58	each		
Bench	4	each		
Sofa	4	each		
Chair	8	each		
Coffee Table	4	each		
Small Game Table	6	each		
Large Game Table	8	each		
Cyber Lounge Seating	16	each		

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
Dining Table – Small	8	each		
Dining Table – Large	4	each		
Dining Chair	56	each		
Large Shrub	128	each		
Shrubs	584	each		
Perennials	1428	each		
Live-Roof/Green-Roof Pre-vegetated Tray	156	m ²		
Part C – Streetscape Work				
Permeable Precast Concrete - Vehicular	1,488	m ²		
Precast Concrete Unit Paving - Pedestrian	1,145	m ²		
Precast Concrete Unit Paving	940	m ²		
Poured Concrete Paving – Pedestrian	355	m ²		
Asphalt Cycle Track Path	230	m ²		
Driveway Crossings	2	each		
Precast Concrete Planter – Large	3	each		
Precast Concrete Planter – Small	4	each		
Precast Concrete Planter - Low	2	each		
Bike Rack	18	each		
Bench	10	each		
Litter Receptacle	10	each		
Light Pole	16	each		
Continuous Soil Trench	280	m ²		
Metal Tree Grate	12	each		
Tactile Warning Strips	24	each		
Deciduous Tree	27	each		
Shrubs	172	each		
Perennials	1048	each		
Sub-Total				
ENGINEERING:				
Foundation Certificate(s)	1	per block		
Grading Certificate	1	each		
Site Servicing Certificate/Stormwater Maintenance Contract	1	each		
Photometrics Certificate		each		
Entrance(s)	4	each		
Street Lights	20	each		

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
Underground Services (Water, Storm and Sanitary)	**	**		
Asphalt Paving, Concrete Curbing, Raised Intersections, and Permeable Pavers on all Roads (Harwood, Street A, B, C & D)	**	**		
Mud/Right of Way Damage Deposit	1	each		
Garbage Facility	1	each		
Litter Deposit	1	each		
Sub-Total				
TOTAL SECURITIES REQUIRED				

Prior to Town Staff completing a site inspection to reduce/release a letter of credit, the required Certificate of Compliance and Certificate of Substantial Completion must be submitted by a Professional Engineer and Landscape Architect respectively certifying that all works have been constructed in accordance with the approved plans.



SCHEDULE "C"

Summary of financial payments and guarantees to the Town of Ajax by the Owner

PAYMENT	METHOD OF PAYMENT	AMOUNT	DUE DATE
Performance Guarantee	Irrevocable Letter of Credit		Prior to Execution of Agreement
Digital Drawing Management Fee	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Cash-in-lieu of Parkland	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Tax Arrears	Cash		Prior to Execution of Agreement
Registrations	Cash		Upon Invoice by Town
Development Charges	Cash		Prior to Issuance of Each Building Permit
Benchmark	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Architectural Control	Cash		Upon Invoice by Town
Legal Fees	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Litter Management Program	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Tree Compensation Payment	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Mud and Right-of-Way Deposit	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Architectural Landscape Review and Inspection Service Fees	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Engineering Review, Inspection and Administration Service Fees	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Stormwater Maintenance Fee	Bank Draft or Certified Cheque		Prior to Execution of Agreement
Liability Insurance	Insurance Certificate		Prior to Execution of Agreement

Schedule D

Excluded Assets

None.

SCHEDULE E

Sale Procedure

To Be Enclosed.

APPENDIX “I”

AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE

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

1000612843 ONTARIO INC.

(the “**Purchaser**”)

WHEREAS:

- A. The Vendor and the Purchaser entered into an Agreement of Purchase and Sale dated June 27, 2024 (the “**Agreement**”);
- B. Except for such change noted below, all other items, terms and conditions of the Agreement shall remain as stated therein, the Agreement continues to be binding and in full force and effect, subject to its terms.


NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are acknowledged, and for other good and valuable consideration, the parties to this agreement agree as follows:

- 1. The recitals are true are incorporated into, and form part of, this Amendment to the Agreement.
- 2. Section 4.5 of the Agreement is amended by replacing the reference to “September 30, 2024”, with “October 4, 2024”.
- 3. Time remains of the essence in respect of the Agreement.
- 4. This Amendment to the Agreement may be executed in counterparts, each of which is deemed to be an original and both of which taken together are deemed to constitute one and the same instrument, and production of one of the executed counterparts from each of the parties will be sufficient proof of execution of this Amendment to the Agreement.

[signature page follows]

DATED this 1st day of September , 2024.

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

Per:  _____

Name: Jeffrey Berger, CPA, CA, CIRP, LIT

Title: Managing Director

1000612843 ONTARIO INC.

Per:  _____

Name: Anthony De Francesco

Title: Authorized Signing Officer

Schedule A

Property

The Property:

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

APPENDIX “J”

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made the 12 day of September 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

THE CORPORATION OF THE TOWN OF AJAX

(the “**Purchaser**”)

NOTE TO PURCHASER:

Please indicate below which of the following lands this Agreement of Purchase and Sale relates to:

☒ Development Lands, Utility Lands and Commercial Lands

☐ Development Lands and Utility Lands only

☐ Commercial Lands only

In the event that this Agreement of Purchase and Sale does not include the Development Lands and Utility Lands, any reference in this Agreement of Purchase and Sale to the Development Agreement shall be considered inapplicable. For greater certainty, neither the Development Lands nor the Utility Lands can be purchased without also purchasing the other.

RECITALS:

- A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021, (the “**Appointment Order**”) the Receiver was appointed as receiver over the lands legally described in Schedule “A” attached hereto;
- B. The Vendor and 1000612843 Ontario Inc. (“**Lakeshore**”) entered into an Agreement of Purchase and Sale dated June 27, 2024 (as amended from time to time, the “**Lakeshore APS**”), pursuant to which the Vendor agreed to sell the Development Lands, Utility Lands and Commercial Lands to Lakeshore;

- 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, which include that the Purchaser will act as a back up bidder and that this Agreement is conditional upon Lakeshore failing to close on the transaction contemplated by the Lakeshore APS in accordance with its terms;

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 it being acknowledged by the Purchaser that this Agreement will not be effective or binding until the Vesting Order has been granted;
- (b) **"Agent"** shall mean Avison-Young Commercial Real Estate Services, LP;
- (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 Region of Durham are open for business but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (g) **"CIM"** means the confidential information memorandum prepared by the Agent;
- (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 the date which is three (3) days immediately following the date upon which the Receiver advises the Purchaser, in writing, that the Lakeshore APS failed to close in accordance with its terms and that the condition set out in 4.3(a) is fulfilled or the next Business Day, as applicable, or such other date as the Parties may mutually agree upon;
- (k) **"Commercial Lands"** means those lands bearing PINs 26459-0050 (LT), 26459-0046 (LT) and 26459-0045 (LT);
- (l) **"Court"** means the Court defined in the first recital of this Agreement;
- (m) **"Data Room"** means the electronic data room established by or on behalf of the Vendor containing the Property Documents for review by the Purchaser;
- (n) **"Development Lands"** means those lands bearing PIN 26456-0108 (LT);
- (o) **"Debtor"** means all or any one of 9617680 Canada Inc., 9654372 Canada Inc., Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc. and 9654445 Canada Inc.;
- (p) **"Deposit"** has the meaning ascribed to it in Section 2.5;
- (q) **"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;
- (r) **"Environmental Condition"** has the meaning ascribed to it in Section 2.2(a);
- (s) **"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;

- (t) **"Ereg"** has the meaning ascribed to it in Section 5.7;
- (u) **"ETA"** means the *Excise Tax Act* (Canada), as it may be amended from time to time;
- (v) **"Excluded Assets"** means the assets, if any, listed in Schedule "D";
- (w) **"Final Order"** means, in respect of any Court 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;
- (x) **"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;
- (y) **"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;

