

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

2292912 ONTARIO INC.

Applicant

-and-

2380009 ONTARIO LIMITED

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3
as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

AMENDED MOTION RECORD

(Returnable July 21, 2017)

July 17, 2017

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-8877-689-3872

Lawyers for the Receiver,
Collins Barrow Toronto Limited

SERVICE LIST

TO: BLANEY MCMURTRY LLP
Barristers and Solicitors
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Reeva M. Finkel
Tel: 416-593-3959
rfinkel@blaney.com

Tel: 416-593-1221
Fax: 416-593-5437

Lawyers for the Applicant,
2292912 Ontario Inc.

AND TO: HIMELFARB PROSZANSKI LLP
Barristers and Solicitors
480 University Avenue, Suite 1401
Toronto, ON M5G 1V2

Tom Arndt
Tel: 416-599-8080 Ext. 252
Fax: 416-599-3131
E-mail: tom@himprolaw.com

Lawyers for 2380009 Ontario Limited and
BuiltRite Technologies Inc.

AND TO: KAGAN SHASTRI LLP
Lawyers
188 Avenue Road
Toronto, ON M5R 2J1

David Winer (LSUC #39330D)
Tel: 416-368-2100 ext 225
Fax: 416-324-4202
E-mail: dwiner@ksllp.ca

Lawyers for 2383603 Ontario Inc. and William Fong

AND TO: **OSCAR C. WONG PROFESSIONAL CORPORATION**

Barristers and Solicitors
330 Highway 7 East, Suite 503
Richmond Hill, ON L4B 3P8

Oscar Wong (LSUC #17233L)
Tel: 905-881-2992
Fax: 905-881-8856
E-mail: ocwlaw@rogers.com

Lawyers for Atlantic Advantage Management Inc.
and Atlantic (HS) Capital Inc.

AND TO: **FRED TAYAR & ASSOCIATES**

Professional Corporation
65 Queen Street West
Suite 1200
Toronto, ON M5H 2M5

Fred Tayar
Tel: 416-363-1800
Fax: 416-363-3356
E-mail: fred@fredtayar.com

Lawyers for Eco Energy Home Services Inc.

AND TO: **MARIO IACOBELLI**

22 Goodmark Place, Unit 6
Toronto, ON M9W 6S2

AND TO: **GINA IACOBELLI**

22 Goodmark Place, Unit 6
Toronto, ON M9W 6S2

AND TO: **GIACOMO FRANCESCONI**

c/o Schneider Ruggiero LLP
Barristers and Solicitors
120 Adelaide St. West, Suite 1000
Toronto, ON M5H 3V1

Attention: George Ruggiero (gruggiero@srlawpractice.com)

AND TO: **G & L CARPENTERS LIMITED**

c/o Schneider Ruggiero LLP
Barristers and Solicitors
120 Adelaide St. West, Suite 1000
Toronto, ON M5H 3V1

Attention: George Ruggiero (gruggiero@srlawpractice.com)

AND TO: **MERCEDES FRANCESCONI**

c/o Schneider Ruggiero LLP
Barristers and Solicitors
120 Adelaide St. West, Suite 1000
Toronto, ON M5H 3V1

Attention: George Ruggiero (gruggiero@srlawpractice.com)

AND TO: **RENATO FRANCESCONI**

c/o Schneider Ruggiero LLP
Barristers and Solicitors
120 Adelaide St. West, Suite 1000
Toronto, ON M5H 3V1

Attention: George Ruggiero (gruggiero@srlawpractice.com)

AND TO: **LUCIEN CARPENTERS LIMITED**

c/o Schneider Ruggiero LLP
Barristers and Solicitors
120 Adelaide St. West, Suite 1000
Toronto, ON M5H 3V1

Attention: George Ruggiero (gruggiero@srlawpractice.com)

AND TO: **THE CORPORATION OF THE CITY OF MISSISSAUGA**

Corporate Services Department
City Clerk's Office
300 City Centre Drive
Mississauga, ON L5B 3C1

AND TO: **PROFILEX INC. (RETURNED BY POST OFFICE)**

c/o Ernesto Alvarez
594 Newpark Blvd.
Newmarket, ON L3X 2S2

AND TO: **GARTH LOW**
Barrister
70 Bond Street, Suite 200
Toronto, ON M5B 1X3

Tel: 416-365-9320
Fax: 416-365-0695
E-mail: garth.low@garthlow.com

Lawyers for Christophere Ho and
Ho and Associates Consulting Group Inc.

AND TO: **KOSKIE MINSKY LLP**
Barristers and Solicitors
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Jeff Van Bakel
jvanbakel@kmlaw.ca

Tel: 416-977-8353
Fax: 416-977-3316

Lawyers for Fan Xiao Bing a.k.a. Angela Fan

AND TO: **BAY POINT FINANCIAL SERVICES INC. (RETURNED BY COURIER)**
125 Park Ridge Drive
Kleinburg, ON L0J 1C0

AND TO: **DEPARTMENT OF JUSTICE**
The Exchange Tower
130 King St. W., #3400, P.O. Box 36
Toronto, ON M5X 1K6

Diane Winters
Email: diane.winters@justice.gc.ca

AND TO: **MINISTRY OF FINANCE**
Legal Services Branch
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Kevin J. O'Hara
Tel: 905.433.6934
Fax: 905.436.4510
E-mail: kevin.ohara@fin.gov.on.ca

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TAB 1

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

2292912 ONTARIO INC.

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APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

AMENDED NOTICE OF MOTION

Collins Barrow Toronto Limited, the Court-Appointed Receiver (the “**Receiver**”) over the assets and undertakings of 2380009 Ontario Limited (“**238**”) will make a Motion to a Judge presiding over the Commercial List on ~~a date to be determined at a chambers appointment on Thursday, July 6, Friday, July 21, 2017 at 9:30~~ 10:00 a.m., or as soon after that time as the matter can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard

in writing under subrule 37.12.1(1) because it is ;

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

orally.

THE MOTION IS FOR:

1. An Order:

(a) abridging the time for service and filing of the within Motion, declaring that service of this Motion has been validly effected on all necessary parties and declaring that this Motion is properly returnable on ~~July 6~~ July 21, 2017;

(b) with respect to the lease (hereafter, the “Lease”) between BuiltRite Technologies Inc. (“BuiltRite”) and 238009 Ontario Limited (“238”):

(i) authorizing the Receiver to issue a Notice of Immediate Termination of the Lease and declaring that, upon the delivery of same to BuiltRite and 238 that:

(1) the Lease is terminated effective as of the date of delivery of the Notice of Immediate Termination; and

(2) BuiltRite and 238 shall immediately deliver vacant possession of the property located at 2380 South Sheridan Way, Mississauga, Ontario (the “Property”) to the Receiver; or

(ii) in the alternative, confirming that the Notice of Termination of Lease issued by the Receiver on June 22, 2017 has been properly issued upon BuiltRite / 238 and that BuiltRite is required to deliver vacant possession of the Property in a proper state of cleanliness and repair on or before August 8, 2017;

- (c) confirming that on the date of termination of the Lease, whether as per paragraph 1.(b)(i) or 1.(b)(ii) herein, BuiltRite and 238 shall provide the Receiver with all necessary keys to the Property and, upon the Receiver's request, such other information as may be required by the Receiver for the purposes of ingress and egress to and from the Property and confirming that the Receiver is authorized to:
- (i) enter and take possession of the Property;
 - (ii) change any locks;
 - (iii) take possession and control of all property located within the Property and remove or dispose of any property located on the premises, subject to the rights of any secured parties or other third parties;
 - (iv) exclude BuiltRite from the Property;
 - (v) enlist the assistance of any local authorities or police in carrying out the terms of the Order;
- (d) confirming that, upon termination of the Lease, the rights of the Receiver at (c) above are not subject to any condition and may be exercised at the Receiver's discretion irrespective of any financing arrangements or potential financing arrangements which may have been made by BuiltRite/238;
- ~~(e) that BuiltRite Technologies Inc. ("BuiltRite") and 238 shall provide to the Receiver or its agents unfettered access to the property located at 2370 South Sheridan Way, Mississauga, Ontario (the "Property") upon request, including~~

~~during business hours, for the purpose of conducting tours of the Property by prospective purchasers or for conducting any other inspections or site visits as may be reasonably required by the Receiver in connection with the marketing and sale of the Property;~~

~~(f) that the Receiver and its agents are authorized to place signage on the Property advertising the Property for sale, provided such signage complies with all applicable laws and does not unreasonably physically interfere with BuiltRite's business operations;~~

~~(g) that 238, BuiltRite and any persons with notice of this Order cooperate with the Receiver and comply with the terms of this Order; ~~shall not disturb or remove any signage advertising the sale of the Property which may be placed on the Property premises, and shall grant access to the Property to the Receiver or its agents upon request being made by the Receiver or its agent, CBRE Limited ("CBRE");~~~~

~~(h) that within 2 calendar days of the date of this Order, BuiltRite and 238 shall provide the Receiver with the names and contact information, including e-mail and the cellular phone number for:~~

~~(i) a primary contact; and~~

~~(ii) two alternative contacts;~~

~~who may be contacted by the Receiver for the purpose of gaining access to the Property when required;~~

- ~~(i) that BuiltRite and 238 shall forthwith provide notice of both the Receiver appointment order dated February 7, 2017 (the "Appointment Order") and this Order to those employees of BuiltRite and/or 238 who will be present at the Property during regular business hours in the ordinary course;~~
- ~~(j) that in the event that no representative of BuiltRite or 238 is available to provide access to the Receiver when requested, that the Receiver is authorized, upon the passing of 24 hours from a request for access being made, to enter the Property for the purposes herein described;~~
- ~~(k) BuiltRite and 238 shall forthwith provide the Receiver with all necessary keys to the Property and, upon the Receiver's request, such other information as may be required by the Receiver for the purposes of ingress and egress to and from the Property;~~
- (l) approving the fees and disbursements of the Receiver and its legal counsel, Torkin Manes LLP;
- (m) that the Second Report, Third Report, and all Reports supplemental to the Second and Third Report and the activities of the Receiver outlined therein are approved;
and
- (n) Such further and other Relief as counsel may request and to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) Pursuant to a Receivership Order dated February 7, 2017 issued by the Honourable Justice Newbould of the Commercial List, Collins Barrow Toronto Limited was appointed as Court-Appointed Receiver over the assets and undertaking of 238. The Receivership Order was issued on the application of 2292912 Ontario Inc. (“229”), the holder of the first-ranking mortgage registered against title to the Property;
- (b) 238, an Ontario corporation, is the current registered owner of the Property;
- (c) The Property consists of 3.7 acres of land located in the City of Mississauga and includes a 78,964-square foot, free-standing industrial building (the “**Building**”). The Building comprises approximately 56,000 square feet of industrial area and 11,000 square feet of office space, together with a usable basement space;
- (d) BuiltRite is the sole occupant of the Property and carries on a manufacturing business;
- (e) Elias Mancebo (“**Mancebo**”) is the sole officer and director of BuiltRite. Mancebo is also recorded as the sole officer and director of 238. In other words, the tenant BuiltRite and its landlord 238 are under common control;

Sale Approval Order

- (f) On May 29, 2017, the Receiver moved for authorization to terminate the lease between BuiltRite and 238 and to list and market the Property for sale. By Order of the Honourable Justice Pattillo dated May 29, 2017 (the “**May 29 Order**”), the Receiver was, *inter alia*, authorized to:
- (i) enter into a listing agreement with CBRE and engage CBRE as the Receiver’s agent for the purposes of marketing the Property;
 - (ii) list the Property for sale and market the Property to prospective purchasers;
and
 - (iii) terminate the lease between BuiltRite and 238 on 45 days’ notice, at the end of which period vacant possession was to be delivered to the Receiver and the premises left in a proper state of cleanliness and repair;

Notice of Termination of Lease

- (g) On June 22, 2017, in accordance with the terms of the May 29 Order, the Receiver delivered 45 days’ notice of termination of the lease between BuiltRite and 238 (**the “Notice of Termination”**);
- (h) As per the Notice of Termination and terms of the May 29 Order, the Lease will be terminated and BuiltRite is required to deliver vacant possession of the Property in a proper state of cleanliness and repair on August 8, 2017 (the “**Notice Termination Date**”);

Access to Property Issues

- (i) Following ~~termination of the lease~~ issuance of the Notice of Termination, and in accordance with the terms of the May 29, 2017 Order, CBRE began its marketing process for the Property on June 26, 2017;
- (j) As detailed in the Second Report of the Receiver, the Receiver and its agent, CBRE, have been unable to obtain access to the Property for the purpose of providing tours of the Property to prospective purchasers. As a result of an inability to obtain the cooperation of BuiltRite/238 in gaining entry to the property, CBRE has already been required to cancel a number of tours scheduled with prospective purchasers;
- (k) As a result of the lack of cooperation received from 238/BuiltRite, the Receiver is presently unable to effectively market the Property;
- ~~(l) — The Receiver is of the view that neither the Receiver or CBRE will be able to gain the required access to the Property for marketing purposes without the assistance of this Honourable Court;~~

July 6, 2017 Chambers Appointment

- (m) This motion was originally before the Court at a 9:30 AM chambers appointment before the Honourable Justice Myers on July 6, 2017. As originally formulated, the Receiver sought an Order requiring BuiltRite/238 to provide access to the Property and cooperation to the Receiver in connection with the Receiver's efforts to market

the Property and show it to prospective purchasers during the 45 day notice period following issuance of the Notice of Termination;

- (n) The motion was opposed by BuiltRite/238, and adjourned to July 21, 2017;

Request for Termination prior to Notice Termination Date

- (o) BuiltRite continues to be in breach of certain terms of the Lease, as set out in the Receiver's Third Report. As a consequence, the Receiver delivered to BuiltRite/238 Notice of Breach advising of the particular defaults of Lease, the steps required to remedy same and of the Receiver's intention to, if such defaults are not cured by July 20, 2017, seek termination of the Lease on July 21, 2017, i.e. prior to the Notice Termination Date;

- (p) To date, the breaches set out in the Notice of Breach have not been remedied;

Status of Refinancing

- (q) The Receiver acknowledges being advised that BuiltRite/238 continue to seek financing;
- (r) Counsel for BuiltRite/238 advised the Receiver on July 14, 2017 that his clients have obtained financing that will close on July 20, 2017;
- (s) The current claimed financing is the latest in a series of supposedly imminently-closing financing arrangements which have been presented to the Receiver. Typically these arrangements have been first presented to the Receiver at or immediately prior to attendances in Court. Thus far, each claimed financing in

the series has contained a number of concerning features which have caused doubt on the part of the Receiver as to the realistic probability of the financing being completed and, thus far, no financing has been completed. The Receiver has similar concerns with respect to the currently claimed financing;

(t) The Receiver has not been provided with a copy of a firm and unconditional financing commitment or with evidence or information sufficient to give the Receiver confidence that a refinancing will in fact close prior to either July 21, 2017, or the Notice Termination Date, upon which vacant possession is to be delivered;

(u) This motion is accordingly premised on the assumption that no financing will take place. Should a refinancing occur, or should sufficient evidence of an unconditional refinancing transaction with an imminent closing be provided, this motion may be further amended as necessary to account for the change in circumstances;

Status of Property

(v) Should no refinancing occur, the Lease will be terminated and vacant possession is required to be delivered to the Receiver on, subject to any Order being issued for earlier termination of the Lease, the Notice Termination Date;

(w) Based on a visual inspection conducted on July 10, 2017 by the property manager retained by the Receiver, it appears that BuiltRite's operations are continuing in the

ordinary course and that BuiltRite has taken no steps to be in a position to provide vacant possession of the Property by the Notice Termination Date;

- (x) It appears to the Receiver that BuiltRite has no contingency plan in place that would enable BuiltRite/238 to deliver vacant possession of the Property on the Notice Termination Date if a refinancing is not completed. For this reason, the Receiver wishes to ensure that the rights of the Receiver upon Lease termination are unambiguous and that a protocol for taking possession of the Property at that time is established and authorized;

Approval of Conduct and Fees

- (y) The Receiver's conduct, as outlined in the Second Report, Third Report and all Reports Supplemental to the Second and Third Reports to Court is reasonable and ought to be approved by the Court;
- (z) Should the claimed financing proceed, approval of the fees and disbursements of the Receiver and its counsel will be required. If necessary, such fees will be addressed in a Supplementary Report filed by the Receiver in advance of the return of this motion;
- (aa) The fees and disbursements of the Receiver and its legal counsel, Torkin Manes LLP, are reasonable and ought to be approved by the Court
- (bb) Such further and other grounds as the lawyers may advise.

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

- (a) The Second Report, Third Report and any Supplemental Reports to the Second and Third Reports of the Receiver;
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

~~July 4~~ July 17, 2017

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart D. Thom
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-888-587-9143

Lawyers for the Receiver,
Collins Barrow Toronto Limited

TO: **THE SERVICE LIST**

RCP-E 37A (July 1, 2007)

2292912 ONTARIO INC.
Applicant

-
-and- 2380009 ONTARIO LIMITED
Respondent

Court File No. CV-16-011354-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AMENDED NOTICE OF MOTION

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart D. Thom
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-888-587-9143

Lawyers for the Receiver, Collins Barrow Toronto Limited

RCP-E 4C (May 1, 2016)

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

2292912 ONTARIO INC.

Applicant

- and -

2380009 ONTARIO LIMITED

Respondent

THIRD REPORT OF THE RECEIVER OF
2380009 ONTARIO LIMITED

July 17, 2017

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I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) ("**Court**") dated February 7, 2017 (the "**Appointment Order**"), Collins Barrow Toronto Limited ("**CBTL**") was appointed receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 2380009 Ontario Limited ("**238**" or the "**Debtor**") acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof. A copy of the Appointment Order is attached as Appendix "**A**" hereto.
2. On May 11, 2017, the Receiver issued its first report to the Court (the "**First Report**") for the purpose of, among other things, seeking an Order of the Court to authorize the Receiver to (i) enter into a listing agreement (the "**CBRE Listing Agreement**") with CBRE Limited ("**CBRE**") for the marketing for sale of the property known municipally as 2370 South Sheridan Way, Mississauga, Ontario (the "**Property**"); and (ii) terminate the lease between 238 as landlord and BuiltRite Technologies Inc. ("**BuiltRite**") as tenant (the "**Lease**"). A copy of the First Report, without appendices, is attached as Appendix "**B**" hereto.
3. On May 24, 2017, the Receiver issued a Supplemental Report to the First Report of the Receiver ("**Supplemental Report**") reporting on, among other things, the failure of representatives of BuiltRite and 238 to provide requested information to the Receiver and BuiltRite's failure to perform its obligations under the Lease. A copy of the Supplemental Report, without appendices, is attached as Appendix "**C**" hereto.

4. On May 29, 2017, Justice Pattillo made an Order, *inter alia*, (the "**May 29 Order**");

(a) that the Receiver was authorized to:

(i) enter into the CBRE Listing Agreement and engage CBRE as the Receiver's agent for the purposes of marketing the Property; and

(ii) list the Property for sale and market the Property to prospective purchasers; and

(b) that as of June 21, 2017 the Receiver was authorized to terminate the lease between BuiltRite and 238 on 45-days' notice, at the end of which period vacant possession was to be delivered to the Receiver and the premises left in a proper state of cleanliness and repair.

A copy of the May 29 Order is attached hereto as Appendix "D". A copy of the lease referenced in the May 29 Order (the "**Lease**") is attached hereto as Appendix "E".

5. To date, the Receiver has not taken possession of the Property.

6. The Receiver has been unable to effectively market the Property for the reason that the tenant, BuiltRite, has refused to grant the Receiver access to the Property for the purpose of showing same to prospective purchasers. On July 4, 2017, the Receiver issued its second report to the Court (the "**Second Report**") for the purpose of, *inter alia*, seeking an Order of the Court that each of 238 and BuiltRite fully cooperate with the Receiver and CBRE in allowing the Property to be viewed by prospective purchasers and related relief. A copy of the Second Report, without appendices, is attached hereto as Appendix "F".

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7. At a chambers appointment conducted on July 6, 2017, 238/BuiltRite indicated their intention to oppose the Receiver's motion and the motion was adjourned to July 21, 2017.
 8. In his Endorsement dated July 6, 2017 (the "**July 6 Endorsement**"), the Honorable Justice Myers questioned whether the Receiver was entitled to unfettered access to the leased premises while the Lease was in place and the tenant in occupation. The Receiver advised the Court that the Lease was not in good standing. Justice Myers' Endorsement of July 6, 2017 states that if the tenant is in breach of the Lease terms, the Receiver may take steps to terminate the Lease. A copy of the July 6 Endorsement is attached hereto as Appendix "**G**".
 9. The Appointment Order, First Report, the Supplemental Report, the Second Report, the May 29 Order and the July 6 Endorsement, together with related Court documents, have been posted on the Receiver's website, which can be found at <http://www.collinsbarrow.com/en/cbn/current-engagements-toronto/2380009-Ontario-Limited>.
 10. The purpose of this Third Report (the "**Third Report**") is to:
 - (a) report on certain activities of the Receiver since the date of the Second Report;
 - (b) provide information on the status of the Lease;
 - (c) provide information on the status of the Receiver's attempts to market the Property;
 - (d) provide information regarding 238/BuiltRite's financing efforts;

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- (e) seek an Order:
- a. authorizing the Receiver to issue a Notice of Immediate Termination of Lease ("**Notice of Immediate Termination**") and declaring that upon delivery of same to BuiltRite and 238:
 - i. the Lease is terminated effective as of the date of delivery of the Notice of Immediate Termination; and
 - ii. upon delivery of the Notice of Immediate Termination, BuiltRite and 238 shall immediately deliver vacant possession of the Property to the Receiver; or
 - b. in the alternative, confirming the Notice of Termination of Lease issued by the Receiver on June 22, 2017 has been properly issued upon 238/BuiltRite and that 238/BuiltRite are required to deliver vacant possession of the Property in a proper state of cleanliness and repair on or before August 8, 2017;
- (f) seek an Order confirming that upon the date of termination of the Lease, the Receiver is authorized to:
- a. enter and take possession of the Property;
 - b. change any locks;
 - c. take possession and control of all property located within the Property and remove or dispose of any property located on the premises, subject to the rights of any secured parties or other third parties;
 - d. exclude BuiltRite from the Property; and

-
- e. enlist the assistance of any local authorities or police in carrying out the terms of the proposed Order;
 - (g) seek an Order confirming that, upon termination of the Lease, the rights of the Receiver at (f) above are not subject to any condition and may be exercised at the Receiver's discretion irrespective of any financing arrangements or potential financing arrangements which may have been made or claimed to have been made by 238/BuiltRite;
 - (h) seek an Order authorizing the Receiver to place signage at the Property advertising the Property for sale provided that such signage does not physically interfere with the business operations of BuiltRite and is compliant with all relevant municipal by-laws; and
 - (i) seek the Court's approval of the Second Report and the Third Report, together with any supplemental reports thereto, and the Receiver's conduct and activities described therein.

