

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

SUPPLEMENTARY MOTION RECORD OF THE RECEIVER

November 29, 2024

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TO: Service List

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IN THE MATTER OF THE RECEIVERSHIP OF

311 CONACHER DRIVE, KINGSTON, ONTARIO AND

2849, 2851, 2853, 2855 AND 2857 ISLINGTON AVENUE, TORONTO, ONTARIO

SUPPLEMENT TO THE THIRD REPORT OF THE RECEIVER

NOVEMBER 28, 2024

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC.

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1.0 INTRODUCTION

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

1.1 Purpose of Report

2. The purpose of this supplement to the Third Report (the “**Supplement to the Third Report**”) is to:
 - (a) provide the Court with further information concerning the status of the sale of the Kingston Property; and
 - (b) seek orders of the Court:
 - i. authorizing and directing Garfinkle Biderman LLP to release the deposit held by it, in trust, which was paid to it by 2349891 Ontario Inc. (the “**Kingston Purchaser**”) pursuant to the asset purchase agreement between the Receiver and the Kingston Purchaser (the “**Kingston APS**”); and
 - ii. approving the Supplement to the Third Report and the Receiver’s conduct and activities described therein.
3. The Supplement to the Third Report should be read in conjunction with the Third Report, including the Terms of Reference set out therein.
4. Unless otherwise defined, the defined terms in the Supplement to the Third Report have the same definitions as set out in the Third Report.

2.0 STATUS OF THE SALE OF THE KINGSTON PROPERTY

2.1 Closing Extension of the Sale of the Kingston Property

5. The Kingston APS was an unconditional offer from the Kingston Purchaser and a non-refundable deposit in accordance with the Kingston APS was paid by the Kingston Purchaser to Garfinkle Biderman LLP (“**Garfinkle Biderman**”) to be held in trust pending the closing of the sale of the Kingston Property.
6. Pursuant to the terms of the Kingston APS, closing of the transaction was to occur on the later of: (i) three (3) days immediately following the issuance of the Kingston AVO, or the next business day, as applicable; or (ii) October 2, 2024, or such other date as the parties may mutually agree upon. The hearing for the approval of the sale of Kingston Property was held on October 9, 2024, and the Endorsement of the Court approving the sale of the Kingston Property was released on October 31, 2024. The Court’s endorsement approving the sale is attached hereto as **Appendix “A”**, and the Approval and Vesting Order is attached hereto as **Appendix “B”**.
7. The Receiver agreed with the Kingston Purchaser to an extension for closing the transaction for the Kingston Property on November 20, 2024 at the Kingston Purchaser’s request.
8. As set out in the Second Report, a copy of which is attached as Appendix D to the Third Report, on November 20, 2024, the Kingston Purchaser advised that it required a 45-day extension to close the transaction. After some negotiation with the Kingston Purchaser, the Receiver agreed to an extension to January 6, 2025 on the basis that an additional deposit of \$500,000 (the “**Additional Deposit**”) towards the purchase price would be paid by the Kingston Purchaser by noon on November 27, 2024. Attached hereto as **Appendix “C”** is a copy of the email exchange between Loopstra Nixon LLP (“**Loopstra Nixon**”), counsel to the Kingston Purchaser, and Garfinkle Biderman, real estate counsel to the Receiver, in which the terms of the extension were agreed to by the Kingston Purchaser.

2.2 Default on Closing Extension of the Sale of the Kingston Property

9. On November 27, 2024, Garfinkle Biderman contacted Loopstra Nixon several times to enquire as to when the Additional Deposit would be paid, as the terms of the agreed upon extension to January 6, 2025 set out that the Additional Deposit was to be paid by noon on November 27, 2025.
10. Loopstra Nixon responded with its letter dated November 27, 2024 (the “**November 27th Letter**”) in which it advised that the Purchaser is no longer in a position to provide the additional \$500,000.00 deposit requested by the Receiver in order to secure an extension of the closing date under the Purchase Agreement until January 6, 2025 and that the November 27th Letter is formal notice of the Purchaser’s inability to complete the transaction as scheduled for the various reasons set out therein.
11. The November 27th Letter further states that: (i) the Purchaser does not consent to the release of the existing deposit in the amount of \$250,000 to the Receiver and maintains that the deposit should be returned to the Purchaser in full, given the extenuating circumstances; and (ii) the Purchaser expressly reserves all of its legal rights to pursue remedies against the Receiver and the deposit-holder should the deposit be released to the Receiver without the Purchaser’s authorization. A copy of the November 27th Letter is attached hereto as **Appendix “D”**.
12. Upon receipt of the November 27th Letter, the Receiver immediately contacted Cameron Stephens to advise it of the Kingston Purchaser’s position. With the concurrence of Cameron Stephens, the Receiver terminated the transaction and requested that Garfinkle Biderman send a letter to Loopstra Nixon confirming same (the “**Termination Letter**”). A copy of the Termination Letter is attached hereto as **Appendix “E”**.
13. The Receiver is of the position that the deposit paid in trust to Garfinkle Biderman by the Kingston Purchaser should be released to the Receiver on the following basis:
 - (a) the Kingston APS, a redacted version of which is attached hereto as **Appendix “F”**, is an unconditional offer and the deposit paid thereunder is a non-refundable deposit;

(b) the Kingston APS sets out at paragraph 2.5 (c) that:

“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.”

(c) the Receiver agreed in good faith to an extension, which was requested by the Kingston Purchaser, to November 20, 2024 at no additional cost to the Kingston Purchaser, on the assumption that the transaction would close on November 20, 2024;

(d) on November 20, 2024, the Receiver agreed to a further extension to November 27, 2024 at no cost to the Kingston Purchaser on the basis that a further deposit of \$500,000 would be paid by the Kingston Purchaser by noon on November 27, 2024 to solidify its commitment to closing the transaction on January 6, 2025. The Kingston Purchaser agreed unconditionally to the terms of the extension; and

(e) the Kingston Purchaser not only defaulted on closing the transaction on November 20, 2024, but has now defaulted on the extension terms to which it agreed to extend the closing date to January 6, 2025.