- (z) **"HST"** means all goods and services taxes and harmonized sales tax payable under the ETA;
- (aa) **"Lakeshore APS"** has the meaning ascribed to it in the Recitals;
- (bb) **"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;
- (cc) **"Leases"** means any leases with any tenants relating to the Property;
- (dd) **"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;
- (ee) **"Parties"** means the Vendor, the Purchaser and any other Person who may become a party to this Agreement;
- (ff) **"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;
- (gg) **"Permitted Encumbrances"** means those Encumbrances listed in Schedule "B";
- (hh) **"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;
- (ii) **"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, the CIM, 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;

- (jj) **"Property"** means the real property described in Schedule "A" and shown on the Sketch of Purchased Assets attached hereto as Schedule "A-1", which is included for convenience and discussion purposes only;
- (kk) **"Property Documents"** means the documents in the Data Room;
- (ll) **"Purchaser Closing Conditions"** has the meaning ascribed to it in Section 4.1;
- (mm) **"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;
- (nn) **"Purchaser's Solicitors"** means the law firm of Ritchie Ketcheson Hart & Biggart LLP;
- (oo) **"Purchased Assets"** means those assets designated in the "Note to Purchaser" on the front page of this Agreement as being the lands which are the subject of this Agreement;
- (pp) **"Receiver"** has the meaning described thereto in the Recitals;
- (qq) **"Reports"** means collectively any written reports or documents received or obtained by the Receiver from any third party regarding any aspect of the Property;
- (rr) **"Rights"** has the meaning ascribed to it in Section 2.13;
- (ss) **"Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;
- (tt) **"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;
- (uu) **"Utility Lands"** means those lands bearing PINs 26459-0037 (LT), 26459-0036 (LT) and 26459-0035 (LT);
- (vv) **"Vendor Closing Conditions"** has the meaning ascribed to it in Section 4.3;
- (ww) **"Vendor's Solicitor"** means the law firm of Garfinkle Biderman LLP;
- (xx) **"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, acting reasonably;

- (yy) **“Vesting Order Motion”** means a motion by the Receiver seeking the granting of the Vesting Order; and
- (zz) **“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 "A-1" Sketch of Property
- Schedule "B" Permitted Encumbrances
- Schedule "C" [Intentionally deleted]
- Schedule "D" Excluded Assets
- Schedule "E" [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 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 Purchased Assets or any part thereof, or in the air, surface or ground water flowing through, onto or from the Purchased Assets, 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 the CIM, 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 CIM, 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 Purchased Assets 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 Purchased Assets 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 Purchased Assets which impacts the use, enjoyment, income or development opportunities connected with the Purchased Assets;
 - (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 Purchased Assets with Environmental Laws, Reports or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Purchased Assets, or otherwise with respect to the environmental condition of the Purchased Assets;
- (e) the CIM, 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 this Agreement) 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 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 Purchased Assets 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 with interest accrued thereon shall be forthwith returned to the Purchaser in accordance with and subject to the terms in Section 2.5 and 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 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 the CIM and any of the Property Documents; and
- (j) 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 Purchased Assets, adequacy, marketability, quantity, location, condition, quality, fitness or state of repair. The information in the CIM, 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 [REDACTED] allocated as set out in paragraph 2.7.

2.5 Deposit

The Parties acknowledge and agree that the sum of [REDACTED] being ten (10%) percent of the Purchase Price (the "**Deposit**") has been delivered by the Purchaser to the Vendor's solicitor in trust upon submission by the Purchaser of an executed copy of the Agreement to the Vendor. The Deposit shall be held in an interest bearing account of a Canadian chartered bank or trust company, in trust pending completion or other termination of this Agreement, 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 and interest thereon 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 (including because any conditions in favour of the Purchaser are not fulfilled or waived), then the Deposit and interest thereon shall, subject to any Claim by the Vendor for damages under Section 2.12 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 and interest thereon 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 and interest thereon 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 Allocation of Purchase Price

The entire Purchase Price shall be allocated to the Purchased Lands as follows: 60% to the Development Lands; and the balance equally divided among the Utility Lands and the Commercial Lands, such that the aggregate of such allocation is equal to the Purchase Price, and the Parties agree that they shall follow such allocation in determining and reporting their liabilities for any Taxes and, without limitation, shall file their respective income tax returns prepared in accordance with such allocation, provided that nothing herein shall require the Vendor to file any income tax returns that it is not otherwise required to file.