II. TERMS OF REFERENCE

11. In preparing this Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "Information"). Certain of the information contained in this Third Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly

or partially comply with Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

12. Defined terms in this Third Report have, unless indicated otherwise herein, the same meanings as set out in the First Report, the Supplemental Report and the Second Report.
13. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.

III. STATUS OF LEASE

Notice of Termination of Lease

14. 238's primary asset is the Property. In view of the Lease, the Receiver is not, and has never been, in possession of the Property.
15. On June 22, 2017, in accordance with the May 29 Order, the Receiver issued a Notice of Termination of Lease to BuiltRite, giving BuiltRite 45 days' notice of the termination of the Lease and requiring BuiltRite to deliver vacant possession of the Property on or before August 8, 2017. A copy of the Notice of Termination of Lease, together with copies of the respective covering letters and registered mail receipts, is attached hereto as Appendix "H".

Notice of Breach

16. As a result of non-payment of July 2017 rent and other continuing breaches of the Lease terms, on July 6, 2017, the Receiver issued a Notice of Breach (the "**Notice of Breach**") to BuiltRite, the effect of which would, if the continuing defaults are not

cured, entitle the Receiver to terminate the Lease prior to the expiry of the 45-day notice period set out in the Notice of Termination of Lease referenced above. A copy of the Notice of Breach is attached hereto as Appendix "I".

17. The particular breaches of Lease referenced in the Notice of Breach are as follows:

- i) Non-payment of an amount equal to the HST payable on, and in addition to, monthly rental payments of \$18,000 for the period from January 15, 2014 to February 28, 2017; and
- ii) Non-payment of utilities, as shown on an account statement generated by Alectra Utilities and provided to the Receiver by BuiltRite via email on June 2, 2017 in the amount of \$375,072.46, as of that date.

18. As set out in the Notice of Breach, the aforementioned defaults may be remedied by:

- i) payment in full of all arrears indicated in paragraph 17i) above; and
- ii) provision of evidence of payment of those utilities arrears referenced at paragraph 17ii) above.

19. The Notice of Breach also references that continuing failure to pay the July 2017 rent by July 16, 2017 would constitute an additional default under the Lease.

20. On July 12, 2017, BuiltRite paid to the Receiver the July rent of \$18,000 plus HST.

21. As of the date of this Report, the remaining defaults of Lease have not been remedied.

HST Arrears

22. The Receiver has advised BuiltRite that BuiltRite does not appear to have paid any HST owing under the terms of the Lease on Lease payments (an amount equal to

\$2,340/month) since the commencement of the Lease in February 2014 up to the date of the Receiver's appointment. The total shortfall in combined rent plus HST owing under the terms of the Lease is equal to at least \$84,000 (the "HST Arrears").

23. At the return of the May 29, 2017 motion, counsel to 238/BuiltRite advised the Receiver that the HST Arrears were not in fact owing by BuiltRite as a result of set-offs which applied between 238 and BuiltRite. Counsel did not at that time have information as to the nature of the set offs alleged.
24. Following the May 29, 2017 motion date, counsel for the Receiver wrote to counsel for 238/BuiltRite and advised that in lieu of a suitable explanation and supporting documentation to substantiate the set offs claimed to offset the HST Arrears, that payment of HST Arrears to the Receiver was required. A copy of the May 31, 2017 correspondence sent by counsel for the Receiver is attached hereto as Appendix "J".
25. No explanation as to, nor any documentation supporting, any applicable principle of set off has ever been provided to the Receiver.
26. On June 6, 2017, Mr. Hernandez informed the Receiver that the HST Arrears were not owing as "we have filed under RC4616 Election or Revocation of an Election for Closely Related Corporations and/or Canadian Partnerships to Treat Certain Taxable Transactions as Having Been Made for Nil Consideration for GST/HST Purposes." The Receiver notes that if accepted by Canada Revenue Agency ("CRA"), a RC4616 Election allows related companies to jointly elect to treat certain taxable supplies between them as having been made for no consideration, and therefore HST is not required to be paid or collected between the parties.

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27. On June 7, 2017, the Receiver requested of Mr. Hernandez that the Receiver be provided with a copy of the RC4616 form that was filed in order that the Receiver could review same as well as proof (such as fax confirmation, e-mail receipt, etc.) that (i) the forms were submitted and (ii) CRA has accepted BuiltRite's/238's position. The Receiver further informed Mr. Hernandez that once the Receiver reviewed those documents, the Receiver could assess whether the Receiver agreed with BuiltRite's/238's position that the matter of the HST arrears was addressed. To date, the Receiver has not received the information requested. A copy of the June 5, 2017 to June 7, 2017 e-mail correspondence is attached hereto as Appendix "K".
28. In order to attempt to determine what was reflected in CRA's records, the Receiver made enquiries directly of CRA. On July 13, 2017, CRA advised the Receiver that a RC4616 Election was not registered in its system for either 238 or BuiltRite. However, the CRA representative advised that it is possible that an election form submitted as far back as March 2017 may not have been processed yet.
29. On July 14, 2017, CRA advised that a RC4616 Election had been filed by 238/BuiltRite on June 6, 2017 and that 238/BuiltRite are requesting that the effective date of the election be backdated to January 1, 2014. The application is being forwarded to CRA's Audit department for review as the requested effective date falls outside the normal eligible parameters. CRA filing guidelines state that an election is to be filed on or before the day on which the HST return for the reporting period that includes the effective date of the election is required to be filed. Based on this information, and unless CRA agrees otherwise, it appears that the full amount of the HST Arrears, which accrued entirely prior to the filing of the RC4616 Election, would

be unaffected by the filing of the election and are therefore overdue and outstanding under the Lease terms. At this time, it is unknown how long it will take CRA to process 238/BuiltRite's RC4616 Election and what CRA's final determination will be.

Request for Termination Prior to Expiry of 45-day Notice Period

30. The Notice of Breach sets out the Receiver's requirement that the breaches of the Lease Terms be remedied on or before July 19, 2017.
31. If the breaches of Lease set out herein are not remedied by July 19, 2017, the Receiver could issue Notice of Immediate Termination on or before the return date of July 21, 2017 and request court confirmation of the validity and effectiveness of same, together with related relief, facilitating the Receiver's taking possession of the Property.
32. The Receiver intends on filing a supplemental report to the Court on July 20, 2017 to inform the Court whether the breaches described herein have been remedied.

IV. STATUS OF LEASED PREMISES

33. Due to the above, it may be the case that the Lease is terminated prior to the expiry of the 45-day Notice period provided for in the Notice of Termination of Lease delivered to 238/BuiltRite on June 22, 2017 and terms of the May 29 Order.
34. However, should the Lease not be terminated earlier, the Lease will in any event be terminated on August 8, 2017 (the "**Notice Termination Date**"). On the Notice Termination Date, 238/BuiltRite are required to deliver vacant possession of the Property in a proper state of cleanliness and repair.

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35. Based on a visual inspection conducted on July 10, 2017 by the Property Manager retained by the Receiver, it appears that BuiltRite's operations are continuing in the ordinary course and that BuiltRite has taken no steps to be in a position to provide vacant possession of the leased premises on the Notice Termination Date.
36. BuiltRite appears to have no intention of vacating the Property. Between the swearing of the Affidavit of Marcelo Hernandez on May 29, 2017 (the date of the initial termination motion) and his Affidavit of July 6, 2017 (the day prior to the Receiver's motion for access to facilitate marketing efforts), BuiltRite appears, based on the statements of Mr. Hernandez, to have both hired new employees and moved additional equipment into the premises. Furthermore, Mr. Hernandez swore on May 29, 2017 that BuiltRite would require a "minimum 8 weeks to move out of the Property". A copy of the Affidavit of Marcelo Hernandez dated May 29, 2017, without exhibits, is attached hereto as Appendix "L". A copy of the Affidavit of Marcelo Hernandez dated July 6, 2017 (the "**July 6 Hernandez Affidavit**"), without exhibits, is attached hereto as Appendix "**M**".
37. It appears to the Receiver that BuiltRite has no contingency plan in place that would enable it to deliver vacant possession of the Property on the Notice Termination Date if a refinancing does not materialize. For this reason, the Receiver wishes to ensure that the rights of the Receiver upon the date of termination (be it the Notice Termination Date or such earlier date as this Court may approve) are unambiguous and that a protocol for taking possession of the Property upon termination is established and authorized.

V. STATUS OF FINANCING

38. The Receiver acknowledges that 238/BuiltRite continue to seek financing. Counsel for 238/BuiltRite advised on July 14, 2017 that his clients have obtained financing that will close on July 20, 2017. However, the current claimed financing is the latest in a series of supposedly imminently-closing financing arrangements which have been presented to the Receiver. Typically these arrangements have been first presented to the Receiver at or immediately prior to attendances in Court. Thus far, each claimed financing has contained a number of concerning features which have caused doubt on the part of the Receiver as to the realistic probability of the financing being completed and, thus far, no financing has been completed.
39. The Receiver was advised by counsel for 238/BuiltRite on July 14, 2017 that the Debtor anticipates that the latest proposed financing arrangement will close on July 20, 2017, one day prior to the scheduled appearance in court on the issues addressed in this Report.
40. The Receiver has not been provided with evidence of an unconditional financing commitment that is sufficient to give the Receiver any confidence that a refinancing will occur on July 20, 2017 or prior to the Notice Termination Date, upon which vacant possession of the Property is to be delivered. Given the history of similar representations from the Debtor respecting financing arrangements, none of which have materialized to date, the Receiver is of the view that until evidence of a firm and unconditional financing commitment is available the appropriate course of action is to proceed as though refinancing will not occur. Should terms of an unconditional financing arrangement be finalized and suitable evidence confirming same be

provided to the Receiver, the relief herein sought may require further amendment to address the change in circumstances.

VI. MARKETING OF THE PROPERTY

41. In order to effectively market the Property for sale, the Receiver requires assurance that the Property can be shown to potential purchasers during normal business hours. CBRE has informed the Receiver that access to the property on weekends is of no use since most prospective purchasers wish to conduct tours during normal business hours. BuiltRite has indicated that it is not willing to grant access to the Property for the purpose of conducting tours other than on weekends.
42. Accordingly, pending the July 21 motion, the Receiver has asked CBRE to not schedule tours of the Property until the Receiver has certainty that purchasers will be able to tour the Property during normal business hours. Without that certainty, the Receiver is concerned that the Receiver's marketing process will be ineffective in maximizing exposure to the market and affect potential realization on the Property.

VII. CONCLUSION

43. Based on the information set out in the Third Report, the Receiver respectfully requests that the Court make an Order on July 21, 2017:
- (a) authorizing the Receiver to issue a Notice of Immediate Termination and declaring that upon delivery of same to BuiltRite and 238, the Lease is terminated effective as of the date of delivery of the Notice of Immediate Termination, and BuiltRite and 238 shall immediately deliver vacant

possession of the Property to the Receiver with the related relief as set out in paragraph 10 herein; or

(b) in the alternative, an Order confirming that the Lease is terminated on the Notice Termination Date, together with related relief, as set out in paragraph 10 herein; and

(c) approving the Second Report and the Third Report, together with any Reports supplemental to these reports, and the Receiver's conduct and activities described therein.

All of which is respectfully submitted to this Court as of this 17th day of July, 2017.

COLLINS BARROW TORONTO LIMITED

In its capacity as Court Appointed Receiver
of 2380009 Ontario Limited and
not in its personal capacity


Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

APPENDIX A

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



HONOURABLE
JUSTICE

NEUBOUW

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TUES

DAY, THE

7th

DAY OF FEBRUARY, 2017

2292912 ONTARIO INC.

Applicant

- and -

2380009 ONTARIO LIMITED

Respondent

ORDER
(appointing Receiver)

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing COLLINS BARROW TORONTO LIMITED as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2380009 ONTARIO LIMITED (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Andrew Jones sworn April 29th, 2016 and the Exhibits thereto, the Supplementary Affidavit of Andrew Jones sworn May 4th, 2016, the Exhibit thereto, and the Further Supplementary Affidavit of Andrew Jones sworn September 27, 2016 and the Exhibits thereto and on hearing the submissions of counsel for 2292912 Ontario Inc. and 2380009 Ontario Limited, no one appearing for the parties on the Service List although duly

served as appears from the affidavits of service of Gail Fairhart sworn May 5, 2016 and Suzana Perik sworn September 29, 2016 and on reading the consent of COLLINS BARROW TORONTO LIMITED to act as the Receiver,

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in

that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including

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

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

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

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

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

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

SERVICE AND NOTICE

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

orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.collinsbarrow.com/en/toronto-ontario/current-engagements-toronto/2380009-Ontario>.

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

GENERAL

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

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

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

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

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 07 2017

PER / PAR:



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that COLLINS BARROW TORONTO LIMITED, the receiver (the "Receiver") of the assets, undertakings and properties of 2380009 Ontario Limited acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the _____ day of _____, 20__.

COLLINS BARROW TORONTO LIMITED,
solely in its capacity as Receiver of the Property,
and not in its personal capacity

Per: _____

Name: Daniel Weisz

Title: Senior Vice-President

2292912 ONTARIO INC.

Applicant

- and -

2380009 ONTARIO LIMITED

et al

Respondent

Court File No.: CV-16-011354-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(appointing Receiver)**

BLANEY McMURTRY LLP
Barristers and Solicitors
2 Queen Street East
Suite 1500
Toronto, Ontario
M5C 3G5

Reeva M. Finkel (LSUC#: 18762E)
Tel: (416) 593-1221
Fax: (416) 593-5437

Lawyers for the Applicant

APPENDIX B

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

2292912 ONTARIO INC.

Applicant

- and -

2380009 ONTARIO LIMITED

Respondent

FIRST REPORT OF THE RECEIVER OF
2380009 ONTARIO LIMITED

May 11, 2017

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I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) dated February 7, 2017 (the “**Appointment Order**”), Collins Barrow Toronto Limited (“**CBTL**”) was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of 2380009 Ontario Limited (“**238**” or the “**Debtor**”) acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached to this report as Appendix “**A**”.
2. The Appointment Order authorizes the Receiver to, among other things:
 - take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor [emphasis added];
 - receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor; and
 - market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

-
3. Paragraph 21 of the Appointment Order authorizes the Receiver to borrow monies to fund the exercise of the powers and duties conferred upon the Receiver by the Appointment Order from time to time, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as the Court may by further order authorize), which advance(s) are secured by way of a fixed and specific charge over the Property (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subordinate in priority to the Receiver's Charge (as defined therein) and the charges as set out in sections 14.06(7), 81.4(4) and 81.6(2) of the Bankruptcy and Insolvency Act.
 4. The Appointment Order referred to in this report, together with related Court documents, has been posted on the Receiver's website, which can be found at <http://www.collinsbarrow.com/en/cbn/current-engagements-toronto/2380009-Ontario-Limited>.

Purpose of First Report

5. The purpose of this first report of the Receiver (the "**First Report**") is to:
 - (a) report to the Court on the activities of the Receiver since the date of the Appointment Order to April 30, 2017;
 - (b) report to the Court on the "Commercial Lease" dated January 15, 2014 and its terms, which lease is entered into between the Debtor as Landlord and BuiltRite Technologies Inc. ("**BuiltRite**") as Tenant (the "**Lease**");

-
- (c) report to the Court on the appraisals the Receiver has obtained in respect of the Sheridan Property (defined below);
 - (d) report to the Court on the listing proposals received by the Receiver for the sale of the Sheridan Property;
 - (e) seek an order sealing Appendices “J”, “K”, “L” and “M” of the First Report;
 - (f) seek an order approving the Receiver entering into a listing agreement with CBRE Limited (“CBRE”) for the marketing for sale of the Sheridan Property;
 - (g) seek an Order that each of 238 and BuiltRite shall fully cooperate with the Receiver and CBRE in allowing the Sheridan Property to be viewed by prospective purchasers;
 - (h) seek an Order that the Lease is to be of no force and effect on the Lease Termination Date (defined below) and that BuiltRite is required to (i) vacate the Sheridan Property by no later than the Lease Termination Date and (ii) to leave the Sheridan Property in a proper state of cleanliness and repair upon vacating;
 - (i) provide the Court with a summary of the Receiver’s cash receipts and disbursements for the period February 7, 2017 to April 30, 2017;
 - (j) seek the Court’s approval of the First Report and the Receiver’s conduct and activities described herein; and
 - (k) seek an order approving the fees and disbursements of the Receiver and of the Receiver’s counsel, Torkin Manes LLP (“Torkin Manes”) to April 30, 2017.

Terms of Reference

6. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "Information"). Certain of the information contained in this First Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
7. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

II. BACKGROUND

8. 238 is an Ontario corporation incorporated on July 9, 2013 and appears to be a single purpose corporation holding legal and beneficial title to certain lands and a free standing industrial building located thereon at 2370 South Sheridan Way, Mississauga, Ontario (the "**Sheridan Property**").
9. According to a corporate search dated May 4, 2017, Elias Mancebo is the sole director, President, Secretary and Treasurer of 238. The Receiver understands

that Mr. Mancebo is a shareholder of 238. A copy of the corporate search for 238 is attached to this report as Appendix "B".

10. The building located on the Sheridan Property encompasses approximately 78,964 square feet, of which BuiltRite pays rent on the gross leasable area of approximately 67,000 square feet (which excludes the basement area). The building has been occupied by a single tenant, BuiltRite, since February 1, 2014 and BuiltRite has exclusive usage of the entire building including the basement area. The Receiver is not aware of any space in the building being occupied by 238 or any other party.
11. BuiltRite is an Ontario corporation, incorporated on January 7, 2014. According to a corporate search dated May 4, 2017 Elias Mancebo is the sole director, President, Secretary and Treasurer of BuiltRite. A copy of the corporate search for BuiltRite is attached to this report as Appendix "C".
12. The Applicant, 2292912 Ontario Inc. ("**229**"), is the registered holder of a first mortgage on the Sheridan Property, which mortgage was assigned from Computershare Trust Company of Canada to 229 on March 23, 2016 (the "**Mortgage**").
13. Due to the Debtor being in default of its obligations under the Mortgage and property taxes arrears in the amount of \$332,889.87 on the Sheridan Property as set out on a tax certificate dated October 8, 2015 from the City of Mississauga, following demands to rectify the breaches, a Notice of Application dated April 19, 2016 ("**Application**") was instituted by 229 seeking the appointment of the Receiver.

-
14. Following requests by the Debtor to 229, the hearing date of 229's Application was adjourned several times, with the last adjournment being to February 7, 2017. On February 7, 2017, the Court made the Appointment Order and CBTL was appointed as Receiver of 238.
 15. Torkin Manes is counsel to the Receiver.
 16. At a meeting held at the Sheridan Property on February 8, 2017 with Elias Mancebo and Marcelo Hernandez, who the Receiver understands is also a shareholder of 238, (the "**February 8 Meeting**"), the Receiver was advised by them that no financial statements had been prepared for 238 since 238's inception in 2014. Accordingly, the Receiver is administering the receivership on the assumption that the only assets of 238 are the Sheridan Property and amounts that may be owing to 238 by BuiltRite.
 17. Based on verbal advice provided to the Receiver at the above-noted meeting, the majority of the shares of BuiltRite are owned by the shareholders of 238. The sole director of each of 238 and BuiltRite is Mr. Mancebo.

III. RECEIVER'S ACTIVITIES TO DATE

Possession and Control

18. As at the date of the Appointment Order, the Sheridan Property was occupied by BuiltRite, and it continues to occupy the Building. The Receiver understands that the Lease governs BuiltRite's right of occupancy and, accordingly, the Receiver did not take possession of the Sheridan Property or change the locks to same. On February 10, 2017, the Receiver sent a letter to BuiltRite notifying it of the

Receiver's appointment and requesting that monthly payments in connection with its occupation of the Sheridan Property be remitted to the Receiver.

19. The Debtor, following requests by the Receiver, provided the Receiver with copies of bank statements for accounts that 238 held at Bank of Montreal ("**BMO**") and Royal Bank of Canada ("**RBC**"). The Receiver notified BMO and RBC of the appointment of the Receiver and instructed BMO and RBC to freeze the Debtor's accounts. The Receiver determined that the BMO account was overdrawn and the RBC account had a balance of \$1.09 as of January 31, 2017 and, accordingly, took no further action with respect to these bank accounts. The Receiver is not aware of any other bank accounts operated by 238.
20. As 238 and BuiltRite have the same mailing addresses, the Receiver was not able to effect a redirection of 238's mail. The Receiver has notified Mr. Hernandez that all mail addressed to 238 is to be forwarded to the Receiver.