14. The Receiver intends to re-market the Kingston Property in January, 2025.

3.0 RECEIVER'S REQUEST OF THE COURT

15. In addition to the relief requested in the Third Report, the Receiver respectfully requests that the Court grant the orders described in paragraph 2(b) above.

All of which is respectfully submitted to this Court as of this 28th day of November, 2024.

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

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

APPENDIX A



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00701672-00CL DATE: OCTOBER 9, 2024

NO. ON LIST: 5

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

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

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] This was a motion brought by TDB Restructuring Limited in its capacity as the court-appointed receiver (the “Receiver”) of the lands and premises known municipally as 311 Conacher Drive, Kingston, Ontario (the “Kingston Property”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “Islington Property”) and together with the Kingston Property, the “Properties”) for, among other things, the approval of the sale of the Kingston Property.
- [2] More particularly, the Receiver seeks orders:
- (a) Approving the sale transaction (the “Transaction”) for the Kingston Property contemplated by the asset purchase agreement between the Receiver and 2349891 Ontario Inc. (the “Kingston Purchaser”) dated August 13, 2024 (the “APS”).
 - (b) Following the Receiver’s delivery of the Receiver’s certificate (substantially in the form at Schedule A to the proposed Approval and Vesting Order (the “AVO”), transferring and vesting all of Conacher Kingston Holdings Inc. (the “Debtor”)’s right, title, and interest in and to the Kingston Property to Crestmount Developments (Kingston) Limited, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances.
 - (c) Approving the Proposed Interim Distribution (as defined in the materials).
 - (d) Approving the Second Report of the Receiver dated September 26, 2024, and the Receiver’s activities described therein, as well as the fees and disbursements of the Receiver and its counsel as detailed in the Second Report and in two affidavits filed herein.
 - (e) Sealing Confidential Appendices 1 and 2 to the Second Report; and
 - (f) Approving the Receiver’s Statement of Receipts and Disbursements described in the Second Report.
- [3] With the exception of certain concerns discussed below, which in my view do not constitute reasons to prevent or delay the Transaction, the Transaction is essentially unopposed. In my view the process and

efforts undertaken by the Receiver easily meet the well-established criteria under *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ONCA).


- [4] The evidence amply demonstrates that the Kingston Property was well-exposed to the market through, among other steps, distribution of promotional brochures to over 7000 potential purchasers and a public MLS listing for approximately seven weeks. An initial potential deal fell by the wayside, and the Receiver renewed its efforts and attracted (or confirmed) additional interest.
- [5] The Receiver received two offers for the Kingston Property by the Bid Deadline, in addition to the offer from the Kingston Purchaser giving rise to the Transaction.
- [6] The only condition for closing is the issuance of the AVO sought on this motion.
- [7] It is clear to me that the Receiver has made a robust effort to get the best price for the Kingston Property, and has not acted imprudently, and I see nothing to suggest that the process has been in any way unfair.
- [8] The only opposition to the Transaction came, first, from counsel to the putative second mortgagee on the Kingston Property, 2462686 Ontario Inc. (“286”) who raised, reasonably, a question as to whether a particular party who had previously expressed an interest in purchasing the Kingston Property had been approached. The Receiver provided a supplement to its Second Report confirming that indeed there had been communications with the agent for that party, from which no bid had resulted.
- [9] Appropriately, in light of receiving that information, counsel for 286 expressly withdrew the concern.
- [10] A second set of alleged concerns were voiced by counsel for the putative third mortgagee on the Kingston Property, 2478659 Ontario Ltd. (“247”). (I use the word “putative” with respect to mortgages of 246 and 247 inasmuch as, despite numerous requests from the Receiver, neither has yet provided documentation proving the validity of their respective charges. Both say they expect to do so, but for the moment at least some question has been raised about their mortgage security which remains to be resolved).
- [11] I regard the concerns raised by 247 as insubstantial and bordering on inappropriate. The concerns were in the nature of suggesting that, for example, although the Receiver reported that it had sent brochures to 7000 potential purchasers it had not in its materials identified the 7000 recipients or provided relevant details about them. Other similarly unconvincing concerns were raised. 247 also suggested that there was no evidence that the broker had a “for sale” sign in place on the Kingston Property; in response the Broker quickly confirmed that it had and offered photographic evidence (which I did not need to see to accept the Broker’s confirmation). In my view 247’s arguments in this vein were in the nature of “throwing everything against the wall in the hope that something would stick.” As a more troubling part of this offensive, counsel for 247 even went so far as to allege that the Receiver had engaged in “double counting” in respect of its fees.
- [12] Any party asserting such allegations against an officer of the court has, in my view, a duty to provide precise and compelling evidence to substantiate them. The processes involved in insolvency matters before this court are important, and often subject to time constraints and other pressures, and this court relies heavily on the professionalism and integrity of the court-appointed professionals who assist the court in these proceedings.

- [13] That is not to say that the Receiver (or any other court officer) is above scrutiny or reproach. However, such allegations must not be made lightly, and must be based in clear evidence.
- [14] In my view 247's allegations are not supported by the evidence in this record and were and are not reasonable allegations to make. I see nothing to suggest that the receiver has conducted itself with anything less than its usual level of diligence and professionalism.
- [15] I am satisfied that the Transaction is for the benefit of the relevant stakeholders and, as noted, in compliance with the Soundair principles, and I approve it. I also agree with the need for the Confidential Appendices to be sealed (in accordance with Sherman Estate and Sierra Club) and so order.
- [16] The other issues raised before me related to issues about the proposed distribution of funds.
- [17] Cameron Stephens Mortgage Capital Ltd. ("Cameron Stephens") is, undisputedly, the first mortgagee on both the Kingston Property – for which it provided first mortgage financing to Conacher Kingston Holdings Inc. ("Conacher Kingston") – and on the Islington Property – for which it provided first mortgage financing to 5004591 Ontario Inc. ("500", and together with Conacher Kingston, the "Debtors").
- [18] The Receiver proposes, after payments of property taxes to the City of Kingston, payment of its fees and those of its counsel, payment of the Receiver's borrowings relating to the Kingston Property, payment to the broker of its commissions and retaining a holdback for further fees and disbursements to pay to Cameron Stephens the remaining amount owed to it in respect of the indebtedness secured by its first mortgage on the Kingston Property (and the Receiver expects that Cameron Stephens indebtedness will be fully repaid from those net proceeds).
- [19] With respect to the second and third mortgagees, 246 and 247, as noted the Receiver remains to be satisfied that these parties have valid charges against the Kingston Property.
- [20] On the assumption that 246 and 247 will demonstrate that their respective security is valid and enforceable, the Receiver than proposed to make the following further distributions:
- (a) Payment to 246 of the lesser of:
 - i. The amount owed to it in respect of its mortgage; or
 - ii. The remaining proceeds from the sale of the Kingston Property; and
 - (b) Payment to 247 of the lesser of:
 - i. The amount owed to it in respect of the mortgage; or
 - ii. The remaining proceeds from the sale of the Kingston Property.
- [21] In the ordinary course, this proposed approach to distribution appears unassailable.
- [22] However, 247 in particular, and 246, make arguments arising in relation to the Islington Property, and in particular the ownership of the Islington Property. That is, and the premise for the "marshalling" argument discussed below, Conacher Kingston and 500 were each owned by the late Nick Kyriacopoulos.

