

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

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

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

RESPONDING MOTION RECORD OF 1604706 ONTARIO INC.

DATE: July 20, 2026

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**RESPONDING MOTION RECORD OF 1604706 ONTARIO INC.
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Exhibit A – Offer to Purchase by 1604706 Ontario Inc. delivered December 16, 2024	A
Exhibit B – Email to the Receiver and its listing agent on December 16, 2024	B
Exhibit C – Offer to Purchase by 1604706 Ontario Inc. dated December 2, 2024	C

Tab 1

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BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

AFFIDAVIT OF ANDY BAKHTIARI

I, Andy Bakhtiari, of the City of Toronto, in the Province of Ontario MAKE OATH AND
SAY:

1. I am the president and a director of 1604706 Ontario Inc. ("160 Inc."). As such, I have knowledge of the matters hereafter deposed.
2. I am deposing this Affidavit on behalf of 160 Inc., in opposition to the Motion of TDB Restructuring Limited ("the Receiver") on account of an Offer to Purchase by 160 Inc. that was delivered to the Receiver, but not to its counsel, on December 16, 2024 ("the 160 Inc. Bid").
3. The 160 Inc. Bid is appended hereto as **Exhibit A**. The signature for the 160 Inc. Bid on page 28 is mine.

4. The 160 Inc. Bid was for the purchase from the Receiver of five abutting parcels of land at 2849, 2851, 2853, 2855 and 2857 Islington Avenue in the City of Toronto ("the Toronto Property"). The stated purchase price in the 160 Inc. Bid was \$3,688,000.
5. As set out in the Receiver's Motion Record, the 160 Inc. Bid was pursuant to the Order of Justice Black dated December 10, 2024 ("the Black Order").
6. The Receiver required that all bids for the Toronto Property conform with the Receiver's Template for all such Bids. The Receiver's Template is found at Appendix A to the Receiver's Sixth Report in support of its Motion against 160 Inc.
7. The Receiver's Template for Bids for the Toronto Property in part specifically required that all Bids for the Toronto Property incorporate and comply with a Sales Procedure to be appended as Schedule D to the Bid ("the Sales Procedure").
8. In the case of the 160 Inc. Bid, the Sales Procedure was incorporated in and formed a material part of that Bid as Schedule D thereto as stipulated in section 1.4 of that Bid.
9. The Receiver further confirmed and agreed that the provisions of the Sales Procedure are a material part of the 160 Inc. Bid, when the Receiver signed the 160 Inc. Bid on November 13, 2025. The Receiver is bound by the Sales Procedure, as also confirmed in the Receiver's Sixth Report.
10. By virtue of the very terms of the 160 Inc. Bid, including the incorporated Sales Procedure at Schedule D thereto, the 160 Inc. Bid was never a Bid which qualified for or that was available for acceptance.

First Reason for Disqualification of the 160 Inc. Bid

11. Pursuant to section 3 of the Sales Procedure which was incorporated in and formed part of the 160 Inc. Bid, Bids for the Toronto Property were required to be submitted to certain "Notice Parties" by email so that they are actually received by each of the Notice Parties no later than the Bid Deadline and any Bids received after the Bid Deadline "shall not constitute a Bid and shall be disqualified."
12. Section 1 of the Sales Procedure defined the Notice Parties as "the Receiver, its counsel and the Listing Agent." The Bid Deadline was set by the Black Order as 5:00 PM on December 16, 2024.
13. Accordingly, for the 160 Inc. Bid to constitute a Bid for the Toronto Property and not be disqualified from consideration by the Receiver, the Bid had to be delivered to each of the Receiver, its counsel and the Listing Agent by 5:00 PM December 16, 2024.
14. I am advised by 160 Inc.'s real estate agent, Ayoub Eftekhamejad ("Ayoub"), and verily believe to be true that he submitted the 160 Inc. Bid to the Receiver and its Listing Agent by an email at 2:55 PM on December 16, 2024, a copy of which email is appended hereto as **Exhibit B**, but that the 160 Inc. Bid was not submitted by Ayoub to the Receiver's counsel by 5:00 PM on December 16, 2024, or at all.
15. Nor did 160 Inc. or anyone else on behalf of 160 Inc. submit the 160 Inc. Bid to counsel for the Receiver by 5:00 PM, December 16, 2024, or at all.
16. Accordingly, (i) as the 160 Inc. Bid for the Property, including the Sales Procedure, disqualified the Bid from being a Bid for consideration by the Receiver for the purchase of the Toronto Property unless delivered by 5:00 PM, December 16, 2024, to not just the

Receiver and its Listing Agent but also to its counsel and (ii) as the 160 Inc. Bid was not submitted to the Receiver's counsel by 5:00 PM, December 16, 2024, or at all, the 160 Inc. Bid did not constitute a Bid for the Property and was disqualified by its own terms and provisions from being a Bid for consideration and possible acceptance in accordance with the other provisions of that Bid.

17. As such, the Receiver had no right or authority to at any time consider, let alone sign and take any steps to accept, the 160 Inc. Bid for the purchase of the Toronto Property. The 160 Inc. Bid did not constitute a valid Bid and was disqualified from being a Bid. The Receiver had no right to purport to in any way partially or otherwise sign or take steps to have the Bid accepted. The Bid was of no force and effect because of prior non-compliance with the delivery pre-condition in the Sales Procedure which disqualified the Bid. Accordingly, the Receiver has no possible claim against 160 Inc. on account of the Bid.
18. In that regard, the disqualification of the 160 Inc. Bid was no different than the disqualification of an earlier Bid for the Toronto Property by 160 Inc. on or about December 2, 2024, a copy of which Bid is appended hereto as **Exhibit C** ("the First 160 Inc. Bid").
19. The First 160 Inc. Bid was submitted after what was then the September 26, 2024, Bid Deadline for Bids for the purchase of the Toronto Property. I am advised by Ayoub and verily believe to be true that the Receiver refused to accept the First 160 Inc. Bid for consideration because it was delivered after September 26, 2024, and was therefore disqualified from consideration by the Receiver for the purchase of the Toronto Property and, at that, even though the \$2.8 million purchase price was more than the highest

purchase price in the Bids submitted for the purchase of the Toronto Property before the September 26, 2024, then Bid deadline. Just as the First 160 Inc. Bid was disqualified from being a valid Bid for the purchase of the Toronto Property from the Receiver, so was the 160 Inc. Bid.

Second Reason for Disqualification of the 160 Inc. Bid.

20. Section 1 of the Sales Procedure incorporated in and forming part of the 160 Inc. Bid as Schedule D thereto defines a "Qualified Bid" as "a Bid that satisfies the conditions set out in Section 7 hereof."
21. In order for a Bid for the Property "to be considered a Qualified Bid...a Bid must satisfy each of the following conditions":

 “(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;”
22. Sections 9 and 10 of the Sale Procedure require that any Successful Bid for the purchase of the Toronto Property must be a Qualified Bid pursuant to section 7 including, more particularly, a Bid for which a Good-Faith Deposit is paid as required by sub-paragraph (f).
23. Furthermore, section 10 of the Sales Procedure in part stipulates “If no Qualified Bid is received by the Bid Deadline, then the Sale Procedure shall be terminated.”
24. As previously set out in my Affidavit, sections 1, 7, 9 and 10 of the Sale Procedure are all incorporated in and form part of the 160 Inc. Bid.