Property Manager

21. In order to minimize the Receiver's involvement in, and costs of, addressing the day-to-day issues at the Sheridan Property, the Receiver entered into a property management agreement with Sterling Karamar Property Management ("**Sterling**") for Sterling to provide property management services at the Sheridan Property. A copy of the property management agreement is attached to this report as Appendix "**D**". The services provided by Sterling include regular site inspections and dealing with building maintenance issues.

Insurance

22. Prior to the appointment of the Receiver, 238 had placed insurance coverage for the Sheridan Property with Aviva.
23. The Receiver notified Canfinse Group Inc. ("Canfinse"), the insurance broker 238 advised was its broker, of the Receiver's appointment and confirmed that 238's policy with Aviva Insurance Company of Canada ("**Aviva**") was still in force. The insurance broker confirmed that premiums for the current policy period ending August 15, 2017 were paid by the Applicant prior to the receivership.
24. The Receiver requested that it be added to the Aviva policy as a named insured and that Sterling be added as an additional insured party to the policy. To date, the Receiver has not received confirmation from Aviva that these changes have been made to the policy. As a result, the Receiver has obtained a separate insurance policy that provides for liability insurance coverage for the Receiver and Sterling.
25. The Receiver has also been advised by Canfinse that Aviva will not renew 238's insurance coverage at the end of the policy period. Accordingly, the Receiver will seek alternative insurance coverage in due course.

Books and Records

26. At the February 8 Meeting, the Receiver discussed with Messrs. Hernandez and Mancebo the receivership and information the Receiver required from the Debtor. While some of the information requested at that meeting or subsequently has been provided to the Receiver, certain records have not been provided as of the date of the First Report, including the following:

-
- copies of the most recent notices of assessment and past two years of statutory remittances;
 - copies of the past two years' corporate tax returns;
 - copies of the 2014 and 2015 bank statements with cancelled cheques and bank reconciliations;
 - Certificate of Insurance confirming that BuiltRite has an insurance policy in place for the Sheridan Property;
 - confirmation that the outstanding balance on 238's Enbridge account for the Sheridan Property has been paid and proof of payment (as the Receiver wanted confirmation that the tenant was paying the utilities being consumed at the Sheridan Property);
 - copy of the most recent hydro bill/statement from Alectra Utilities (formerly Enersource); and
 - information as to whether the monthly payments of \$18,000 paid to Timbercreek Mortgage Servicing Inc. by BuiltRite, on behalf of 238 prior to the receivership, and made pursuant to a Direction re Funds that is attached to the copy of the Lease provided to the Receiver, were **inclusive, or exclusive**, of HST.

27. The Receiver's requests for this information were made by 5 separate e-mails to 238 sent on February 17 and 23, and March 1, 10, and 29, 2017. On April 7, and again on April 25, 2017, the Receiver sent a further letter by e-mail to both Messrs. Hernandez and Mancebo requesting the above information. As this information still has not been provided to the Receiver by 238, the Receiver intends to examine Mr. Hernandez and/or Mr. Mancebo under oath to obtain the information not otherwise received from other sources by the Receiver.

Property Taxes

28. A City of Mississauga tax statement dated March 2, 2017, shows property tax arrears exist in the amount of \$301,601.28 as of March 2, 2017. \$60,015 of the arrears is owed for 2017 taxes, approximately \$233,000 is owed for 2016 and 2015 taxes, and \$8,825 is owed for 2014 and prior years.
29. Prior to the appointment of the Receiver, 238's tax account had been assigned by the City of Mississauga to a bailiff, Barton & Company (Bailiffs) Ltd., which was empowered to seize any goods and chattels of the Debtor or to attorn rents to recover outstanding property taxes.
30. The Receiver has notified the City of Mississauga and the bailiff of the appointment of the Receiver and the resulting stay of proceedings against 238.
31. A further tax instalment of \$44,453.28 was payable on April 3, 2017 in respect of 2017 taxes. The Receiver has not made the April instalment and does not have funding to pay the outstanding prior periods' taxes of \$301,601.28 and any ensuing interest and penalties thereon.

IV. THE LEASE

32. On February 7, 2017, the Receiver requested and received from Mr. Hernandez a copy of the Lease. A copy of the Lease is attached to this report as Appendix "E".
33. As set out in the affidavit of Andrew Jones sworn April 29, 2016, 229 had minimal information as to the terms under which BuiltRite occupied the Sheridan Property. The Receiver is advised that between April 29, 2016 and February 2, 2017, as well as prior, no copy of a lease agreement was ever provided to 229.

34. The Lease, ultimately provided to the Receiver following its appointment, includes, among others, the following terms:

- the leased premises comprise 66,823 square feet (which encompasses essentially all of the Sheridan Property, excluding the basement);
- the initial term of the Lease is for a period of ten (10) years commencing February 1, 2014 and ending on January 31, 2024;
- provided the Tenant is “not currently” in default under any provision of the Lease, the Tenant has the right to renew the Lease for a term of ten (10) years consisting of 2 x five (5) year terms upon the same terms and conditions as contained in the Lease, save and except for the amount of Basic Rent;
- Basic Rent is payable at an aggregate rate of \$216,000 per year, payable \$18,000.00 monthly, from February 1, 2014 to January 31, 2019;
- Basic Rent will be payable at an aggregate rate of \$240,000 per year, payable \$20,000.00 monthly, from February 1, 2019 to January 31, 2024;
- the Tenant agrees to pay the Landlord the sum of \$7,500.98 per month as Additional Rent as a fixed monthly contribution by the Tenant on account of municipal property taxes during both the 10 year initial term and each of the two 5 year renewals, if renewed, however the \$7,500.98 monthly contribution is not payable during the first five (5) years of the Lease as it is “a reimbursement to leasehold improvements provided by the tenant”;
- all rents are subject to Harmonized Sales Tax (HST);

-
- the Tenant is responsible for the cleaning and maintenance of the Premises. The Landlord is liable for any personal injuries incurred by any person due to the Tenant's failure to repair, maintain or clean the Premises;
 - the Tenant is responsible to pay for its own water, electricity, gas, heating, telephone, fire alarm or security systems, and any rental equipment or other service supplying the Premises;
 - the Landlord is responsible and is to pay for all municipal realty taxes and local improvement rate assessed against the Premises and the Tenant is to make a fixed non variable financial contribution thereto as set out in the Lease;
 - the Tenant shall carry business insurance in its own name with respect to (i) third party or public liability claims, (ii) risk of business interruption, (iii) Tenant equipment, chattels, inventory, property and leasehold improvements, and (iv) plate glass damage; and
 - Notice to be provided under the Lease to the Landlord is to be given to: Mark Lathem LLP c/o 2380009 Ontario Limited at the mailing address 588 Edward Avenue, unit 49, Richmond Hill, Ontario L4C 9Y6. Notice to the Tenant is to be given to the Tenant at the Premises.

Capitalized terms in this paragraph, if not otherwise defined in this First Report, are as defined in the Lease.

35. The Receiver notes that many terms of the Lease do not appear to be typical of standard net net commercial leases and notes the following concerns with the lease terms:

Subject	Lease Term	Comment
Area Rent Payable on	Rent is paid on 66,823 sq. ft. (the gross leasable area)	Building consists of 78,964 sq. ft. The Lease does not refer to approximately 12,000 sq. ft. that comprises the basement which houses certain equipment, storage and eating areas used by the Tenant.
Base Rent	<p>\$18,000 a month (\$216,000 per annum) plus HST for first 5 years</p> <p>\$20,000 a month (\$240,000 per annum) plus HST for next 5 years</p>	<p>Base rent (\$3.23 per sq. ft. for first 5 years) appears to be below what market base rent was at date of the Lease.</p> <p>The Receiver is advised "market" base rent as at February 1, 2014 was in the range of \$4.75 per sq. ft. for comparable buildings.</p>
Renewal Options	If not in default, two (2) five (5) year options at base rent to be agreed plus HST	All other terms and conditions remain the same.
Realty Taxes Contribution During Initial 10 Year Term	Tenant to contribute towards realty taxes by paying a fixed amount of \$7,500.98 per month throughout the first 10 years	No payment on account of realty tax contribution in the first 5 years as a "reimbursement" to leasehold improvements provided by the Tenant.
Realty Tax Contribution during each of the two/five year renewal options	Tenant pays \$7,500.98 per month as a contribution towards realty taxes throughout both renewal periods (if exercised)	<p>It is to be noted that there is no increase in the annual Tenant realty tax contribution from \$7,500.98 throughout a potential 20 year period, while realty taxes are expected to continue to increase throughout the 20 year period.</p> <p>This means the effective net base rent received by the Landlord during the initial 10 year term will decrease each year, thereby impacting the return on investment since the "net return" to the Landlord erodes yearly as the gap between the \$90,011.76 (12 x \$7,500.98) annual realty tax</p>

Subject	Lease Term	Comment
		<p>contribution and the actual amount of tax paid by the Landlord widens.</p> <p>It is unusual that realty taxes in a single tenant building are not fully paid for by the Tenant or, at a minimum, the amount payable by the tenant is not indexed for inflation and/or has an incremental increase over the fixed initial contribution.</p>
Tenant Improvements	The Tenant is not to pay the fixed \$7,500.98 monthly contribution towards realty taxes in the first five years as a reimbursement to leasehold improvements by Tenant	<p>There is no covenant by the Tenant to expend at least \$450,000 in tenant improvements, nor are the tenant improvements spelled out. In addition, there is no requirement for the Tenant to (i) seek prior Landlord approval for any improvements to the Sheridan Property and (ii) provide evidence such improvements comply with all by-laws, rules and regulations, or to provide evidence that all permits have been obtained. There is also no obligation on the Tenant to provide confirmation all trades are paid in a timely manner.</p> <p>The result of the tenant leasehold improvements reimbursement is that for the first 5 years of the term, 100% of realty taxes fall on the Landlord thereby dramatically reducing the return on investment and net rent received.</p> <p>In the second 5 years, while rent increases by \$2,000 per month (\$24,000 per annum) as per the Lease, it is to be expected that base rental for a similar type building will increase as will realty taxes. The end result is that base rent will continue to not reflect market rent, and the cost to the Landlord of the balance payable by it for realty taxes will effectively reduce net base rent further below market rent and thus further erode the "true" net base rent received by the Landlord.</p>

Subject	Lease Term	Comment
Insurance	<p>Tenant pays for and carries in its name only (i) third party liability insurance (ii) business interruption (iii) tenant equipment, chattels, inventory, property and leasehold insurance; (iv) plate glass insurance</p>	<p>Tenant does not pay towards building insurance, third party liability insurance covering Landlord (even though Tenant occupies entire building), does not cover rental insurance in case of business interruption due to fire, substantive damage etc. (which means Landlord is responsible for mortgage payments but recovers no rental loss coverage unless it takes out its own insurance)</p> <p>These coverages are normally the responsibility of a Tenant in a true "net net" lease</p> <p>Failure to so provide means possible further reduction in net return on investment to an owner/Landlord.</p>
Cleaning and Maintenance	<ul style="list-style-type: none"> • Tenant responsible for cleaning and interior maintenance of premises • Landlord liable for any personal injuries to any party due to Tenant's failure to repair, maintain or clean its premises 	<p>Usual net lease provides that Tenant is liable for such injuries and Landlord is shown as a named insured on the Tenant's liability insurance policy.</p> <p>The usual provision is for the Tenant to be responsible for same. This is a reversal of onus onto the Landlord.</p>

36. The Receiver believes the lease terms are heavily weighted in favour of the Tenant and are not reflective of a usual net lease whereby the Landlord passes all operating expenses, realty taxes, insurance, maintenance etc. onto the Tenant as "Additional Rent".

37. The monthly base rent during the first five years, set at \$18,000 plus HST, matches the \$18,000 monthly payments due by the Landlord to the first mortgagee, rather than having been set to reflect current and anticipated future base rental rates.

-
38. Given the fact both the Landlord and Tenant have the same director and the majority of the shares of 238 and BuiltRite are owned by Messrs. Mancebo and Hernandez, it appears that this lease was not treated as an arms-length negotiated lease reflecting market rate and usual net lease terms.
 39. As a result of the aforementioned lease terms, the Receiver was of the preliminary view that the Lease is balanced heavily in favour of BuiltRite, to the detriment of 238 and its creditors.
 40. In order to determine whether the Receiver's impression was correct, the Receiver made enquiries to determine whether or not the Lease was negotiated in an arms-length manner by the landlord and tenant.
 41. On March 16, 2017, the Receiver asked Mr. Hernandez to advise the Receiver of the name of the lawyer who acted on behalf of BuiltRite at the time the lease with 238 was executed. Mr. Hernandez responded that the lawyer who acted "on our file for the lease is Matthew Joseal Igbinosun". The Receiver was not familiar with Mr. Igbinosun and "googled" that name. Based on the results that appeared on "Google", it appears to the Receiver that Mr. Igbinosun passed away in or about September 2014.
 42. On April 6, 2017, Torkin Manes wrote to Mr. Lathem who was named as the person to receive notice on behalf of 238 in connection with the Lease, and requested certain information from Mr. Lathem in connection with both the negotiation and finalization of the Lease. Torkin Manes reiterated its request on April 12 and 18, 2017. Copies of Torkin Manes' correspondence of April 6, 12 and 18 are attached to this report as Appendix "F".

43. On April 18, 2017, Mr. Lathem advised Torkin Manes that he had changed law firms¹ and that *"This file would be in storage and it may not have a separate file per say (sic). I have yet to determine that."* Further correspondence between Torkin Manes and Mr. Lathem ensued, in which Torkin Manes advised Mr. Lathem that the Receiver was prepared to wait until 5 p.m. on April 28th to receive the requested information, after which if not provided, the Receiver would commence the process to examine him under oath and to examine his file materials. A copy of the April 18, 2017 correspondence between Mr. Cohen of Torkin Manes and Mr. Lathem is attached to this report as Appendix "G".

44. On April 24, 2017, Mr. Lathem responded to Torkin Manes and, inter alia, advised that:

"We have no file for this matter.", "There is no electronic version of the lease on our hard drive which would be there if we had actually prepared it.", and "I have no recollection of preparing a lease for either of these parties."

A copy of the April 24, 2017 correspondence from Mr. Lathem is attached to this report as Appendix "H".

45. On April 26, 2017, Mr. Lathem further wrote to Torkin Manes and advised that he had spoken to the client (238) regarding the lease and that:

¹ Mr. Lathem is currently with Himelfarb Proszanski, the counsel which attended in court on behalf of 238 at the hearing of the Application for the appointment of the Receiver.

“They have confirmed that the lease was drawn by another lawyer and that we had no involvement this matter other than (sic) they used our address (without asking). I have also been advised that they provided the name of the lawyer to the receiver.”

A copy of the April 26, 2017 correspondence from Mr. Lathem is attached to this report as Appendix “I”.

46. The correspondence from Mr. Lathem indicates that, despite insertion of Mr. Lathem’s name and address in the Notice section of the Lease, he was never involved with the Lease. If this is correct, and based on Mr. Lathem’s comments that “I have also been advised that they provided the name of the lawyer to the receiver”, it appears the Lease was drawn by Mr. Igbinosun for both the Landlord and the Tenant.
47. The fact that the lease terms are not in keeping with usual net lease terms, including no realty tax contribution for the first five years and a fixed \$7,500.98 monthly realty tax contribution for the entire 10 year term and each 5 year renewal (10 years) if exercised, means the commercial value of the Sheridan Property on a sale is significantly depressed if the Lease remains in place.
48. To date, the Receiver has not acknowledged to BuiltRite that the Receiver accepts the Lease as a valid lease agreement. Notwithstanding, the Receiver notes that as of the date of this Report, BuiltRite is in breach of certain terms of the Lease, as follows:

Lease Obligation	Breach of Covenant
<p><i>Harmonized Sales Tax</i> The Tenant acknowledges that all rents are subject to a Harmonized Sales Tax (HST) under the Excise Tax Act of Canada.</p>	<p>HST has not been paid on the monthly lease payments of \$18,000 since inception of the lease to date. (Alternatively, if the \$18,000 is intended to include HST, BuiltRite has been paying rent of \$15,929.20, rather than the rent of \$18,000 prescribed under the Lease.) This means there is a shortfall in payment of at least \$82,832 in the aggregate for 40 months.</p>
<p><i>Insurance</i> The Tenant shall carry business insurance in his own name...The Tenant shall provide the Landlord with proof of the aforesaid Tenant's insurance forthwith upon demand of the Landlord.</p>	<p>On February 13, 17 and 23, March 1, 10 and 29, and April 7 and 25, 2017, the Receiver requested from the Tenant a Certificate of Insurance as proof of its insurance coverage. To date, no proof has been provided.</p>
<p><i>Utilities</i> The Tenant shall be responsible to pay for his own water, electricity, gas, heating, telephone, fire alarm or security systems, and any rental equipment or other service supplying the Premises</p>	<p>Enbridge has advised the Receiver that the gas bill was in arrears as of February 13, 2017, in the amount of \$10,517.81. The Tenant has failed to pay gas bills issued since the date of the Appointment Order. (In order to ensure that gas would be delivered to the Sheridan Property, the Receiver has paid \$3,585.59 to Enbridge in respect of charges incurred since February 7, 2017.) Despite requests made to BuiltRite by the Receiver regarding the status of the other utilities, BuiltRite has failed to provide the information to the Receiver</p>

49. As set out in Paragraph 66 of this report, the Receiver is seeking an Order authorizing it to terminate the Lease. Accordingly, the Receiver has taken no steps at this time to note the Lease in default, nor has the Receiver attempted to renegotiate the terms of the lease with BuiltRite.

V. APPRAISALS

50. In order to assist the Receiver to assess offers to be received during the proposed sales process, the Receiver retained Altus Group Limited (“**Altus**”) and Colliers International Realty Advisors Inc. (“**Colliers**”) to each provide the Receiver with their appraisals of the current market value of the Sheridan Property. As Altus and Colliers had both previously provided appraisals of the Sheridan Property to 229 (or its administrator), the Receiver believed it would be cost efficient to obtain appraisals from these parties as they were familiar with the Sheridan Property.
51. In view of the atypical terms noted in the Lease, the Receiver also asked the appraisers to provide for the Sheridan Property:
- an estimated current net market rental rate;
 - a current appraised value based on the existing terms of the Lease; and
 - a current appraised value assuming a lease was in place that reflected the estimated net market rental rate in (a) above.
52. Colliers’ appraisal, dated March 15, 2017, provides its estimate of the current market value of the Sheridan Property as at March 6, 2017. The Colliers appraisal states that a **negative aspect** of the Sheridan Property is that “The property is currently encumbered by a non-arms-length lease that is assumed to be enforceable should the building ownership be transferred. The non-arms-length lease is currently at rates considered to be under prevailing market rates, and has provision whereby the landlord pays municipal taxes for the first 5 years of the term, which is not considered typical of market lease agreements.” [*emphasis added*].

A copy of the Colliers appraisal is attached to this report at Confidential Appendix "J".

53. The Altus' appraisal, dated May 1, 2017, provides its opinion of the current market value of the Sheridan Property as of May 1, 2017. In its appraisal, Altus indicates that **BuiltRite's net rental rate is significantly below market and that there is an under recovery of property taxes.** A copy of the Altus appraisal is attached to this report at Confidential Appendix "K".
54. A summary of the Altus and Colliers estimated net market rental rates and appraised values of the Sheridan Property is attached to this report as Appendix "L".
55. As set out in Confidential Appendix "L", both the Colliers and Altus appraisals estimate that the current market value of the Sheridan Property with the Lease in place would **be substantially lower than if a lease with market rent and usual net lease terms was in place.** In its appraisal, Colliers indicates that its market value appraisal of the Sheridan Property with the Lease in place
- "has been adjusted to account for the **below market rent** *[emphasis added]*, and the provisions that the tenant does not pay taxes for the first five years (after which it only pays a portion) and that the tenant does not pay insurance as a reimbursable expense."

VI. LISTING PROPOSALS

56. The Appointment Order authorizes the Receiver to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any

part or parts thereof, and negotiating such terms and conditions of sale as the Receiver, in its discretion, may deem appropriate.

57. In early March 2017, the Receiver invited three realtors, Avison Young, CBRE and Cushman Wakefield, to each submit listing proposals for the marketing and sale of the Sheridan Property.
58. In view of the atypical terms contained in the Lease, the Receiver requested that the realtors, in their listing proposals, include (a) the proposed listing price with the Lease in place and (b) if the realtor was of the view that the terms of the Lease do not reflect fair market rental terms, the proposed listing price assuming a lease in place that is reflective of fair market terms.
59. On March 28, 2017, each realtor attended at the Receiver's offices and presented their listing proposals. A representative of 229 attended the presentations as the Receiver believed that such attendance would assist the Receiver obtain the first mortgagee's support of the sales process to be pursued by the Receiver, including its willingness to make further advances to the Receiver by way of Receiver's Certificate to allow the Receiver to carry out its mandate.
60. A summary of the (3) listing proposals is attached to this report as Confidential Appendix "M". Avison Young, CBRE and Cushman Wakefield each concluded that the selling value of the Sheridan Property would be significantly greater if a lease was in place that reflected market rent and usual net lease terms. Of greater note, **each of the proposals stated that the highest value for the Sheridan Property would be achieved by selling the Sheridan Property on a vacant basis, with potential realizations achieving significantly greater returns than the**

realization expected if the Sheridan Property was sold with the Lease in place.