- [23] I should note in passing that, in July of 2024 the Receiver brought a motion to approve the sale of the Islington Property. The motion was granted, but the purchaser ultimately failed to close the purchase, as a result of which the Islington Property was re-listed.
- [24] The order sought by the Receiver contemplates, after the distributions described above, the postponement of any further distributions to creditors pending the sale of the Islington Property. So, any excess proceeds from the sale of the Kingston Property will be held in trust by the Receiver until the Islington Property is sold and stakeholders have an opportunity to make submissions about the appropriate distribution of both any surplus funds from the Kingston Property and the net proceeds of sale of the Islington Property.
- [25] Notwithstanding this proposed approach, 247 has now brought a motion for a declaration that the “doctrine of marshalling be applied to require Cameron Stephens to realize on its security against the [Islington Property].” 247 also seeks an order requiring the Receiver to maintain the sale proceeds from the Kingston Property and the Islington Property in separate accounts, and that Cameron Stephens’ mortgage on the Islington Property not be discharged.
- [26] The Receiver opposes the relief sought by 247, noting that both Conacher Kingston and 500 have covenanted to Cameron Stephens to repay the full amount of their debt, as secured by the first mortgage, in each case that Cameron Stephens holds, on the respective properties.
- [27] The Receiver cites at least four reasons why the proceeds of sale of the Kingston Property ought not to be held back.
- [28] First, as noted, there is no dispute about the validity of Cameron Stephens’ charges over the properties, nor that Cameron Stephens is the first mortgagee in each case. The Receiver points to authority for the proposition that, even if the doctrine of marshalling is applicable, a fundamental principle of the doctrine is that “nothing will be done to interfere with the paramount right of the first mortgagee to pursue his remedy against either of the two estates.” (807933 Ontario Inc. v. Allison (Trustee of) (1995) 22 O.R. (3d) 102 (Gen. Div.), appeal dismissed (1998) 38 O.R. (3d) 337 (C.A.).
- [29] As such, the Receiver persuasively argues, the right of a junior creditor to invoke the marshalling doctrine is subject to the important qualification that nothing will be done to interfere with the ability of the first mortgagee to pursue its remedy against either of the two estates. The first mortgagee does not become a trustee for the junior mortgagees (*First Investors Corp. v. Veeradon Developments Ltd.* (1988), ABCA 38 (CanLII)). In this case, the Receiver asserts, requiring Cameron Stephens to postpone realization on its security would in fact prejudice its “paramount” right to pursue its remedy against either of the two estates.
- [30] Second, the Receiver takes issue with 247’s reliance on *Re Allison* (on which the Receiver also relies). The Receiver points out that the motions judge in that case concluded that “the applicants are not entitled to invoke the doctrine of marshalling” on the basis that the applicant was not a secured creditor.” Moreover, as was pointed out by counsel for the owner of the Islington Property, who was present in court, the specific aspect of the motions judge’s decision in *Re Allison* on which 247 specifically relied in argument was expressly overturned by the Court of Appeal for Ontario.
- [31] The Receiver notes that, even if the doctrine of marshalling applies – in respect of which it takes no position – the result would still be to pay down Cameron Stephens’ debt in full from the Kingston

Property sale, and subsequently allow 246 and/or 247 to argue that they have the right to marshal into the Islington Property, which is precisely what the Receiver's proposed approach will allow to happen.

- [32] The Receiver's third point is that the indebtedness owed to Cameron Stephens and the other creditors continues to grow as a result of the accrual of interest, such that the sooner its debt is satisfied the more money will be available for the satisfaction of other debts. On the other hand, reducing the amount of proceeds available to satisfy the claims of multiple creditors is in none of the stakeholders' interest.
- [33] Finally, the Receiver notes that creditors who assert claims, albeit unsecured, against proceeds from the Islington Property may similarly argue that Cameron Stephens' indebtedness ought to be repaid out of the Kingston Property first. In fact, those very arguments were raised in July 2024 when the Receiver sought approval of the sale of the Toronto Property.
- [34] I am persuaded by these submissions. In my view the doctrine of marshalling, even if it applies, does not assist the second and third mortgagees (246 and 247) here.
- [35] The Receiver's proposed approach to distribution in fact preserves whatever rights these parties (and others) may have to share in the proceeds of sale (of the two properties).
- [36] Moreover, it remains the case that 246 and 247 have yet to prove the validity of their respective charges (and counsel for the owner of the Islington Property maintains that they will be unable to do so). While I would not uphold the argument of 246 and 247 in the circumstances at hand in any event, I would be all the more loath to do so when the validity of their respective charges remains unproved.
- [37] As noted, and for these additional reasons, I am granting the orders sought by the Receiver, signed copies of which are attached, and dismissing the motions of 246 and 247.



W.D. BLACK J.