2.8 Adjustment of Purchase Price

- (1) [Intentionally deleted]
- (2) 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
- (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 Purchased Assets, 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 part of Property comprising the Purchased Assets 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 enures 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 Conveyance Event

[Intentionally deleted]

2.15 Vesting Order

- (a) The Receiver and the Purchaser acknowledge that:
 - i. this Agreement is subject to Court approval; and
 - ii. Closing is subject to the issuance of the Vesting Order, and the Vesting Order becoming a Final Order.
- (b) 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) 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 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 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 the Court a certificate, substantially in the form attached to the 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;
- (b) the Assumed Liabilities and any other obligations and liabilities assumed by the Purchaser as provided for by this Agreement; and
- (c) to effect a Conveyance upon the terms of Section 2.14, if the circumstances arise that require it to do so.

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 the Development Agreement, to perform its obligations thereunder and to consummate the Transaction;
- (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 Vesting Order prior to Closing, to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the 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; and
- (c) [Intentionally deleted]
- (d) the Appointment Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction.
- (e) [Intentionally deleted].

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) the transaction contemplated by the Lakeshore APS fails to close in accordance with its terms;
- (b) 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;
- (c) 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, including the Development Agreement;
- (d) 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
- (e) [Intentionally deleted]
- (f) On the closing date, the Appointment Order and the 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 that was not fulfilled was the Vendor Closing Condition contained in Sections 4.3(a) and 4.3(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 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 or before (or such later date agreed upon by the Parties) approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the applicable 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.

SECTION 5 — CLOSING

5.1. Closing

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

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) [Intentionally deleted]
- (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, including an executed copy of the Development 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) [intentionally deleted];

- (iii) 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;
 - (iv) 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;
 - (v) assignment of all Leases;
 - (vi) the Vesting Order; and
 - (vii) 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.

5.8 Payment of Land Transfer Tax

The parties agree that the Purchase Price will not be shown in the Vesting Order. The parties agree that any Land Transfer Tax payable by the Purchaser (and similarly, in the event of a Conveyance Event, any Land Transfer Tax payable by the Vendor) shall be paid directly to the Ministry of Finance prior to closing such that the Purchase Price will not be shown on any registered document nor will the Land Transfer Tax paid be shown on any registered document.

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:

THE CORPORATION OF THE TOWN OF AJAX
65 Harwood Ave. South
Ajax, ON L1S 2H9

Attention: Shane Baker

Telephone No:

Email: shane.baker@ajax.ca

with a copy to:

RITCHIE KETCHESON HART & BIGGART LLP
1 Eva Road, Suite 206
Toronto, ON M9C 4Z5

Attention: John Hart

Email: jhart@ritchieketcheson.com

and in the case of the Vendor, as follows:

RSM CANADA LIMITED, Court-Appointed

Receiver of 9617680 Canada Inc., 9654372 Canada Inc., Central Park Ajax
Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc. and
9654445 Canada Inc.

11 King Street West

Suite 700, PO Box 27

Toronto, ON M5H 4C7

Attention: Bryan Tannenbaum

Email: bryan.tannenbaum@rsmcanada.com

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

Thornton Grout Finnigan LLP

100 Wellington Street West, Suite 3200

Toronto, ON M5K 1K7

Attention: Rebecca Kennedy

Email: rkennedy@tgf.ca

Attention: Alexander Soutter

Email: asoutter@tgf.ca

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 constitutes the entire agreement between the Parties with respect to the Purchased Assets 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 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 which for greater certainty, do not form part of the Purchase Price. Any other commissions payable to any other party shall be the responsibility of the Purchaser.