61. All three listing brokerages the Receiver met with were familiar with the Sheridan Property. As set out in Appendix "M", the commission rates payable on a sale of the Sheridan Property range between 3% and 4%, with certain of the rates dependent on whether a co-operating brokerage is involved with the sale.
62. Taking into account the listing proposals received, the presentations of the respective realtors, the commission rates to be charged and the Receiver's subsequent discussions, the Receiver recommends to the Court that the Receiver be authorized to enter into a listing agreement with CBRE for the following reasons:
 - i) CBRE's familiarity and prior experience with the Sheridan Property having been involved with the sale of the Sheridan Property to 238;
 - ii) the commission rate of 3% that CBRE has advised the Receiver it will charge is equal to the other rates proposed if a sale is completed without a co-operating brokerage involved. In the event of a sale with a co-operating brokerage, CBRE's commission rate would be 3.85%; and
 - iii) 229 is supportive of the Receiver engaging CBRE. The listing agreement will provide that the Sheridan Property be listed with no fixed price and seek offers from interested parties by a set date. A copy of the proposed listing agreement with CBRE is attached to this report as Appendix "N".

63. The Receiver notes that prior to listing the Sheridan Property for sale, it will seek a Phase One Environmental Site Assessment which will be made available for potential purchasers.

VII. THE LEASE AND THE SALE OF THE SHERIDAN PROPERTY

64. Included in the listing proposals provided by CBRE, Avison Young and Cushman Wakefield, and/or in their presentations to the Receiver, the following observations of the terms and conditions of the Lease were made by some or all of the real estate brokers:

- the current and future rental rates in the Lease **do not reflect market rates [emphasis added]**;
- the Tenant's contribution to property taxes is below the actual cost of current property taxes;
- it is not typical for the Landlord to be liable for personal injuries incurred by any person due to the Tenant's failure to repair, maintain or clean the premises and this creates an unquantifiable liability to the Landlord; and
- the Landlord is responsible for effecting repairs on items that are typically the Tenant's responsibility.

Copies of excerpts from the Avison Young and CBRE listing proposals setting out their respective comments on the Lease terms are attached to this report as Appendix "O".

65. As set out earlier in this report, and taking the above into account, the Receiver is of the view that the Lease is a significant detriment to achieving the highest

realization from the Sheridan Property and, in turn, is detrimental to the positions of all of 238's creditors.

66. In order to maximize the true realizable value of the Sheridan Property, the Receiver needs the ability to provide vacant possession to a purchaser on closing, if the purchaser so requires. Accordingly, the Receiver is seeking an Order from the Court (the "**Lease Termination Order**") that the Lease is to be of no force and effect 60 days following the date of the Receiver providing written notice to BuiltRite to vacate the Sheridan Property (the "**Lease Termination Date**") and that BuiltRite is required to (i) vacate the Sheridan Property by no later than the Lease Termination Date and (ii) to leave the Sheridan Property in a proper state of cleanliness and repair upon vacating.
67. The Receiver also requires an Order that both 238 and BuiltRite fully cooperate with the Receiver, and the listing agent and brokers wishing to show prospective purchasers through the Sheridan Property. In this regard the Receiver intends on providing each of 238 and BuiltRite with notice at least 24 hours prior to any visits.
68. The Receiver recognizes that for vacant possession of the Sheridan Property to be provided, the tenancy of BuiltRite will have to be terminated, which will clearly impact the business and employees of BuiltRite.
69. Having said that, the Receiver is concerned that if the Lease Termination Order is not granted, a purchaser could purchase the Sheridan Property at a purchase price reflective of the terms of the Lease which, based on the information contained in Confidential Appendix M, would represent a much lower realization value for the Sheridan Property. In the event current lease defaults are not cured or new

defaults arise, the Purchaser, if it terminated the Lease, would enjoy the ability to either enter into a lease for the Sheridan Property at current market rent or to sell the Sheridan Property without the economic burden that exists under the Lease. In such case all upside economic benefit would go to the Purchaser, as opposed to those proceeds being available to 238's creditors.

70. In addition to the above, as previously set out herein, the Receiver understands that the shareholders of 238 own the majority of the shares of BuiltRite, which can be construed as making BuiltRite's occupation of the building as "owner occupied". Therefore the corporate organization which currently exists effectively will, if the Lease remains in place when the Sheridan Property is sold, and based on the information set out in Confidential Appendix "M", enable the shareholders of BuiltRite to continue to economically benefit from very favorable lease terms, to the detriment of 238's creditors.
71. It is to be noted that the Applicant's mortgage is in priority to the Lease. No notice of lease was registered on title.
72. As set out in the material filed by the Applicant in support of the Appointment Order, the Applicant delivered a notice to BuiltRite attorning rent payable by it to the Landlord. The Receiver provided BuiltRite with a copy of the Appointment Order. Accordingly, BuiltRite is and was previously aware of the actions of the Applicant to seek to take all steps it deemed necessary to realize on its loan. In addition, the Receiver has been advised by counsel to the Applicant that there is no non-disturbance agreement in effect between the Applicant and BuiltRite.

VIII. SECURED OR PRIORITY CLAIMS

73. The following is a list of the PPSA claims registered against 238 in the Personal Property Security Registration System ("PPSA") as of May 1, 2017 and in the Land Registry ("PIN") as of February 8, 2017. These claims have not been audited or verified by the Receiver:

Name of Registrant	Amount	PPSA	PIN
2292912 Ontario Inc.	\$3,394,878	√	√
2383603 Ontario Inc. / Atlantic (HS) Capital Inc. / Atlantic Advantage Management Inc.	\$2,600,000		√
Bay Point Financial Services Inc.	\$350,000	√	√
ECO Energy Home Services Inc.	Unknown	√	
G & L Carpenters Limited	Unknown		√
Giacomo Francesconi	\$320,000		√
Lucien Carpenters Limited	Unknown	√	√
Mario Iacobelli / Gina Iacobelli	\$420,000		√
Mercedes Francesconi	Unknown		√
Renato Francesconi	Unknown		√
William Fong	Unknown		√

The Receiver is in the process of seeking Torkin Manes' opinion on the validity and enforceability of the security held by 229.

74. The Receiver is also aware of a judgment against 238 in favour of Atlantic (HS) Capital Inc., Atlantic Advantage Management Inc. and 2383603 Ontario Inc. for which a writ of execution has been filed with the office of the Sheriff showing a judgement against both 238, BuiltRite and Elias Mancebo, in the amount of \$2,911,813.85.

Deemed Trust Claim of Canada Revenue Agency ("CRA")

75. The Receiver contacted CRA to inquire as to the status of the Debtor's statutory filings. CRA informed the Receiver that 238 has not filed any HST returns since

October 31, 2014. Accordingly CRA may have a deemed trust claim against 238 in respect of unremitted HST on rent collected since at least November 2014.

76. Mr. Hernandez advised the Receiver that 238 does not have any employees. The Receiver has confirmed with CRA that 238 does not have a payroll account registered with CRA.

IX. STATUTORY NOTICES AND REPORTS

77. Attached to this report as Appendix "P" is the Notice and Statement of Receiver prepared pursuant to Sections 245(1) and 246(1) of the Bankruptcy and Insolvency Act.

X. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

78. Attached to this report as Appendix "Q" is the Receiver's Interim Statement of Receipts and Disbursements for the period February 7, 2017 to April 30, 2017 (the "R&D"). During this period, receipts were \$111,010 while disbursements were \$64,946, resulting in a net cash surplus of \$46,064.
79. Included in the Receiver's cash receipts is \$75,000 the Receiver borrowed from 229, in respect of which the Receiver has issued to 229 Receiver Certificate No.1, dated February 28, 2017.

XI. PROFESSIONAL FEES

80. The Receiver's accounts total \$53,332.27 in fees and disbursements plus HST of \$6,933.20 for a total amount of \$60,265.48 for the period ending April 30, 2017 (the "Receiver's Accounts"). A copy of the Receiver's Accounts, together with a

summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Daniel Weisz sworn May 11, 2017 that is attached to this report as Appendix "R".

81. The accounts of the Receiver's counsel, Torkin Manes, total \$31,467.77 in fees and disbursements and \$4,048.31 in HST for a total of \$35,516.08 (the "**Torkin Manes Accounts**") for the period ending April 30, 2017. A copy of the Torkin Manes Accounts, together with a summary of the personnel, hours and hourly rates described in the Torkin Manes Accounts, supported by the Affidavit of Barry A. Cohen, Q.C. sworn May 11, 2017 is attached to this report as Appendix "S".

XII. CONCLUSION

82. The Receiver respectfully requests that the Court grant an Order which provides for the following:
- (a) approving the First Report and the conduct and activities of the Receiver as set out therein;
 - (b) approving the Receiver entering into a listing agreement with CBRE for the marketing for sale of the Sheridan Property;
 - (c) directing each of 238 and BuiltRite to fully cooperate with the Receiver and CBRE, in allowing the Sheridan Property to be viewed by prospective purchasers;
 - (d) directing that the Lease is to be of no force and effect on the Lease Termination Date and directing BuiltRite to (i) vacate the Sheridan Property by no later than the Lease Termination Date and (ii) to leave the

Sheridan Property in a proper state of cleanliness and repair upon vacating;

- (e) sealing Appendices "J", "K", "L" and "M" of the First Report;
- (f) approving the R&D; and
- (g) approving the Receiver's Accounts and the Torkin Manes Accounts.

All of which is respectfully submitted to this Court as of this 11 day of May, 2017.

COLLINS BARROW TORONTO LIMITED

In its capacity as Court Appointed Receiver
of 2380009 Ontario Limited and
not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

APPENDIX C

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

2292912 ONTARIO INC.

Applicant

- and -

2380009 ONTARIO LIMITED

Respondent

SUPPLEMENTAL REPORT TO THE
FIRST REPORT OF THE RECEIVER OF
2380009 ONTARIO LIMITED

May 24, 2017

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IV. CONCLUSION 5

Appendices

May 16 Letter A

Letter to BuiltRite B

May 19 email (without appendices) C

I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) dated February 7, 2017 (the “**Appointment Order**”), Collins Barrow Toronto Limited (“**CBTL**”) was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of 2380009 Ontario Limited (“**238**” or the “**Debtor**”) acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (the “**Property**”).
2. The first report of the Receiver dated May 11, 2017 (the “**First Report**”) was filed with the Court on May 12, 2017. The purpose of this Supplemental Report to the First Report (“**Supplemental Report**”) is to:
 - (a) provide additional information on the requests for information made to Messrs. Hernandez and Mancebo;
 - (b) provide information on the continuing failure of BuiltRite to meet its obligations pursuant to the Lease; including non-payment of the May rent;
 - (c) adding “and in providing such information on, and access to, the Sheridan Property as the Receiver and/or its agents request” to the Receiver’s request in the First Report for an Order to “seek an Order that each of 238 and BuiltRite shall fully cooperate with the Receiver and CBRE in allowing the Sheridan Property to be viewed by prospective purchasers”; and
 - (d) to seek an Order for immediate termination of the Lease effective 10 days following the date of the Order.
3. The Supplemental Report should be read in conjunction with the First Report. Defined terms in this Supplemental Report have, unless indicated otherwise

herein, the same meanings as set out in the First Report. The Terms of Reference included in the First Report also apply to the Supplemental Report.

4. Unless otherwise stated, all dollar amounts contained in the Supplemental Report are expressed in Canadian dollars.

II. RECEIVER'S REQUESTS FOR INFORMATION

5. As noted in the First Report, certain records requested by the Receiver from Messrs. Hernandez and Mancebo had not been provided to the Receiver as of the date of the First Report. The Receiver has made, most recently on March 10, 22 and 29, April 7 and 25, 2017, repeated requests for the following information:

- copies of the most recent notices of assessment and past two years of statutory remittances;
- copies of the past two years' corporate tax returns;
- copies of the 2014 and 2015 bank statements with cancelled cheques and bank reconciliations;
- Certificate of Insurance confirming that BuiltRite has an insurance policy in place for the Sheridan Property;
- confirmation that the outstanding balance on 238's Enbridge account for the Sheridan Property has been paid and proof of payment;
- copy of the most recent hydro bill/statement from Alectra Utilities (formerly Enersource); and
- information as to whether the monthly payments of \$18,000 paid to Timbercreek Mortgage Servicing Inc. by BuiltRite, on behalf of 238 prior to the receivership, and made pursuant to a Direction re Funds that is attached to the copy of the Lease provided to the Receiver, were inclusive, or exclusive, of HST.

-
6. In addition, on April 26 and May 9, 2017, in order to prepare for a trust exam by Canada Revenue Agency, the Receiver requested of Messrs. Hernandez and Mancebo:
- confirmation that no corporate tax returns have been filed by 238 and that no HST returns have been filed since October 31, 2014; and
 - accounting records for 238 from the date of incorporation to the present including bank reconciliations, general ledger detail report, trial balance, cheque register, copies of invoices paid, data file for 238's accounting software, etc.
7. Lastly, on May 8 and 12, 2017, the Receiver requested the name of the contact person at the premises to provide a tour of the Sheridan Property for, and respond to the questions of, the consultant being retained by the Receiver to prepare a Phase One Environmental Site Assessment for the Sheridan Property. As of the date of the Supplemental Report, no responses to these requests have been received by the Receiver. Accordingly, the Receiver is requesting that the relief sought by the Receiver as set out in the First Report be expanded to include that each of 238 and BuiltRite provide such information on, and access to, the Sheridan Property as the Receiver and/or its agents request.
8. On May 16, 2017, the Receiver sent a letter to Messrs. Hernandez and Mancebo requesting that they forward the information enumerated above (the "**Requested Information**"), or advise if (any of) the Requested Information is not presently available and the date that that Requested Information will be provided to the Receiver (the "**March 16 Letter**"). A copy of the March 16 Letter is attached at

Appendix "A" to the Supplemental Report. As of the date of the Supplemental Report, no response to the March 16 Letter has been received by the Receiver.

9. The Receiver respectfully requests that the Court grant an order requiring Messrs. Hernandez and Mancebo to deliver the Requested Information to the Receiver within seven (7) days of the order failing which the Receiver shall be at liberty to conduct examinations of such persons as it deems necessary to obtain the Requested Information.

III. THE LEASE

10. Pursuant to the terms of the Lease, BuiltRite is to pay 238 basic rent of \$18,000.00 plus HST monthly in advance on the 1st day of each and every month, from February 1, 2014 to January 31, 2019. BuiltRite has failed to pay the May rent of \$18,000 plus HST and such default continues.
11. On May 16, 2017, the Receiver sent a letter to BuiltRite requesting (i) payment of the rent due May 1, 2017 (referencing communications by the Receiver on May 2, May 4 and May 10, 2017), (ii) a reimbursement from BuiltRite for two Enbridge bills that had been paid by the Receiver, and (iii) that BuiltRite pay a third Enbridge bill which had been received by the Receiver and to provide payment confirmation to the Receiver. A copy of the letter is attached at Appendix "B" to the Supplemental Report.
12. As of May 19, 2017, as BuiltRite had not provided evidence that the Enbridge April bill had been paid, the Receiver paid the Enbridge April bill.
13. In addition, on May 19, 2017, the Receiver sent an e-mail to Messrs. Mancebo and Hernandez informing them that the April Enbridge bill had been paid by the

Receiver and requesting reimbursement thereof by BuiltRite. In that e-mail, the Receiver also referred to its correspondence of May 16, 2017 (Appendices "A" and "B" to the Supplemental Report) and requested responses to that correspondence. As of the date of this report, no responses to the May 19 e-mail, or the May 16, 2017 correspondence, has been received by the Receiver. A copy of the May 19, 2017 e-mail (without appendices) is attached at Appendix "C" to the Supplemental Report.

14. The Receiver sees no meaningful purpose in sending further communication to 238/BuiltRite concerning non-payment of rent, failure to reimburse the Receiver for Enbridge accounts or for the aforementioned information. Based on the lack of response received to date, the Receiver does not see how further requests for the same information will result in any response being received.

IV. CONCLUSION

15. In addition to and with reference to the relief requested in the First Report, the Receiver respectfully requests that the Court add (1) "and in providing such information on, and access to, the Sheridan Property as the Receiver and/or its agents request" to the Receiver's request in the First Report for an Order to "seek an Order that each of 238 and BuiltRite shall fully cooperate with the Receiver and CBRE in allowing the Sheridan Property to be viewed by prospective purchasers"; and (2) an order declaring the Lease is terminated ten (10) days from the date of the Order and allowing the tenant ten (10) days to vacate the premises.

All of which is respectfully submitted to this Court as of this 24th day of May, 2017.

COLLINS BARROW TORONTO LIMITED
In its capacity as Court Appointed Receiver
of 2380009 Ontario Limited and
not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

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APPENDIX D

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

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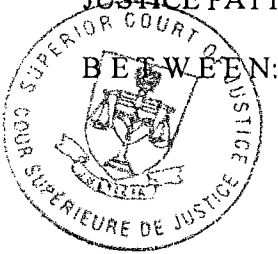
MONDAY, THE 29TH

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JUSTICE PATTILLO

)

DAY OF MAY, 2017



BETWEEN:

2292912 ONTARIO INC.

Applicant

-and-

2380009 ONTARIO LIMITED

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

ORDER

(Re: Approval of Sales Process)

THIS MOTION, brought by Collins Barrow Toronto Limited in its capacity as the Court-appointed receiver (in such capacity, the “Receiver”), without security of all of the assets, undertakings, properties of 2380009 Ontario Limited (“238”) for an order, *inter alia*:

- (a) Authorizing the Receiver to list for sale the property known municipally as 2370 South Sheridan Way, Mississauga, Ontario (the “Property”), pursuant to the terms of a listing agreement with CBRE Limited (“CBRE”) and engaging CBRE as the Receiver's agent for the purpose of marketing the Property for sale;
- (b) Authorizing the Receiver to market the Property for sale to prospective purchasers on a vacant possession basis, specifically, free and clear of the tenancy or other

interest of the current lessee of the premises, BuiltRite Technologies Inc. (“BuiltRite”);

- (c) Directing Elias Mancebo (“Mancebo”) and Marcelo Hernandez (“Hernandez”) to provide to the Receiver the “Requested Information”, as defined in the Supplemental Report of the Receiver dated May 24, 2017 (the “Supplemental Report”) within seven days of the date of this Order;
- (d) Approving the First Report to Court of the Receiver dated May 11, 2017 (the “First Report”) and the Supplemental Report and the activities of the Receiver outlined therein as well as the fees and disbursements of the Receiver and its counsel as shown in the Fee Affidavits filed in support of this Motion; and
- (e) Terminating the lease dated January 15, 2014 between 238 as landlord and BuiltRite as Tenant (the “Lease”) on such terms as are set out in the materials filed on this Motion; and
- (f) Sealing certain Confidential Appendices to the First Report.

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

ON READING the First Report, the Supplemental Report and the Factum of the Receiver, and on hearing the submissions of counsel for the Receiver and counsel for BuiltRite and 238 and on being advised of the consent of the parties attending,

1. **THIS COURT ORDERS** that the time for service of this Motion is hereby abridged and validated so that this Motion is properly returnable in Toronto today and hereby dispenses with further service thereof.
2. **THIS COURT FURTHER ORDERS** that the Receiver is authorized to list the Property for sale pursuant to the terms a listing agreement with CBRE substantially in the form as that

appended as Exhibit "N" to the First Report and to engage CBRE as the Receiver's agent for the purpose of marketing the Property for sale.

3. **THIS COURT FURTHER ORDERS** that the Receiver is authorized to market the Property for sale to prospective purchasers on a vacant possession basis, specifically, free and clear of the tenancy of or any other interest of BuiltRite.

4. **THIS COURT FURTHER ORDERS** that the Receiver is authorized to enter into an Agreement of Purchase and Sale in respect of the Property with a prospective purchaser, conditional upon Court approval of any proposed sale of the Property.

5. **THIS COURT FURTHER ORDERS** that Mancebo and Hernandez deliver all Requested Information within their possession, power or control to the Receiver within seven days of the date of this Order failing which the Receiver is authorized to conduct examinations of such persons as it may deem appropriate in order to obtain the Requested Information.

6. **THIS COURT FURTHER ORDERS** that the First Report and the Supplemental Report and the activities of the Receiver outlined therein and the fees and disbursements of the Receiver and its counsel as shown in the Fee Affidavits filed in support of this Motion, are approved.

7. **THIS COURT FURTHER ORDERS** that Confidential Appendices "J", "K", "L" and "M" of the First Report are sealed and shall not be publicly available until such time as the sale of the Property by the Receiver has been fully completed, or until further Order of this Court.

8. **THIS COURT ORDERS** that the Receiver is authorized to terminate the Lease on 45 days' notice to BuiltRite and 238 (the "Notice Period") and that BuiltRite and 238 are ordered to


deliver vacant possession of the Property, in a proper state of cleanliness and repair, upon the expiry of the Notice Period.

9. **THIS COURT ORDERS** that provided that on or before June 2, 2017:

- (a) all rent owing by BuiltRite under the Lease, plus HST, for May 2017 and June 2017 is paid in full;
- (b) all HST arrears owing by BuiltRite under the Lease are paid in full by BuiltRite;
- (c) an insurance certificate from BuiltRite's and 238's insurer naming the Receiver and Sterling Karamar Property Management as additional insured is provided to the Receiver;
- (d) proof of payment of all utilities in respect of the Property is provided to the Receiver; and
- (e) the Receiver is reimbursed \$4,176.43 in respect of utilities paid by Receiver to date.

then the Receiver shall not exercise its right under paragraph 8 of this Order prior to June 21, 2017.