DATE: OCTOBER 9, 2024

APPENDIX B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 9TH DAY
JUSTICE W.D. BLACK) OF OCTOBER, 2024

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by TDB Restructuring Limited in its capacity as the Court-appointed receiver (the "Receiver") of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the "Kingston Property") and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the "Toronto Property" and together with the Kingston Property, the "Properties") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and 2349891 Ontario Inc. (the "Purchaser") dated August 13, 2024 and appended to the Report of the Receiver dated September 26, 2024 (the "Second Report"), and vesting in the Purchaser or as it directs, Conacher Kingston

Holdings Inc. (the “**Debtor**”)’s right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver and the other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the Lawyer’s Certificate of Service of Douglas Montgomery, dated October 2, 2024, filed:

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

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in Crestmount Developments (Kingston) Limited, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the

foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated December 6, 2023 (and effective December 22, 2023); (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office No. 13 of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to enter Crestmount Developments (Kingston) Limited as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale , as if the Purchased Assets had not been

sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS that, upon closing of the Transaction, the Receiver is authorized and directed to distribute the net proceeds from the sale of the Purchased Assets in the following order of priority (such scheme of distribution being the “Interim Distribution”):

- (a) Payment to the City of Kingston, in respect of property taxes owing by the Debtor in connection with the Kingston Property;
- (b) Payment to the Receiver and its counsel, in respect of remaining unpaid fees and disbursements in connection with the Kingston Property;
- (c) Payment to Cameron Stephens Mortgage Capital Ltd. (“CS”), in respect of amounts loaned to the Receiver pursuant to the Receiver’s Borrowing Charge in connection with Kingston Property;
- (d) Payment to Rogers & Trainor Commercial Realty Inc., in respect of commissions owed to it upon the successful closing of the Transaction;
- (e) Retention of \$150,000 by the Receiver as a holdback amount for the further fees and disbursements of the Receiver and its counsel to do close the sale of the Kingston Property and to do all things necessary to wind up the administration of the receivership of the Kingston Property; and

- (f) Payment to CS, in respect of the remaining amount owed to it in connection with its mortgage registered on title to the Kingston Property.

6. THIS COURT ORDERS that, to the extent that there remain net proceeds from the sale of the Purchased Assets following the Interim Distribution (these funds being the “Surplus Funds”), the Receiver shall hold the Surplus Funds pending further order of the Court.

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


8. THIS COURT ORDERS that, notwithstanding:

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

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

shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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



Schedule A – Form of Receiver’s Certificate

Court File No. CV-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

RECEIVER’S CERTIFICATE

RECITALS

- (a) Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the "Court") dated December 6, 2023 (and effective December 22, 2023), TDB Restructuring Limited was appointed as the receiver (the "Receiver") of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the "Kingston Property") and

2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the "Toronto Property" and together with the Kingston property, the "Properties").

- (b) Pursuant to an Order of the Court dated October 9, 2024, the Court approved the agreement of purchase and sale made as of August 13, 2024 (the "Sale Agreement") between the Receiver and the Purchaser and provided for the vesting in Crestmount Developments (Kingston) Limited of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
- (c) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in section 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**TDB Restructuring Limited, in its
capacity as Receiver of the Properties,
and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

PIN Range Nos. 36061-0475 to 36061-0730

Lots 1 to 256, all inclusive, Plan 13M135

PIN Range Nos. 36061-0731 to 36061-0734

Blocks 257 to 260, all inclusive, Plan 13M135

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

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
FC294966	2019/12/18	CHARGE	\$15,600,000	CONACHER KINGSTON HOLDINGS INC.	CAMERON STEPHENS MORTGAGE CAPITAL LTD.
FC312121	2020/10/23	CHARGE	\$5,000,000	CONACHER KINGSTON HOLDINGS INC.	2462686 ONTARIO INC.
FC312122	2020/10/23	NO ASSGN RENT GEN		CONACHER KINGSTON HOLDINGS INC.	2462686 ONTARIO INC.
FC319869	2021/02/25	POSTPONEMENT		2462686 ONTARIO INC.	CAMERON STEPHENS MORTGAGE CAPITAL LTD.
FC362038	2022/11/03	CHARGE	\$8,500,000	CONACHER KINGSTON HOLDINGS INC.	2478659 ONTARIO LTD.
FC384851	2024/03/22	NOTICE		STERLING CAPITAL CORP.	
FC388266	2024/06/11	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	RSM CANADA LIMITED
FC388269	2024/06/11	APL AMEND ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	RSM CANADA LIMITED

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

(unaffected by the Vesting Order)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
FR143249	1964/01/23	BYLAW			
FR210365	1971/05/27	BYLAW			
FR656866	1996/10/31	AGREEMENT	\$1		THE CITY OF KINGSTON
FR673613	1997/10/01	BYLAW			
FC267976	2018/09/18	NOTICE		THE CORPORATION OF THE CITY OF KINGSTON	CONACHER KINGSTON HOLDINGS INC.
FC271067	2018/11/05	BYLAW		THE CORPORATION OF THE CITY OF KINGSTON	
FC299585	2020/03/19	NOTICE		THE CORPORATION OF THE CITY OF KINGSTON	CONACHER KINGSTON HOLDINGS INC.
13M135	2021/06/15	PLAN SUBDIVISION			
13R22461	2021/06/18	PLAN REFERENCE			
FC328512	2021/06/28	NO SUB AGREEMENT		THE CORPORATION OF THE CITY OF KINGSTON	CONACHER KINGSTON HOLDINGS INC.
FC328513	2021/06/28	TRANSFER EASEMENT	\$1	CONACHER KINGSTON HOLDINGS INC.	THE CORPORATION OF THE CITY OF KINGSTON

FC329305	2021/07/07	TRANSFER EASEMENT	\$1	CONACHER KINGSTON HOLDINGS INC.	KINGSTON HYDRO CORPORATION
FC356034	2022/07/28	PLAN CORRECTION		ASSISTANT EXAMINER OF SURVEYS	

APPENDIX C

Arif Dhanani

From: Jenna Morley <jmorley@LN.Law>
Sent: Wednesday, November 20, 2024 2:46 PM
To: Mark Lauriola
Cc: Arif Dhanani; Avrom Brown; Michelle Hang; Althea Rowe
Subject: RE: Conacher

External sender

Mark,

I confirm that the purchaser has agreed to the terms and conditions below, including, without limitation, payment of the additional \$500,000.00 non-refundable deposit by noon on Wednesday, November 27, 2024.