25. In addition, section 2.15(a)(ii), (b) and (c) of the 160 Inc. Bid all stipulate that the 160 Inc. Bid is subject to compliance with the Sales Procedure including the requirement for the 160 Inc. Bid to be a Qualified Bid as defined in section 7 of the Sales Procedure and the requirement that there can be no Successful Bid for the Property unless the Bid is a Qualified Bid.
26. Accordingly, if the 160 Inc. Bid is not a Qualified Bid for the purchase of the Toronto Property, the 160 Inc. Bid cannot possibly be a Successful Bid for the purchase of the Toronto Property for the purpose of taking steps for acceptance of the Bid by Court Approval. Again, this is because the requirement that the 160 Inc. Bid be a Qualified Bid for the purchase of the Property is a pre-condition or condition precedent for consideration by the Receiver and possible acceptance for the purchase of the Toronto Property.
27. In this case, 160 Inc. did not pay the Good-Faith Deposit of \$368,800, with respect to the 160 Inc. Bid. No deposit of any kind was paid or tendered by or on behalf of 160 Inc. with respect to the 160 Inc. Bid.
28. Because 160 Inc. did not pay the Good-Faith Deposit as required by section 7(f) of the Sales Procedure, the 160 Inc. Bid was never a Qualified Bid for the purchase of the Toronto Property which could be considered for determination as a Successful Bid by the Receiver. As the Good-Faith Deposit payment pre-condition for the 160 Inc. Bid qualifying as a Qualified Bid was never complied with or satisfied, the 160 Inc. Bid was never a Qualified Bid and the 160 Inc. Bid was therefore never open or available for consideration by the Receiver as a Successful Bid or, in turn, for acceptance by Court Approval.

29. In turn, the 160 Inc. Bid therefore never resulted in any sort of agreement with the Receiver. The Bid was no more than an offer which expired in accordance with its terms without any legal consequences whatsoever because the subject pre-condition for its qualification as a Qualified Bid, being the payment of the Good-Faith Deposit, was never complied with by 160 Inc..
30. Nor was there any default with respect to non-payment of the Good-Faith Deposit. There was no default because there was no agreement between 160 Inc. and the Receiver. Again, this was because of non-compliance with a pre-condition for the 160 Inc. Bid to qualify for consideration by the Receiver pursuant to the Sales Procedure.
31. Accordingly, the Receiver has no claim against 160 Inc. on account of the 160 Inc. Bid because there were two separate and independent disqualifications of the 160 Inc. Bid from possible consideration by the Receiver.

Disqualification/Non-Qualification of the 160 Inc. Bid Conclusion

32. The disqualification and non-qualification of the 160 Inc. Bid for possible acceptance is easily summarized as follows:
 - (a) By its own terms, the 160 Inc. Bid was subject to strict prior compliance with a number of pre-conditions or qualifying conditions;
 - (b) Failing strict compliance by 160 Inc. with the pre-conditions and qualifying conditions for the 160 Inc. Bid, the 160 Inc. Bid is undeniably disqualified and/or cannot be considered for determination as a Successful Bid or for possible acceptance pursuant to the Sales Procedure;

- (c) By reason of not only (i) the Receiver's Template with the incorporated Sales Procedure for Bids for the Toronto Property and (ii) the incorporation of the Sales Procedure in the 160 Inc. Bid but (iii) the Receiver's affirmation and confirmation that the 160 Inc. Bid was subject to/conditional upon prior compliance with the disqualifying conditions and pre-conditions thereto in the Sales Procedure, there is no doubt and it is undeniable that the 160 Inc. Bid is disqualified and does not qualify as a Qualified Bid in the event of prior non-compliance with the disqualifying conditions and the pre-conditions for qualification in the Sales Procedure;
- (d) Pursuant to section 3 of the Sales Procedure, the 160 Inc. Bid was therefore disqualified from possible consideration and acceptance because it was not delivered to the Receiver's Counsel by 5:00 PM on December 16, 2024;
- (e) Pursuant to sections 1, 7, 9 and 10 of the Sales Procedure, section 2.15 of the 160 Inc. Bid and the very terms of the Bid, the 160 Inc. Bid was therefore also separately disqualified from possible consideration and acceptance because it was never a Qualifying Bid for consideration as a Successful Bid and for acceptance by Court approval due to non-payment of the required Good-Faith deposit of \$368,800;
- (f) Since the 160 Inc. Bid is a disqualified Bid and a Bid which did not qualify as a Qualifying Bid for consideration and possible acceptance, the 160 Inc. Bid was never open for consideration and possible acceptance pursuant to the Sales Procedure or otherwise and is of no legal force or effect whatsoever. No agreement and certainly no accepted agreement arose from the 160 Inc. Bid. This

is a complete defence to the Receiver's alleged, but non-existent, claim against 160 Inc.

Additional Complete Defence Due to No Valid Acceptance of The 160 Inc. Bid

33. Section 16 of the Sales Procedure is also incorporated in and forms part of the 160 Inc. Bid, as set out in section 1.3 of the Bid and Schedule A thereto.
34. In addition, section 2.15(a)(i) of the 160 Inc. Bid also separately stipulates that the 160 Inc. Bid is subject to Court approval.
35. Section 12 of the Sales Procedure stipulates that "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."
36. Accordingly, by the very terms of the 160 Inc. Bid, Court Approval of the Bid was required for acceptance of the 160 Inc. Bid.
37. In this case, the 160 Inc. Bid was not determined and could not have been determined to be a Successful Bid pursuant to the Sales Procedure and the 160 Inc. Bid incorporating that Procedure. Again, this is because the 160 Inc. Bid was not a Qualified Bid as defined in the Sales Procedure and, in turn, did not qualify for consideration as a Successful Bid.
38. On or about November 13, 2025, the Receiver purported to sign back the 160 Inc. Bid as set out in paragraph 37.2 and the letter at Appendix Y to the Sixth Report. However, the purported sign back was unauthorized and ineffective for the reasons already set out above. In that regard, the Receiver did not purport to assert in its November 13, 2025,

letter that the 160 Inc. Bid was a "Successful Bid" as defined and required by sections 7, 9 and 10 of the Sales Procedure. In addition, the 160 Inc. Bid could not be accepted by the Receiver and was prohibited from doing so by the very terms of the 160 Inc. Bid. Acceptance required Court Approval.

39. In that regard, the Receiver never obtained nor even applied for Court Approval of the 160 Inc. Bid as required by section 12 of the Sales Procedure. As there was no Court Approval of the 160 Inc. Bid, there was never any acceptance of the 160 Inc. Bid as required by section 12 of the Sales Procedure and, once again, by the very terms of the 160 Inc. Bid. The Receiver is contractually barred from even alleging otherwise.
40. In addition to the requirement for Court Approval for acceptance of the 160 Inc. Bid by the very terms of the Bid, Court Approval for the 160 Inc. Bid was also required by paragraph 8(b) of the Black Order.
41. Since there was no acceptance of the 160 Inc. Bid as required by the very terms of the 160 Inc. Bid and not to mention the Black Order, although the Bid was in any event not open for acceptance because of disqualification, there was no agreement of any kind between the Receiver and 160 Inc. that resulted from the Receiver's signing and purported acceptance of the 160 Inc. Bid by its November 13, 2025, letter.

Complete Defence Conclusion Based on No Acceptance of the 160 Inc. Bid

42. Pursuant to section 12 of the Sales Procedure, there is no acceptance of the 160 Inc. Bid until a Successful Bid, as defined in sections 7, 9 and 10 of the Sales Procedure, has been approved by the Court. That requirement is confirmed in section 2.15(a)(i) of the 160 Inc. Bid. Nor is there any provision to the contrary in the 160 Inc. Bid.