10. **THIS COURT ORDERS** that provided that the obligations set out at paragraph 9 herein are complied with, the Receiver shall not offer the Property for sale prior to June 21, 2017.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

C. Irwin
Registrar

MAY 30 2017

PER / PAR: 

2292912 ONTARIO INC.
Applicant

-and- 2380009 ONTARIO LIMITED
Respondent

Court File No. CV-16-011354-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER
(Re: Approval of Sales Process)

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Jeffrey J. Simpson (39663M)
jsimpson@torkinmanes.com
Tel: 416-777-5413
Fax: 1-888-587-9143

Lawyers for the Receiver, Collins Barrow Toronto Limited

RCP-E 4C (May 1, 2016)

APPENDIX E

COMMERCIAL LEASE

January 15, 2014

BETWEEN:

2380009 ONTARIO LIMITED

(The "Landlord")

BUILTRITE TECHNOLOGIES INC.

(The "Tenant")

In consideration of the rents, covenants and obligations stipulated herein, Landlord and the Tenant have agreed to enter into a Lease of the commercial space and Premises comprising part of the first floor, office and entire basement totaling 66,823 sq.ft of the property municipally known as 2370 South Sheridan Way, Mississauga, Ontario (hereinafter called the "Premises")

1. Grant of Lease

- (1) The Landlord Leases the Premises to the Tenant:
 - (a) at the rent set forth in Section 2;
 - (b) for the Term set forth in Section 3;
 - (c) subject to the conditions and in accordance with the covenants, obligations and agreements herein.

(2) The Landlord covenants that he has the right to grant the Leasehold interest in the Premises free from encumbrances except as disclosed on title.

2. Rent

Basic Rent

- (1) The Tenant covenants to pay the Landlord basic rent at a rate of \$ 216,000.00 per year, payable \$18,000.00 monthly in advance on the 1st day of each and every month, from and including February 1st 2014 to and including January 31, 2019.
- (1a) The Tenant covenants to pay the Landlord basic rent at a rate of \$ 240,000.00 per year, payable \$20,000.00 monthly in advance on the 1st day of each and every month, from and including February 1st 2019 to and including January 31, 2024

Additional Rent

- (2) The Tenant covenants to pay the Landlord the sum of \$7500.98 per month as Additional Rent for municipal property taxes.

(2a) The first 5 years will exclude the additional municipal property tax component as a reimbursement to leasehold improvements provided by the tenant.
The additional rent will commence on the February 01, 2019 to January 31, 2024.

Harmonized Sales Tax

- (3) The Tenant acknowledges that all rents are subject to a Harmonized Sales Tax (HST) under the Excise Tax Act of Canada.

Prepaid Rent

- (3) The Landlord acknowledges receipt of the sum of all \$40,680.00 from the Tenant on account of the Rent, Additional Rent and HST for the first and last month of the Lease.

3. TERM AND POSSESSION

- (1) The Tenant shall have possession of the Premises for a period of Ten (10) years, commencing on the 1st day of February, 2014 and ending on the 31st day of January 2024 (the "Term") for the space of 66,823 square feet total.
 - (2) Subject to the Landlord's rights under this Lease, and as long as the Lease is in good standing, the Landlord covenants that the Tenant shall have quiet enjoyment of the Premises during the Term of this Lease without interruption or disturbance from the Landlord, the Landlord agents, or any other persons lawfully claiming through the Landlord.
-
- (3) The Landlord shall have the right to enter and inspect the Premises from time to time during normal business hours upon reasonable notice to the Tenant. In the event of a fire, flood, a gas leak or similar serious emergency the Landlord shall have the right to enter the Premises without notice, provided that he notifies the Tenant as soon as possible thereafter.

ASSIGNMENT & SUBLEASE IN

- (1) The Tenant shall not assign this Lease or sub-lease the whole or any part of the Premises unless he first obtains the consent of the Landlord in writing, which consent shall not be unreasonably withheld.
- (2) The consent of the Landlord to any assignment or subletting shall not operate as a waiver of the necessity for consent to any subsequent assignment or subletting.

USE

- (1) During the Term of this Lease the Premises shall not be used for any purpose other than as General Office, Extrusion manufacturing, Assembly, Fabricating or any similar business or such other commercial use as may be legally permitted and approved in writing by the Landlord.

- (2) The Tenant shall not do or permit to be done at the Premises anything which may:
 - (a) constitute a nuisance;
 - (b) cause damage to the Premises;
 - (c) cause injury or annoyance to occupants of neighboring Premises;
 - (d) make void or voidable any insurance upon the Premises; or
 - (e) constitute a breach of any bylaw, statute, code, order or regulation of any municipal or regional, or other, but competent authority relating to the Premises.

REPAIR AND MAINTENANCE

- (1) The Tenant covenants that during the Term of this Lease and any renewal thereof, he shall keep the interior of the Premises, in good operable condition, and the Tenant shall promptly make all the needed repairs and effect all necessary replacements as would a prudent owner, save and except for the items in subsection (3) below.

- (2) The Tenant shall be responsible for repairs or replacement of any equipment or Leasehold improvements installed by the Tenant, and the Tenant shall be liable to affect repairs for damage to the Premises, including doors, windows and plate glass, caused by the Tenant, the Tenant's agents, employees, customers, or invitees.

Exemptions

- (3) The Tenant shall not be responsible for damage caused by reasonable wear and tear, or caused by fire, lightning, flood, storm, civil insurrection or war, or for repairs to the following:
 - (a) Building foundation, exterior walls common roof and roof membrane;

 - (b) Heating ventilation and air conditioning, and electrical, mechanical and plumbing systems.

- (4) The Landlord shall be responsible for effecting repairs with respect to all items exempted from the Tenant's obligations under Section 6 (3) of this Lease.



Leasehold Improvements

- (5) The Tenants shall have the right, subject to the Landlord's approval which shall not be withheld unreasonably, to make Leasehold improvements and install the Tenant's fixtures, and the landlord agrees to forthwith deliver possession of the Premises to the Tenant in order to allow the Tenant to renovate, redecorate or make such Leasehold improvements and to install such fixtures as may be necessary for the operation of the Tenant's business.

- (6) The Tenant undertakes and covenants that he will carry out any and all Leasehold improvement work and install in good and workmanlike manner, and at his own expense and in compliance with all applicable rules, regulations, laws, bylaws, codes, statutes or standards.

Cleaning and maintenance

- (7) The Tenant shall be responsible for the cleaning and maintenance of the Premises including the cost of garbage removal, the Landlord shall be liable for any personal injuries incurred by any person due to the Tenant's failure to repair, maintain or clean the said Premises.

UTILITIES AND SERVICES

- (1) The Tenant shall be responsible to pay for his own water, electricity, gas, heating, telephone, fire alarm or security systems, and any rental equipment or other service supplying the Premises.
-

MUNICIPAL TAXES AND FEES

- (1) The Landlord shall be responsible and pay for all municipal realty taxes and local improvement rate assessed against the Premises and the Tenant shall make a contribution thereto as set out herein.
- (2) The Tenant shall also pay for his own municipal business licenses and Merchants Association membership fees, if any.

INSURANCE

- (1) During the term of this Lease and any renewal hereof, the Landlord shall maintain with respect to the Premises, insurance coverage to protect against loss or damage by fire, lightning, storm and other perils that may cause damage to the Premises or the property of the Landlord in which the Premises are located and such other insurance, including third-party liability and rent a loss, as the landlord may deem appropriate.

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- (2) Notwithstanding any third-party liability insurance coverage arranged by the Landlord, the Tenant agrees and covenants to save harmless and keeps indemnify Landlord against all claims and demands whatsoever by any person, whether in respect of injury or damage to persons or property, arising out of or occasioned by the Tenant's use

or occupancy of the Premises, or the subletting or assignment of same or any part thereof, and the Tenant further covenants to indemnify the Landlord with respect to any encumbrance on or damage to the Premises occasioned by or arising from the act, default, or negligence of the Tenant, its agents, servants, employees, contractors, customers, invitees or licensees.

- (3) The Tenant shall carry business insurance in his own name to provide coverage with respect to:
- (a) third party or public liability claims;
 - (b) risk of business interruption to any extent sufficient to allow the Tenant to meet his ongoing obligations to the Landlord and to protect it and it against loss of revenue;
 - (c) Tenant equipment, chattels, inventory, property and Leasehold improvements; and
 - (d) plate glass damage.
- (4) The Tenant shall provide the Landlord with proof of the aforesaid Tenant's insurance forthwith upon demand of the Landlord.

DAMAGE TO THE PREMISES

- (1) If the Premises or the building in which the Premises is located, are damaged or destroyed, in whole or in part, by fire or other peril, then the following provisions shall apply:
- (a) if the damage or destruction renders the Premises unfit for occupancy and impossible to repair or rebuild using reasonable diligence within 90 clear days from the happening of such damage or destruction, then the Term hereby granted shall cease from the date the damage or destruction occurred, and the Tenant shall immediately surrender the remainder of the Term and give possession of the Premises to the Landlord, and the rent from the time of the surrender shall abate;
 - (b) If the Premises can with reasonable diligence be repaired and rendered fit for occupancy within 90 days from the happening of such damage or destruction, then the rent hereby reserved shall not accrue after the day that the damage or destruction occurred, or while the process of repairs is going on, and the Landlord shall repair the Premises with all reasonable speed, and the Tenant's obligations to pay rent shall resume immediately after the necessary repairs had been completed;

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- (c) If the Premises can be repaired within 90 days as aforesaid, but the damage is such that the Premises are capable of being partially used, and until such damage has been repaired, the Tenant shall remain in possession and the rent shall abate a proportionately.
- (2) Any question as to the degree of damage or destruction or the period of time required to repair or rebuild shall be determined by an architect retained by the Landlord.

ACTS OF THE FAULT AND LANDLORD'S REMEDIES

- (1) An act of default has occurred when:
- (a) the Tenant has failed to pay rent for a period of 15 consecutive days whether or not demand for payment has been made by the Landlord; or
 - (b) the Tenant has breached his covenants or fail to perform any of his obligations under this Lease, and the Landlord has given notice specifying the nature of the default and the steps required to correct it, and the Tenant has failed to correct the default as required by the notice;
 - (c) the Tenant has become bankrupt or insolvent or made an assignment for the benefit of any creditor, or at his property seized or attached in satisfaction of the judgment, or had a receiver appointed, or committed any act or neglected to do anything with the result that a construction lien or other encumbrance is registered against the Landlord property;
 - (d) The Landlord's insurance policy is canceled or not renewed by reason of the Tenant's illegal use or occupation of the Premises;
 - (e) The Premises becomes vacant or remains unoccupied for a period of 30 consecutive days, or are used by any other person or persons or for any other purpose than as provided by this Lease without the written consent of the Landlord.
-

Termination and Re-Entry

- (2) When an act of default on the part of the Tenant occurs, the Landlord shall have the right to terminate this Lease and re-enter the Premises and deal with the Premises as he may choose.

Distress

- (3) The Tenant covenants that notwithstanding any present or future act of the legislature of the Province of Ontario, the personal property the Tenant shall not be exempt from levy by distress for rent in arrears; and the Tenant acknowledges that it is upon the express understanding that there should be no such exemption that this Lease is entered into, and executing this Lease The Tenant waves the benefit of any such legislative provisions which might otherwise be available to the Tenant in the absence of this Agreement.

MAA
R

Rectification by the Landlord

(4) If, when an act of default has occurred, the Landlord chooses not to terminate the Lease and re-enter the Premises, the Landlord shall have the right to take any and all necessary steps to rectify any and all acts of default of the Tenant and to charge the cost of such rectification to the Tenant and to recover the costs as rent.

Waiver

(5) If, when an act of default has occurred, the Landlord chooses to waive his right to exercise the remedies available to him under this Lease or at all, the waiver shall not constitute condonation of the act of default, nor shall the waiver be treated as an estoppel against the Landlord to prevent his exercising his remedies with respect to any subsequent act of default.

(6) No covenants, term, or condition of this Lease shall be deemed to have been waived by the Landlord unless the waiver is in writing and signed by the Landlord.

SUBORDINATION AND POSTPONEMENT

(1) This Lease and all the rights of the Tenant under this Lease are subject and subordinate to any and all charges against the land, buildings or improvements (the "Property") of which the Premises form a part, whether the charge is in the nature of a mortgage trust deed, lien or any other form of charge arising from the financing or refinancing, including extensions or renewals, of the Landlord's interest in the property.

Subordination and Attornment

(2) Upon the request of the Landlord, the Tenant will execute any form required to subordinate or postpone this Lease and the Tenant's right to any charge, and will, if required, a torn rents to the holder of the charge on the Premises or the property.

Non Disturbance

(3) No subordination or postponement by the Tenant shall have the effect of permitting the holder of any charge to disturb the occupation and possession of the Premises by the Tenant as long as the Tenant performs his obligations under this Lease.

EXTERIOR SIGNS

(1) The Tenant at his own expense and at his own risk may erect signs, subject to the Landlord's approval, to be located at the front of the Premises and as such other additional place or places on the Landlord's property as the Landlord may designate.

(2) All signs erected by the Tenant shall conform to all municipal bylaws and regulations.

*M.A.
R.*

(3) The Tenant shall be responsible for the repair and maintenance of any signs, and the Tenant shall be responsible for the removal of the signs upon the termination of the Lease.

REGISTRATION

(1) The Tenant shall not at any time registered notice or a copy of this Lease on title to the property of which the premise these form part, without the written consent of the Landlord.

(2) The Tenant shall forthwith provide the Landlord with a true copy of any document registered, or caused be registered, on the title to the property by the Tenant or by any security holder of the Tenant.

RENEWAL OPTION PARAGRAPH

(1) Provided the Tenant is not currently in default under any provision of this Lease, the Tenant shall have the right to renew this Lease for a term of Ten (10) years consisting of 2 x Five (5) year terms upon the same terms and conditions as contained herein, save and except for the amount of Basic Rent.

(2) The rental to be paid by the Tenant during the renewal term shall be agreed upon by the parties at the commencement date of the renewal term and shall be based upon prevailing market rent.

(3) If the parties fail to reach an agreement as to the rental payable during the renewal term, the rentals shall be settled by arbitration in accordance with the provisions of the Arbitration Act of Ontario, and the decision of the arbitration panel's shall be final and binding upon the parties hereto.

(4) In order to exercise his right of renewal, the Tenant shall serve the Landlord with written notice of the Tenants intention no later than Three (3) months prior to the expiration of the Term. If such written notice is not given to the Landlord within the time specified, the Tenant shall be deemed to have waived his right to renew.

TERMINATION AND OVER HOLDING

(1) If the Tenant remains in possession of the Premises after the expiration of the Term or renewals term without objection by the Landlord, there shall be no tacit renewal of this Lease, and the Tenant shall be a monthly Tenant only at a monthly rental equal to the amount of the Rent and Additional Rent and Harmonized Sales Tax previously paid by the Tenant during the months immediately preceding the expiration of the Term. Such monthly tenancy shall, in all other respects, be upon the same terms and conditions as contained in this Lease.

NOTICE

(1) Any the notice required or permitted to be given by one party to the other pursuant to the terms of this Lease shall be given to the Tenant at the premises and to the Landlord at:

Mark Lathem LLP
c/o 2380009 Ontario Limited
588 Edward Avenue, unit 49
Richmond Hill, Ontario L4C 9Y6

To the Tenant at the Premises.

(3) And a notice given by one party to the other in accordance with the provisions of this Lease shall be deemed conclusively to have been received on the date delivered, if the notice is served personally, or five (5) days after mailing if the notices mailed.

INTERPRETATION

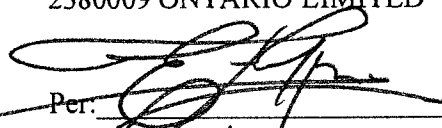
(1) The words importing this singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.

(2) The words "Landlord" and "Tenant" and "Guarantor" wherever used in this Lease shall be construed to include in the executors', administrators, successors and assigns of the Landlord and Tenant and guarantor, respectively.

(3) When there are two or more parties bound by the same covenants herein contained, the obligations shall be joint and several.

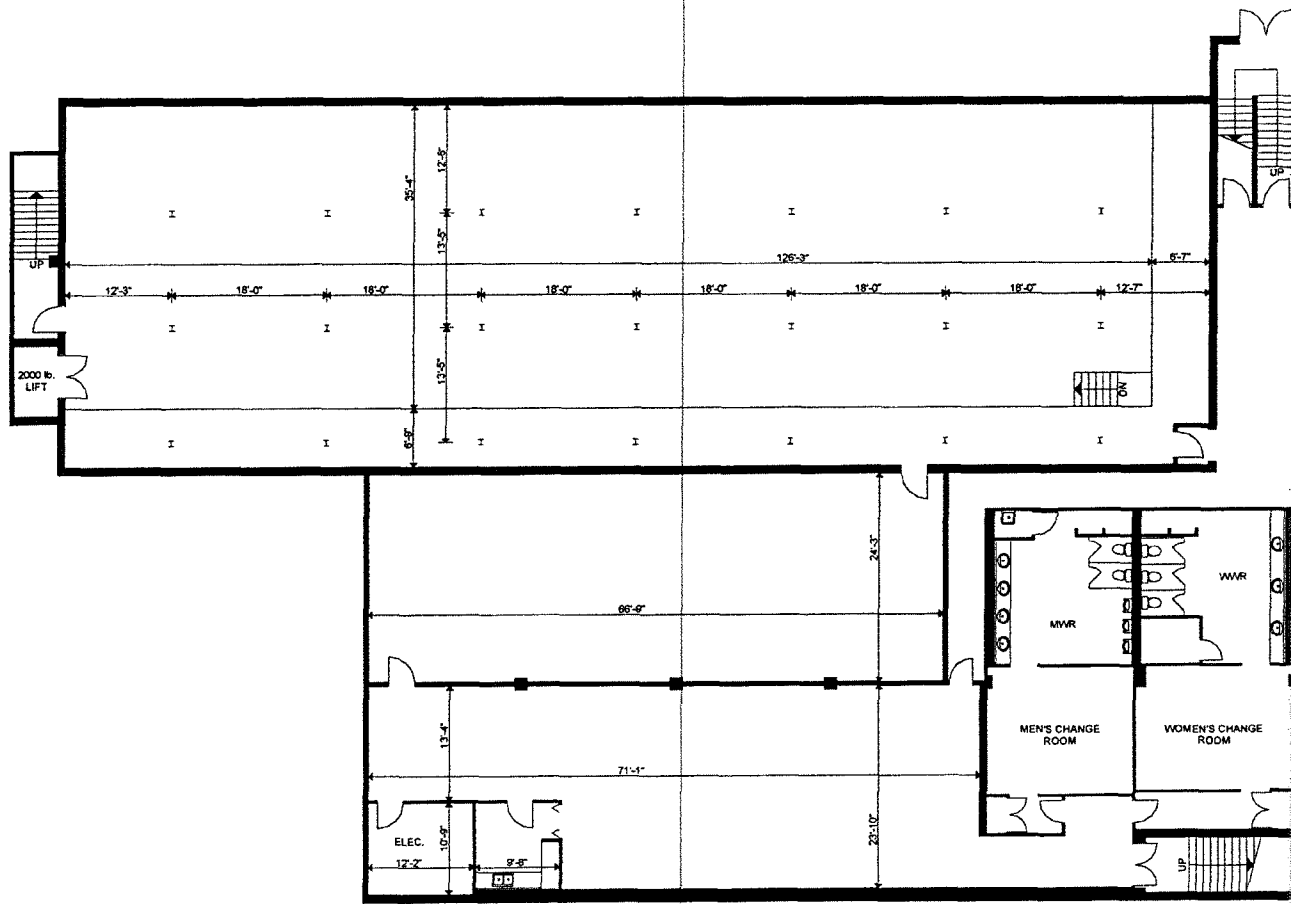
IN WITNESS of the foregoing covenants, the Landlord, Tenant and Guarantor have executed this Lease.

WITNESSED:

) 2380009 ONTARIO LIMITED
)
)
) Per: 
)
) **ELIAS MANABEBO**
)

BUILTRITE TECHNOLOGIES INC.
I have authority to bind the corporation

)
)
)
) Per: 
)
) **M. HERNANDEZ**
)



Client

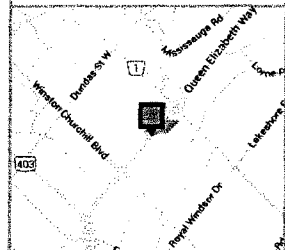
2380009 Ontario Ltd.

Version:	Prepared: 04/10/2013
FP1A	Measured: 26/11/2002

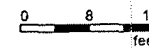
2370 South Sheridan Way
Mississauga, Ontario

Basement

Basement:	12,141 sq ft
Floor 1:	56,652 sq ft
Floor 2:	10,171 sq ft
Total:	78,964 sq ft



This work product has been prepared by Extreme Measures Inc. pursuant to a contract with the Client for the sole benefit of and use by the Client. No third party may rely on this work product without the receipt of a reliance letter from Extreme Measures Inc.



extreme measures inc.	Tel: 416.323.2855
	Fax: 416.323.0855
	mail@xmeasures.com
	www.xmeasures.com

DIRECTION RE FUNDS

TO: BUILTRITE TECHNOLOGIES INC.
FROM: 2380009 ONTARIO LIMITED
**RE: LEASE PAYMENTS FOR 2370 SOUTH SHERIDAN WAY,
MISSISSAUGA (THE "PROPERTY")**

The undersigned hereby authorizes and directs you to make the lease payments payable under the lease on the above-mentioned Property in the amount of \$18,000.00 per month to the following:

Timbercreek Asset Management

This direction may be delivered by facsimile, portable document format ("PDF"), or otherwise, each of which shall constitute an original document, and all of which taken together shall constitute one and the same instrument. A party providing its signature by facsimile, PDF or otherwise shall promptly forward to the other party an original of the executed copy of this release which was so delivered by facsimile or other means.