As indicated below, the purchaser agrees to extend the closing date to noon on Wednesday, November 27, 2024, upon the same terms and conditions, with time to remain of the essence. We will await receipt of the formal extension agreement to reflect the further extension to January 6, 2025.

Jenna

From: Mark Lauriola <mlauriola@garfinkle.com>
Sent: November 20, 2024 2:04 PM
To: Jenna Morley <jmorley@LN.Law>
Cc: Arif Dhanani <adhanani@tdbadvisory.ca>; Avrom Brown <abrown@GARFINKLE.com>; Michelle Hang <mhang@garfinkle.com>
Subject: RE: Conacher

Hi Jenna,

Our client is agreeable to extend until noon on Wednesday November 27, 2024 on the basis that we receive the additional \$500,000.00 non-refundable deposit by noon on Wednesday November 27, 2024.

Further to the above, on the basis that we receive the additional \$500,000.00 non-refundable deposit, our client is agreeable to an extension until January 6, 2025 on the following extension terms:

- The Purchaser to have provided an additional \$500,000.00 non-refundable deposit by Noon on Wednesday November 27, 2024 to the Vendor or the Vendor's Solicitor
- The Original Deposit in the amount of \$250,000.00 shall be non-refundable
- Statement of Adjustments to remain as at today's Closing Date, November 20, 2024 and time continues to remain as of the essence
- The Purchaser acknowledges that the Vendor will not grant any further extensions beyond January 6, 2025

We need your reply by 3:00 PM today. Provided your client agrees to accept our client's extension terms, we will extend until noon on November 27, 2024 and then provide a formal extension agreement to be executed by all parties for the extension to January 6, 2025 on the basis that we have received the additional \$500,000.00 non-refundable deposit.

Look forward to hearing from you as soon as possible.

Regards,



Mark A. Lauriola
Associate Lawyer
Garfinkle Biderman LLP
Suite 801, 1 Adelaide Street East
Toronto, Ontario M5C 2V9
Tel No: 416-869-1234
DIRECT LINE: 416-869-7658
Fax No: 416-869-0547
E-mail: mlauriola@garfinkle.com
Website: www.garfinkle.com

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From: Jenna Morley <jmorley@LN.Law>
Sent: November 20, 2024 11:31 AM
To: Mark Lauriola <mlauriola@garfinkle.com>
Cc: Arif Dhanani <adhanani@tdbadvisory.ca>; Avrom Brown <abrown@GARFINKLE.com>; Michelle Hang <mhang@garfinkle.com>
Subject: RE: Conacher

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Mark,

I just got out of my meeting. They're asking for an extension until Wednesday because they can't come up with the money that quickly.

Jenna

From: Mark Lauriola <mlauriola@garfinkle.com>
Sent: November 20, 2024 11:26 AM
To: Jenna Morley <jmorley@LN.Law>
Cc: Arif Dhanani <adhanani@tdbadvisory.ca>; Avrom Brown <abrown@GARFINKLE.com>; Michelle Hang <mhang@garfinkle.com>
Subject: RE: Conacher

Hi Jenna,

Just left you a voicemail with respect to the payment of the additional non-refundable deposit. Please give us a call or send an email replying to our voicemail.

Regards,



Mark A. Lauriola
Associate Lawyer
Garfinkle Biderman LLP
Suite 801, 1 Adelaide Street East
Toronto, Ontario M5C 2V9
Tel No: 416-869-1234
DIRECT LINE: 416-869-7658
Fax No: 416-869-0547
E-mail: mlauriola@garfinkle.com
Website: www.garfinkle.com

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From: Jenna Morley <jmorley@LN.Law>
Sent: November 20, 2024 11:03 AM
To: Mark Lauriola <mlauriola@garfinkle.com>
Cc: Arif Dhanani <adhanani@tdbadvisory.ca>; Avrom Brown <abrown@GARFINKLE.com>; Michelle Hang <mhang@garfinkle.com>
Subject: Re: Conacher

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Would your client agree to payment by next Wednesday instead of Friday? The other terms are acceptable.

From: Mark Lauriola <mlauriola@garfinkle.com>
Sent: Wednesday, November 20, 2024 11:00:44 AM
To: Jenna Morley <jmorley@LN.Law>
Cc: Arif Dhanani <adhanani@tdbadvisory.ca>; Avrom Brown <abrown@GARFINKLE.com>; Michelle Hang <mhang@garfinkle.com>
Subject: RE: Conacher

Hi Jenna,

Further to your call with Avrom, please see below as our client is agreeable to an extension until January 6, 2025 on the following extension terms:

- The Purchaser to provide an additional \$500,000.00 non-refundable deposit by Noon on Friday November 22, 2024 to the Vendor or the Vendor's Solicitor
- The Original Deposit in the amount of \$250,000.00 shall be non-refundable
- Statement of Adjustments to remain as at today's Closing Date, November 20, 2024 and time continues to remain as of the essence
- The Purchaser acknowledges that the Vendor will not grant any further extensions beyond January 6, 2025

We need your reply by noon today. Provided your client agrees to accept our client's extension terms, we will extend for two days until noon on November 22, 2024 and then provide a formal extension agreement to be executed by all parties for the extension to January 6, 2025 on the basis that we have received the additional \$500,000.00 non-refundable deposit.

Look forward to hearing from you as soon as possible.

Regards,



Mark A. Lauriola
Associate Lawyer
Garfinkle Biderman LLP
Suite 801, 1 Adelaide Street East
Toronto, Ontario M5C 2V9
Tel No: 416-869-1234
DIRECT LINE: 416-869-7658
Fax No: 416-869-0547
E-mail: mlauriola@garfinkle.com
Website: www.garfinkle.com

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From: Jenna Morley <jmorley@LN.Law>
Sent: November 20, 2024 9:16 AM
To: Avrom Brown <abrown@GARFINKLE.com>
Cc: Arif Dhanani <adhanani@tdbadvisory.ca>; Mark Lauriola <mlauriola@garfinkle.com>
Subject: RE: Conacher

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Good morning, Avrom.

Please let me know as soon as you have instructions.