43. Acceptance of the 160 Bid by Court Approval is the last step in the Sales Procedure. First, a Bid must not be disqualified by non-compliance with section 3 of the Sales Procedure. Second, a Bid must be a Qualified Bid to be considered as a possible Successful Bid as required by sections 7, 9 and 10 of the Sales Procedure and section 2.15 of the 160 Inc. Bid. Third, assuming that a Bid is not disqualified and is a Qualified Bid (*which is not the case here*), the Receiver may determine if one or more of the Qualified Bids is a Successful Bid. Fourth, if a Qualified Bid is determined to be a Successful Bid, the Receiver is required to seek Court Approval of the Bid and of the transaction contemplated by the Bid; however, if there is no Qualified Bid, the Sales Procedure is terminated or terminated with respect to any Bid which is disqualified or is not a Qualified Bid. Fifth, a Bid is only accepted when a Qualified Successful Bid has been approved by the Court.
44. Here, the Receiver never obtained nor even applied for Court Approval of the 160 Inc. Bid. Nor will the Receiver ever do so because the Receiver instead sought Court Approval for another Bid which was approved by the Court and which was subsequently completed by a sale of the Toronto Property pursuant to the terms of that Bid.
45. Accordingly, even if the 160 Inc. Bid had not been disqualified and had been a Qualified Bid instead of being disqualified and not a Qualified Bid, the 160 Inc. Bid was never accepted as provided for and required by the very terms of the 160 Inc. Bid including the Sales Procedure. Nor was the Bid approved as required by the Black Order. As a result, there is no accepted enforceable agreement between the Receiver and 160 Inc. with respect to the 160 Inc. Bid.

46. Since there is no accepted agreement which resulted from the 160 Inc. Bid, the Receiver has no claim against 160 Inc. on account of the Bid. There was never any default by 160 Inc. because there were no underlying obligations on the part of 160 Inc. There was no breach of any kind by 160 Inc. because there was nothing to breach. The Receiver has purported to reserve its rights against 160 Inc. and to make a claim on account of that reservation but the Receiver had no rights to reserve. There is no possible contractual basis or any other basis for the Receiver's alleged claim against 160 Inc.

Further Complete Defence as a Result of No Acceptance of the 160 Inc. Bid

47. Section 5.6 of the 160 Inc. Bid specifically precludes the Receiver from asserting repudiation and claiming damages for the difference between the amount of the Bid and the price for which the Toronto Property was sold unless "all of the Purchaser Closing Conditions have been complied with" and unless 160 Inc. has failed to comply with the terms of the Bid.
48. Apart from the fact the 160 Inc. Bid was never accepted and the further fact that 160 Inc. has not failed to comply with any obligations, the fact is that the "Purchaser Closing Conditions" as defined in section 4.1 of the 160 Inc. Bid were not all complied with including, more particularly, the condition requiring the Receiver to obtain an Approval and Vesting Order. As the Receiver did not comply with all of the Purchaser Closing Conditions and as the conditions were never waived by 160 Inc., the Receiver would in any event be contractually barred from making its alleged, albeit non-existent, claim against 160 Inc.
49. This is yet another further alternative complete defence to the Claim.

The Nullity of the 160 Inc. Bid

50. Section 4.5 of the 160 Inc. Bid stipulates (i) that the obligations of 160 Inc. are conditional upon an Order being obtained for approval of the Bid and for the vesting of the Toronto Property in 160 Inc. pursuant to that approval, (ii) that the said condition "is incapable of waiver" and (iii) that the transaction contemplated by the 160 Inc. Bid "shall automatically be deemed to be null and void and of no further force and effect" should the Order not be obtained.
51. As no Court Order was obtained or will ever be obtained for approval of the 160 Inc. Bid, any obligations which 160 Inc. may have had pursuant to the 160 Inc. Bid (*although there were none*) are null, void and of no force and effect. This is yet another reason for why the Receiver has no basis for making a claim against 160 Inc. on account of the 160 Inc. Bid.
52. Section 4.5 of the 160 Inc. Bid is further proof that (i) the 160 Inc. Bid was disqualified from possible acceptance, (ii) that the 160 Inc. Bid was not a Qualified Bid for possible acceptance and (iii) that Court Approval was required for acceptance of the 160 Inc. Bid. There are other provisions in the 160 Inc. Bid which further prove those facts and 160 Inc. will rely upon them at the hearing of the Motion should the Motion have to be argued.

The Binding Provisions of the Sales Procedure on the Receiver

53. The Receiver is not only bound by the Sales Procedure pursuant to the provisions of the Sales Procedure and by, *inter alia*, section 1.3 and Schedule D of the 160 Inc. Bid but is also strictly bound by the Sales Procedure, together with the related provisions of the 160

Inc. Bid, by reason of (i) the "Entire Agreement" provisions in section 6.7 of the 160 Inc. Bid and (ii) the no "Amendments and Waiver" provisions in section 6.6 of the 160 Inc. Bid.

Other Submissions

54. The Receiver has made a claim against 10001079582 Ontario Inc. ("100 Inc.") for recovery of damages on account of its alleged default and/or breach of an alleged agreement of purchase and sale for the purchase of the Toronto Property which is alleged to have been entered into before November 13, 2025.
55. Apart from the aforesaid complete defences to the Receiver's claim against 160 Inc., the Receiver's alleged claim against 160 Inc. is also premature pending the outcome of the preceding claim against 100 Inc. The amount of the alleged claim against 160 Inc. should be eliminated or reduced by the amount of any Judgment or, alternatively, the amount of any recovery from 100 Inc. including from forfeiture of an apparent deposit paid by 100 Inc. to the Receiver.
56. 160 Inc. also puts the Receiver to the proof of the amount of its alleged claim against 160 Inc.
57. I am therefore deposing this Affidavit on behalf of 160 Inc. in good faith and for no improper purpose.

SWORN REMOTELY by the
Deponent stated as being in the City
of Toronto, Ontario, on July 20, 2026,
in accordance with O. Reg 431/20,
*Administering Oath or Declaration
Remotely*

A Commissioner for taking affidavits, etc.

Maurice J. Neirinck

Andy Bakhtiari

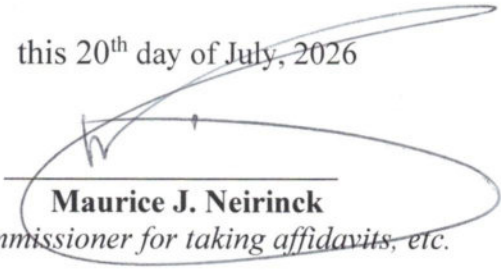
Attached is **Exhibit A** referred

to in the Affidavit of

ANDY BAKHTIARI

sworn before me

this 20th day of July, 2026



Maurice J. Neirinck

A Commissioner for taking affidavits, etc.

From: Ayoub Eftekharnjad <aeftekharnjad_ca@yahoo.ca>
To: adhanani@tdbadvisory.ca <adhanani@tdbadvisory.ca>; btannenbaum@tdbadvisory.ca <btannenbaum@tdbadvisory.ca>; Alex Holiff <alex.holiff@colliers.com>
Sent: Monday, December 16, 2024 at 02:55:29 p.m. EST
Subject: Fw: Offer for 2849 Islington Ave

**Dear
Arif**

I am writing to formally submit my offer to purchase the property located at 2849 Islington Ave. Please review the attached offer and consider it at your earliest convenience. I am confident this proposal will be of interest and look forward to discussing further details.

Thank you for your time and consideration.

Best regards, Ayoub

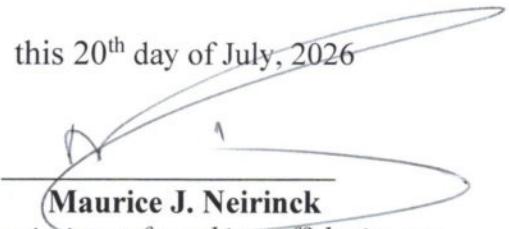
Attached is **Exhibit B** referred

to in the Affidavit of

ANDY BAKHTIARI

sworn before me

this 20th day of July, 2026



Maurice J. Neirinck

A Commissioner for taking affidavits, etc.