AND FOR SO DOING, this shall be your good and sufficient authority.

DATED this 15th day of January, 2014

2380009 Ontario Limited

Per: 

Elias Mancebo

I have authority to bind the corporation

APPENDIX F

Court File No. CV-16-011354-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

2292912 ONTARIO INC.

Applicant

- and -

2380009 ONTARIO LIMITED

Respondent

SECOND REPORT OF THE RECEIVER OF
2380009 ONTARIO LIMITED

July 4, 2017

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I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) ("**Court**") dated February 7, 2017 (the "**Appointment Order**"), Collins Barrow Toronto Limited ("**CBTL**") was appointed receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 2380009 Ontario Limited ("**238**" or the "**Debtor**") acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof. A copy of the Appointment Order is attached to this report at Appendix "**A**".
2. On May 11, 2017, the Receiver issued its first report to the Court (the "**First Report**") for the purpose of, among other things, seeking an Order of the Court to authorize the Receiver to (i) enter into a listing agreement (the "**CBRE Listing Agreement**") with CBRE Limited ("**CBRE**") for the marketing for sale of the property known municipally as 2370 South Sheridan Way, Mississauga, Ontario (the "**Sheridan Property**"); and (ii) terminate the lease between 238 as landlord and BuiltRite Technologies Inc. ("**BuiltRite**") as tenant (the "**Lease**"). A copy of the First Report, without appendices, is attached at Appendix "**B**" hereto.
3. On May 24, 2017, the Receiver issued a Supplemental Report to the First Report of the Receiver ("**Supplemental Report**") reporting on, among other things, the failure of representatives of BuiltRite and 238 to provide requested information to the Receiver and BuiltRite's failure to perform its obligations under the Lease. A copy of the Supplemental Report, without appendices, is attached at Appendix "**C**" hereto.
4. At the attendance on May 29, 2017 (the "**May 29 Order**"), Justice Pattillo Ordered, among other things:

(a) that the Receiver was authorized to:

(i) enter into the CBRE Listing Agreement and engage CBRE as the Receiver's agent for the purposes of marketing the Sheridan Property;

(ii) list the Sheridan Property for sale and market the Sheridan Property to prospective purchasers

(b) that as of June 21, 2017 the Receiver was authorized to terminate the lease between BuiltRite and 238 on 45-days' notice, at the end of which period vacant possession was to be delivered to the Receiver and the premises left in a proper state of cleanliness and repair;

5. A copy of the May 29 Order is attached hereto at Appendix "D".

6. The Appointment Order, First Report, the Supplemental Report and May 29 Order referred to in this report, together with related Court documents, have been posted on the Receiver's website, which can be found at <http://www.collinsbarrow.com/en/cbn/current-engagements-toronto/2380009-Ontario-Limited>.

Purpose of Second Report

7. The purpose of this second report of the Receiver (the "**Second Report**") is to:

(a) report to the Court on the Receiver's termination of the Lease;

-
- (b) report to the Court on the activities of the Receiver to market the Sheridan Property since the First Report;
 - (c) report to the court on the inability of the Receiver or its agent, CBRE, to obtain cooperation from BuiltRite or 238 in gaining access to the Sheridan Property for the purposes of marketing the property as contemplated by the CBRE Listing Agreement and May 29 Order;
 - (d) seek an order that each of 238 and BuiltRite shall fully cooperate with the Receiver and CBRE in allowing the Sheridan Property to be viewed by prospective purchasers and in providing such information on and unfettered access to the Sheridan Property, including during the regular business hours of BuiltRite, as the Receiver and/or its agents request;
 - (e) seek an order that each of 238 and BuiltRite shall cooperate with the Receiver in all aspects of the marketing of the Sheridan Property, including the placement of signage advertising the sale of the Sheridan Property on the premises;
 - (f) seek an order that BuiltRite and 238 provide the Receiver with the name and contact information, including e-mail and cellular phone number, for the primary contact, and two alternative contacts, who may be contacted by the Receiver for the purpose of gaining access to the Sheridan Property in order to conduct tours with prospective purchasers;
 - (g) seek an Order requiring BuiltRite and 238 to provide notice of the Appointment Order and any Order further mandating access to the Sheridan Property and cooperation with the Receiver to its employees such that they

are aware of the obligation to cooperate with the Receiver and to provide access;

- (h) seek an order that BuiltRite and 238 provide the Receiver with keys to the Sheridan Property and, upon request, such other information as may be required by the Receiver for the purposes of ingress and egress from the Property, in the event that no representative of BuiltRite or 238 is available to provide access as otherwise contemplated herein; and
- (i) seek the Court's approval of the Second Report and the Receiver's conduct and activities described herein.

Terms of Reference

8. In preparing this Second Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in this Second Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA Canada

Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

9. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.
10. Defined terms in this Second Report have, unless indicated otherwise herein, the same meanings as set out in the First Report and the Supplemental Report.

II. BACKGROUND

11. 238 is a single purpose corporation holding legal and beneficial title to the Sheridan Property.
12. BuiltRite is the sole tenant of the Sheridan Property.
13. Elias Mancebo is the sole director, President, Secretary and Treasurer of both 238 and BuiltRite.
14. Marcelo Hernandez appears to be a principal of BuiltRite and has been a primary contact for 238 and BuiltRite in relation to issues concerning BuiltRite and 238.
15. Additional information on the background of 238 and BuiltRite and events leading up to the appointment of the Receiver are contained in the First Report.

III. TERMINATION OF THE LEASE

16. On June 22, 2017, and in accordance with the May 29 Order, the Receiver issued a Notice of Termination of Lease to BuiltRite, giving BuiltRite 45 days' notice of the termination of the Lease and requiring BuiltRite to deliver vacant possession of the Sheridan Property on or before August 8, 2017. A copy of the Notice of Termination of Lease is attached at Appendix "E" to this report.

IV. MARKETING OF THE SHERIDAN PROPERTY

17. On June 13, 2017, the Receiver and CBRE executed a listing agreement in respect of the marketing of the Sheridan Property for sale. The Sheridan Property was not offered for sale prior to June 21, 2017.
18. On June 26, 2017, CBRE launched its marketing campaign. On that date, the Receiver sent an email to Mr. Hernandez to notify him that CBRE would be conducting tours of the Sheridan Property for interested parties and contacting Mr. Hernandez directly with requests for access to the Sheridan Property. A copy of the June 26 e-mail is attached at Appendix "F" to this report.
19. On June 27, 2017, CBRE notified the Receiver of its unsuccessful attempts to schedule tours at the Sheridan Property with Mr. Hernandez. As a result of CBRE's inability to gain access to the property, a number of tours planned for June 29 and 30, 2017 had to be cancelled / postponed by CBRE.
20. The difficulties in obtaining access to the premises and scheduling tours which have been encountered by CBRE have been caused by the following:
 - (a) Mr. Hernandez has been generally unresponsive to telephone calls and emails from CBRE requesting access;
 - (b) Mr. Hernandez has advised CBRE that any tours would need to be scheduled in advance;
 - (c) attempts to schedule access have been unsuccessful, as:
 - (i) Mr. Hernandez said that he would be out of town on the requested date;

-
- (ii) Mr. Hernandez refused to provide an alternative contact at the company who could provide access to the Sheridan Property; and
 - (iii) Mr. Hernandez has said that he preferred to do tours only on weekends due to the "safety hazard" associated with conducting tours during BuiltRite's business hours. No clarification of what the suggested "safety hazard" is has been provided so as to facilitate a discussion on potential ways that any legitimate concern can be addressed.

- 21. A summary of CBRE's attempts to schedule tours for the week ending June 30, 2017 is set out in the e-mail of Allison Miller dated June 28, 2017 attached at Appendix "G" hereto.
- 22. In addition to the unsuccessful attempts of CBRE to obtain, or even schedule, access to the Sheridan Property, the Receiver's direct demands for cooperation and compliance in providing access to the Sheridan Property have had no positive effect.
 - (a) The Receiver sent an email to Mr. Hernandez on June 27, 2017 requesting that he contact the Receiver to discuss times to be made available for tours on June 29, 2017 and going forward. No response to that e-mail was received by the Receiver;
 - (b) The Receiver sent another email to Mr. Hernandez on June 28, 2017 advising him that CBRE needs to be able to attend at the Sheridan Property during business hours in order to show the Sheridan Property to interested purchasers, and that a representative of BuiltRite does not need to be present during the tours;

(c) The Receiver's counsel sent a similar message to counsel for BuiltRite and 238 on June 28, 2017.

23. Copies of the Receiver's emails dated June 27 and 28, 2017 are attached at Appendix "H" hereto.
24. No responses to the above emails requesting access to the premises were received by either the Receiver or its counsel.
25. On June 30, 2017, the Receiver was advised by Mr. Scot Steele, a representative of CBRE, that he had spoken to Mr. Hernandez. Evidently, Mr. Hernandez indicated to Mr. Steele that access to the Property would not be provided prior to the return of this motion.
26. CBRE has advised that in order to effectively market the Sheridan Property, it requires unfettered access to same during ordinary business hours for the purpose of conducting tours with prospective purchasers. CBRE has advised that the suggestion of Mr. Hernandez that tours be conducted on weekends only is untenable, as the majority of prospective purchasers for this type of property will wish to conduct tours during regular business hours.
27. The Receiver is therefore presently unable to effectively market the Sheridan Property for sale. The Receiver requires that BuiltRite grant CBRE access to the Sheridan Property, including during business hours, to conduct tours of same. Based upon the foregoing, the Receiver is of the view that it is not likely that it will receive cooperation from BuiltRite or 238 without the assistance of this Honourable Court.

28. Accordingly, the Receiver is seeking the order requested.

V. CONCLUSION

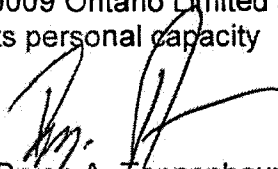
29. The Receiver respectfully requests that the Court grant an Order which provides for the following:

- (a) that 238, BuiltRite and persons with notice of the order shall fully cooperate with the Receiver and CBRE in allowing the Sheridan Property to be viewed by prospective purchasers and in providing such information on and unfettered access to the Sheridan Property, including during the regular business hours of BuiltRite, as the Receiver and/or its agents request;
- (b) that 238, BuiltRite and persons with notice of the order shall cooperate with the Receiver in all aspects of the marketing of the Sheridan Property, including the placement of signage advertising the sale of the Sheridan Property on the premises;
- (c) that BuiltRite and 238 provide the Receiver with the name and contact information, including e-mail and cellular phone number, for the primary contact, and two alternative contacts, who may be contacted by the Receiver for the purpose of gaining access to the Sheridan Property in order to conduct tours with prospective purchasers;
- (d) requiring BuiltRite and 238 to provide notice of the Appointment Order and any Order further mandating access to the Sheridan Property and cooperation with the Receiver to its employees such that they are aware of the obligation to cooperate with the Receiver and to provide access;

-
- (e) that BuiltRite and 238 provide the Receiver with keys to the Sheridan Property and, upon request, such other information as may be required by the Receiver for the purposes of ingress and egress from the Property, in the event that no representative of BuiltRite or 238 is available to provide access as otherwise contemplated herein; and
- (f) seek the Court's approval of the Second Report and the Receiver's conduct and activities described herein.

All of which is respectfully submitted to this Court as of this 4th day of July, 2017.

COLLINS BARROW TORONTO LIMITED
In its capacity as Court Appointed Receiver
of 2380009 Ontario Limited and
not in its personal capacity


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

APPENDIX G

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

2292917 BATTARIO INC.

Plaintiff(s)

AND

2380009 ONTARIO LIMITED

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

Adjourned to: _____

Time Table approved (as follows):

- Adjourned to July 21/17 for one hour.

- Receiver is bound by the lease & has proven a legal right to occupy the premises. But the tenant says the tenant is in breach of the lease. Receiver can take steps to terminate if that is so. In the interim, tenant may wish to be more cooperative in face of imminent termination. Jul 21 is also more than ample time to re-finance if it is

_____ Date Judge's Signature

Additional Pages _____

proposal to do so is real (which appears dubious) -

Jul 6/17

APPENDIX H

Torkin Manes LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, Ontario M5C 2W7

Tel: 416-863-1188
Fax: 416-863-0305
www.torkinmanes.com

Stewart Thom
Direct Tel: 416-777-5197
Direct Fax: 1-888-689-3872
sthom@torkinmanes.com

Our File No: 34487.0002

An international
member of

A^{ll}yLaw

Torkin|Manes
Barristers & Solicitors

June 22, 2017

DELIVERED VIA REGISTERED MAIL

Mr. Mark Lathem LLP
c/o 2380009 Ontario Limited
588 Edward Avenue, Unit 49
Richmond Hill, ON L4C 9Y6

Dear Mr. Lathem:

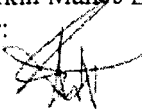
Re: NOTICE OF TERMINATION OF LEASE
2370 South Sheridan Way, Mississauga, ON (the "Leased Premises")

Enclosed, please find a Notice of Termination of Lease dated as of today's date.

Yours truly,

Torkin Manes LLP

Per:



Stewart Thom
ST/jmc

Enclosure

34487.0002/10070089_1

NOTICE OF TERMINATION OF LEASE

FROM: Collins Barrow Toronto Limited, in its capacity as Receiver of 2380009 Ontario Limited (the "**Receiver**")

TO: 2380009 Ontario Limited ("**238**")

AND TO: BuiltRite Technologies Inc. ("**BuiltRite**")

In accordance with the terms of the Lease (as herein defined) and with paragraph 8 of the Order of the Honourable Justice Pattillo dated May 29, 2017 issued in Court File No: 16-011354-00CL (the "**Order**"), the Receiver hereby gives 45 days' notice of the termination of the lease agreement between BuiltRite, as tenant, and 238, as landlord, dated January 15, 2014 (the "**Lease**") respecting premises located at 2370 South Sheridan Way, Mississauga, Ontario (the "**Leased Premises**").

As per the terms of the Order, you are required to deliver vacant possession of the Leased Premises on or before Tuesday, August 8, 2017. The Order further requires that the Leased Premises be delivered "in a proper state of cleanliness and repair". Please be advised that the Receiver expects strict compliance with the terms of the Order and this Notice and that the termination of the Lease and requirement to vacate the Leased Premises by the aforementioned date shall not be varied, altered or extended other than in writing, signed by the Receiver.

Dated this 22nd day of June, 2017.

**Collins Barrow Toronto Limited, in its
capacity as Receiver of 2380009 Ontario
Limited and not in its personal capacity**

Per: _____

Daniel Weisz, Senior Vice-President
I/We have the authority to bind the corporation

Torkin Manes LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, Ontario M5C 2W7

Tel: 416-863-1188
Fax: 416-863-0305
www.torkinmanes.com

Stewart Thom
Direct Tel: 416-777-5197
Direct Fax: 1-888-689-3872
sthom@torkinmanes.com

Our File No: 34487.0002

An association of
members of

AllyLaw

Torkin|Manes
Barristers & Solicitors

June 22, 2017

DELIVERED VIA REGISTERED MAIL

2380009 Ontario Limited
1277 Wilson Avenue - Suite #406
North York, ON M3N 1K1

Attention: Mr. Hai Liang Zhang

Dear Sirs/Mesdames:

Re: NOTICE OF TERMINATION OF LEASE
2370 South Sheridan Way, Mississauga, ON (the "Leased Premises")

Enclosed, please find a Notice of Termination of Lease dated as of today's date.

Yours truly,

Torkin Manes LLP

Per:



Stewart Thom
ST/jmc

Enclosure
34487.0002/10070007_1

NOTICE OF TERMINATION OF LEASE

FROM: Collins Barrow Toronto Limited, in its capacity as Receiver of 2380009 Ontario Limited (the "Receiver")

TO: 2380009 Ontario Limited ("238")

AND TO: BuiltRite Technologies Inc. ("BuiltRite")

In accordance with the terms of the Lease (as herein defined) and with paragraph 8 of the Order of the Honourable Justice Pattillo dated May 29, 2017 issued in Court File No: 16-011354-00CL (the "Order"), the Receiver hereby gives 45 days' notice of the termination of the lease agreement between BuiltRite, as tenant, and 238, as landlord, dated January 15, 2014 (the "Lease") respecting premises located at 2370 South Sheridan Way, Mississauga, Ontario (the "Leased Premises").

As per the terms of the Order, you are required to deliver vacant possession of the Leased Premises on or before Tuesday, August 8, 2017. The Order further requires that the Leased Premises be delivered "in a proper state of cleanliness and repair". Please be advised that the Receiver expects strict compliance with the terms of the Order and this Notice and that the termination of the Lease and requirement to vacate the Leased Premises by the aforementioned date shall not be varied, altered or extended other than in writing, signed by the Receiver.

Dated this 22nd day of June, 2017.

**Collins Barrow Toronto Limited, in its
capacity as Receiver of 2380009 Ontario
Limited and not in its personal capacity**

Per: _____

Daniel Weisz, Senior Vice-President
I/We have the authority to bind the corporation

Torkin Manes LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, Ontario M5C 2W7

Tel: 416-863-1188
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Stewart Thom
Direct Tel: 416-777-5197
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sthom@torkinmanes.com

Our File No: 34487.0002

An international
member of

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Torkin | Manes
Barristers & Solicitors

June 22, 2017

DELIVERED VIA REGISTERED MAIL

BuiltRite Technologies Inc.
2370 South Sheridan Way
Mississauga, ON L5J 2M4

Attention: Mr. Elias F. Mancebo

Dear Sirs/Mesdames:

Re: **NOTICE OF TERMINATION OF LEASE**
2370 South Sheridan Way, Mississauga, ON (the "Leased Premises")

Enclosed, please find a Notice of Termination of Lease dated as of today's date.

Yours truly,

Torkin Manes LLP

Per:



Stewart Thom
ST/jmc

Enclosure

34487.0002/10070043_1

NOTICE OF TERMINATION OF LEASE

FROM: Collins Barrow Toronto Limited, in its capacity as Receiver of 2380009 Ontario Limited (the "Receiver")

TO: 2380009 Ontario Limited ("238")

AND TO: BuiltRite Technologies Inc. ("BuiltRite")

In accordance with the terms of the Lease (as herein defined) and with paragraph 8 of the Order of the Honourable Justice Pattillo dated May 29, 2017 issued in Court File No: 16-011354-00CL (the "Order"), the Receiver hereby gives 45 days' notice of the termination of the lease agreement between BuiltRite, as tenant, and 238, as landlord, dated January 15, 2014 (the "Lease") respecting premises located at 2370 South Sheridan Way, Mississauga, Ontario (the "Leased Premises").

As per the terms of the Order, you are required to deliver vacant possession of the Leased Premises on or before Tuesday, August 8, 2017. The Order further requires that the Leased Premises be delivered "in a proper state of cleanliness and repair". Please be advised that the Receiver expects strict compliance with the terms of the Order and this Notice and that the termination of the Lease and requirement to vacate the Leased Premises by the aforementioned date shall not be varied, altered or extended other than in writing, signed by the Receiver.

Dated this 22nd day of June, 2017.

**Collins Barrow Toronto Limited, in its
capacity as Receiver of 2380009 Ontario
Limited and not in its personal capacity**

Per: _____

Daniel Weisz, Senior Vice-President
I/We have the authority to bind the corporation



Registered Receipt (Bulk)

This receipt is necessary if enquiry is desired. Fragile and perishable articles are not indemnified against damage. Indemnity and fees information is available on request from your Postal Outlet.

Récépissé (en nombre) Recommandé

À produire en cas de réclamation. Aucune indemnité ne sera versée pour l'avarie d'un objet fragile ou périssable. Vous pouvez obtenir des renseignements sur les indemnités et les droits à votre installation postale.

Sender Expéditeur

706/34487.0002

STEWART TROT

Sender Instructions - Note: Bulk Receipt is to be completed for 3 or more items. Present mailings at any Postal Outlet.

- A Complete and remove customer receipt.
- B Remove paper backing from receipt.
- C Affix receipt to this form.

Delivery confirmation may be obtained by calling 1-888-550-6333 or through the internet at www.canadapost.ca

Instructions pour l'expéditeur - Avis: Récépissé en nombre, pour 3 articles et plus. Doit être complété avant de déposer à l'installation postale.

- A Remplissez et retirez le récépissé du client.
- B Retirez la pellicule protectrice du récépissé.
- C Collez le récépissé sur cette formule.

Une confirmation de la livraison peut être obtenue en composant le 1 800 550-6333 ou par internet au www.postescanada.ca.