6.12. 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.

6.13. 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.

6.14. 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.

6.15. 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.

6.16. 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.

6.17. 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.

6.18. 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: Bryan A. Tannenbaum, FCPA, FCA, FCIRP,
LIT

Title: President

THE CORPORATION OF THE TOWN OF AJAX

Per: _____

Name: Shane Baker

Title: Chief Administrative Officer

I have the authority to bind the corporation

Schedule A

Property

1. The Property:

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

ServiceOntario

PRINTED ON 22 MAR. 2018 AT 10:24:49
FOR JANELLEE

SCALE
0 30 60 90
meters

PROPERTY INDEX MAP
DURHAM(No. 40)

LEGEND
PREVIOUS PROPERTY
LEASEHOLD PROPERTY
UNITED INTEREST PROPERTY
CONDOMINIUM PROPERTY
PROPERTY NUMBER
BLOCK NUMBER
GEOGRAPHIC FABRIC
DOCUMENT

THIS IS NOT A PLAN OF SURVEY

NOTES
REVIEW THE TITLE RECORDS FOR COMPLETE
DETAILS OF THE PROPERTY AND MAY
NOT REFLECT RECENT REGISTRATIONS
THIS MAP WAS COMPILED FROM PLANS AND
REGISTRATION SYSTEM AND HAS BEEN PREPARED
FOR PROPERTY INDEXING PURPOSES ONLY
FOR DIMENSIONS OF PROPERTIES BOUNDARIES SEE
RECORDED PLANS AND DOCUMENTS
ONLY MAJOR EASEMENTS ARE SHOWN
REFERENCE PLANS UNDERLYING MORE RECENT
REFERENCE PLANS ARE NOT ILLUSTRATED

Ontario

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 Vesting Order)

PIN No.	Reg. Num.	Date	Instrument Type	Parties To
26459-0050	CO97966	September 29, 1961	Municipal By-Law	RSM Canada Limited
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR963279	January 11, 2011	Director of Titles Order	
	DR2104350	February 25, 2022	Court Order	
26459-0046	CO97966	September 29, 1961	Municipal By-Law	RSM Canada Limited
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR2104350	February 25, 2022	Court Order	
26459-0045	CO97966	September 29, 1961	Municipal By-Law	RSM Canada Limited
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR2104350	February 25, 2022	Court Order	
26456-0108	CO169590	June 26, 1968	Municipal By-Law	The Corporation of the Town of Ajax The Corporation of the Town of Ajax RSM Canada Limited
	D79596	November 1, 1978	Municipal By-law	
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR1508437	August 24, 2016	Notice of Site Plan Agreement	
	DR1511281	August 31, 2016	Municipal By-Law	
	DR2121686	April 14, 2022	Court Order	
26459-0037	CO97966	September 29, 1961	Municipal By-Law	RSM Canada Limited
	DR431409	September 26, 2005	Airport Zoning Regulations	
	DR2104350	February 25, 2022	Court Order	
26459-0036	CO97966	September 29, 1961	Municipal By-law	RSM Canada Limited
	DR2104350	February 25, 2022	Court Order	

26459-0035	LTC3716	September 29, 1961	Municipal By-law	RSM Canada Limited
	DR2104350	February 25, 2022	Court Order	

Schedule C

[Intentionally deleted]

Schedule D

Excluded Assets

SCHEDULE E

[Intentionally Deleted]

2615333 ONTARIO INC.

- and -
Applicant

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC. *et al*
Respondents

Court File No. CV-20-00651299-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto, Ontario

MOTION RECORD
VOLUME 2 of 3
(Returnable March 3, 2025)

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Lawyers for the Court-appointed Receiver,
TDB Restructuring Limited