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made the <*> day of <*> 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

■ **1604706 Ontario Inc**

(the "Purchaser")

RECITALS:

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

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

SECTION 1 - INTERPRETATION

1.1 Definitions

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

MB

- (a) **"Acceptance Date"** means the date that this Agreement is executed and delivered by the Parties;
- (b) **"Agent"** shall mean Colliers Macaulay Nicolls Inc.;
- (c) **"Agreement"** means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;
- (d) **"Applicable Laws"** means, with respect to the Purchased Assets or to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event;
- (e) **"Assumed Liabilities"** has the meaning ascribed to it in Section 2.10.
- (f) **"Business Day"** means a day on which banks and the Land Registry Office for the City of Toronto are open for business but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (g) Intentionally deleted.
- (h) **"Claim"** means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;
- (i) **"Closing"** means the successful completion of the Transaction;
- (j) **"Closing Date"** means the date which is three (3) days immediately following the date upon which the Approval and Vesting Order is granted, or the next Business Day, as applicable, or such other date as the Parties may mutually agree upon;
- (k) Intentionally deleted.
- (l) **"Court"** means the Court defined in the first recital of this Agreement;
- (m) Intentionally deleted.
- (n) **"Data Room"** means the electronic data room established by or on behalf of the Vendor containing documents related to the Purchased Assets for review by the Purchaser;
- (o) Intentionally deleted.



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



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



become a party to this Agreement. **"Party"** means any one of the foregoing;

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



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

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

1.3 Extended Meanings



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

1.4 Schedules

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

- Schedule "A" Property
- Schedule "B" Permitted Encumbrances
- Schedule "C" Excluded Assets
- Schedule "D" 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 Approval and Vesting Order. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets.

2.2 "As is, Where is"

The Purchaser acknowledges and agrees that:

- (a) the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning, permitted uses, permits, compliance with Applicable Laws of Government Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof, any non-compliance with Environmental Laws including any adverse



matters contained in the Reports (the "**Environmental Condition**"), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and are hereby waived by the Purchaser. The descriptions of the Purchased Assets set out in this Agreement or in the Property Documents are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Purchaser further acknowledges that the Property Documents and all other written and oral information (including, without limitation, any analyses, financial information and projections, compilations, studies and the Plans) obtained by the Purchaser from the Vendor or the Agent with respect to the Purchased Assets or otherwise relating to the Transaction has been provided for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

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



- (iv) the execution, good standing, validity, binding effect or enforceability of the Permitted Encumbrances;
 - (v) that the Vendor has any right, title or interest in any goodwill associated with the Purchased Assets, or the use of any name associated with the operation of the Purchased Assets;
 - (vi) the description, title, condition, value, state of repair and fitness for any purpose of the Purchased Assets; and
 - (vii) the compliance of the Property with Environmental Laws, Reports or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Property, or otherwise with respect to the environmental condition of the Property;
- (e) the Property Documents and any assets lists, information packages and other material concerning the Purchased Assets or the sale thereof provided by or on behalf of the Vendor and the Agent have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in such material) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, no conditions, warranty or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning such descriptions;
- (f) the Vendor is entering into this Agreement solely in its capacity as Receiver of the Property pursuant to the Appointment Order and not in its personal or other capacity and the Vendor and its agents (including the Vendor's Solicitors), officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith;
- (g) save as to any valid objection to title made in respect of matters arising after the Acceptance Date, the Purchaser shall be conclusively deemed to have accepted the title to the Property and to have accepted the Property subject to the Permitted Encumbrances and the Environmental Condition and subject to all Applicable Laws, by-laws and regulations affecting its use. If any valid objection to title expressly permitted herein is made by the Purchaser prior to the Closing Date, which the Vendor is unwilling or unable to remove, remedy, or satisfy and which the Purchaser will not waive or is not satisfied by title insurance, then the Receiver may terminate this Agreement by notice to the Purchaser, whereupon, except as herein expressly set forth, the Deposit without interest accrued thereon shall be forthwith returned to the Purchaser in accordance with and subject to the terms in Section 2.5 and 2.12 each of the Purchaser and the Receiver shall be released from all obligations under this Agreement;
- (h) the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except such of the foregoing as are in the possession or control of the Receiver;



- (i) the Purchaser acknowledges that, the Vendor has provided the Purchaser access to the Data Room and that the Purchaser has had sufficient opportunity to review, and has satisfied itself with respect to, the Property Documents. If for any reason the transaction is not completed, the Purchaser shall forthwith return the Property Documents, and delete any electronic copies of them in its possession or control. The Vendor makes no representation or warranty, express or implied, as to the accuracy or completeness of any information contained in any of the Property Documents; and
- (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 Property, adequacy, marketability, quantity, location, condition, quality, fitness or state of repair. The information in the Data Room and description of the Purchased Assets in any marketing material, listing information, and any like material delivered or made available by the Vendor and/or the Agent, the Vendor's agents or any other party on its behalf to the Purchaser or its representatives are believed to be correct, but if any misstatement, error, inaccuracy or omission (collectively the "Inaccuracies") is found in the them, the Purchaser shall not be entitled to any abatement, damages, reimbursement, costs or to termination of this Agreement as a result of them and the Purchaser releases the Vendor and its agents from any Claims the Purchaser had, has or may have as a result of such Inaccuracies.

2.3 Permitted Encumbrances

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

2.4 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "Purchase Price") shall be an amount of \$ 3,688,000.00 - allocated as set out in paragraph 2.7.

Three Million & Six Hundred Eighty Eight Thousand Dollars

2.5 Deposit

The Parties acknowledge and agree that the sum of \$ 368,800.00, 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 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:

MB

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

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows:

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

2.7 Intentionally deleted.

2.8 Adjustment of Purchase Price

- (1) The Purchase Price shall be adjusted as of the Closing Date in accordance with the terms of this Agreement for any property taxes (including interest thereon, if applicable), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a Court supervised sale



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

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

2.9 Excluded Liabilities

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

2.10 Assumed Liabilities

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

- (a) Permitted Encumbrances;
- (b) the use of the Purchased Assets from and after the Closing Date to the extent relating to periods from and after the Closing Date; and
- (c) the Environmental Condition, and any and all Liabilities for the remediation of the soil and groundwater in, on, over, under or flowing through, onto or from the Property or any part thereof.

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

2.11 Taxes

In addition to the Purchase Price, the Purchaser or the beneficial owner of the Property if different from the Purchaser shall pay all applicable Transfer Taxes exigible in



connection with the purchase and sale of the Purchased Assets, including, without limitation, HST and Land Transfer Tax.

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

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

2.12 Inspections

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

- (a) any invasive testing shall require the Vendor's written approval prior to such testing;
- (b) the Purchaser shall provide at least two Business Days' notice to the Vendor of any such tests and inspections and the Vendor will be entitled to have a representative present during all such tests and inspections;
- (c) all soil tests or environmental audits shall be coordinated with the Vendor;
- (d) any damage to the Property caused by such tests and inspections will be promptly repaired by the Purchaser and the Purchaser will indemnify and save the Vendor harmless from all Claims which the Vendor may suffer as a result of the said tests and inspections or any other breach of this Section by the Purchaser; and
- (e) prior to entering the Property to conduct the Purchaser's tests and investigations, the Purchaser shall deliver (or shall cause its representatives completing the Purchaser's investigations on its behalf to deliver) to the Vendor evidence of liability insurance coverage for at least \$2,000,000.