Jenna

From: Jenna Morley <jmorley@LN.Law>
Sent: November 19, 2024 4:40 PM
To: Avrom Brown <abrown@GARFINKLE.com>
Cc: Arif Dhanani <adhanani@tdbadvisory.ca>; Mark Lauriola <mlauriola@garfinkle.com>
Subject: Re: Conacher

Avrom,

Confirmed that the 45 day extension is being requested by the purchaser.

Jenna

Jenna Morley

Partner | Municipal, Land Use Planning & Development | Loopstra Nixon LLP

📞 437.291.9034

✉️ jmorley@LN.Law

📍 366 King St E, Suite 340,
Kingston, ON Canada K7K 6Y3

www.loopstranixon.com



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From: Avrom Brown <abrown@GARFINKLE.com>
Sent: Tuesday, November 19, 2024 10:48:03 AM
To: Jenna Morley <jmorley@LN.Law>
Cc: Arif Dhanani <adhanani@tdbadvisory.ca>; Mark Lauriola <mlauriola@garfinkle.com>
Subject: Conacher

Jenna

I just had a call from Herb Wisebrod who represents someone involved in the purchaser group requesting a 45 day extension.

Pls confirm and I will submit the request.

Otherwise, pls call me.

Thx



Avrom W. Brown*

Partner

*Services provided through a professional corporation

Garfinkle Biderman LLP

Dynamic Funds Tower, Suite 801

1 Adelaide Street East

Toronto, Ontario M5C 2V9

Tel No: 416.869.1234

DIRECT LINE: 416.869.7600

Fax No: 416.869.0547

E-mail: abrown@garfinkle.com

www.garfinkle.com

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APPENDIX D



Jenna Morley - Partner
Direct Line: 437-291-9034
Email: jmorley@LN.law

November 27, 2024

Garfinkle Biderman Barristers & Solicitors
Dynamic Funds Tower, Suite 801
1 Adelaide Street East
Toronto, Ontario M5C 2V9

Attention: Avrom W. Brown

Dear Sirs:

RE: Agreement of Purchase and Sale dated August 13, 2024 (the “**Purchase Agreement**”) between TDB Restructuring Limited (the “**Receiver**”) and 2349891 Ontario Inc. (the “**Purchaser**”) in respect of the lands municipally known as 311 Conacher Drive, Kingston (the “**Property**”)

As you know, we are the solicitors for the Purchaser in this matter. I am writing to confirm that the Purchaser is no longer in a position to provide the additional \$500,000.00 deposit requested by the Receiver in order to secure an extension of the closing date under the Purchase Agreement until January 6, 2025. Therefore, this letter is formal notice of the Purchaser’s inability to complete the transaction as scheduled today for the reasons outlined below.

As we have reiterated, the requirement to obtain the approval and vesting order (the “**Order**”), and the subsequent delay in the issuance thereof, has significantly prejudiced my client’s ability to secure financing for the acquisition of the Property.

It was mutually understood by the parties that the Order would be issued on October 9, 2024, being the motion date for the Order, in order to facilitate closing on October 16, 2024. In reliance of that date, the Purchaser obtained several commitment letters with prospective lenders, each with the standard expiry date of 10 to 20 days. When the issuance of the Order was delayed by over three weeks, the commitment letters expired.

In light of the delay, and the resulting loss of the remainder of the 2024 construction season, the prospective lenders are no longer interested in pursuing the financing. This is a regrettable outcome, but one that was caused directly by the delay in the issuance of the Order and its compounding impact on the ability to mobilize the site this year.

Be advised that the Purchaser does not consent to the release of the existing deposit in the amount of \$250,000 to the Receiver and maintains that the deposit should be returned to the Purchaser in full, given the extenuating circumstances. The Purchaser expressly reserves all of its legal rights to pursue remedies against the Receiver and the deposit-holder should the deposit be released to the Receiver without the Purchaser’s authorization.



If your client is amenable to proceeding with the January 6, 2025 closing date in the absence of a further deposit, my client would be pleased to discuss the terms of that arrangement.

Yours sincerely,

A handwritten signature in blue ink that reads "Jenna Morley".

Jenna Morley

APPENDIX E

Avrom Brown
Direct Line: 416-869-7600
e-mail: abrown@garfinkle.com

Michelle Hang
Direct Line: 416-869-7655
e-mail: mhang@garfinkle.com

November 27, 2024

Loopstra Nixon LLP
366 King Street East, Suite 340
Kingston, Ontario
K7K 6Y3

Attention: Jenna Morley

Dear Madam,


RE: TDB Restructuring Limited, solely in its capacity as court-appointed receiver and manager of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario and not in its personal capacity and without personal or corporate liability, sale of the Property to Crestmount Developments (Kingston) Limited pursuant to an agreement of purchase and sale made as of August 13, 2024

We acknowledge receipt of your letter dated November 27, 2024.

Based upon your client's default in not being able to close today which is the closing date, and not satisfying the condition to extend to January 6, 2025, this Agreement of Purchase and Sale is now at an end and it is our client's position that it is entitled to retain the deposit but our firm will not release the deposit until a court order is obtained allowing us to do so.

Accordingly, this transaction is now at an end.

Yours very truly,
GARFINKLE BIDERMAN LLP



Avrom Brown
AB:mh

APPENDIX F

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made the 13th day of August, 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

2349891 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 Rogers & Trainor Commercial Realty 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 Kingston 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 the later of: (i) three (3) days immediately following the date upon which the Approval and Vesting Order is granted, or the next Business Day, as applicable, or (ii) October 2, 2024, 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 Loopstra Nixon LLP;
- (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 [REDACTED] allocated as set out in paragraph 2.7.