(1) REGISTERED DOMESTIC / RECOMMANDÉ RÉGIME INTÉRIEUR

CUSTOMER RECEIPT / REÇU DU CLIENT

No 2380009 / Destinataire

Name HAI LIANG ZHANG / Nom

2380009 INT. LTD

Address 1277 WILSON AVE. STE 406 / Adresse

City / Prov. / Postal Code NORTH YORK ON M3A 1K1 / Ville / Prov. / Code postal

Declared Value \$ 0 / Valeur déclarée

FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON

1888 550-6333

CPC Tracking Number / Numéro de repérage de la BCP: RN 264 818 813 CA

33-086-584 (14-06)

370207
STN. SUCC. A. LAIDE STREET
2077-06-22
LAIDE ST. E.
TORONTO, ON
M2B 2L8

(2) REGISTERED DOMESTIC / RECOMMANDÉ RÉGIME INTÉRIEUR

CUSTOMER RECEIPT / REÇU DU CLIENT

No 2380009 / Destinataire

Name MARK LATHEN LLP / Nom

2380009 INT. LTD

Address 588 EDWARD AVE. UNIT 49 / Adresse

City / Prov. / Postal Code RICHMOND HILL ON L4C 4Y6 / Ville / Prov. / Code postal

Declared Value \$ 0 / Valeur déclarée

FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON

1888 550-6333

CPC Tracking Number / Numéro de repérage de la BCP: RN 264 818 800 CA

33-086-584 (14-06)

370207
STN. SUCC. A. LAIDE STREET
2077-06-22
LAIDE ST. E.
TORONTO, ON
M2B 2L8

(3) REGISTERED DOMESTIC / RECOMMANDÉ RÉGIME INTÉRIEUR

CUSTOMER RECEIPT / REÇU DU CLIENT

No 2380009 / Destinataire

Name ELIAS F. PANICHI / Nom

SULTRIME TECH. INC

Address 2370 SOUTH SHERBOURNE WAY / Adresse

City / Prov. / Postal Code MISSISSAUGA ON L5J 2T4 / Ville / Prov. / Code postal

Declared Value \$ 0 / Valeur déclarée

FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON

1888 550-6333

CPC Tracking Number / Numéro de repérage de la BCP: RN 264 818 795 CA

33-086-584 (14-06)

370207
STN. SUCC. A. LAIDE STREET
2077-06-22
LAIDE ST. E.
TORONTO, ON
M2B 2L8

(5) REGISTERED DOMESTIC / RECOMMANDÉ RÉGIME INTÉRIEUR

CUSTOMER RECEIPT / REÇU DU CLIENT

No 2380009 / Destinataire

Name / Nom

Address / Adresse

City / Prov. / Postal Code / Ville / Prov. / Code postal

Declared Value \$ / Valeur déclarée

FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON

1888 550-6333

CPC Tracking Number / Numéro de repérage de la BCP

33-086-584 (14-06)

370207
STN. SUCC. A. LAIDE STREET
2077-06-22
LAIDE ST. E.
TORONTO, ON
M2B 2L8

APPENDIX I

Torkin Manes LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, Ontario M5C 2W7

Tel: 416-863-1188
Fax: 416-863-0305
www.torkinmanes.com

Stewart Thom
Direct Tel: 416-777-5197
Direct Fax: 1-888-689-3872
sthom@torkinmanes.com

Our File No: 34487.0002

An international
member of

AllyLaw

Torkin | Manes
Barristers & Solicitors

July 6, 2017

DELIVERED VIA REGISTERED MAIL

2380009 Ontario Limited
1277 Wilson Avenue - Suite #406
North York, ON M3N 1K1

Attention: Mr. Hai Liang Zhang

Dear Sirs/Mesdames:

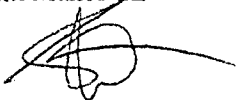
Re: NOTICE OF BREACH OF LEASE re 2370 South Sheridan Way, Mississauga, ON

Enclosed, please find a Notice of Breach of Lease dated as of today's date.

Yours truly,

Torkin Manes LLP

Per:



Stewart Thom
ST/jmc

Enclosure

34487.0002/10070007_1

NOTICE OF BREACH

FROM: Collins Barrow Toronto Limited, in its capacity as Receiver of 2380009 Ontario Limited (the "Receiver")

TO: BuiltRite Technologies Inc. ("BuiltRite")

AND TO: 2380009 Ontario Limited ("238")

You are in breach of the terms of the lease agreement between BuiltRite, as tenant, and 238, as landlord, dated January 15, 2014 (the "Lease") respecting premises located at 2370 South Sheridan Way, Mississauga, Ontario (the "Leased Premises").

The breaches are as follows:

1. Non-payment of an amount equal to the H.S.T. payable on, and in addition to, monthly rental payments of \$18,000 for the period from January 15, 2014 to February 28, 2017; and
2. Non-payment of utilities, as shown on an account statement generated by Alectra Utilities and provided to the Receiver by BuiltRite via email on June 2, 2017 in the amount of \$375,072.46, as of that date (copy attached).

In accordance with the terms of the Lease and the provisions of the *Commercial Tenancies Act* notice of breach is hereby given.

The above defaults may be remedied by:

- (a) payment in full of all arrears indicated in paragraph 1 herein; and
- (b) provision of evidence of payment of those utilities arrears referenced at paragraph 2 herein.

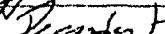
We require that all of the above breaches be remedied on or before July 19, 2017.

We also note that July 1, 2017 rent, including H.S.T., has not been paid which as of July 16, 2017 shall constitute an additional default under the terms of the Lease.

Dated this 6th day of July, 2017.

Collins Barrow Toronto Limited, in its
capacity as Receiver of 2380009 Ontario
Limited

Per: 

Title: 
I/We have the authority to bind the corporation

Stewart Thom

From: marcelo <mhernandez@builtritetechnology.com>
Sent: June-02-17 6:13 PM
To: Daniel Weisz; Brenda Wong
Cc: emancebo@builtritetechnology.com
Subject: FW: Builtrite

Good evening Daniel,

Please find below what they sent us from the Hydro company to provide proof of arrangement. Hopefully this will satisfy.

Have a wonderful weekend.

Marcelo

From: Melissa McDonald [<mailto:Melissa.McDonald@electrautilities.com>]
Sent: June 2, 2017 4:10 PM
To: marcelo
Subject: RE: Builtrite

Hi Marcelo,

2471793 ONTARIO INC.
BUILTRITE TECHNOLOGIES INC.
2370 SOUTH SHERIDAN WAY
MISSISSAUGA ON L5J 2M4

Account #1300853042
Arrangement \$16,500/week
Transfer of \$140,245.57 is from Account # 9157222049

Bill Date	Balance Forward	Electricity Charges	Late Charge	Misc Fees	Payment	HST	Balance Owing
12-Aug-16	\$ 140,245.57	\$ 59,000.00		\$ 30.00		\$ 3.90	\$ 199,279.47
23-Sep-16	\$ 199,279.47	\$ 33,029.68			\$ 25,000.00	\$ 4,293.86	\$ 211,603.01

25-Oct-16	\$ 211,603.01	\$ 32,712.06	\$ 621.61		-	\$ 30,000.00	\$ 4,252.56	\$ 219,189.24
23-Nov-16	\$ 219,189.24	\$ 41,733.98	\$ 2,669.21	\$ 9.00			\$ 5,425.42	\$ 269,026.85
22-Dec-16	\$ 269,026.85	\$ 41,661.50	\$ 3,364.03		-	\$ 12,000.00	\$ 5,415.99	\$ 307,468.37
24-Jan-17	\$ 307,468.37	\$ 27,043.69	\$ 3,724.48	-\$ 49.19			\$ 3,515.67	\$ 341,703.02
23-Feb-17	\$ 341,703.02	\$ 31,757.73	\$ 5,004.48	\$ 9.00			\$ 4,128.51	\$ 382,602.74
22-Mar-17	\$ 382,602.74	\$ 34,330.60	\$ 5,281.20	\$ 9.00	-	\$ 48,000.00	\$ 4,462.98	\$ 378,686.52
26-Apr-17	\$ 378,686.52	\$ 33,254.73	\$ 4,415.30	\$ 9.00	-	\$ 30,000.00	\$ 4,323.12	\$ 390,688.67
23-May-17	\$ 390,688.67	\$ 23,764.02	\$ 6,048.44	-\$ 27.00	-	\$ 38,500.00	\$ 3,089.33	\$ 385,063.46
26-May-17				\$ 9.00	-	\$ 10,000.00		\$ 375,072.46

Melissa

alectra
utilities

Discover the possibilities

Melissa McDonald
Manager of Credit & Collections

175 Sandalwood Pkwy W. Brampton, ON L7A 1E8

t 905.452.5511 | m 416.420.9342

alectrautilities.com



Torkin Manes LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, Ontario M5C 2W7

Tel: 416-863-1188
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Stewart Thom
Direct Tel: 416-777-5197
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sthom@torkinmanes.com

Our File No: 34487.0002

An international
member of
AllyLaw

Torkin|Manes
Barristers & Solicitors

July 6, 2017

DELIVERED VIA REGISTERED MAIL

Mr. Mark Lathem LLP
c/o 2380009 Ontario Limited
588 Edward Avenue, Unit 49
Richmond Hill, ON L4C 9Y6

Dear Mr. Lathem:

Re: NOTICE OF BREACH OF LEASE re 2370 South Sheridan Way, Mississauga, ON

Enclosed, please find a Notice of Breach of Lease dated as of today's date.

Yours truly,

Torkin Manes LLP
Per:

Stewart Thom
ST/jmc

Enclosure
34487.0002/10120795_1

NOTICE OF BREACH

FROM: Collins Barrow Toronto Limited, in its capacity as Receiver of 2380009 Ontario Limited (the "Receiver")

TO: BuiltRite Technologies Inc. ("BuiltRite")

AND TO: 2380009 Ontario Limited ("238")

You are in breach of the terms of the lease agreement between BuiltRite, as tenant, and 238, as landlord, dated January 15, 2014 (the "Lease") respecting premises located at 2370 South Sheridan Way, Mississauga, Ontario (the "Leased Premises").

The breaches are as follows:

1. Non-payment of an amount equal to the H.S.T. payable on, and in addition to, monthly rental payments of \$18,000 for the period from January 15, 2014 to February 28, 2017; and
2. Non-payment of utilities, as shown on an account statement generated by Alectra Utilities and provided to the Receiver by BuiltRite via email on June 2, 2017 in the amount of \$375,072.46, as of that date (copy attached).

In accordance with the terms of the Lease and the provisions of the *Commercial Tenancies Act* notice of breach is hereby given.

The above defaults may be remedied by:

- (a) payment in full of all arrears indicated in paragraph 1 herein; and
- (b) provision of evidence of payment of those utilities arrears referenced at paragraph 2 herein.

We require that all of the above breaches be remedied on or before July 19, 2017.

We also note that July 1, 2017 rent, including H.S.T., has not been paid which as of July 16, 2017 shall constitute an additional default under the terms of the Lease.

Dated this 6th day of July, 2017.

Collins Barrow Toronto Limited, in its
capacity as Receiver of 2380009 Ontario
Limited

Per: 

Title: *President*
I/We have the authority to bind the corporation

Stewart Thom

From: marcelo <mhernandez@builtritetechnology.com>
Sent: June-02-17 6:13 PM
To: Daniel Weisz; Brenda Wong
Cc: emancebo@builtritetechnology.com
Subject: FW: Builtrite

Good evening Daniel,

Please find below what they sent us from the Hydro company to provide proof of arrangement. Hopefully this will satisfy.

Have a wonderful weekend.

Marcelo

From: Melissa McDonald [<mailto:Melissa.McDonald@electrautilities.com>]
Sent: June 2, 2017 4:10 PM
To: marcelo
Subject: RE: Builtrite

Hi Marcelo,

2471793 ONTARIO INC.
BUILTRITE TECHNOLOGIES INC.
2370 SOUTH SHERIDAN WAY
MISSISSAUGA ON L5J 2M4

Account #1300853042
Arrangement \$16,500/week
Transfer of \$140,245.57 is from Account # 9157222049

Bill Date	Balance Forward	Electricity Charges	Late Charge	Misc Fees	Payment	HST	Balance Owing
12-Aug-16	\$ 140,245.57	\$ 59,000.00		\$ 30.00		\$ 3.90	\$ 199,279.47
23-Sep-16	\$ 199,279.47	\$ 33,029.68			\$ 25,000.00	\$ 4,293.86	\$ 211,603.01

25-Oct-16	\$ 211,603.01	\$ 32,712.06	\$ 621.61		-	\$ 30,000.00	\$ 4,252.56	\$ 219,189.24
23-Nov-16	\$ 219,189.24	\$ 41,733.98	\$ 2,669.21	\$ 9.00			\$ 5,425.42	\$ 269,026.85
22-Dec-16	\$ 269,026.85	\$ 41,661.50	\$ 3,364.03		-	\$ 12,000.00	\$ 5,415.99	\$ 307,468.37
24-Jan-17	\$ 307,468.37	\$ 27,043.69	\$ 3,724.48	-\$ 49.19			\$ 3,515.67	\$ 341,703.02
23-Feb-17	\$ 341,703.02	\$ 31,757.73	\$ 5,004.48	\$ 9.00			\$ 4,128.51	\$ 382,602.74
22-Mar-17	\$ 382,602.74	\$ 34,330.60	\$ 5,281.20	\$ 9.00	-	\$ 48,000.00	\$ 4,462.98	\$ 378,686.52
26-Apr-17	\$ 378,686.52	\$ 33,254.73	\$ 4,415.30	\$ 9.00	-	\$ 30,000.00	\$ 4,323.12	\$ 390,688.67
23-May-17	\$ 390,688.67	\$ 23,764.02	\$ 6,048.44	-\$ 27.00	-	\$ 38,500.00	\$ 3,089.33	\$ 385,063.46
26-May-17				\$ 9.00	-	\$ 10,000.00		\$ 375,072.46

Melissa

alectra
utilities

Discover the possibilities

Melissa McDonald
Manager of Credit & Collections
 175 Sandalwood Pkwy W. Brampton, ON L7A 1E8
 t 905.452.5511 | m 416 420.9342
alectrautilities.com



Torkin Manes LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, Ontario M5C 2W7

Tel: 416-863-1188
Fax: 416-863-0305
www.torkinmanes.com

Stewart Thom
Direct Tel: 416-777-5197
Direct Fax: 1-888-689-3872
sthom@torkinmanes.com

Our File No: 34487.0002

An international
member of
AllyLaw

Torkin|Manes
Barristers & Solicitors

July 6, 2017

DELIVERED VIA REGISTERED MAIL

BuiltRite Technologies Inc.
2370 South Sheridan Way
Mississauga, ON L5J 2M4

Attention: Mr. Elias F. Mancebo

Dear Sirs/Mesdames:

Re: NOTICE OF BREACH OF LEASE re 2370 South Sheridan Way, Mississauga, ON

Enclosed, please find a Notice of Breach of Lease dated as of today's date.

Yours truly,

Torkin Manes LLP

Per:

Stewart Thom
ST/jmc

Enclosure
34487.0002/10120797_1

NOTICE OF BREACH

FROM: Collins Barrow Toronto Limited, in its capacity as Receiver of 2380009 Ontario Limited (the "Receiver")

TO: BuiltRite Technologies Inc. ("BuiltRite")

AND TO: 2380009 Ontario Limited ("238")

You are in breach of the terms of the lease agreement between BuiltRite, as tenant, and 238, as landlord, dated January 15, 2014 (the "Lease") respecting premises located at 2370 South Sheridan Way, Mississauga, Ontario (the "Leased Premises").

The breaches are as follows:

1. Non-payment of an amount equal to the H.S.T. payable on, and in addition to, monthly rental payments of \$18,000 for the period from January 15, 2014 to February 28, 2017; and
2. Non-payment of utilities, as shown on an account statement generated by Alectra Utilities and provided to the Receiver by BuiltRite via email on June 2, 2017 in the amount of \$375,072.46, as of that date (copy attached).

In accordance with the terms of the Lease and the provisions of the *Commercial Tenancies Act* notice of breach is hereby given.

The above defaults may be remedied by:

- (a) payment in full of all arrears indicated in paragraph 1 herein; and
- (b) provision of evidence of payment of those utilities arrears referenced at paragraph 2 herein.

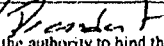
We require that all of the above breaches be remedied on or before July 19, 2017.

We also note that July 1, 2017 rent, including H.S.T., has not been paid which as of July 16, 2017 shall constitute an additional default under the terms of the Lease.

Dated this 6th day of July, 2017.

Collins Barrow Toronto Limited, in its
capacity as Receiver of 2380009 Ontario
Limited

Per: 

Title: 
//We have the authority to bind the corporation

Stewart Thom

From: marcelo <mhernandez@builtritetechnology.com>
Sent: June-02-17 6:13 PM
To: Daniel Weisz; Brenda Wong
Cc: emancebo@builtritetechnology.com
Subject: FW: Builtrite

Good evening Daniel,

Please find below what they sent us from the Hydro company to provide proof of arrangement. Hopefully this will satisfy.

Have a wonderful weekend.

Marcelo

From: Melissa McDonald [<mailto:Melissa.McDonald@electrautilities.com>]
Sent: June 2, 2017 4:10 PM
To: marcelo
Subject: RE: Builtrite

Hi Marcelo,

2471793 ONTARIO INC.
BUILTRITE TECHNOLOGIES INC.
2370 SOUTH SHERIDAN WAY
MISSISSAUGA ON L5J 2M4

Account #1300853042
Arrangement \$16,500/week
Transfer of \$140,245.57 is from Account # 9157222049

Bill Date	Balance Forward	Electricity Charges	Late Charge	Misc Fees	Payment	HST	Balance Owing
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23-Feb-17	\$ 341,703.02	\$ 31,757.73	\$ 5,004.48	\$ 9.00			\$ 4,128.51	\$ 382,602.74
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26-May-17				\$ 9.00	-	\$ 10,000.00		\$ 375,072.46

Melissa

alectra
utilities

Discover the possibilities

Melissa McDonald
Manager of Credit & Collections
 175 Sandalwood Pkwy W. Brampton, ON L7A 1E8
 t 905.452.5511 | m 416.420.9342
alectrautilities.com





Registered Receipt (Bulk)

This receipt is necessary if enquiry is desired. Fragile and perishable articles are not indemnified against damage. Idemnity and fees information is available on request from your Postal Outlet.

Récépissé (en nombre) Recommandé

À produire en cas de réclamation. Aucune indemnité ne sera versée pour l'avarie d'un objet fragile ou périssable. Vous pouvez obtenir des renseignements sur les indemnités et les droits à votre installation postale.

Sender Expéditeur

Sender instructions - Note: Bulk Receipt is to be completed for 3 or more items. Present mailings at any Postal Outlet.

Instructions pour l'expéditeur - Avis: Récépissé en nombre, pour 3 articles et plus. Doit être complété avant de déposer à l'installation postale.

- A Complete and remove customer receipt.
- B Remove paper backing from receipt.
- C Affix receipt to this form.

- A Remplissez et retirez le récépissé du client.
- B Retirez la pellicule protectrice du récépissé.
- C Collez le récépissé sur cette formule.

Delivery confirmation may be obtained by calling 1-888-550-6333 or through the internet at www.canadapost.ca

Une confirmation de la livraison peut être obtenue en composant le 1 800 550-6333 ou par Internet au www.postescanada.ca.

S. THOM

706

34487.0002.

(1)



REGISTERED DOMESTIC RECOMMANDÉ RÉGIME INTÉRIEUR



CUSTOMER RECEIPT REÇU DU CLIENT

To BUILTRITE TECHNOLOGIES INC.

Name 2370 SOUTH STERIDAN WAY

Address MISSISSAUGA, ON L5J 2M4

City / Prov. / Postal Code Ville / Prov. / Code postal

FOR DELIVERY CONFIRMATION CONFIRMATION DE LA LIVRAISON
www.canadapost.ca or/ou www.postescanada.ca
1 888 550-6333

Declared Value Value déclarée \$

CPC Tracking Number Numéro de repérage de la SCP
RW 679 363 495 CA

33-086-584 (11-04)

(2)



REGISTERED DOMESTIC RECOMMANDÉ RÉGIME INTÉRIEUR



CUSTOMER RECEIPT REÇU DU CLIENT

To MARK LATHAM c/o 2380009 ONTARIO LTD.

Name 588 EDWARD AVE. UNIT 4A

Address RICHMOND HILL, ON L4C 9Y6

City / Prov. / Postal Code Ville / Prov. / Code postal

FOR DELIVERY CONFIRMATION CONFIRMATION DE LA LIVRAISON
www.canadapost.ca or/ou www.postescanada.ca
1 888 550-6333

Declared Value Value déclarée \$

CPC Tracking Number Numéro de repérage de la SCP
RW 679 363 442 CA

33-086-584 (11-04)

(3)



REGISTERED DOMESTIC RECOMMANDÉ RÉGIME INTÉRIEUR



CUSTOMER RECEIPT REÇU DU CLIENT

To HAI LIANG ZHANG c/o 2380009 ONTARIO LTD.

Name 1277 WILSON AVE SUITE 406

Address NORTH YORK, ON M3N 1K1

City / Prov. / Postal Code Ville / Prov. / Code postal

FOR DELIVERY CONFIRMATION CONFIRMATION DE LA LIVRAISON
www.canadapost.ca or/ou www.postescanada.ca
1 888 550-6333

Declared Value Value déclarée \$

CPC Tracking Number Numéro de repérage de la SCP
RW 679 363 456 CA

33-086-584 (11-04)

STR. 370207
2017-07-06
31 AUBURN ST. E
TORONTO, ON
M4E 1J9

(5)

(6)

APPENDIX J

Daniel Weisz

From: Stewart Thom <sthom@torkinmanes.com>
Sent: Wednesday, May 31, 2017 10:01 AM
To: Tom Arndt
Cc: Daniel Weisz; Barry A. Cohen, Q.C., LL.M.; Jeffrey Simpson
Subject: RE: 2292912 Ontario Inc. v. 2380009 Ontario Limited

Tom,

This is a reminder that one of the items on the list of obligations to be performed by June 2, 2017 is payment of all HST arrears under the lease. We did not, for the purposes of the order, quantify that number as you indicated that your client has some form of explanation/justification for set off between the landlord and tenant, the effect of which is alleged to reduce the balance which would otherwise be owing on the face of the lease and having regard to the fact that it does not appear that any HST has been paid by the tenant since the inception of the lease.

Danny, can you please confirm the receiver's calculation of HST outstanding?