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

2.13 Non-Transferable and Non-Assignable Purchased Assets

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

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

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the reasonable opinion of the Vendor, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and 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 Intentionally deleted.

2.15 Approval and Vesting Order

- (a) The Receiver and the Purchaser acknowledge that:
 - i. this Agreement is subject to Court approval; and
 - ii. closing of the Transaction is subject to this Agreement being determined by the Receiver to be the Successful Bid pursuant to the Sale Procedure and to the issuance of the Approval and Vesting Order.
- (b) If this Agreement is determined to be 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 Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction.
- (d) From and after the Acceptance Date, the Receiver shall provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, or the Approval and Vesting Order and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing (provided that the Receiver shall not be obligated to incorporate the comments of the Purchaser and do any such filings).

2.16 Closing Certificate

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

2.17 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to 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.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Covenants

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

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

3.2 Purchaser's Representations and Warranties

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

- (a) the Purchaser is and will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the Purchased Assets;
- (b) the Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations and the execution and delivery of this Agreement and the consummation of the Transaction has been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) no consent or approval of or registration, declaration or filing with any Government Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of any of its obligations hereunder;
- (d) the Purchaser is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained herein;
- (e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the



ability of the Purchaser to enter into this Agreement or to consummate the Transaction and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;

- (f) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as of Closing, duly and validly executed and delivered by the Purchaser and constitute or will, as of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;
- (g) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*;
- (h) The Purchaser has now and will have on the Closing Date the financial resources to complete this transaction in accordance with the terms of this Agreement; and
- (i) the Purchaser is registered or will be registered on Closing under Part IX of the ETA.

3.3 Record of Site Condition in the Environmental Registry

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

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

On Closing, the Purchaser shall deliver an indemnity in favour of the Vendor in which it agrees to indemnify and save the Vendor harmless from any and all Claims incurred by the Vendor in the event the Purchaser fails to make such filings.

3.4 Receiver's Representations

The Receiver represents and warrants to the Purchaser as follows:

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



3.5 Survival of Representations, Warranties and Covenants

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

SECTION 4 — CONDITIONS

4.1 Purchaser Closing Conditions

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

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

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

4.4 Vendor Closing Conditions Not Fulfilled

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

- (a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement and, unless the Vendor Closing Condition 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 Approval and Vesting Order

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

SECTION 5 — CLOSING

5.1. Closing

The completion of the Transaction shall take place on the Closing Date 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.

5.3 Vendor's Deliveries on Closing

- (a) On or before the Closing, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:
 - (i) statement of adjustments;
 - (ii) an acknowledgement dated as of the Closing Date, that each of the Vendor Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
 - (iii) an assignment of the Purchased Assets and assumption of the



Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;

- (iv) assignment of all Leases;
 - (v) the Approval and Vesting Order; and
 - (vi) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.
- (b) Upon the completion of the deliveries pursuant to Section 5.2 and 5.3(a), the Vendor shall immediately file a certificate with the Court (the "**Receiver's Certificate**") that the Transaction has been completed and title to the Property shall vest in the Purchaser effective immediately upon the filing with the Court of the Receiver's Certificate and shall deliver to the Purchaser a copy of same.

5.4 Risk

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

5.5 Termination

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

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

5.6 Breach by Purchaser

If all of the Purchaser Closing Conditions have been complied with or waived by the Purchaser and the Purchaser fails to comply with the terms of this Agreement, the



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

5.7 Electronic Registration

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

SECTION 6 - GENERAL

6.1. Further Assurances

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

6.2. Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by electronic transmission, addressed:

in the case of the Purchaser, as follows:

Attention: AYOUB EFTEKHARNEJAD

Telephone No:

Email: aeftekharnjad_ca@yahoo.ca

and in the case of the Vendor, as follows:

TDB Restructuring Limited, Court-Appointed
Receiver of 5004591 Ontario Inc.
11 King Street West



Suite 700, PO Box 27
Toronto, ON M5H 4C7

Attention: Arif Dhanani
Email: adhanani@tdbadvisory.ca

with a copy to:

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

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

and a copy to:

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

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

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

6.3. Time

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

6.4. Currency

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

6.5. Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor; provided the Purchaser may assign its rights and obligations under this Agreement to



an "affiliate" of the Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)), provided that the Purchaser remains liable, jointly, with such affiliate for all the obligations of the Purchaser hereunder. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.6. Amendments and Waiver

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

6.7. Entire Agreement

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

6.8. Paramountcy

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

6.9. Severability

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

6.10. Governing Law

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



6.11. Commission

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

6.12. Certain Words

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

6.13. Statutory References

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

6.14. Actions to be Performed on a Business Day

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

6.15. No Registrations

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

6.16. Strict Construction

Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.



6.17. No Third Party Beneficiaries

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

6.18. Planning Act

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

6.19. Counterparts

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

6.21 Expenses

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

(Remainder of this page intentionally left blank)



6.22 Announcements

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

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

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

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



1604706 Ontario Inc.
Per: _____
Name: _____
Title: _____
12/02/24



Schedule "A"

Property

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

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

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

Part Lot 2 Plan 9059 North York as in TB379983; Toronto (N York), City of Toronto

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

Part Lot 2 Plan 9059 North York as in TB379984; Toronto (N York), City of Toronto

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

Part Lot 1 Plan 9059 North York as in TB221318; Toronto (N York), City of Toronto

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

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



Schedule "B"

Permitted Encumbrances

"Permitted Encumbrances" means the following:

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

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



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



Schedule "C"
Excluded Assets



SCHEDULE D

Sale Procedure

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 6, 2023 and effective December 22, 2023 (the "**Appointment Order**"), RSM Canada Limited was appointed receiver and manager, without security, of the lands and premises set out on **Schedule "B"** attached hereto (the "**Property**") owned by the Debtor(s) and of all of the assets, undertakings and properties of the Debtor(s) acquired for, or used in relation to the Property, including all proceeds thereof.

Pursuant to the Substitution Order of the Ontario Court of Justice (Commercial List) dated March 1, 2024, (the "**Substitution Order**") the name of TDB Restructuring Limited ("**Receiver**") was substituted in the place of the name of RSM Canada Limited.

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

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 "A"** hereto;

"Agreement of Purchase and Sale" shall be the form of Agreement uploaded to Dataroom;

"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 7 hereof;

"Bid Deadline" means 4 p.m. (Toronto time) on June 3, 2024;

"Bidder" means a party that submits a Bid in accordance with Section 8;



"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 Property;

"Confidential Information" means the confidential information in the Confidential Data Room;

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

"Debtor(s)" means, collectively, 5004591 Ontario Inc.;

"Encumbrances" means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests;

"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 Colliers Macaulay Nicolls Inc.;

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

"Participant Requirements" has the meaning set out in Section 4 hereof;

"Qualified Bid" means a Bid that satisfies the conditions set out in Section 7 hereof as determined by the Receiver;

"Qualified Bidder" means a Bidder submitting a Qualified Bid;

"Sale Hearing" means a Court hearing on motion by the Receiver for an Order to approve the sale of the Property to the Successful Bidder;

"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.

2. Assets for Sale



The Receiver is soliciting offers for all of and not less than all of the right, title and interest of the Receiver and the Debtor(s) in and to the Property.

3. Sale Procedure Structure and Bidding Deadlines

Interested Parties that meet the Participant Requirements shall be given access to the Confidential Information in the Confidential Data Room.

All Bids must be submitted to the Notice Parties by email 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.

A Bid received after the Bid Deadline shall not constitute a Bid and shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. 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**").

5. Access to Due Diligence Materials

Only Interested Parties that satisfy the Participant Requirements ("**Potential Bidders**") will be eligible to receive 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 Property, or any of them.