2.5 Deposit

The Purchaser will deliver to the Vendor the sum of [REDACTED] (the "**Deposit**") within twenty-four (24) hours after the Acceptance Date. The Deposit shall be held in a non-interest bearing account of a Canadian chartered bank or trust company, in trust and to be disbursed in accordance with the following provisions:

- (a) if the purchase and sale of the Purchased Assets is completed on the Closing Date, then the Deposit shall be released from trust and applied towards payment of the Purchase Price;
- (b) if the purchase and sale of the Purchased Assets is not completed on the Closing Date for any reason other than the default of the Purchaser

hereunder, then the Deposit shall, subject to any Claim by the Vendor for damages under Section 2.12(d) herein, be released from trust and paid to the Purchaser in full satisfaction of all Claims incurred by the Purchaser as a result of such non-completion; or

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

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows:

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

2.7 Intentionally deleted.

2.8 Adjustment of Purchase Price

- (1) The Purchase Price shall be adjusted as of the Closing Date in accordance with the terms of this Agreement for any property taxes (including interest thereon, if applicable), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a Court supervised sale (the "**Adjustments**"). The Receiver shall prepare a statement of adjustments and deliver same to the Purchaser for its approval by no later than 3 Business Days prior to the Closing Date. If the amount of any Adjustments required to be made pursuant to this Purchase Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor as of the Closing Date based upon the best information available to the Vendor at

such time. When such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Vendor and the Purchaser shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the Parties the final cost or amount of an item shall be determined by an accountant or such other financial professional appointed jointly by the Vendor and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the Parties. All re-adjustments shall be requested in a detailed manner on or before the 60th day after the Closing Date, after which time neither party shall have any right to request re-adjustment.

- (2) As set out in Section 2.10(2) of this Agreement, on closing the Purchaser shall assume the Subdivision Agreement. The City of Kingston currently holds cash security for the obligations under this Subdivision Agreement in the amount of \$1,333,782.00 ("**Subdivision Agreement Security**"). On closing, the Vendor shall deliver a direction to the City of Kingston directing that the Subdivision Agreement Security, as it is able to be released by the City of Kingston, be paid to the Purchaser. On Closing, the Vendor shall be entitled to a credit on the statement of adjustments in the amount of the Subdivision Agreement Security.
- (3) 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

1. 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. One of the Permitted Encumbrances is the subdivision agreement registered as Instrument No. FC328512 ("**Subdivision Agreement**"). On Closing, the Purchaser will be required to execute an assumption agreement with the City of Kingston assuming the obligations of the Subdivision Agreement, substantially in the form as attached hereto as Schedule "E".

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 Approval and 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 Approval and 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:

2349891 Ontario Inc.
c/o Tribrik Management
119 Westcreek Drive, Suite 4
Vaughan, ON L4L 9N6
Attention: Mark Zanette

Telephone No: 905-738-2212 x4183
Email: mark@tribrik.com

with a copy to:

Loopstra Nixon LLP
366 King Street East
Suite 340
Kingston, ON K7K 6Y3
Attention: Jenna Morley
Telephone No: 437-291-9034
Email: jmorley@LN.law

and in the case of the Vendor, as follows:

TDB Restructuring Limited, Court-Appointed
Receiver of Kings Townhomes Limited (formerly Conacher Kingston Holdings
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:

Rogers & Trainor Commercial Realty Inc.
20 Gore Street, Suite 102
Kingston, ON K7L 2L1

Attention: Kostas Doulas
Email: kdoulas@rtcr.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, which consent will not be unreasonably withheld or unduly delayed; 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.

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.


6.23 Irrevocability

This offer shall be irrevocable by the Purchaser for a period of ten (10) days after execution by the Purchaser, after which time, if not accepted, this offer shall be null and void.

(Remainder of page intentionally left blank)

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

2349891 ONTARIO INC.

Per: 
Name: Mark Zanette
Title: Director

SCHEDULE "A"

Property

PIN Range Nos. 36061-0475 to 36061-0730

Lots 1 to 256, all inclusive, Plan 13M135

PIN Range Nos. 36061-0731 to 36061-0734

Blocks 257 to 260, all inclusive, Plan 13M135

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
FR143249	January 23, 1964	Municipal By-law	
FR210365	May 27, 1971	Municipal By-law	
FR3656866	October 31, 1996	Site Plan Control Agreement	City of Kingston
FR673613	October 1, 1997	Municipal By-law	
FC267976	September 18, 2018	Notice of Agreement	The Corporation of the City of Kingston
FC271067	November 5, 2018	Municipal By-law	The Corporation of the City of Kingston
FC328512	June 28, 2021	Subdivision Agreement	The Corporation of the City of Kingston
FC328513	June 28, 2021	Easement	The Corporation of the City of Kingston
FC328514	June 28, 2021	Easement	The Corporation of the City of Kingston
FC329305	July 7, 2021	Easement	Kingston Hydro Corporation
FC329306	July 7, 2021	Easement	Kingston Hydro Corporation
FR232889	February 5, 1973	Easement	The Public Utilities Commission of the City of Kingston and the Bell Telephone Company of Canada

Note: The listing of permitted encumbrances was based on a sampling only review of the pins and all of the pins were not individually reviewed. Accordingly, any prospective Purchaser must conduct their own title searches prior to submitting this offer to ascertain if there are any other undisclosed permitted encumbrances which were not evident from the sampling of pins.

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 August 13, 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 Kings Townhomes Limited (formerly Conacher Kingston Holdings Inc.);

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

"Interested Party" means a party participating in this Sale Procedure;

"Listing Agent" shall mean Rogers & Trainor Commercial Realty 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 for a period of ten (10) days after execution by the Purchaser;
- 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) Corporate Information. A Bid must be accompanied by 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) Intentionally deleted; 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 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. Intentionally Deleted

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.

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, as amended.

DATED this 13th day of August, 2024.
2349891 ONTARIO INC.

Per: 
Name: **Mark Zanette**
Title: **Director**

I have authority to bind the corporation.

Schedule "B"

PROPERTY

PIN Range Nos. 36061-0475 to 36061-0730

Lots 1 to 256, all inclusive, Plan 13M135

PIN Range Nos. 36061-0731 to 36061-0734

Blocks 257 to 260, all inclusive, Plan 13M135

SCHEDULE "E"
Assumption Agreement

THIS ASSUMPTION AGREEMENT is made

BETWEEN

**TDB RESTRUCTURING LIMITED,
solely in its capacity as Receiver of 311 Conacher Drive and not in its
personal or corporate capacity**

(the "**Assignor**")

- and -

LEGAL NAME OF PURCHASER

(the "**Assignee**")

- and -

THE CORPORATION OF THE CITY OF KINGSTON

(the "**City**")

WHEREAS:

Under the *Planning Act* (the "**Planning Act**"), the *City* is the approval authority for plans of subdivision in the City of Kingston.