For clarity, we expect one of two things to happen in order for your client to satisfy the condition that the HST arrears be paid:

1. Funds equivalent to the HST arrears amount calculated by the Receiver (number to be confirmed by Danny) are provided to the receiver by way of bank draft on or before June 2, 2017; or
2. A *satisfactory* explanation **together with supporting documentation** be provided to the receiver in advance of the expiry of the deadline for payment of June 2, 2017. The receiver will, at its sole discretion, determine whether the explanation and documentation provided is satisfactory and warrants any reduction of the HST outstanding. If proceeding by this route, I would encourage you to provide us with the explanation/documentation immediately, such that if the receiver does not feel that the explanation provided warrants any reduction of the calculated HST arrears, your client will still have time to ensure that the payment required by the receiver is received by the June 2, 2017 deadline. Should your client choose to hold back on providing the explanation/documentation until the end of day on Friday, they will of course find themselves in default if the explanation is rejected and the receiver reserves all rights to deliver notice of termination immediately thereafter and offer the property for sale.

As I believe was made clear to you on Monday's motion date, if your clients require additional time to fulfill their obligations under the order you may request same, but should not do so at the last minute before the expiry of the deadline. The receiver reserves all rights to refuse to grant any extension. Approval of any extension will be based on the length of time requested and the reasons provided as to why the extension is necessary. The receiver is unlikely to approve any request that entails an extension of more than a few days, at most, or any request that comes without a suitable explanation as to why it is necessary.

Your client will, of course, need to comply with all conditions under the order and the above applies equally to those other conditions.

If you need to discuss, feel free to contact me.

Yours truly,

Stewart Thom
Tel: 416-777-5197

Fax: 1-877-689-3872

Torkin Manes LLP
Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

From: Tom Arndt [mailto:tom@himprolaw.com]
Sent: May-29-17 9:39 AM
To: Stewart Thom; rfinkel@blaney.com; mhernandez@builtritetechnology.com; dwiner@ksllp.ca; ocwlaw@rogers.com; info@ecoenergyhs.ca; gruggiero@srlawpractice.com; info@cnkhcanada.com; jvanbakel@kmlaw.ca; diane.winters@justice.gc.ca; kevin.ohara@fin.gov.on.ca
Cc: dweisz@collinsbarrow.com
Subject: RE: 2292912 Ontario Inc. v. 2380009 Ontario Limited

Marcelo and I are running a bit late.

Marcelo is coming with cheque for rent and arrears in HST.

Tom Arndt
Himelfarb Proszanski
Barristers & Solicitors
480 University Avenue, Suite 1401
Toronto, Ontario, M5G 1V2

Phone. (416) 599-8080 Ext.252
Fax. (416) 599-3131
Email. tom@himprolaw.com
Web. www.himprolaw.com



From: Stewart Thom [mailto:sthom@torkinmanes.com]
Sent: May-26-17 3:29 PM
To: rfinkel@blaney.com; Tom Arndt; mhernandez@builtritetechnology.com; dwiner@ksllp.ca; ocwlaw@rogers.com; info@ecoenergyhs.ca; gruggiero@srlawpractice.com; info@cnkhcanada.com; jvanbakel@kmlaw.ca; diane.winters@justice.gc.ca; kevin.ohara@fin.gov.on.ca
Cc: dweisz@collinsbarrow.com
Subject: RE: 2292912 Ontario Inc. v. 2380009 Ontario Limited

All,

Attached please find a copy of the draft order to be sought by the receiver at the hearing of the receiver's motion returnable Monday May 29, 2017.

Stewart Thom
Tel: 416-777-5197
Fax: 1-877-689-3872

Torkin Manes LLP
Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

From: Stewart Thom
Sent: May-24-17 7:42 PM
To: 'rfinkel@blaney.com'; 'tom@himplolaw.com'; 'mhernandez@builtritetechnology.com'; 'dwiner@ksllp.ca'; 'ocwlaw@rogers.com'; 'info@ecoenergyhs.ca'; 'gruggiero@srlawpractice.com'; 'info@cnkhcanada.com'; 'jvanbakel@kmlaw.ca'; 'diane.winters@justice.gc.ca'; 'kevin.ohara@fin.gov.on.ca'
Cc: 'dweisz@collinsbarrow.com'
Subject: 2292912 Ontario Inc. v. 2380009 Ontario Limited

All,

Please find attached the Amended Notice of Motion, Supplemental Report to the First Report of the Receiver and Factum of the Receiver in connection with the Receiver's motion returnable May 29, 2017.

If you require a hard copy or a copy of the Book of Authorities, please request same by return email.

Stewart Thom
Tel: 416-777-5197
Fax: 1-877-689-3872
sthom@torkinmanes.com
[VCard](#)

Torkin Manes LLP
Barristers & Solicitors

151 Yonge Street, Suite 1500
Toronto ON M5C 2W7
torkinmanes.com

An international member of Ally Law

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

This message (including attachments, if any) is confidential, may be privileged and is intended for the above-named recipient(s) only. If you have received this message in error, please notify me by return email and delete this message from your system. Any unauthorized use or disclosure of this message is strictly prohibited.

APPENDIX K

Brenda Wong

From: Daniel Weisz
Sent: Wednesday, June 07, 2017 1:57 PM
To: marcelo; emancebo@buitritetech.com
Cc: 'Tom Arndt'; 'Barry A. Cohen, Q.C., LL.M.'; 'Stewart Thom'; Brenda Wong; 'Peter Proszanski'
Subject: RE: 2380009 Ontario Limited/Builtrite

Hi Marcelo,

Thank you for your e-mail below. We have reviewed your e-mail and respond as follows:

- i) Regarding HST, Paragraph 9b) of the May 29th Court Order ("Order") which requires BuiltRite to pay "all HST arrears owing by BuiltRite...". We acknowledge your advice that you have filed under RC4616 *Election or Revocation of an Election for Closely Related Corporations and/or Canadian Partnerships to Treat Certain Taxable Transactions as Having Been Made for Nil Consideration for GST/HST Purposes*. Please provide us with copies of the RC4616 form that you filed in order that we can review same as well as proof (such as fax confirmation, e-mail receipt, etc.) that (i) the forms have been submitted and (ii) CRA has accepted your position. Once we review these documents, we can assess whether we agree with your position that you have addressed the matter of the HST arrears.
- ii) With respect to paragraph 9(e), we confirm that we have agreed to accept payment of \$4,176.43, plus \$41.00 in reimbursement for courier costs, to be made via bank draft by June 9, 2017. Please note there will be no extension granted to the agreed date.
- iii) With respect to the Required Information to be delivered to the Receiver within seven days of the date of the Order pursuant to paragraph 5 of the Order, the following information has not been provided to the Receiver:
 - Copy of the most recent hydro bill/statement from Alectra Utilities ("Alectra"). You have provided a copy of an e-mail from Alectra Utilities. Please also provide a copy of a written agreement setting out the terms of BuiltRite's payment arrangement with Alectra.
 - Copies of the most recent notices of assessment and past two years of statutory remittances. You have advised that no tax returns have been filed, as the company was practically inactive. You have not indicated whether any HST returns have been filed since October 31, 2014 or provided copies of the most recent notice of assessment for the HST account or HST returns filed for the past two years. We understand that an election under Form RC4616 does not cancel your obligation to file HST returns as an HST registrant. We ask that you please advise if HST returns have been filed. Please note that we do not agree with your advice that the company has been inactive, as 2380009 has generated rental income (plus applicable HST) since the commencement of the lease, notwithstanding that those rental payments were directed by 2380009 to be remitted to the first mortgagee.
 - Accounting records for 238 from the date of incorporation to the present, including bank reconciliations, general ledger detail report, trial balance, cheque register, copies of invoices paid, data file for 2380009's accounting software, etc.

In summary, we request that you provide the information requested above or confirm that the information doesn't exist (form 4616 and CRA advice regarding the request, copy of payment arrangement with Alectra and latest Alectra bill, status of the HST returns and accounting records).

As you indicate in your e-mail, we acknowledge and appreciate the time you have spent assisting the Receiver in providing information and conducting the tours of the property.

Please note that it is not the present intention of the Receiver to provide 45 days' notice to terminate the Lease prior to June 21, 2017. As such, the June rent paid relates to the continued occupancy by BuiltRite of the property. July rent would also be due and payable on July 1 notwithstanding if the Lease is terminated before then.

With reference to your request for the appraisals, the information therein has been sealed by the Court. As such, we are not in a position to provide that information, nor would we since the dissemination of that information could compromise any sales process that will be conducted by the Receiver.

All the above being said, as we have previously discussed, the Receiver is tasked with maximizing the realizations from the assets of 2380009. The receivership has been in effect for over 4 months which has afforded 2380009 and BuiltRite time to attempt to restructure their finances (which 4 month time period does not include the period between the date the receivership application was initially served and the date of the Receiver's appointment). As such, the Receiver will be proceeding to take the steps it believes will result in the maximization of the realizations from 2380009's assets. Accordingly, please be advised that unless otherwise ordered by the Court, the Receiver intends on June 21, 2017 to exercise its right to terminate the Lease in accordance with Paragraph 8 of the Order.

Thank you,

Danny

Daniel Weisz
Senior Vice-President
Collins Barrow Toronto Limited
T 416-646-8778
F 416-480-2646

Connect with me on LinkedIn: <http://ca.linkedin.com/in/danielweisz>

11 King St. W., Suite 700, Box 27,
Toronto, Ontario, Canada, M5H 4C7

Clarity Defined@
www.collinsbarrow.com



Independent member of Baker Tilly International

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From: marcelo [mailto:mhernandez@builtritetechnology.com]
Sent: Tuesday, June 06, 2017 12:12 PM
To: Daniel Weisz; emancebo@builtritetechnology.com
Cc: "Tom Arndt"; 'Barry A. Cohen, Q.C., LL.M.'; 'Stewart Thom'; Brenda Wong; 'Peter Proszanski'
Subject: RE: 2380009 Ontario Limited/Builtrite

Good morning Daniel,

We have reviewed the received email this morning in reference to the Court Order on May 29, 2017, our reply is as follows;

It is Builtrite's position that all HST has been paid in full to the Receiver since its appointment on February 2017. All the rents plus HST have been paid in full including the month of June.

All HST which you state not to be paid in full and owing under the lease we believe is not accurate as we have filed under **RC4616 Election or Revocation of an Election for Closely Related Corporations and/or Canadian Partnerships to Treat Certain Taxable Transactions as Having Been Made for Nil Consideration for GST/HST Purposes.**

We have met all the requirements in paragraph 9 other than the section (e) \$4176.43 in respect to the Enbridge which you have provided us an extension until June 09, 2017, in which we communicated by email.

Lastly, in reference to paragraph 5 of the Court Order, we reply as follows;

- (a) We have complied with all your request of information from your letter dated May 16, 2017 as there has not been any tax returns completed on 2380009 and with that no notice of assessments. The company was practically inactive and the bank statements provided, prove so.
- (b) We have provided you all the bank statements we had. We do not have any access to the account and cannot request anything as the accounts have been frozen or closed due to the receivership.

Furthermore, we have been more than accommodating in our time touring more than 3 real estate firms, appraisal companies and most recently the consultant for phase one. We have provided surveys, floor plans, previous phase 1 and 2 copies and other information relating to the property to all of the professionals above for their references and assistance in the work and reports to be prepared for your review.

Accordingly, we feel that not only is the position the Receiver is taking to exercise prior to June 21, 2017 to terminate the lease in paragraph 8 of the Court Order excessive but also not fair considering the above information provided.

Lastly, our position is that the rent and HST has been paid in full for the month of June 2017 and can't understand why the lease is even being terminated for rents paid.

We have not been provided an appraisal reports which the Receiver has commissioned so that we may also review what has been prepared and be able advise our lenders who are consistently calling.

We would greatly appreciate your support and reconsider acting on moving forward on this matter. Thank you for your consideration and in wait for your reply.



Marcelo Hernandez

Builrite Technologies Inc.

2370 South Sheridan Way

Mississauga, Ontario L5T 2M4

Tel: (905) 855-2900 Fax: (905) 855-2901

Cell: (416) 895-0842

www.builtritetechnology.com

From: Daniel Weisz [mailto:dweisz@collinsbarrow.com]
Sent: June 5, 2017 5:22 PM
To: mhernandez@builtritetechnology.com; emancebo@builtritetechnology.com
Cc: 'Tom Arndt' (tom@himprolaw.com); Barry A. Cohen, Q.C., LL.M.; Stewart Thom; Brenda Wong
Subject: 2380009 Ontario Limited/Builtrite

Hi Elias and Marcelo,

We are writing with reference to the Court Order made on May 29, 2017, a copy of which is attached for your reference.

It is the Receiver's position that paragraph 9 of that Court Order has not been complied with including, without limitation, that Builtrite has not paid in full all HST arrears owing under the Lease.

Accordingly, the Receiver hereby advises you of its position that the Receiver can before June 21, 2017 exercise the authority to terminate the Lease granted in Paragraph 8 of the aforementioned Court Order.

We also remind you that the Required Information referred to in Paragraph 5 of the Court Order is to be delivered to the Receiver within 7 days of the date of the Court Order.

Please contact us should you have any questions or require any additional information.

Thank you,

Danny

Daniel Weisz
Senior Vice-President
Collins Barrow Toronto Limited
T 416-646-8778
F 416-480-2646

Connect with me on LinkedIn: http://secure-web.cisco.com/1_LWWzOeATZHhNYhWd2uDvMZRCOGKy5b-HK0L6xTqq0frJEinh2V6-JpmbXlaERdbKXjPMFkx-M21Qz2BZV5IMSL6DrfBjZ2Zq1JnuSZjFHHFzx1jVK3pGMiV2Nrx1yacTMSQcBTkEq09Z-o8AVK7eWraAyMj34pRgOlfoZLf288G2niZbOXp2buchAkXOUiOKiYHLmwKYei2B-MtEj6xbjSKO4bulP94RKIRG3F81AkIXEbDkUezPaQxkTiP9Qj280T170Vf3H_X5mk7AhshxFSV3-j33iR3geJln21ivoVKXf0RBGpej5-erwZqWYxzX3jdNolqg_8W4q8lCbUiA/http%3A%2F%2Fca.linkedin.com%2Fin%2Fdanielweisz

11 King St. W., Suite 700, Box 27,
Toronto, Ontario, Canada, M5H 4C7

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APPENDIX L

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

2292912 ONTARIO INC.

Applicant

and

2380009 ONTARIO LIMITED

Respondent

APPLICATION UNDER Rules 14.05(2), 14.05(3)(g) and 41 of the *Rules of Civil Procedure*, section 101 of the *Courts of Justice Act*, and section 243(1) of the *Bankruptcy and Insolvency Act*

AFFIDAVIT OF MARCELO HERNANDEZ

I, MARCELO HERNANDEZ, of the City of Mississauga, in the Province of Ontario, make oath and say:

1. I am principal of Bultrite Technologies Inc. ("Bultrite") and as such have knowledge of the matters hereinafter deposed to. Where the information in this Affidavit is based on information and belief, I have indicated the source of my information and do believe it to be true. To the extent that any information set out in this Affidavit is based on my review of the file and involvement of this matter, I believe that the information stated is true.
2. I swear this Affidavit in response to a motion for approval for listing of sale and termination of a lease on the property where 2380009 Ontario and Bultrite operates, commercial property municipally known as 2370 Sheridan Way, Mississauga, Ontario (the "Property"). The Property is 3.70 acres in size and has a 72,364 square foot building (18% office).
3. 238 is the real estate holding company. Bultrite is the operating company.

BACKGROUND

4. Builtrite is in the business of manufacturing extruded PVC custom profiles, fully fabricated Window & Patio Door systems, Decking and other building products.
5. Builtrite has 26 employees, all of whom would be out of work if the lease was terminated.
6. Builtrite has \$5,500,000 worth of equipment and machinery at the Property. I estimate would take minimum 8 weeks to move out of the Property. Realistically it would take 6 months to relocate properly.

Lanyard Refinancing

7. Builtrite and 238 are in the final stages of obtaining refinancing that would produce funds to payout the first mortgage and other creditors. Attached are the following documents:

Exhibit A - March 31, 2017 Letter of Intent from Lanyard - for \$4,000,000 Loan Amount

Exhibit B - May 10, 2017 Letter of Intent from Lanyard - for Loan Amount of the lesser of 62.5% of appraisal and \$4,500,000

Exhibit C - May 16, 2017 draft Appraisal - Property valued at \$7,600,000

Exhibit D - Proposed Pay-out calculation for \$4,500,000 Lanyard re-fi

Exhibit E - Deposit payment for Lanyard re-fi, dated April 28, 2017

Exhibit F - City of Mississauga Tax Certificate dated May 19, 2017

8. The commitment letter from Lanyard is imminent. Lanyard is located in Vancouver, so they are 3 hours behind Toronto time.

Irreparable Harm

9. Builtrite and 238 would suffer irreparable harm if the lease were terminated in the current circumstances. Builtrite and 238 is on the cusp of the Lanyard refinancing which would pay out creditors with the aim of ending 238's receivership.

10. There is also concern of damage to Builtrite's customer base and operations if the lease was terminated. Word will spread in our industry eroding confidence by our customers that Builtrite will be able to deliver product on time.

11. I swear this Affidavit in response to the within receivership application, and for no other or improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on May
29, 2017.

*Commissioner for Taking Affidavits
(or as may be)*

MARCELO HERNANDEZ

APPENDIX M

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

2292912 ONTARIO INC.

Applicant

and

2380009 ONTARIO LIMITED

Respondent

APPLICATION UNDER Rules 14.05(2), 14.05(3)(g) and 41 of the *Rules of Civil Procedure*, section 101 of the *Courts of Justice Act*, and section 243(1) of the *Bankruptcy and Insolvency Act*

**AFFIDAVIT OF MARCELO HERNANDEZ
(July 6 2017)**

I, MARCELO HERNANDEZ, of the City of Mississauga, in the Province of Ontario, make oath and say:

1. I am principal of Builtrite Technologies Inc. ("**Builtrite**") and as such have knowledge of the matters hereinafter deposed to. Where the information in this Affidavit is based on information and belief, I have indicated the source of my information and do believe it to be true. To the extent that any information set out in this Affidavit is based on my review of the file and involvement of this matter, I believe that the information stated is true.
2. I swear this Affidavit in response to Collins Barrow Toronto Limited, the Court-Appointed Receiver (the "**Receiver**")'s motion for *inter alia* unfettered access to the property located at 2370 South Sheridan Way, Mississauga, Ontario (the "**Property**") upon request and that the Second Report and activities of the Receiver outlined therein be approved and for no other or improper purpose.

BACKGROUND

3. The Property is 3.70 acres in size and has a 72,364 square foot building.
4. 238 is the real estate holding company. Builtrite is the operating company.
5. Builtrite is in the business of manufacturing extruded PVC custom profiles, fully fabricated Window & Patio Door systems, Decking and other building products.
6. Builtrite has 28 employees, all of whom would be out of work if the Property is sold.
7. Builtrite has \$7,000,000 worth of equipment and machinery at the Property.

NACC LOANS Refinancing

8. Builtrite and 238 are in the final stages of refinancing that would produce funds to payout the first mortgage and other creditors.
9. By Mortgage Commitment dated June 27, 2017, Nacc Loans committed to loan 238 \$5,000,000 on certain terms (the "**Mortgage Commitment**").
10. The Mortgage Commitment has been accepted and is valid until July 28, 2017 with a funding date of July 28, 2017. The Mortgage Commitment was fully executed and delivered to NACC before July 4 deadline. NACC has a copy of the Lease.
11. The funds generated from the Mortgage Commitment are to pay out the first mortgage against the Property (approximately \$3,300,000), to pay down other debts and to take steps to discharge the Receiver.

12. I have spoken with representatives for all other mortgages registered on the Property, they have all agreed to postpone to the Nacc Mortgage.

13. A true copy of the Mortgage Commitment is attached hereto as **Exhibit A**.

Access to Property - Weekends are ok

14. The Receiver seeks an order for unfettered access to the Property for itself, its agents and potential purchasers of the Property.

15. I am concerned for the physical safety of Builtrite's employees, the Receiver, its agents and potential purchasers of the Property if unfettered access is ordered.

16. The building on the Property is Builtrite's manufacturing facility. We have multiple saw stations, extrusion equipment which deals with both water and heat (risk of slip and fall, burning), continuous use of forklifts.

17. Operations run 24 hours 5 days a week.

18. I took sample pictures of the interior of the building today showing some of the ongoing manufacturing. True copies of the pictures I took today are attached hereto as **Exhibit B**.

19. For this and other value reasons, I have offered to make the Property available to the Receiver for tours on the weekend when manufacturing is not ongoing to prevent any potential injuries or accidents.

20. The Receiver has rejected our offer without good or sufficient reason.

21. I also note that I am unsure if our insurance would cover an injury if we permitted tours during business operations.

Receiver should stop all activities

22. It is my opinion, in light of the pending refinancing which will pay out the first mortgage (the party that sought the receivership) by month's end, that the Receiver should cease all enforcement activities and put all activities on hold to avoid incurring any further expenses while we close the NACC LOANS refinancing.

23. Those activities are increasing the costs of discharging the Receiver and making less funding available to pay out 238's debts.

24. If the Receiver does not stop all activities, we will ask the court to refuse to approve payment of any and all associated costs and expenses from this date forward.

25. I swear this Affidavit in response to the motion by the Receiver, and for no other or improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on July 6,
2017.



*Commissioner for Taking Affidavits
(or as may be)*

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MARCELO HERNANDEZ

2292912 ONTARIO INC.
Applicant

-and- 2380009 ONTARIO LIMITED
Respondent

Court File No. CV-16-011354-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AMENDED MOTION RECORD
(Returnable July 21, 2017)**

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872

Lawyers for the Receiver, Collins Barrow Toronto Limited

RCP-E 4C (May 1, 2016)