6. 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.

7. 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 Bid must be



submitted by the Bid Deadline. The Agreement of Purchase and Sale must constitute a written and binding commitment to close on a transaction for the purchase of the Property, on the terms and conditions set forth therein;

- b) Irrevocable. A Bid must be received by the Bid Deadline, in accordance with Section 3 above, and 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) Intentionally deleted.
- 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; and
- g) Intentionally deleted.

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

8. Intentionally deleted.

9. 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.

10. Determination of Successful Bid

If one or more Qualified Bids is received by the Bid Deadline, the Receiver may



by a date to be determined by the Receiver: (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.

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 Agreement of Purchase and Sale included in 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.

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

11. Intentionally deleted.

12. 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.

13. Intentionally deleted.

14. "As Is, Where Is"

The sale of the Property, 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 Property 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 Property 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 Property, made by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or as to another Successful Bidder, the applicable Agreement of Purchase and Sale.

15. Free Of Any and All Encumbrances

Except as otherwise provided in the Successful Bid, the Property shall be sold



free and clear of all Encumbrances, except the Permitted Encumbrances, in accordance with an approval and vesting order of the Court, with all Encumbrances on or against the Property that are sold, other than the Permitted Encumbrances, to attach to the net proceeds of the sale of such Property after completion of such sale under a Successful Bid.

16. 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.

17. 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. 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 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.

18. 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"

ACKNOWLEDGEMENT

TO: TDB Restructuring Limited, in its capacity as court-appointed receiver and manager of the lands and premises described on Schedule "B" (the **"Property"**) (the **"Receiver"**)

RE: The sale procedure with respect to the sale by the Receiver of the Property (the **"Sale Procedure"**)

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

DATED this ____ day of _____, 20__.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

MB

Schedule "B"

PROPERTY

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

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

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

Part Lot 2 Plan 9059 North York as in TB379983; Toronto (N York), City of Toronto

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

Part Lot 2 Plan 9059 North York as in TB379984; Toronto (N York), City of Toronto

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

Part Lot 1 Plan 9059 North York as in TB221318; Toronto (N York), City of Toronto

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

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

MB

AE

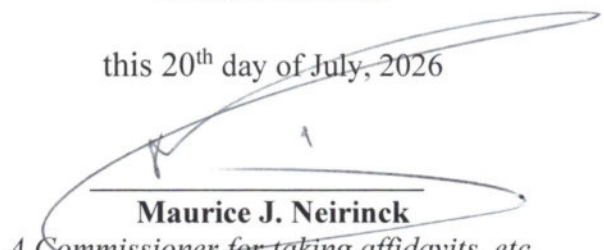
Attached is **Exhibit C** referred

to in the Affidavit of

ANDY BAKHTIARI

sworn before me

this 20th day of July, 2026



Maurice J. Neirinck

A Commissioner for taking affidavits, etc.

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made the <*> day of <*> 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

▶ **1604706 Ontario Inc**

(the "**Purchaser**")

RECITALS:

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

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

SECTION 1 - INTERPRETATION

1.1 Definitions

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

- (a) **"Acceptance Date"** means the date that this Agreement is executed and delivered by the Parties;
- (b) **"Agent"** shall mean Colliers Macaulay Nicolls Inc.;
- (c) **"Agreement"** means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;
- (d) **"Applicable Laws"** means, with respect to the Purchased Assets or to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event;
- (e) **"Assumed Liabilities"** has the meaning ascribed to it in Section 2.10.
- (f) **"Business Day"** means a day on which banks and the Land Registry Office for the City of Toronto are open for business but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (g) Intentionally deleted.
- (h) **"Claim"** means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;
- (i) **"Closing"** means the successful completion of the Transaction;
- (j) **"Closing Date"** means the date which is three (3) days immediately following the date upon which the Approval and Vesting Order is granted, or the next Business Day, as applicable, or such other date as the Parties may mutually agree upon;
- (k) Intentionally deleted.
- (l) **"Court"** means the Court defined in the first recital of this Agreement;
- (m) Intentionally deleted.
- (n) **"Data Room"** means the electronic data room established by or on behalf of the Vendor containing documents related to the Purchased Assets for review by the Purchaser;
- (o) Intentionally deleted.



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



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



become a party to this Agreement. **"Party"** means any one of the foregoing;

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



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

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

1.3 Extended Meanings



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

1.4 Schedules

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

Schedule "A"	Property
Schedule "B"	Permitted Encumbrances
Schedule "C"	Excluded Assets
Schedule "D"	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 Approval and Vesting Order. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets.

2.2 "As is, Where is"

The Purchaser acknowledges and agrees that:

- (a) the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning, permitted uses, permits, compliance with Applicable Laws of Government Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof, any non-compliance with Environmental Laws including any adverse



matters contained in the Reports (the "**Environmental Condition**"), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and are hereby waived by the Purchaser. The descriptions of the Purchased Assets set out in this Agreement or in the Property Documents are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Purchaser further acknowledges that the Property Documents and all other written and oral information (including, without limitation, any analyses, financial information and projections, compilations, studies and the Plans) obtained by the Purchaser from the Vendor or the Agent with respect to the Purchased Assets or otherwise relating to the Transaction has been provided for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

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



- (iv) the execution, good standing, validity, binding effect or enforceability of the Permitted Encumbrances;
 - (v) that the Vendor has any right, title or interest in any goodwill associated with the Purchased Assets, or the use of any name associated with the operation of the Purchased Assets;
 - (vi) the description, title, condition, value, state of repair and fitness for any purpose of the Purchased Assets; and
 - (vii) the compliance of the Property with Environmental Laws, Reports or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Property, or otherwise with respect to the environmental condition of the Property;
- (e) the Property Documents and any assets lists, information packages and other material concerning the Purchased Assets or the sale thereof provided by or on behalf of the Vendor and the Agent have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in such material) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, no conditions, warranty or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning such descriptions;
- (f) the Vendor is entering into this Agreement solely in its capacity as Receiver of the Property pursuant to the Appointment Order and not in its personal or other capacity and the Vendor and its agents (including the Vendor's Solicitors), officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith;
- (g) save as to any valid objection to title made in respect of matters arising after the Acceptance Date, the Purchaser shall be conclusively deemed to have accepted the title to the Property and to have accepted the Property subject to the Permitted Encumbrances and the Environmental Condition and subject to all Applicable Laws, by-laws and regulations affecting its use. If any valid objection to title expressly permitted herein is made by the Purchaser prior to the Closing Date, which the Vendor is unwilling or unable to remove, remedy, or satisfy and which the Purchaser will not waive or is not satisfied by title insurance, then the Receiver may terminate this Agreement by notice to the Purchaser, whereupon, except as herein expressly set forth, the Deposit without interest accrued thereon shall be forthwith returned to the Purchaser in accordance with and subject to the terms in Section 2.5 and 2.12 each of the Purchaser and the Receiver shall be released from all obligations under this Agreement;
- (h) the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except such of the foregoing as are in the possession or control of the Receiver;



- (i) the Purchaser acknowledges that, the Vendor has provided the Purchaser access to the Data Room and that the Purchaser has had sufficient opportunity to review, and has satisfied itself with respect to, the Property Documents. If for any reason the transaction is not completed, the Purchaser shall forthwith return the Property Documents, and delete any electronic copies of them in its possession or control. The Vendor makes no representation or warranty, express or implied, as to the accuracy or completeness of any information contained in any of the Property Documents; and
- (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 Property, adequacy, marketability, quantity, location, condition, quality, fitness or state of repair. The information in the Data Room and description of the Purchased Assets in any marketing material, listing information, and any like material delivered or made available by the Vendor and/or the Agent, the Vendor's agents or any other party on its behalf to the Purchaser or its representatives are believed to be correct, but if any misstatement, error, inaccuracy or omission (collectively the "**Inaccuracies**") is found in the them, the Purchaser shall not be entitled to any abatement, damages, reimbursement, costs or to termination of this Agreement as a result of them and the Purchaser releases the Vendor and its agents from any Claims the Purchaser had, has or may have as a result of such Inaccuracies.