Conacher Kingston Holdings Inc. ("**Conacher**") owns the property known municipally as 311 Conacher Street in the City of Kingston (the "**lands**").

Conacher applied to the *City* for approval of a plan of subdivision of the *lands* or a part of the *lands*.

The *City* imposed on *Conacher* a condition to the approval of the plan of subdivision a requirement that the *Assignor* enter into an agreement with the *City* dealing with such matters as the *City* considered necessary, including the provision of municipal and other services (a "**subdivision agreement**"), and to register a *subdivision agreement* against the *lands*.

The *City* and *Conacher* entered into a *subdivision agreement* dated March 31st, 2020 (the "**subdivision agreement**").

As required by section 1.12 of the *subdivision agreement*, Conacher deposited with the City the amount of \$1,333,782.00 as *security* for the performance of Conacher's obligations under the *subdivision agreement*. The City continues to hold \$1,333,782.00 as *security* under the *subdivision agreement*.

Section 1.24 of the *subdivision agreement* provides that Conacher shall not assign the *subdivision agreement* without the prior written consent of the City and that the *subdivision agreement* binds the parties' assigns.

The Ontario Superior Court of Justice appointed the Assignor as receiver of the *lands*.

The City approves of the Assignor's assignment of the *subdivision agreement* to the Assignee on the condition that the Assignor and the Assignee enter into an assignment and assumption agreement satisfactory to the City.

The Assignee agrees to be bound by the terms of the *subdivision agreement* through this assignment and assumption agreement (this "**assumption agreement**").

THEREFORE, the Assignor, the Assignee and the City agree as follows:

1. INTERPRETATION

- 1.1 In this *assumption agreement*, all italicized terms or expressions have the same meaning as defined terms and expressions in the *subdivision agreement* unless this *assumption agreement* expresses a contrary intention.
- 1.2 "**Include**", "**includes**" and "**including**" indicate that the subsequent list is not exhaustive.
- 1.3 Any words or abbreviations which have well-known professional, technical or trade meanings are used in this *assumption agreement* in accordance with such recognized meanings, unless expressly provided otherwise.
- 1.4 All dollar amounts are expressed in Canadian dollars and are payable in Canadian dollars.
- 1.5 A reference to any legislation, regulation, by-law, rule, or policy or to a provision thereof includes a reference to any legislation, regulation, by-law, rule, or policy enacted, made or passed in substitution thereof or amendment thereof.
- 1.6 Any reference to legislation includes all of the regulations made thereunder.

2. SATISFACTION

- 2.1 The *City* states that this *assumption agreement*, once signed by all of the parties, is to the *City's* satisfaction.

3. ASSIGNEE COVENANTS & ACKNOWLEDGEMENTS

- 3.1 The *Assignee* acknowledges and agrees with the *City* and the *Assignor* that:
- (a) the *Assignee* has received a copy of the signed *subdivision agreement* and is familiar with its terms, covenants and conditions and agrees to be bound by those terms, covenants and conditions;
 - (b) the *City* will have all the rights as against the *Assignee* which it would have under the *subdivision agreement* and at law if the *Assignee* was the *Owner* thereunder;
 - (c) the *Assignee* must perform all of the obligations of the *Owner* under and in accordance with the *subdivision agreement*; and
 - (d) the *Assignee* will have all the rights as against the *City* which it would have under the *subdivision agreement* and at law if the *Assignee* was the *Owner* thereunder.

4. CONDITIONS

- 4.1 By stating that this *assumption agreement* is to the *City's* satisfaction, the *City* does not acknowledge or approve of any of the terms of this *assumption agreement* or any other document made between the *Assignor* and the *Assignee* except for the *Assignee's* agreement with the *City* that the *City* will have all the rights as against the *Assignee* which would have under the *subdivision agreement* and at law if the *Assignee* were the *Owner* thereunder.
- 4.2 In the event of a conflict between the *subdivision agreement* and any other document made between the *Assignor* and the *Assignee* which may govern the *Assignee's* performance of its obligations under the *subdivision agreement*, the *subdivision agreement* will prevail.

5. NOTICE

- 5.1 Any *notice* or other communication required, desired, or permitted to be given by the *subdivision agreement* must be in writing and will be effectively given if given in

accordance with the requirements of the *subdivision agreement* and, in the case of *notice* to the *City* and to the *Assignor*, addressed in accordance with the provisions of the *subdivision agreement*, and, in the case of *notice* to the *Assignee*:

CONTACT INFORMATION.

6. BINDING EFFECT

6. This *assumption agreement* will enure to the benefit of and be binding on the parties to this *assumption agreement*, the successors and assigns of the *City*, and the permitted successors and assigns of the *Assignee*.

7. GENERAL

- 7.1 This *agreement* will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

- 7.2 This *agreement* may be executed in counterparts, including:

- (a) counterparts executed on paper and delivered by facsimile transmission or scanned and delivered by electronic transmission; or
- (b) counterparts in the form of an electronic record, executed electronically and delivered by electronic transmission;

and when so executed and delivered, will be deemed an original.

*** SIGNATURE PAGE TO FOLLOW ***

IN WITNESS WHEREOF the *parties* have executed this *agreement* as of the date written below.

SIGNED, SEALED AND DELIVERED
in the presence of

**THE CORPORATION OF THE CITY
OF KINGSTON**

We have the authority to bind the *City*.

Bryan Paterson, Mayor
Date:

John Bolognone, Clerk
Date:

[*ASSIGNOR*]

I/We have the authority to bind the
Assignor.

Name:
Title:
Date:

Name:
Title:
Date:

[*ASSIGNEE*]

I/We have the authority to bind the
Assignee.

Name:
Title:
Date:

Name:
Title:
Date:

CAMERON STEPHENS MORTGAGE CAPITAL
LTD.
Applicant

-and- CONACHER KINGSTON HOLDINGS INC. et al.
Respondents

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

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

SUPPLEMENTARY MOTION RECORD

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Lawyers for the Receiver,
TDB Restructuring Limited