2.3 Permitted Encumbrances

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

2.4 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "**Purchase Price**") shall be an amount of \$ ~~2,800,000.00~~ allocated as set out in paragraph 2.7.

Two Million & Eight Hundred Thousand Dollars

2.5 Deposit

The Parties acknowledge and agree that the sum of \$ 280,000.00, 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 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:

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

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows:

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

2.7 Intentionally deleted.

2.8 Adjustment of Purchase Price

- (1) The Purchase Price shall be adjusted as of the Closing Date in accordance with the terms of this Agreement for any property taxes (including interest thereon, if applicable), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a Court supervised sale



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

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

2.9 Excluded Liabilities

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

2.10 Assumed Liabilities

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

- (a) Permitted Encumbrances;
- (b) the use of the Purchased Assets from and after the Closing Date to the extent relating to periods from and after the Closing Date; and
- (c) the Environmental Condition, and any and all Liabilities for the remediation of the soil and groundwater in, on, over, under or flowing through, onto or from the Property or any part thereof.

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

2.11 Taxes

In addition to the Purchase Price, the Purchaser or the beneficial owner of the Property if different from the Purchaser shall pay all applicable Transfer Taxes exigible in



connection with the purchase and sale of the Purchased Assets, including, without limitation, HST and Land Transfer Tax.

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

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

2.12 Inspections

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

- (a) any invasive testing shall require the Vendor's written approval prior to such testing;
- (b) the Purchaser shall provide at least two Business Days' notice to the Vendor of any such tests and inspections and the Vendor will be entitled to have a representative present during all such tests and inspections;
- (c) all soil tests or environmental audits shall be coordinated with the Vendor;
- (d) any damage to the Property caused by such tests and inspections will be promptly repaired by the Purchaser and the Purchaser will indemnify and save the Vendor harmless from all Claims which the Vendor may suffer as a result of the said tests and inspections or any other breach of this Section by the Purchaser; and
- (e) prior to entering the Property to conduct the Purchaser's tests and investigations, the Purchaser shall deliver (or shall cause its representatives completing the Purchaser's investigations on its behalf to deliver) to the Vendor evidence of liability insurance coverage for at least \$2,000,000.



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

2.13 Non-Transferable and Non-Assignable Purchased Assets

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

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

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the reasonable opinion of the Vendor, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and 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 Intentionally deleted.

2.15 Approval and Vesting Order

(a) The Receiver and the Purchaser acknowledge that:

- i. this Agreement is subject to Court approval; and
- ii. closing of the Transaction is subject to this Agreement being determined by the Receiver to be the Successful Bid pursuant to the Sale Procedure and to the issuance of the Approval and Vesting Order.

(b) If this Agreement is determined to be 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 Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction.

(d) From and after the Acceptance Date, the Receiver shall provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, or the Approval and Vesting Order and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing (provided that the Receiver shall not be obligated to incorporate the comments of the Purchaser and do any such filings).

2.16 Closing Certificate

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

2.17 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to 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.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Covenants

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

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

3.2 Purchaser's Representations and Warranties

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

- (a) the Purchaser is and will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the Purchased Assets;
- (b) the Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations and the execution and delivery of this Agreement and the consummation of the Transaction has been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) no consent or approval of or registration, declaration or filing with any Government Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of any of its obligations hereunder;
- (d) the Purchaser is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained herein;
- (e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the



ability of the Purchaser to enter into this Agreement or to consummate the Transaction and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;

- (f) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as of Closing, duly and validly executed and delivered by the Purchaser and constitute or will, as of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;
- (g) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*;
- (h) The Purchaser has now and will have on the Closing Date the financial resources to complete this transaction in accordance with the terms of this Agreement; and
- (i) the Purchaser is registered or will be registered on Closing under Part IX of the ETA.

3.3 Record of Site Condition in the Environmental Registry

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

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

On Closing, the Purchaser shall deliver an indemnity in favour of the Vendor in which it agrees to indemnify and save the Vendor harmless from any and all Claims incurred by the Vendor in the event the Purchaser fails to make such filings.

3.4 Receiver's Representations

The Receiver represents and warrants to the Purchaser as follows:

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



3.5 Survival of Representations, Warranties and Covenants

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

SECTION 4 — CONDITIONS

4.1 Purchaser Closing Conditions

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

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

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

4.4 Vendor Closing Conditions Not Fulfilled

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

- (a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement and, unless the Vendor Closing Condition 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 Approval and Vesting Order

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

SECTION 5 — CLOSING

5.1. Closing

The completion of the Transaction shall take place on the Closing Date 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.

5.3 Vendor's Deliveries on Closing

- (a) On or before the Closing, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:
 - (i) statement of adjustments;
 - (ii) an acknowledgement dated as of the Closing Date, that each of the Vendor Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
 - (iii) an assignment of the Purchased Assets and assumption of the



Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;

- (iv) assignment of all Leases;
 - (v) the Approval and Vesting Order; and
 - (vi) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.
- (b) Upon the completion of the deliveries pursuant to Section 5.2 and 5.3(a), the Vendor shall immediately file a certificate with the Court (the "**Receiver's Certificate**") that the Transaction has been completed and title to the Property shall vest in the Purchaser effective immediately upon the filing with the Court of the Receiver's Certificate and shall deliver to the Purchaser a copy of same.

5.4 Risk

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

5.5 Termination

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

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

5.6 Breach by Purchaser

If all of the Purchaser Closing Conditions have been complied with or waived by the Purchaser and the Purchaser fails to comply with the terms of this Agreement, the



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

5.7 Electronic Registration

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

SECTION 6 - GENERAL

6.1. Further Assurances

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

6.2. Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by electronic transmission, addressed:

in the case of the Purchaser, as follows:

Attention: AYOUB EFTEKHARNEJAD

Telephone No:

Email: aeftekharnjad_ca@yahoo.ca

and in the case of the Vendor, as follows:

TDB Restructuring Limited, Court-Appointed
Receiver of 5004591 Ontario Inc.
11 King Street West



Suite 700, PO Box 27
Toronto, ON M5H 4C7

Attention: Arif Dhanani
Email: adhanani@tdbadvisory.ca

with a copy to:

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

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

and a copy to:

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

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

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

6.3. Time

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

6.4. Currency

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

6.5. Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor; provided the Purchaser may assign its rights and obligations under this Agreement to



an "affiliate" of the Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)), provided that the Purchaser remains liable, jointly, with such affiliate for all the obligations of the Purchaser hereunder. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.6. Amendments and Waiver

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

6.7. Entire Agreement

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

6.8. Paramountcy

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

6.9. Severability

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

6.10. Governing Law

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



6.11. Commission

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

6.12. Certain Words

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

6.13. Statutory References

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

6.14. Actions to be Performed on a Business Day

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

6.15. No Registrations

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

6.16. Strict Construction

Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

MB

6.17. No Third Party Beneficiaries

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

6.18. Planning Act

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

6.19. Counterparts

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

6.21 Expenses

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

(Remainder of this page intentionally left blank)



6.22 Announcements

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

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

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

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



Per: 1604706 Ontario Inc.
Name: Mauro Brancaleoni 12/02/24
Title: _____

MB

Schedule "A"

Property

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

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

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

Part Lot 2 Plan 9059 North York as in TB379983; Toronto (N York), City of Toronto

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

Part Lot 2 Plan 9059 North York as in TB379984; Toronto (N York), City of Toronto

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

Part Lot 1 Plan 9059 North York as in TB221318; Toronto (N York), City of Toronto

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

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

Schedule "B"

Permitted Encumbrances

"Permitted Encumbrances" means the following:

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

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

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

Schedule "C"

Excluded Assets

SCHEDULE D

Sale Procedure

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 6, 2023 and effective December 22, 2023 (the "**Appointment Order**"), RSM Canada Limited was appointed receiver and manager, without security, of the lands and premises set out on **Schedule "B"** attached hereto (the "**Property**") owned by the Debtor(s) and of all of the assets, undertakings and properties of the Debtor(s) acquired for, or used in relation to the Property, including all proceeds thereof.

Pursuant to the Substitution Order of the Ontario Court of Justice (Commercial List) dated March 1, 2024, (the "**Substitution Order**") the name of TDB Restructuring Limited ("**Receiver**") was substituted in the place of the name of RSM Canada Limited.

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

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 "A"** hereto;

"Agreement of Purchase and Sale" shall be the form of Agreement uploaded to Dataroom;

"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 7 hereof;

"Bid Deadline" means 4 p.m. (Toronto time) on June 3, 2024;

"Bidder" means a party that submits a Bid in accordance with Section 8;

"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 Property;

"Confidential Information" means the confidential information in the Confidential Data Room;

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

"Debtor(s)" means, collectively, 5004591 Ontario Inc.;

"Encumbrances" means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests;

"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 Colliers Macaulay Nicolls Inc.;

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

"Participant Requirements" has the meaning set out in Section 4 hereof;

"Qualified Bid" means a Bid that satisfies the conditions set out in Section 7 hereof as determined by the Receiver;

"Qualified Bidder" means a Bidder submitting a Qualified Bid;

"Sale Hearing" means a Court hearing on motion by the Receiver for an Order to approve the sale of the Property to the Successful Bidder;

"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.

2. Assets for Sale

The Receiver is soliciting offers for all of and not less than all of the right, title and interest of the Receiver and the Debtor(s) in and to the Property.

3. Sale Procedure Structure and Bidding Deadlines

Interested Parties that meet the Participant Requirements shall be given access to the Confidential Information in the Confidential Data Room.

All Bids must be submitted to the Notice Parties by email 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.

A Bid received after the Bid Deadline shall not constitute a Bid and shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. 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**").

5. Access to Due Diligence Materials

Only Interested Parties that satisfy the Participant Requirements ("**Potential Bidders**") will be eligible to receive 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 Property, or any of them.

6. 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.

7. 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 Bid must be

submitted by the Bid Deadline. The Agreement of Purchase and Sale must constitute a written and binding commitment to close on a transaction for the purchase of the Property, on the terms and conditions set forth therein;

- b) Irrevocable. A Bid must be received by the Bid Deadline, in accordance with Section 3 above, and 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) Intentionally deleted.
- 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; and
- g) Intentionally deleted.

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

8. Intentionally deleted.

9. 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.

10. Determination of Successful Bid

If one or more Qualified Bids is received by the Bid Deadline, the Receiver may

by a date to be determined by the Receiver: (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.

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 Agreement of Purchase and Sale included in 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.

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

11. Intentionally deleted.

12. 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.

13. Intentionally deleted.

14. "As Is, Where Is"

The sale of the Property, 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 Property 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 Property 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 Property, made by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or as to another Successful Bidder, the applicable Agreement of Purchase and Sale.

15. Free Of Any and All Encumbrances

Except as otherwise provided in the Successful Bid, the Property shall be sold

free and clear of all Encumbrances, except the Permitted Encumbrances, in accordance with an approval and vesting order of the Court, with all Encumbrances on or against the Property that are sold, other than the Permitted Encumbrances, to attach to the net proceeds of the sale of such Property after completion of such sale under a Successful Bid.

16. 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.

17. 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. 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 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.

18. 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"

ACKNOWLEDGEMENT

TO: TDB Restructuring Limited, in its capacity as court-appointed receiver and manager of the lands and premises described on Schedule "B" (the **"Property"**) (the **"Receiver"**)

RE: The sale procedure with respect to the sale by the Receiver of the Property (the **"Sale Procedure"**)

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

DATED this ____ day of _____, 20__.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

Schedule "B"

PROPERTY

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

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

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

Part Lot 2 Plan 9059 North York as in TB379983; Toronto (N York), City of Toronto

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

Part Lot 2 Plan 9059 North York as in TB379984; Toronto (N York), City of Toronto

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

Part Lot 1 Plan 9059 North York as in TB221318; Toronto (N York), City of Toronto

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

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

MB

AE



Schedule B Agreement of Purchase and Sale - Commercial

Form 505

for use in the Province of Ontario

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

BUYER: ..1604706 Ontario Inc., and

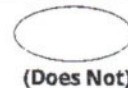
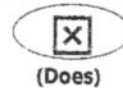
SELLER: ..TBD Restructuring Limited (formerly RSM Canada Limited), solely in its capacity as Court-Appointed Receiver of 2849-2857 Islington Avenue, Toronto.

for the purchase and sale of ..2849* Islington Ave, Toronto W05, Humber Summit, Toronto, Ontario M9L 2J9

..... dated the day of, 20.....

Deposit Interest

The Buyer gives consent for **Colliers Macaulay Nicolls Inc.** ("**Colliers**") to place the deposit in an interest-bearing account:



The parties to this Agreement hereby acknowledge that if the Buyer has instructed Colliers to deposit funds in an interest-bearing account, such funds shall be placed with the Bank of Montreal (BMO) at the current Canadian Prime rate less Two Point Six percent (BMO Prime rate - 2.6%). Any accrued interest on the deposit will be paid to the Buyer as soon as possible after completion or other termination of this Agreement.

FINTRAC: Individual and Corporation/Entity Identification Information Record

The parties to this transaction hereby acknowledge that real estate brokers and sales representatives are subject to the PROCEEDS OF CRIME (Money Laundering) and TERRORIST FINANCING ACT (PCMLTFA) and are required by Canada's financial Intelligence unit and anti-money laundering and anti-terrorist financing regulator, FINTRAC, to comply with their obligations under the ACT and its Regulations. Such obligation includes verifying the identity and keeping records of all entities and individuals on the real estate transaction.

The parties to this transaction who are represented by Colliers, or are unrepresented by a Real Estate Brokerage, further acknowledge that they will be required to provide individual and corporation/entity identification information to Colliers.

Colliers is committed to the protection of all personal information under its control.

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

INITIALS OF BUYER(S):

MB

INITIALS OF SELLER(S):

CAMERON STEPHENS MORTGAGE CAPITAL LTD. - and - CONACHER KINGSTON HOLDINGS INC. et al.
Applicant Respondents

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

AFFIDAVIT OF ANDY BAKHTIARI

MAURICE J. NEIRINCK & ASSOCIATES
181 University Avenue
Suite 2200
Toronto, ON M5H 3M7

Maurice J. Neirinck (LSO #14910B)
Tel: (416)-361-2400
Email: mjn@mjnlaw.ca

Lawyers for 1604706 Ontario Inc.

CAMERON STEPHENS MORTGAGE CAPITAL LTD. - and - **CONACHER KINGSTON HOLDINGS INC. et al.**

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

RESPONDING MOTION RECORD
OF 1604706 ONTARIO INC.

MAURICE J. NEIRINCK & ASSOCIATES
181 University Avenue
Suite 2200

Toronto, ON M5H 3M7

Maurice J. Neirinck (LSO #14910B)

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